

Brown Sign Parking and Tax-Increment Bills

BY CP&DR STAFF

Gov. Jerry Brown has vetoed two planning bills by significant San Diego legislators -- AB 504 by Assemblywoman Lorena Gonzalez, which would have reined in the permitting power of Civic San Diego, the nonprofit redevelopment agency, and AB 35 by Assembly Speaker Toni Atkins, which would have increased the state's allocation of low-income housing tax credits by \$300 million.

However, Brown signed several important bills, including SB 744, which requires lower parking ratios in infill situations; AB 323, which extends a CEQA

exemption for city roadway improvements; AB 2, which brings back limited tax-increment financing; and SB 107, a redevelopment cleanup bill.

Brown vetoed the tax credit bill as [part of a package of nine bills he vetoed](#) in order to maintain the state's strong fiscal situation. He tipped his hand in a plenary at the Urban Land Institute in San Francisco when he said he generally opposed tax credits because it is not usually possible to remove them in hard fiscal times.

Gonzalez has promoted AB 504 as a way of restoring permitting power to San Diego City Hall, in part to give

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Redevelopment Is Back – Or Is It?

So, redevelopment is back, sort of. How much of a difference it will make remains to be seen.

Gov. Jerry Brown has signed AB 2 (Alejo), which permits cities to create tax-increment-based “Community Redevelopment Investment Authorities” (CRIA). It's more or less the same bill that

legislative leaders – led by former Senate pro tem Darrell Steinberg – have been trying to get Brown to sign since 2012, when the redevelopment agencies were shut down.

Unlike [those earlier bills](#), however, this law makes the overt point of completely disconnecting the new system from the old

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OPR Releases Draft General Plan Guidelines

The state Office of Planning and Research has released a public draft of the update to its General Plan Guidelines for the state, beginning the public review period of the draft. The “general plan guidelines package,” when it is completed, will include new guidelines for general plans, along with a GIS data mapping tool that will allow communities to access large amounts of free data in crafting their general plans, and an easily navigable website. The draft does not incorporate any changes from legislation in the current cycle, such as SB 379. These changes will be incorporated after the public comment period, prior to finalizing the draft. The [general plan guidelines document](#) updated with sections on visioning, community engagement, social equity, resilience, economic development, healthy communities, and climate change, as well as links to data, tools, resources, and model policies throughout. The [general plan guidelines GIS based data mapping tool](#), currently in beta being updated during this review, will allow all users access to large amounts of free data, organized by elements and by themes, for creating their general plans. Public comment period ends December 5. (See CP&DR’s [preview](#) of the general

plan guidelines.)

SANDAG Adopts Regional Transportation Plan

The SANDAG Board of Directors voted unanimously to adopt the final version of its Regional Transportation Plan, called [San Diego Forward: The Regional Plan](#). The plan will invest \$204 billion into transportation infrastructure projects over the next 35 years, including provisions for 1 million more county residents and 300,000 more jobs. The RTP calls for investment in transit projects, bikeways, pedestrian improvements, and a Managed Lanes network between now and 2050. It designates half the region as open space, and exceeds greenhouse gas reduction targets set for the region by the California Air Resources Board. New infrastructure includes five new trolley lines, 32 new Rapid lines, and significant increases in transit frequencies; 160 miles of Managed Lanes to existing freeways for the specific purpose of allowing transit, carpools, and vanpools to be more efficient and bypass traffic; and 275 miles of bikeways. “What that means is that in the two or three decades before, where the region was stretching out, it kind of stretched to the limit now,” SANDAG Executive Director Gary Gallegos told the [Los](#)

[Angeles Times](#). “Now what it is doing is growing up. The reason I think that’s important is that as our transportation plans evolve, we need to take that into account.” Some [critics](#) have said that the plan focuses too much on freeways, while others say that some areas of the county will not benefit from the plan soon enough. The plan is linked to the 2011 regional Sustainable Communities Strategy (see prior CP&DR [coverage](#)); it has been mired in lawsuits over its measurement of greenhouse gas emissions (see prior CP&DR [coverage](#)).

Affordable Housing Sought for Treasure Island

San Francisco Supervisor Jane Kim is pushing the [Treasure Island](#) development of over 8,000 residences to include 40 percent affordable and middle-income housing, a significant increase from the currently-approved 27 percent. Kim’s proposal hinges on this year’s AB 2, which establishes a Community Revitalization and Investment Authorities, allowing cities to invest property tax funds into affordable housing. Lennar Urban, the developer of the site, is unlikely to budge to 40 percent, but it could up the ante to 30 percent if it works out a deal with the state. “We have an existing

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WWW.CP-DR.COM

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

William Fulton
Editor & Publisher

Martha Bridegam
Josh Stephens,

Morris Newman, Kenneth Jost
Contributing Editors

Susan Klipp
Circulation Manager

Talon Klipp
Graphics & Website

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development agreement in place with specific provisions for affordable housing and community benefits. If we and our partner, the city, mutually determine that this legislation creates additional funding opportunities for the project, we will move toward the 30 percent goal as outlined in our agreement,” [Lennar Urban](#) regional vice president Kofi Bonner told the San Francisco Business Times. (See [CP&DR coverage](#) of Treasure Island’s EIR.)

Report: Wetland Restoration Crucial for Health of S.F. Bay

Bay Area officials need to restore 54,000 acres of wetlands in the San Francisco Bay over the next 15 years if they want to stave off billions of dollars of damage from [rising seas](#), surging tides, and extreme storms driven by climate change, according to a new [report](#) from 100 scientists and 17 government agencies. While experts have said that some places in the bay need seawalls, the study, titled “The Baylands and Climate Change: What We Can Do,” nevertheless advocates working with nature rather than against it, adding that seawalls and levees would destroy many marshes and probably cost taxpayers more in the long run. “[The marshes will] start to erode,” said Letitia Grenier, one of the report’s main

authors. “We’ll have bigger waves coming in on high tides and storms -- and more flooding. We’ll lose our wildlife. And eventually the wetlands will be gone. You’ll see levees and concrete seawalls. The water in many places will be higher than the land, like it is in New Orleans.” A 2012 study by the National Academy of Sciences found that melting ice and expanding warming water will raise the sea level of the bay by one foot over the next 20 years, two feet by 2050, and five feet by 2100. (See prior [CP&DR coverage](#).)

Coastal Commission Willing to Entertain Banning Ranch Proposal

The Coastal Commission has decided to give a developer 90 days to alter its [plan](#) for a mixed-use development at Banning Ranch, a 401-acre site that is one of the largest privately owned pieces of undeveloped land in Orange County. The plan would build 1,375 homes, a 75-room boutique hotel, 75,000 square feet of retail and several parks on about 95 acres of the property (see prior [CP&DR coverage](#)). It is currently used for oil operations. Coastal Commission staff had previously recommended denial of the project because it would affect the sensitive habitat, including wetlands, of coastal species including the threatened

California gnatcatcher. “There has to be a project that is less invasive,” commission vice chairwoman Dayna Bochco said to the developer. “You chose a place that is very, very sensitive.” Coastal Commissioners were hesitant to outright deny the project, as it would condense the oil operations to about 16.5 acres near the center of the project, include extensive mitigation of the oilfields, and would retain about 261 acres of open space.

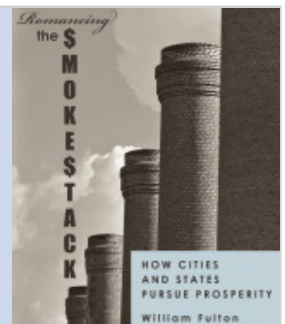
Report: Scorecard of California’s Transit Stations

A new [report](#) from the nonprofit Next 10 and prepared by the Center for Law, Energy and the Environment (CLEE) at the UC Berkeley School of Law grades the state’s various transit stations, judging which stations perform the best overall when it comes to connecting riders to key amenities, cutting the environmental impact of transportation and contributing to a vibrant, pedestrian-friendly community. Among other highlights, San Francisco MUNI’s Market and Church Street station scored a chart-topping A+ for near-perfect walkability score while San Diego’s Gillespie Field Station, located in a car-dependent area, received an F. The Santa Clara VTA’s Japantown/Ayer Station performed

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

Bill Fulton’s Book On Economic Development



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the best system wide, receiving a B+ from the researchers, while the Middlefield Station, located in a low-density area toward the edge of the system's service area scored low across all indicators. Of the six transit systems evaluated, MUNI scored a B, followed by BART, which earned a B-, Los Angeles Metro Rail and Sacramento Regional Transit, both of which scored Cs, and San Diego Metropolitan Transit and Santa Clara VTA, both of which scored C-. "Stations serving walkable neighborhoods with plenty of conveniently located homes and businesses scored highest," Ethan Elkind, lead author and associate director of the Climate Change and Business Program at CLEE, said in a press release. "Neighborhoods that provide these local amenities encourage ridership. And the more demand, the better the economic performance of the transit system."

U.S. Supreme Court Decision Threatens San Jose Stadium Plans

The U.S. Supreme Court shut down San Jose's request to review baseball's exemption from antitrust laws in an attempt to lure the Oakland A's to San Jose (see prior CP&DR [commentary](#)). In [refusing](#) to hear San Jose's appeals, the court allowed to stand an appeals court ruling that upheld baseball's

unique exemption from federal antitrust laws. The court's refusal effectively kills plans to build the stadium. Now, the City of San Jose is moving on from the legal battle, seeking other ways to develop the site right in the heart of Silicon Valley near the region's largest transit hub, the Diridon transit station. The A's, however, will still retain control of the proposed stadium site until November 2018. The court decision is viewed as a boost to backers in Oakland who are seeking to build a new stadium at the Coliseum site, which will now likely only include a baseball team, instead of the previous plan that would house both the Raiders and the A's.

National APA Honors Two 'Great Places' in California

San Diego's Balboa Park and Los Angeles' Olvera Street were honored this year American Planning Association's annual [Great Places in America](#) program, which highlights places that offer better choices for where and how people work and live and that have a true sense of cultural interest. Olvera Street was highlighted as a "Great Street" for its position as a hub of historic significance in the oldest section of Los Angeles, with crafts, artisan shops, and eateries all highlighting the city's Mexican culture. "There is a striking contrast

between Olvera's tight quarters in the sprawling context of what has now become of the second largest city in the U.S. Olvera Street continues to be a living monument to the city's history, with a festive atmosphere of celebration that adds to an unmatched and authentic liveliness reflecting the city's birthplace," the APA states on its website. Balboa Park was highlighted as a "Great Public Space," with its 1,200 acres of land containing the San Diego Zoo, 15 major museums, indoor and outdoor performance spaces, lush gardens, and restaurants. "Balboa Park exemplifies the considerable traffic and allure that a large, urban park can achieve when a variety of uses are planned and maintained within the space as a whole," the APA website states.

Sacramento Railyard Redevelopment Clears Hurdle

A Sacramento development firm has finalized the [purchase](#) of the city's 240-acre downtown railyard, the development of which would effectively double the size of Sacramento's downtown. The land will likely be developed into a Major League Soccer stadium, a hospital, a new institute for the University of California Davis, and thousands of homes. The purchaser, Downtown Railyard Venture LLC, is owned by

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JOB AD: Senior Land Use Economics Consultant (Los Angeles, CA) WANTED

EPS's Los Angeles office is seeking to fill a full-time position for a Senior Land Use Economist to help grow and lead its Los Angeles office. We invite qualified candidates with experience in real estate economics, public finance, urban planning, and regional economic analysis to apply. For more information, please visit EPS's Web site at www.epsys.com.

Economic & Planning Systems, Inc. (EPS) is a land economics consulting firm experienced in the full spectrum of services related to real estate development, market and feasibility analysis, public/private partnerships, and the financing of government services and public infrastructure.

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veteran developer Larry Kelley, and the purchase was held up for over a year over negotiations of financial responsibility for cleanup of toxic materials. The city's official plan for the site, adopted eight years ago, calls for construction of as many as 12,000 homes. Additionally, Kaiser Permanente announced plans to build a hospital at the northwest corner of the railyard in the next seven to 10 years; the city's minor-league soccer club could build a 22,000 seat, \$100 million soccer stadium in the northwest corner; and UC Davis is considering building an extension campus there focused on research into global food supply issues.

Group Advocates Endangered Status for Joshua Trees

In the wake of scientific modeling that suggests Joshua Trees could lose 90 percent of their range by the end of the century, a conservation group known as WildEarth Guardians is petitioning the U.S. Fish and Wildlife Service to list the desert succulents as threatened [species](#) under the Endangered Species Act. The trees, which grow up to 40 feet high, live more than 200 years and are the namesake of the 800,000-acre Joshua Tree National Park, were subject to large-scale brush fires in the 1990s along with replacement by

development in desert boom towns in the 1980s. Some conservationists have proposed translocation efforts and habitat restoration programs to save the trees from widespread extirpation.

High Speed Rail Authority to Test in Angeles National Forest

The California High Speed Rail Authority has asked for [permission](#) to test-drill deep into the federally-protected Angeles National Forest to determine the feasibility of an alternate-route rail tunnel through the San Gabriel Mountains. The request comes as residents in the cities of Acton, Santa Clarita, and San Fernando protested the original route along the 14 Freeway Corridor, prompting the rail authority to add three other possible tunneled routes for the bullet train to be constructed under the Angeles forest, connecting Burbank and Palmdale. If allowed to perform its tests, the rail authority will drill down 900 feet to 2,500 feet below the surface in up to eight locations of the northwestern portion of the Angeles, only along existing forest roads. By examining the test borings, the rail authority can determine the soil, water content and locate earthquake faults, all necessary to complete an Environmental Impact Report on the high-speed train's alignment from

Palmdale to Burbank. Now, the U.S. Forest Service is asking the public for their thoughts on whether to allow the rail authority to proceed with its tunnel study.

FTA Awards \$19 Million in Grants to Four Calif. Agencies

Four California transportation organizations became recipients of a share of \$19.5 million in [grants](#) to support planning projects that improve access to public transit through the Federal Transit Administration's Transit-Oriented Development Planning Pilot Program. Among the [recipients](#), the Sacramento Area Council of Governments received \$1,118,720 to develop a toolkit of policy and regulatory changes to implement its Downtown Riverfront Streetcar; the Peninsula Corridor Joint Powers Board received \$600,000 for its Caltrain Electrification Project; the San Diego Association of Governments received \$429,635 to implement its Mid-Coast Corridor Light Rail Project connecting to colleges and medical facilities north of downtown; and Oakland's Bay Area Rapid Transit district received \$1,100,000 to reinforce the BART system through the Transbay Core Capacity Project. ■

JOB AD: Senior Associate Consultant (Sacramento, CA) WANTED

EPS's Sacramento office is seeking to fill a full-time position of a Senior Associate Consultant. A Senior Associate works with a range of analytical methods and computer models related to real estate feasibility, revitalization/redevelopment, public finance, fiscal and economic impacts, land use policy, and regional economic development. For more information, please visit EPS's Web site at www.epsys.com.

Economic & Planning Systems, Inc. (EPS) is a land economics consulting firm experienced in the full spectrum of services related to real estate development, market and feasibility analysis, public/private partnerships, and the financing of government services and public infrastructure.

In Roundup of Local Land Use Measures, San Francisco Wins for Most Contentious City

BY CP&DR STAFF

A typically diverse array of land use measures appears on the November ballot in a handful of localities around the state. Most questions ask voters to endorse or oppose specific developments, from a golf course redevelopment in El Dorado County to a park in San Carlos. Only the City of Modesto has a sweeping, citywide question, billed as a referendum on urban sprawl.

Then there is the City and County of San Francisco, arguably the most unique and hotly contested 49 square miles in the country. This November, it has a whole state's worth of propositions. They range from a proposed local moratorium on development to restrictions on Airbnb and the like to a major \$310 million housing bond that Mayor Ed Lee has been promoting.

El Dorado Hills Community Services District

(El Dorado County)

Former Golf Course Rezoning Advisory Question

Measure E

Should the El Dorado County Board of Supervisors rezone the approximately 100 acres of the former executive golf course in El Dorado Hills from its current land use designation as "open space recreation" to a designation that allows residential housing and commercial development on the property?

City of Malibu (Los Angeles County)

Shopping Center at Cross Creek and Civic Center Way

Measure W

Shall an ordinance be adopted approving the Civic Center-Northeast Specific Plan for property located at the northwest corner of Cross Creek and Civic Center Way that regulates development and limits uses to allow construction of a commercial shopping center up to 38,425 square feet, proposed to include a grocery store, retail and recreational/

educational uses?

Note: Measure W is required by Measure R, which was approved by city voters in November 2014. Measure R required voter approval of any commercial or commercial-residential development larger than 20,000 square feet.

Town of San Anselmo (Marin County)

Memorial Park Initiative

Measure D (Citizen Initiative)

Shall an ordinance be adopted to amend the San Anselmo General Plan to do the following: prohibit the use of Memorial Park as a flood detention basin; prevent any non-recreational uses that adversely affect or reduce Memorial Park's current recreational amenities; and require voter approval before the park can be sold or transferred by the Town? Proponents collected 1,484 [valid signatures](#) to qualify this initiative for a voter decision. The town council could have approved the initiative directly. Council members voted to put it before voters instead.

Town of San Anselmo

Council-Referred Memorial Park Ordinance

Measure E

Shall an ordinance be adopted to amend the Town's General Plan to affirm continued use of Memorial Park as primarily a recreational facility and to permit accessory use of Memorial Park for flood control by way of a detention basin only if a majority of voters approves a specific plan detailing development of the park for flood control following environmental review?

City of Sausalito

Advisory Vote on Leasing the MLK Public School Site

Measure F

City of Sausalito No-Tax-Increase Park Improvement/

>>> In Roundup of Local Land Use Measures, San Francisco Wins for Most Contentious City

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Safety Measure. To bring Robin Sweeny Park, Southview Park, Dunphy Park and the MLK site to current health/safety standards; repair unsafe children’s playground equipment, upgrade safety lighting, pathways and play courts; add needed restrooms; restore wetlands/natural areas, shall the City of Sausalito enter into an agreement with the Sausalito Financing Authority and permit revenue from the MLK site to be used as revenue financing, with no increase in taxes?

City of Modesto (Modesto County)

Stamp Out Sprawl Voter Approval of Development Initiative

Measure I

Shall the City of Modesto 2008 Urban Area General Plan be amended to establish limit lines (boundaries) for nonresidential and medium and large lot residential development, outside of which areas new development subject to the limits would require voter approval?

City of San Francisco

Housing Bond Issue

Proposition A

To finance the construction, development, acquisition, and preservation of housing affordable to low- and middle-income households through programs that will prioritize vulnerable populations such as San Francisco’s working families, veterans, seniors, disabled persons; to assist in the acquisition, rehabilitation, and preservation of affordable rental apartment buildings to prevent the eviction of long-term residents; to repair and reconstruct dilapidated public housing; to fund a middle-income rental program; and to provide for homeownership down payment assistance opportunities for educators and middle-income households; shall the City and County of San Francisco issue \$310 million in general obligation bonds, subject to independent citizen oversight and regular audits?

Mission Rock Development Initiative

Proposition D

Shall the City increase the height limit for 10 of the 28 acres of the Mission Rock site from one story to height limits ranging from 40 to 240 feet and make it City policy to encourage the development on the Mission Rock site provided that it includes eight acres of parks and open space and housing of which at least 33% is affordable for low- and middle-income households?

Initiative to Restrict Short-Term Rentals

Proposition F

Shall the City limit short-term rentals of a housing unit to 75 days per year regardless of whether the rental is hosted or unhosted; require owners to provide proof that they authorize the unit as a short-term rental; require residents who offer short-term rentals to submit quarterly reports on the number of days they live in the unit and the number of days the unit is rented; prohibit short-term rentals of in-law units; allow interested parties to sue hosting platforms; and make it a misdemeanor for a hosting platform to unlawfully list a unit as a short-term rental?

Mission District Housing Moratorium Initiative

Proposition I

Shall the City suspend the issuance of permits on certain types of housing and business development projects in the Mission District for at least 18 months; and develop a Neighborhood Stabilization Plan for the Mission District by January 31, 2017?

Legacy Business Historic Preservation Fund

Proposition J

Shall the City establish a Legacy Business Historic Preservation Fund, which would give grants to Legacy Businesses and to building owners who lease space to those

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businesses for terms of at least 10 years; and expand the definition of a Legacy Business to include those that have operated in San Francisco for more than 20 years, are at risk of displacement and meet the other requirements of the Registry?

Development on Surplus Public Lands Proposition K

Shall the City to expand the allowable uses of surplus property to include building affordable housing for a range of households from those who are homeless or those with very low income to those with incomes up to 120% of the area median income; and, for projects of more than 200 units, make some housing available for households earning up to 150% or more of the area median income?

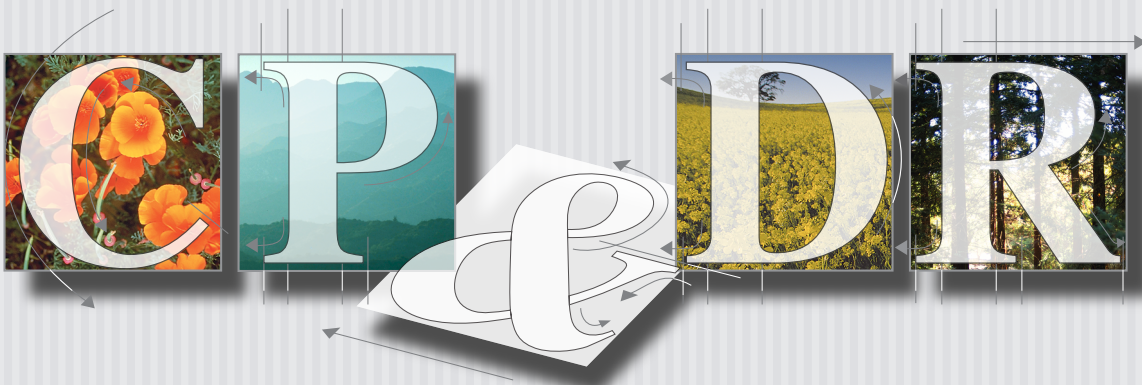
City of San Carlos (San Mateo County)

Black Mountain Park Bond Issue

Measure V

To permanently protect and preserve rare San Carlos open space from development, protect a local water source, prevent increased traffic congestion, and improve access to tranquil natural areas and parks, including walking trails, recreation, and restrooms/facilities, shall the City of San Carlos issue \$45 million in bonds to acquire, create, and enhance Black Mountain Park located along Alameda de las Pulgas between Madera Avenue and Melendy Drive, with citizen oversight and funds restricted to these specific purposes only? ■

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SGC Will Offer \$30 Million To Augment Funding For Already Approved Projects

BY WILLIAM FULTON

The Strategic Growth Council staff has proposed using \$30 million in new money to provide additional funding for projects that didn't make the cut or weren't fully funded by the Affordable Housing and Sustainable Communities program last year.

In material discussed at the council's meeting in mid-October, the SGC staff also threw out several additional ideas for working with the metropolitan planning organizations, including a geographical allocation of funds and MPO review and recommendation of projects. However, SGC staff isn't recommending any particular ideas.

The SGC staff also laid out the process by which it will provide \$500,000 in technical assistance to grant applicants from disadvantaged communities and align the AHSC program and the Sustainable Agricultural Lands Conservation (SALC) program and indicated that SGC and the Department of Housing & Community Development will work to incorporate issues of farmworker housing into the AHSC program.

SGC funding for its programs funded by the cap-and-trade fees is expected to increase from \$122 million in 2014-15 to about \$400 million in 2015-16. Last month, [SGC staff announced](#) that it would recommend a wide range of changes to the program guidelines, most significantly increasing or eliminating funding caps for individual projects, individual jurisdictions, and individual developers.

At that time, SGC staff promised that at the October 15 meeting more options would be presented for four topics: geographical distribution of funds, MPO collaboration, alignment with SALC, and technical assistance. [The staff reports for Thursday's meeting](#) contains this additional detail. The SGC is expected to discuss these options Thursday and make final decisions at its December meeting so that the application process can move forward in early 2016.

\$30 Million For Old Projects

Of the \$400 million to be distributed in 2016, SGC staff is recommending that \$30 million be given to project

applicants last year who either received no funding or only partial funding. The agenda packet for Thursday's meeting [contains a draft Notice Of Funding Availability \(NOFA\)](#) for these funds. SGC staff has indicated that projects cannot be substantially different from those contained in the application and these funds will be distributed according to the old program guidelines.

Geographical Distribution of Funds

The geographical distribution of funds was a huge issue in last year's round of funding. At the semi-final stage, SGC green-lighted [a disproportionate number of Bay Area projects](#), though in the end the Bay Area and Southern California [received about the same number of grants](#). The Southern California Association of Governments complained about the process and even threatened to seek legislation allocating the funds by region.

[The SGC staff report](#) does not make a recommendation for geographical distribution of funds. However, the report does note that the removal or increase of caps on jurisdictions, developers, and projects should remove some barriers to geographical equity.

For the purposes of the discussion, the SGC staff also provided a population breakdown by MPO. For example, the SCAG region contains 49% of the state's population, while MTC contains 20%. But the staff did not recommend a geographical allocation along these lines.

SGC staff is also proposing the creation of a new category of "Catalytic Projects," which could include high-density projects, large residential projects, or major transportation investments, that could also help create more geographical equity.

MPO Collaboration

As the debate on regional equity has revealed, there has been a fair amount of tension between the SGC, which is trying to administer the program in a manner that meets the state's goals, and the MPOs, which believe that they should have more control over the distribution of the funds.

>>> SGC Will Offer \$30 Million To Augment Funding For Already Approved Projects

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In the staff report, the SGC staff also [lays out several options for collaborating with MPOs](#), including conducting grant-writing workshops, building greater capacity by leveraging the value of Proposition 84 grant recipients and other institutions and organizations in the region, and having the MPOs review all applications for consistency with the sustainable community strategies under SB 375.

The staff is also recommending that at least one concept proposal from each MPO be green-lighted for a full proposal assuming all threshold requirements are met.

Alignment With SALC

The Sustainable Agricultural Land Conservation Program (SALC) was funded with \$5 million last year. As CP&DR noted last spring, with the decline of the Williamson Act, it may soon emerge as the leading agricultural land conservation program in the state. [<http://www.cp-dr.com/node/3696>]

This transition may occur faster than anyone anticipated, considering the fact that the SGC staff is recommending an [eight-fold increase in SALC program funding](#), to \$40 million. These funds would go to land conservation easements and local government policies to protect

agricultural lands.

SGC staff is recommending that AHSC applicants provide information about agricultural land conservation within their jurisdiction as part of their application, in part to help inform future program guideline changes in both programs.

SGC and HCD staff are looking at possible ways to use SALC and AHSC to encourage farmworker housing projects, which are eligible for funding under current AHSC guidelines.

Technical Assistance

The legislature appropriated \$500,000 for technical assistance to grant applicants operating in disadvantaged communities (which last year accounted for more than 70% of both applications and awards). SGC staff is recommending a [pilot program](#), to be ramped up by January, that would permit a wide range of organizations to apply to be technical assistance providers, including MPOs and councils of governments, air districts, land conservancies, state universities and colleges, and both for-profit and non-profit organizations with a history of working with disadvantaged communities. ■

There has been a fair amount of tension between the SGC, which is trying to administer the program in a manner that meets the state’s goals, and the MPOs, which believe that they should have more control over the distribution of the funds.



Mobility Plan Nudges Los Angeles Towards New Transportation Modes

BY JOSH STEPHENS

There's a scene in "X Men Origins: Wolverine" in which a government scientist infuses every bone in the title mutant's body with an inviolable metal called adamantium. The process is excruciating, but it leaves Wolverine with the distinct benefit of near-indestructibility. And claws.

That's kind of like what the city of Los Angeles is doing to its transportation network. With the adoption of Mobility Plan 2035 [<http://la2b.org/>], the world's first great automobile-oriented city could become the first city to de-orient itself from the automobile. The city will not merely cease adding lane-miles; it will, in fact, take space away from personal automobiles.

"In built-out cities, we're not in the business of widening streets anymore, particularly in downtowns," said Seleta Reynolds, director of the Los Angeles Department of Transportation.

While the plan has delighted pedestrian and bicycle advocates, some everyday commuters are worried about gridlock. At least one group has already filed a California Environmental Quality Act lawsuit to alter, or block implementation of, the plan.

The City of Los Angeles has, finally, formulated an ambitious vision — some say too ambitious — to redefine nearly every facet of mobility in the city. Mobility Plan 2035, which serves as the mobility element of the city's General Plan, initially approved by the City Council in August. The plan comes at a confluence of crises and opportunities: crises like gridlock, pollution, ugliness, and lawsuits; opportunities like cultural shifts, transit investments, and previously unimaginable innovations like ride-hailing services and bike share.

In broad strokes, the plan applies a "complete streets" mindset to the city's entire street grid.

"In the past we've designed streets to operate quickly... as streets become more important destinations we have different objectives," said Jeremy Klop, principle at consulting firm Fehr & Peers, which worked on the plan.

The plan responds to future expansion of and changes in

public transit services and promotes so-called "first mile, last mile" connections. The plan also calls for placemaking, acknowledging that streets serve social and commercial purposes beyond the roles as conduits for traffic. Though many of these strategies will make driving more difficult, the plan's authors say that the city has enormous potential for mode switches that justify the focus on alternative transportation. The Mobility Plan reports that currently 47 percent of trips in the greater Los Angeles area are less than three miles and that 84 percent of those trips are taken by car. Planners consider these trips ripe for conversion to walking, biking, and transit.

In many instances, the plan calls for average driving speeds to decrease so that streets become safer for bicyclists and pedestrians.

"One of the pieces of guidance that we found useful was the concept of layered networks," said Klop. "No other major city that I'm aware of on the scale of L.A. has established a target operating speed for their roadways to work to create compatible speeds."

Five goals motivate this vision: safety, infrastructure upgrades, access, intra-city collaboration, and a clean, health environment.

It is, in short, a dream come true for progressive planners. Critics say that is it, as best, an idealistic vision imposed on an un-ideal city.

"This isn't a Danish village," said Richard Katz, a member of the Los Angeles City Planning Commission and longtime transportation policy expert.

"Strategies like that never seem to work," said Katz. "If we want to follow the (road) diet metaphor, people who reduce weight are people who decide for themselves they have to reduce to lose weight. If somebody forces on a diet, it usually doesn't work out real well."

City officials say that recent state legislation, plus a confluence of cultural changes, makes implementation of the Mobility Plan easier and confirms that Los Angeles' vision is in line with statewide trends. The plan draws

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on 2008’s Complete Streets Act as well as on the more recent adoption, per 2013’s Senate Bill 743, of vehicle miles traveled metrics for analysis under the California Environmental Quality Act. The plan is also designed to align with no fewer than nine local transportation plans, including SCAG’s Regional Transportation Plan, the Los Angeles County Bicycle Master Plan, and Metro’s First Mile, Last Mile Strategic Plan.

The plan will require unprecedented collaboration between city departments, which, at times, have been notoriously uncooperative with each other. That includes a strong emphasis on the relationship between land use and transportation planning.

“Having land use as a support...so that when you get off a bus stop you have that range of uses so that people’s need to drive 15 miles goes down,” said Senior City Planner Claire Bowin. “There’s more things for them to walk and bike to within shorter distances.”

“When an engineer at the design review counter is taking a look at a new development and looking at the corner curb radius he or she is no longer using guidelines that haven’t been updated since the 1984 Olympics,” said Reynolds.

As radical as the plan is, its effects, say city officials, may take years, if not decades, to be felt by the typical commuter. By then, planners expect even more Angelenos to embrace the plan’s values and strategies. Currently, young people between the ages of 16 and 34 drove 23 percent fewer miles on average in 2009 than they did in 2001, though this may be partly because of the recession. They are also getting their drivers licenses later. Currently, 64,000 Angelenos commute by car and 16,000 commute by bike on a daily basis. Those numbers mark a 56 percent increase from the year 2000. Far larger numbers — 1.5 million — ride Metro on a daily basis.

The plan seeks to make substantive improvements such as ensuring that 90 percent of Los Angeles households have easy access to transit and to bicycling facilities by 2035. What rankles some critics, however, is the plan’s

implication that many changes are designed to influence commuter behavior not by providing incentives but rather by making driving more painful. Whatever the approach, the plan envisions a Los Angeles in which 75 percent of households own either zero or one car by 2035, up from 50 percent today. In turn, the plan seeks to reduce households’ average expenditures on transportation by 10 percent.

Reynolds said that the plan is “innovative in way that it conceives of how the system works together.” Streets currently classified as highways to will be henceforth known as boulevards, secondary highways will become avenues and collector streets. The plan seeks to redesign many streets to accommodate active transportation and to improve the travel environment for all modes other than personal vehicles. Conversely, some streets will be designated as thoroughfares in order to funnel traffic to more appropriate streets. Freeways, which represent 53 percent of daily commuting miles, will be unaffected.

“Given a city that’s as sprawled out as we are, we recognize that the vehicle will still play a major role,” said Bowin.

“A lot of time when we’re talking about a concept like complete streets, people think that means everything has to fit on every street. That’s really not the case,” said Reynolds.

Some habitual drivers in Los Angeles, though, are afraid of what lies ahead.

Shortly after the plan’s adoption, a citizens group called Fix the City filed suit against the city seeking to stop implementation of the plan. The suit claims that the Mobility Plan violates both the California Environmental Quality Act and the Los Angeles City Charter. The group contends that many of the improvements will impede vehicular traffic and place an undue burden on that vast majority of Angelenos who currently rely on personal autos and who, they say, may not be able to take advantage of alternatives.

“If we had a mass transit system, a real network, it would

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>>> Mobility Plan Nudges Los Angeles Towards New Transportation Modes

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be a viable option,” said Lake. “This is the cart before the horse.”

“If your commute is 15 or 20 miles, you’re not taking your bike to work,” said Katz.

Lake also questioned the impact that bicycle commuting can have on a city so deeply wedded to the personal automobile.

“It’s almost like an article of faith: if you have bike lanes and get 1.1 percent to go to 1.7 percent of trips you’re going to solve the world’s problems,” said Lake. “The math doesn’t work that way.”

Bowin said that city departments will be monitoring the plan’s impacts to determine whether predicted behaviors come to bear.

“One thing that’s critical is for our staff to continue to develop and analyze data,” said Bowin.

Though Katz voted for the plan, he said that he was voting for the vision because it is “aspirational” and that he expected the City Council to update some of the elements that he found troublesome. Many of those elements remain in the final plan, he said.

Critics have also found fault with what they say is a misguided focus on safety. The is designed to uphold Los Angeles Mayor Eric Garcetti’s pledge, which he calls “Vision Zero,” to reduce pedestrian fatalities in the city to zero by 2035.

“This isn’t a Danish village,” said Richard Katz, a member of the Los Angeles City Planning Commission and longtime transportation policy expert.

Longtime neighborhood activist Laura Lake noted that greater congestion could slow down ambulances and fire trucks, which rely on open streets. Delays, she said, could cost more lives than the plan saves.

“Paramedics can’t ride a bus to get to you,” said Lake.

Katz said that “Vision Zero” may be too zealous and myopic, given the relatively small number of annual deaths caused by automobile crashes.

“(Pedestrian deaths are) 10 percent of the gun deaths in Los Angeles,” said Katz. “I think Vision Zero is a laudable goal.... We also want no deaths from handguns.”

In 2012, 99 pedestrians were killed on city streets, for a fatality rate of 2.57 per 100,000 residents. Nationwide, big-city pedestrian fatality rates that year ranged from .79 to 3.34.

Contacts and Resources:

Los Angeles Mobility Plan <http://la2b.org/>

Claire Bowin, Los Angeles Department of City Planning, claire.bowin@lacity.org

Jeremy Klop, Fehr and Peers, j.klop@fehrandpeers.com

Laura Lake, Fix the City, <http://fixthecity.org/>

Seleta Reynolds, seleta.reynolds@lacity.org ■

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legal digest

WOTUS Rule Stayed Nationwide

BY MARTHA BRIDEGAM

The federal Sixth Circuit Court of Appeals has issued a [nationwide stay](#) blocking enforcement of the new [federal rule defining “Waters of the United States”](#). For now the stay applies in all states, including California. While it lasts, the “Waters Of...” definition returns to the jumbled but familiar state it was in before the new rule took effect on August 28. Although the stay is only a temporary measure, it strengthens legitimacy and buys time for opponents of the Obama Administration’s approach to clean water regulation.

The rule by the Environmental Protection Agency (EPA) and Army Corps of Engineers [adds some small bodies and areas of water, including California’s intermittent vernal ponds](#), to the realm of “waters” under federal oversight. It has been attacked as a symbol of regulatory overreach by agricultural and building lobbies and by conservative organizing groups.

The rule, if allowed to take effect, would increase the number of waterways under EPA jurisdiction, meaning that projects with effects on those included waters would newly be required to obtain federal permits to proceed. Estimates of the extent of the increase vary widely. Last year the EPA [said that the increase would be about 3%](#) -- apparently

The rule by the Environmental Protection Agency (EPA) and Army Corps of Engineers adds some small bodies and areas of water, including California’s intermittent vernal ponds, to the realm of “waters” under federal oversight.

taken from an EPA statement issued last year. However, an American Farm Bureau analysis claims the new rule [“would expand EPA and Army Corps of Engineers authority over approximately 99.7% of Missouri.”](#)

In the Sixth Circuit order, Judge David McKeague, joined by Judge Richard Griffin, framed the stay as an opening attempt to create breathing space while the court considered a complex multistate case. The circuit court is considering four consolidated cases brought by a total of 18 different

states, mostly in the South and central Midwest. Other state governments have weighed in on the side of the EPA, including those of New York, Oregon and Washington.

The third member of the Sixth Circuit appellate panel, Judge Damon Keith, dissented. He noted the court had not yet determined whether it had subject-matter jurisdiction over the case, and he therefore found it premature to grant the stay.

But in a phrase that has already been much quoted, McKeague wrote for the majority: “A stay temporarily silences the whirlwind of confusion that springs from uncertainty about the requirements of the new Rule and whether they will survive legal testing.”

McKeague wrote that opponents of the rule had demonstrated a substantial possibility of success on the merits, particularly in their argument against the way the rule extended jurisdiction to smaller waters. The criticisms have focused on definitions of tributaries, of “adjacent waters” and of waters with a “substantial nexus” to navigable waters. McKeague described petitioners as arguing that the definitions in the final rule were not supported by the leading interpretive case of *Rapanos v. United States*, 547

>>> WOTUS Rule Stayed Nationwide

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U.S. 715 (2006), and that the final versions of the definitions included material that had not first been aired properly in comment periods during the rulemaking process.

The opinion mentioned uncertainty created by “disparate rulings ... by district courts around the country”, including an existing preliminary injunction that had already blocked application of the rule in 13 states. [That order](#) and its supporting opinion, issued in North Dakota on the day before the rule’s August 28 effective date, listed, among

examples of prospective “irreparable harm” from the rule, that it “will make North Dakota subject to, among other things, undertaking jurisdictional studies for every proposed natural gas, oil, or water pipeline project.”

The list of 13 states affected by the August North Dakota order does not overlap with the list of 18 states opposing the rule as parties in the Sixth Circuit case.

Reaction was favorable from agricultural [and building groups](#). [The Capital Press](#), a paper covering

[agriculture in the Northwest](#), quoted [Washington State farm groups as cheering the stay](#) with the caution that opponents of the rule had more lobbying and litigation to do. The National Association of Home Builders [likewise applauded the stay](#).

[The National Resources Defense Council](#) responded by emphasizing the need to protect clean drinking water and picking out phrases where “the court acknowledged the importance of, and basis for, the environmental protections.” ■



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Cal Supremes Grapple With CEQA-In-Reverse Case

BY MARTHA BRIDEGAM

California's Supreme Court justices picked doubtfully during oral arguments at the famous "CEQA in reverse" argument -- a claim that the California Environmental Quality Act can require an environmental impact report (EIR) not only when a project may threaten the environment, but also when a project would draw users to a place with hazardous environmental conditions.

The question before the court in *California Building Industry Association v. Bay Area Air Quality Management District* -- argued in early October -- is not so much whether projects should be built near hazards, but whether CEQA is the appropriate law to regulate such proposals. (Last year [Bill Fulton suggested](#) that if CEQA doesn't apply "in reverse", then maybe local officials will have to dust off other planning tools to protect the public more affirmatively.)

Justices Mariano-Florentino Cuéllar, Goodwin Liu and Carol Corrigan led the questioning. They appeared to view full-on "reverse" CEQA as too radical, and instead were inviting rationales for compromise outcomes.

They particularly asked Ellison Folk, counsel for the Bay Area Air Quality Management District (BAAQMD) for reassurances that her position would not over-multiply the number of EIRs required in California. The California Building Industry Association (CBIA), in briefing, had claimed the argument would create " 'EIR Only Zones' in

urbanized areas." Folk, an attorney with Shute, Mihaly & Weinberger, insisted CEQA's established regulatory controls would restrain the number of added reviews under the air district's proposed interpretation, so they would not address "every possible nuisance effect of living in urban life."

Corrigan pushed Folk for an example of a project that, under a "reverse CEQA" interpretation of the law, would not create a potential significant impact by drawing additional people to its site. Corrigan seemed unsatisfied with responses to her question as framed, but Folk countered that merely bringing a project into "the CEQA world" would not necessarily take it past the usual stages of preliminary scrutiny to require an actual EIR.

The underlying dispute is a challenge by the CBIA construction lobbying group to the air district's 2010 "TAC [Toxic Air Contaminant] Receptor Thresholds", which were designed to scrutinize projects near sites with known sources of air pollution such as freeways and freight yards. After a [fact-specific First District ruling favored BAAQMD](#), the state Supreme Court granted review on the generic issue of when -- if ever -- CEQA could "require an analysis of how existing environmental conditions will impact future residents or users (receptors) of a proposed project?"

At argument, Chief Justice Tani Cantil-Sakauye suggested the

"reverse" argument was not clearly supported by legislative action, and asked if there instead had been "palpable inaction". Justices Kathryn Werdegar and Ming Chin joined in once each; Justice Leondra Kruger not at all.

Stuart Flashman, a CEQA petitioners' attorney with conceptually related cases before the high court, attended the argument and wrote afterward, "I have to say it seems like the court is, at best, going to give only a very limited win to the Air District, and might go against them entirely."

The "CEQA in reverse" question is sometimes analyzed in terms of picturesque natural hazards such as landslide risks, rising sea levels, and earthquake faults. But a weighty urban planning aspect of the dispute has to do with more prosaic human-created hazards -- especially in urban landscapes where developers are replacing and adding residential density.

Now that investment is returning to cities and public policy is discouraging private car use, it matters more that new urban projects, including housing, are sometimes built on fouled land in bad air. This is especially true of sites near rail lines and freeways that make good candidates for transit-oriented development. It's also especially true of the nuisance-burdened urban parcels that are typically offered as sites for subsidized housing. (Several large subsidized-housing builders and nonprofit housing organizations

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backed the developers’ call for review of the First District ruling in 2013.)

As the attorneys discussed late the oral argument, any attempt to build an oil refinery next to a residential subdivision would face serious environmental review under the California Environmental Quality Act (CEQA). But the court had to consider whether, if a developer proposes a subdivision next to an existing refinery, CEQA should require environmental review of the proposal based on the “impact” of inviting more people to live where they would breathe the refinery’s emissions. Should other regulatory schemes, such as the air quality element of the local general plan, go to work on such issues in CEQA’s place? And in light of specific CEQA exemption language for certain housing projects, is the answer different for, say, an attempt to build agricultural workers’ housing next to an existing smelter?

Cuéllar and Liu tag-teamed the attorneys through these hypotheticals and the briefed arguments. Both tried to draw out rationales explaining when a new project could be viewed as worsening an existing hazard rather than merely attracting new people within its reach.

Liu said: “I guess I’m having a pretty hard time” seeing how the effect of existing conditions on humans could be a significant effect on the environment: “That’s the effect of the project on the people -- that’s not an effect on the environment in

At argument, Chief Justice Tani Cantil-Sakauye suggested the “reverse” argument was not clearly supported by legislative action, and asked if there instead had been “palpable inaction”. Justices Kathryn Werdegar and Ming Chin joined in once each; Justice Leondra Kruger not at all.

ordinary parlance.”

At a technical level, the major jumping-off point for the argument was Sec. 15126.2(a) of the CEQA Guidelines, which provides in part: “The EIR [Environmental Impact Report] shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected.” BAAQMD argued that Sec. 15126.2(a) was justified by a portion of the CEQA authorizing statute, Public Resources Code Sec. 21083(b)(3), which provides for guideline criteria on whether “The

environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.”

CBIA’s legal team, led by Andrew Sabey with the firm of Cox, Castle & Nicholson, argued that Sec. 15126.2(a) was a regulatory overreach by the Department of Natural Resources, unsupported by the statute. Sabey argued that 21083(b)(3) referred to a “causal effect” flowing from a project itself to “substantial adverse effects on human beings” and therefore did not apply to effects from the project’s surroundings. Folk, in rebuttal, argued that the provision had antecedents as old as CEQA itself.

In briefing and argument, CBIA leaned on a line of cases reining in 15126.2(a) that began with *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464. Possibly the best known is *Ballona Wetlands Land Trust v. City of Los Angeles* (2011), 201 Cal.App.4th 455, where opponents unsuccessfully claimed a project had failed sufficiently to account for future sea level rise. *Ballona Wetlands* is the case most often used by local governments in not engaging in a “CEQA In Reverse” process.

Sabey answered Cantil-Sakauye’s question about “palpable inaction” by noting the legislature rejected two bills in the 2013 session, AB 953 and SB 617, that were attempts to overrule the Baird cases.

In briefing and argument,

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BAAQMD's team deprecated the "reverse" idea, arguing that a project has a "significant effect on the environment" when it attracts more people to a place with an existing environmental hazard because that causes it to have "substantial adverse effects on human beings" under Sec. 21083(b)(3).

The air district's main brief quoted one of its board members as saying "CEQA should be just as good ... [at] protecting people as well as moths and Manzanita bushes."

Folk emphasized repeatedly at argument that the Legislature included natural and preexisting environmental hazards in CEQA's ambit by mentioning them as limiting factors on specific exemptions from review. Examples included exemptions affecting schools and airports, but Folk returned most to a set of review exemptions for housing development in Pub. Resources Code Sec. 21155.1 and Secs. 21159.21 through 21159.24. Those sections create exemptions for "transit priority projects" and for specified infill, low-income and farmworker housing. But they include provisos withholding the exemption from sites with an enumerated list of heightened risks from surroundings, including flooding, earthquake, wildfire, or public health dangers caused by activity on nearby properties. Folk argued that the enumerated hazards would not appear in CEQA statutes at all unless the Legislature viewed them as within CEQA's scope.

The air district's main brief quoted one of its board members as saying "CEQA should be just as good ... [at] protecting people as well as moths and Manzanita bushes."

Liu questioned whether the Legislature might have meant to express special concern, beyond the usual routine, for vulnerable populations to be served by the types of housing under the exemptions -- a query that backhandedly expressed concern for the futures of marginalized people who in practice are often relegated to damaged environments.

But Liu also challenged Sabey to answer Folk's reiterated argument -- which Liu wryly described as "exceptions to exemptions -- only lawyers love this kind of thing." He asked Sabey for an argument why the legislature would express concern about risks such as wildfires or landslides with respect to specific types of construction, but not with respect to the main CEQA analysis.

Sabey argued that the CEQA law of cumulative impacts and baselines necessarily distinguished a project

from existing conditions: "You need to have the existing environment be something other than the project." Otherwise, he said, the issue becomes "the impact of the project on itself."

He noted that CEQA Guidelines Sec. 15064(h)(4) refused to find "cumulatively considerable" effects based on "the mere existence of significant cumulative impacts caused by other projects alone". (Flashman commented afterwards, "it's hard to see how you'd have a cumulative impact concern about placing a new project in an earthquake, flooding, or wildfire zone.")

Sabey further argued that when the legislature chooses to exempt a big project such as a stadium from CEQA for policy reasons, "that does not necessarily translate those criteria into CEQA concerns." He said it would be necessary to "reverse engineer the meaning of CEQA to say this exception explains how CEQA works." He argued that urban nuisances such as obscured views or shadows from existing neighboring buildings could become grounds for objections to urban projects: "You would be arming all of the anti-development forces" across the state, he said.

The case is *CBIA v. BAAQMD*, Case No. S213478, available via <http://appellatecases.courtinfo.ca.gov>.

Major California Supreme Court briefing is at <http://www.courts.ca.gov/33098.htm>. ■

Carlsbad May Exclude Traffic From Vacant Store in CEQA Baseline

BY WILLIAM FULTON

The City of Carlsbad acted correct in including traffic from a vacant store in its environmental baseline for a shopping center renovation, the Fourth District Court of Appeals has ruled in an unpublished case.

Westfield, the shopping center operator, proposed demolishing and reconstructing the vacant Robinson-May store in Plaza Camino Real, a shopping center originally built in 1969. Westfield's changes actually resulted in a reduction in the overall square footage of the shopping center.

North County Advocates sued, claiming that the city should not have included assumed traffic from the Robinson-May store in the baseline for the analysis under the California Environmental Quality Act. North County also claimed that the city did not adequately mitigate traffic on the project by making Westfield pay its fair share of the expansion of the El Camino Real bridge over SR-78.

The Fourth District upheld a trial court's ruling in favor of the city.

The main issue in the case was the baseline question. Relying on *Communities for a Better Environment v. South Coast Air Quality Management Dist.*

(2010) 48 Cal.4th 310 North County Advocates argued that the baseline should consist of existing conditions at the time environmental review began and "the City instead 'falsely inflated the existing traffic conditions' by 'imputing over 5,000 daily trips' to the baseline premised on a fully occupied Robinsons-May building when, in fact, Robinsons-May vacated the space in 2006."

The court rejected this argument, saying that because Westfield was permitted to remodel and reoccupy the Robinsons-May building without additional discretionary approvals, a baseline assuming traffic from the remodeled building is appropriate. In so doing, the court accepted the city's argument that it should rely instead on *Cherry Valley Pass Acres & Neighbors v. City of Beaumont*

(2010) 190 Cal.App.4th 316, which permits an agency to base an existing-conditions baseline on recent historical use levels if those levels are permitted to continue.

"We conclude Respondents have the better argument—Communities for a Better Environment is distinguishable and Cherry Valley is on point and persuasive," the court wrote.

The court quoted the California Supreme Court in *Communities for a Better Environment* – which had to do with air quality regulation – as saying that while existing conditions should ordinarily be used for the baseline, "[n]either CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule."

In *Cherry Valley*, the Fourth District, using the Supreme Court's ruling as a guide, allowed the use maximum water extractions permissible under law as the baseline, rather than recent actual usage. Wrote the court in the North County Advocates case, "The court distinguished *Communities*

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**ABBOTT &
KINDERMANN, LLP**
ATTORNEYS AT LAW

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

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

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for a Better Environment and other cases cited by the petitioner on the ground that the baseline in each of those cases was hypothetical because it was based on “conditions that were permissible pursuant to an existing plan or regulation but that were not being employed or that did not exist ‘on the ground’ at the time environmental review commenced.”

“Like Cherry Valley and unlike Communities for a Better Environment,” the court wrote, “the City’s selection of a traffic baseline that assumed full occupancy of the

Robinsons-May space was not merely hypothetical because it was not based solely on Westfield’s entitlement to reoccupy the Robinsons-May building ‘at anytime without discretionary action,’ but was also based on the actual historical operation of the space at full occupancy for more than 30 years up until 2006.”

On the issue of mitigation to help build the bridge over SR 78, the court accepted the city’s argument that the project’s traffic impact on El Camino Real had been mitigated to the level of insignificance.

The Case: *North County Advocates v. City of Carlsbad*,

The Lawyers:

For North County Advocates: Everett L. DeLano III, DeLano & DeLano, everett@delanoanddelano.com

For City of Carlsbad: Celia Brewer, City Attorney, celia.brewer@carlsbadca.gov

For Plaza Camino Real (Westfield): Edward Casey, Alston & Bird, ed.casey@alston.com ■

Riverside Habitat/CEQA Case Depublished By Supreme Court

BY CP&DR STAFF

The California Supreme Court has denied review of a case from Riverside County involving the interplay of habitat conservation planning and the California Environmental Quality Act -- and also depublished the case so it cannot be used as precedent.

The complicated facts of *Paulek v. Western Riverside County Regional Conservation Authority*, [NO. E059133](#), probably did not lend themselves to precedent anyway. In July, the Fourth District Court

of Appeal [ruled](#) that a complicated agreement plan-level conservation land swap between Anheuser-Busch, the Western Riverside Regional Conservation Authority, and Riverside County was not exempt from CEQA.

As part of the complicated agreement, the conservation authority agreed to purchase Anheuser-Busch’s Warm Springs Ranch in nine phases -- the last of which would be a 200-acre parcel to be purchased in 2020.

As part of the deal, this property was released from the region’s habitat conservation plan, in exchange for adding 1,000 acres elsewhere. No actual land swap occurred.

Even though the 200 acres is scheduled for purchase and not development, and despite the 5:1 ratio of land removed to land added to the conservation plan, the Fourth District ruled that reclassification of the 200 acres was not exempt from CEQA. ■

>>> Brown Sign Parking and Tax-Increment Bills

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the City Council the ability to impose labor requirements on downtown projects including hotels. As the successor to the Centre City Development Commission, Civic San Diego does issue permits from some downtown buildings. In his [veto message](#), Brown said the issue should be resolved locally, not at the state level.

A month ago the Legislature sent Gov. Jerry Brown several dozen [bills relating to land use](#), transportation, the environment, and related issues. October 11 was his deadline to sign, veto, or approve without signing.

Here is CP&DR's roundup of the governor's actions.

Planning & Zoning

AB 1303 (Gray) Subdivision Map Act: map expiration dates

This bill would extend by 24 months the expiration date of any approved tentative map or vesting tentative map that was approved on or after January 1, 2002, and not later than July 11, 2013, within a county that meets certain criteria, except as specified. The bill would additionally require the extension of an approved or conditionally approved tentative map or vesting tentative map, or parcel map for which a tentative map or vesting tentative map was approved on or before December 31, 2001, upon application by the subdivider at least 90 days prior to the expiration of the map, as specified.

Signed

AB 504 (Gonzalez) Local Planning

This bill would, notwithstanding any other law, authorize a city to delegate to, or authorize pursuant to a contract with, a nonprofit public benefit corporation the performance of ministerial planning functions, as defined, and require that the city retain all nonministerial planning functions. This bill was aimed at Civic San Diego.

Vetoed

AB 744 (Chau) Planning and zoning: density bonuses

This bill would prohibit, at the request of the developer, a city, county, or city and county from imposing a vehicular parking ratio, inclusive of handicapped and guest parking, in excess of 0.5 spaces per bedroom on a development that includes the maximum percentage of low- or very low income units, as specified, and is located within 1/2 mile of a major transit stop, as defined, and there is unobstructed access to the transit stop from the development.

Signed

SB 379 (Jackson) Land use: General Plan: Safety Element

This bill would require cities and counties to include in the next revision to their local hazard mitigation plans a new safety assessment identifying the risks that climate change poses to the local area.

Signed

Transportation & Infrastructure

AB 313 (Atkins) Enhanced infrastructure financing districts

A multifaceted bill regarding the creation and administration of enhanced infrastructure financing districts.

Signed

SB 9 (Beal) Greenhouse Gas Reduction Fund: Transit and Intercity Rail Capital Program

This bill would modify the purpose of the Transit and Intercity Rail Capital Program to delete references to operational investments and instead provide for the funding of transformative capital improvements, as defined, that will modernize California's intercity, commuter, and urban rail systems and bus and ferry transit systems to achieve

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certain policy objectives, including reducing emissions of greenhouse gases, expanding and improving transit services to increase ridership, and improving transit safety.

Signed

SB 508 (Beall) Transportation funds: Transit operators: Pedestrian safety

This bill would revise the Transportation Development Act to apply less-stringent farebox ratio requirements for transit operators to receive funds from a 1/4% sales tax. It also would authorize spending of local funds for pedestrian safety education programs.

Signed

SB 64 (Liu) California Transportation Plan

Amends California Transportation Plan updates to be completed every five years, emphasizing that the California Transportation Commission will prepare action-oriented and pragmatic recommendations for transportation improvements.

Signed

SB 374 Local agency design-build projects: transit districts (Hueso)

Would specify that the definition of a local agency authorized to use the design-build method of project delivery includes the San Diego Association of Governments. The bill would define projects, as it pertains to the San Diego Association of Governments, to include development projects adjacent, or physically or functionally related, to transit facilities developed by the association.

Signed

SB 767 (DeLeon) Los Angeles County Metropolitan Transportation Authority: transactions and use tax

The bill would instead authorize the MTA to impose

an additional transportation transactions and use tax at a maximum rate of 0.5% as long as a specified existing 0.5% transactions and use tax is in effect, and at a maximum rate of 1% thereafter, as specified, for a period of time determined by the MTA, if certain conditions exist and subject to various requirements, including the adoption of an expenditure plan and voter approval, as specified.

Signed

Housing

AB 35 (Chiu / Atkins): Income taxes: Credits: Low-Income Housing: Allocation Increase.

AB 35 would expand the state's Low-Income Housing Tax Credit by \$300 million annually. Expansion of the state tax credit will have two positive effects: Developers will not only have access to more funding for building developments where the rents remain affordable, but they will also be able to leverage additional federal funds (a total of \$600 million annually). Developers acquire and sell the tax credits, which provides revenue that they cobble together with other funding sources to build developments where rents are kept [affordable](#). This bill would increase the state's Low Income Housing Tax Credit by \$300 million to build and rehabilitate affordable housing.

Vetoed

AB 90 (Chau) Federal Housing Trust Fund

This bill would designate the Department of Housing and Community Development as the state agency responsible for administering funds received by the state from the federal Housing Trust Fund. This bill would require the department to administer the funds through existing or newly created programs that produce, preserve, rehabilitate, or support the operation of rental housing for extremely low income and very low income households, except that up to 10% of funding may be used to support home ownership for extremely low income and very low income households.

Signed

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AB 668 (Gomez): Property Taxation: Assessment: Affordable Housing

Requires county assessor to assess for taxation contracts with non-profit companies if they have received a welfare exemption for properties intended to be sold to low-income families and if the contract restricts the use of the land for 30 years to owner-occupied housing available at an affordable cost

Signed

Environment, Climate Change, CEQA

AB 323 (Olsen): California Environmental Quality Act: Exemption: Roadway Improvement

AB 323 would extend the sunset date for current law that exempts city roadway improvement projects from California Environmental Quality Act requirements if the project is within the existing right-of-way, improves safety and is within a jurisdiction with a population of less than 100,000 people.

Signed

AB 498 (Levine): Wildlife Conservation: Wildlife Corridors

This bill would provide credits to applicants who invest in “mitigation banks,” defined as wetland areas denoted for conservation, in order to protect habitat connectivity for fish and wildlife, and it also makes it impermissible for an agency to deny a permit to a project applicant who does not take voluntary steps to protect a wildlife corridor.

Signed

AB 747 (Eggman): An act to amend Section 65962 of the Government Code, relating to land use. Sacramento-San Joaquin Valley

This bill would prohibit a city or county within the

Sacramento-San Joaquin Valley from approving a discretionary permit or entitlement that would result in the construction of a new building or construction that would result in an increase in allowed occupancy for an existing building for a project that is located within a flood hazard zone unless the city or county finds that the construction meets the criteria referenced above.

Chaptered

Economic Development/Redevelopment

AB 2 (Alejo) Community Revitalization Authority

This bill would authorize certain local agencies to form a community revitalization authority (authority) within a community revitalization and investment area, as defined, to carry out provisions of the Community Redevelopment Law in that area for purposes related to, among other things, infrastructure, affordable housing, and economic revitalization. The bill would provide for the financing of these activities by, among other things, the issuance of bonds serviced by tax increment revenues, and would require the authority to adopt a community revitalization and investment plan for the community revitalization and investment area that includes elements describing and governing revitalization activities.

Signed (see [Insight](#) Oct. 4, 2015)

SB 63 (Hall) Seaport Infrastructure Financing Districts

This bill would additionally include port or harbor infrastructure, as defined, among the projects that may be financed by an enhanced infrastructure financing district. The bill would require a harbor agency to prepare an infrastructure financing plan for a seaport infrastructure financing district, defined as an enhanced infrastructure financing district that finances port or harbor infrastructure. The bill would increase the vote threshold for a seaport infrastructure financing district to issue bonds to 2/3 of the

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>>> Brown Sign Parking and Tax-Increment Bills

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voters, and would provide that for purposes of these voters, a “landowner” includes an entity paying possessory interest tax on state-owned land.

Signed

SB 107 (Committee on Budget and Fiscal Review) Local government

A multifaceted measure to clean up the process of dissolving redevelopment agencies.

Signed

Miscellaneous

AB 3 (Williams): Isla Vista Community Services District

Create a community services district as a means of self-governance for Isla Vista

Signed

AB 57 (Quirk) Telecommunications: wireless telecommunication facilities

This bill would provide that a collocation or siting application for a wireless telecommunications facility is deemed approved if the city or county fails to approve or disapprove the application within the reasonable time periods specified in applicable decisions of the Federal Communications Commission, all required public notices have been provided regarding the application, and the applicant has provided a notice to the city or county that the reasonable time period has lapsed.

Signed

AB 189 Arts Council - Cultural Districts

This bill would require the Arts Council to establish criteria and guidelines for state-designated cultural districts.

Signed

Brown vetoed the tax credit bill as part of a package of nine bills he vetoed in order to maintain the state’s strong fiscal situation. He tipped his hand in a plenary at the Urban Land Institute in San Francisco when he said he generally opposed tax credits because it is not usually possible to remove them in hard fiscal times.

AB 851 (Mayes) Local government: organization: disincorporations

This bill would authorize a local agency conducting proceedings for the disincorporation of a city to propose the adoption of a special tax on behalf of an affected city in accordance with the above-described procedure. This bill would, in the case of a disincorporation or reorganization that includes a disincorporation, require the plan for services to include specific provisions,

including, among others, an enumeration and description of the services currently provided by the city proposed for disincorporation.

Signed

SB 25 (Roth) Local government finance: property tax revenue allocation: vehicle license fee adjustments

Designed primarily to restore some funding to four of the state’s newest cities (Eastvale, Wildomar, Menifee and Jurupa Valley, all in Riverside County), this bill would modify these reduction and transfer provisions for a city incorporating after January 1, 2004, and on or before January 1, 2012, for the 2014–15 fiscal year and for each fiscal year thereafter, by providing for a vehicle license fee adjustment amount calculated on the basis of changes in assessed valuation.

Vetoed

SB 302

This bill approved a \$24 million appropriation from the state’s general fund to transfer to a private investor group who sued the state for killing a deal wherein the group purchased state buildings for \$2.3 billion and agreed to lease them back to the state for at least \$56 million in rent each year.

Signed ■

>>> Redevelopment Is Back – Or Is It?

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redevelopment code sections in state law; and it makes no connection to SB 375 and the state’s other sustainability-based planning and development efforts.

AB 2 permits the creation of CRIA’s with the following caveats:

- * They can’t take school district tax increment funds. That will ensure the system doesn’t cost the state general fund any money.

- * They can take other agencies’ tax-increment money only with their consent. That’s to stop lawsuits between cities and counties.

- * The money can be used only for limited purposes – which are focused on unemployment and crime, not on sustainability and proximity to transit.

- * The CRIA system is completely disconnected from the old redevelopment system. In fact, a city can create a CRIA only after the state Department of Finance issues a Finding of Completion under the redevelopment wind-down law. This has been a Brown requirement all along, designed to encourage cities to wrap up the old redevelopment stuff.

This is pretty much the bill Brown said he’d sign last year when he vetoed Alejo’s AB 2280. That bill did all the same things that AB 2 does. Except, it hooked the CRIAs into the remnants of redevelopment, basically using the legal structure of the old redevelopment law as its basis. In his veto message last year, Brown wrote: “The bill ... unnecessarily vests this new program in redevelopment law. I look forward to working with the author to craft an appropriate legislative solution.”

Technically, this is the second hole that Brown has punched in the tax-increment wall in the last two years. Last year, he signed a bill to make it easier for cities to use tax increment to create [infrastructure districts](#) (EIFDs)—but that move still requires 55% voter approval. AB 2 is potentially more important because it is more like old-style redevelopment and it doesn’t require a vote to create a

district.

The criteria to create a CRIA is significantly tighter than the criteria for the old redevelopment project areas. A redevelopment area could be created if the city found “blight” to be present. Over the course of time, the definition of blight was tightened up – no raw land, for example – but the truth of the matter was that blight was still a pretty loose term. As redevelopment lawyers used to say, “Blight is in the eye of the beholder.”

AB 2 establishes a specific set of criteria targeted at low-to moderate-income neighborhoods that have other social or physical problems as well. A CRIA can only be established if 80% of the land area with a household income of less than 80% of the statewide annual media income. In addition to that, three of the following four criteria must be met:

- 1) Unemployment at least 3 percent higher than statewide median;
- 2) Crime rates at least 5 percent higher than statewide median;
- 3) Deteriorated or inadequate infrastructure; or
- 4) Deteriorated commercial or residential structures, including a former military base.

You can see what the state is driving at here: You want relatively poor neighborhoods that have both physical deterioration *and* social problems – not one or the other. That’s designed to avoid a major loophole in the old redevelopment law: Only physical deterioration was required, and the definition of physical deterioration was pretty loopy-goopy.

The thing that jumps out at you immediately from this definition is how much easier it will be for the Central Valley to create CRIAs. 80% median income and high unemployment and crime? Sure, that’s a lot of Los Angeles – but it’s also practically the entire Central Valley.

Then again, it’s not entirely clear whether creating CRIAs will be worth it. For a city, the whole game is to

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capture more tax revenue than it would otherwise get by capturing some tax revenue increases from other agencies. But the school tax increment is out, so that means at best a CRIA will get only half the amount that a redevelopment project area got. And counties and special districts will undoubtedly want their cut. Once you're down to a third of the tax increment – rather than the typical two-thirds under the old system – will these deals be worth doing, especially if the other agencies need to be cut in?

Maybe the biggest concern, however, is the fact that CRIAs are totally “place-blind” and – unlike the earlier Steinberg versions of the bill – completely disconnected from the state’s whole array of sustainability policies.

Steinberg’s bills [linked a new tax-increment system to SB 375](#), requiring that the new districts be required to conform to each region’s sustainable communities strategy. Also, SB 375, as well as the [SB 743 reform](#) of the California Environmental Quality Act and other state policies, use a pretty consistent definition of infill development. AB 2 does not even mention infill development or any other place-based criteria.

More recently, Brown passed the cap-and-trade program and allocated 20% of the revenue to the Affordable Housing and Sustainable Communities program -- [\\$400 million in FY 2015-16](#).

The AHSC program [has struggled](#) to balance the goal of

CRIAs will be totally “place-blind” and – unlike the earlier Steinberg versions of the bill – completely disconnected from the state’s whole array of sustainability policies.

reducing greenhouse gas emissions – the whole purpose of the cap-and-trade fees in the first place – with social equity goals, especially affordable housing. Huge battles occurred over how much of the cap-and-trade money should go to affordable housing and the definition of “[disadvantaged communities](#)”. [In addition, among other things, there is a growing battle between the market and affordable housing advocates over the prime real estate near transit stations.

AB 2 is not connected to this debate at all. Yes, there *should* be some overlap between affordable housing and disadvantaged communities in the AHSC program and CRIAs under AB 2. But there is no guarantee. In addition, it’s entirely possible that lots of CRIAs could be created in low-income but transit-poor neighborhoods – especially in the Central Valley – thus increasing housing and concentration of people in those locations.

Maybe it’s necessary to focus on low-income locations in transit-poor, isolated rural locations. Certainly a lot of needy Californians live in such locations. And AB 2 is welcome tool – just the kind of second-Brown-term minor-league revival of tax increment that we’ve all been expecting. But, by severing the connection between with the whole rest of the state policy apparatus, AB 2 is likely to dilute the combined effect of state investment and policies on the goals that most California state and local policy leaders agree on. ■

A Plan with 'Zero' Chance of Success

In 2013, [34 pedestrians](#) died on the streets of Denmark. The city of Copenhagen, roundly hailed as the world's pleasantest city for walking and biking, has about 10 percent of Denmark's population of 5.6 million. We can extrapolate that exactly three pedestrians died on the streets of Copenhagen in 2013, for a rate of about 0.5 per 100,000.

To be sure, those three deaths each deserve lamentation, scrutiny, and sympathy. On the other hand, they deserve celebration. Copenhagen's pedestrian fatality rate is about as low as it gets. The lowest pedestrian death rate of any major American city is 0.76. Copenhagen's pedestrian fatality rate is a full five times lower than that of the City of Los Angeles, which, at [2.57](#) (pdf) puts it towards the high end.

If you divide Copenhagen's fatality rate by Los Angeles', you get 19 percent. The question that some in Los Angeles are now asking is, what happens when you divide by zero?

Founded in Sweden in 1997, [Vision Zero](#) is an international movement dedicated to reducing pedestrian fatalities to nil. Los Angeles Mayor Eric Garcetti supports Vision Zero enthusiastically. He made it is one of inspirations behind the new [Los Angeles Mobility Plan 2035](#), which I reported on this month. In loose affiliation with a handful of other cities around the world and around the state -- including San Diego, San Jose, and San Francisco -- Los Angeles has pledged to calm traffic, improve sidewalks and crossings, enhance public transit, and do a host of great things that are, directly or indirectly, designed to make walking safer.

Safer is admirable and good, just as 2.57 is not good at all. Safer is especially good when it comes with collateral benefits and when multiple goals -- such as placemaking -- are achieved at once. But *zero*?

The trouble with Vision Zero is that, from the moment it was devised, it was destined to fail.

Even before I covered the Mobility Plan, Garcetti's embrace Vision Zero made me uncomfortable, for its both grandiosity and fantasy. How can Los Angeles -- or any other city in the civilized world -- ever hope to live up to such a stark, uncompromising goal?

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Accidents are going to happen, even in Copenhagen. Someone is going to bust an inner tube and hit the curb. Someone is going to slip on a carelessly discarded smørrebrød. Someone will trip on his scarf and end up in a canal. Even perfect cities aren't perfect.

The fact is, planning can never eliminate all bad things -- whatever the thing happens to be. In the case of pedestrian safety, it can absolutely *reduce* deaths. It can, if you go back to high school calculus, *approach* zero. But this is still a free country. Unless Los

Angeles bans cars entirely and replaces all its pavement with compacted marshmallow, it can never reach zero. Not in 2015, not in 2035, not ever. In the battle between absolutes and public policy, policy never wins.

As much as I admire the Swedes' approach to urbanism, Vision Zero strikes me -- in its rhetoric, it not necessarily in its strategy -- as a paternalistic extension of parents' paranoia over germs, dirt, boogeymen, and [walking home](#) from school. Should public policy look out for citizens' safety? Of course, but not maniacally so. And, more to the point, not inefficiently so.

Planning Commissioner Richard Katz notes that Los Angeles really shouldn't worry about traffic deaths. It should worry about *all* deaths. There are four million ways to die in the naked city, from lung cancer to drug overdoses to gang shootings. Public policy should be prejudiced only

A Plan with ‘Zero’ Chance of Success

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by those cases that will yield the most lives saved. Then again, we can’t repeal the Second Amendment, so we might as well fix our streets.

Laura Lake, who heads a group that is suing the city over the Mobility Plan, takes the Zero Paradox a step further. She notes that by slowing traffic on certain streets, the plan might impede ambulances that are responding to fires and medical emergencies. For every pedestrian saved, someone else might expire in a gurney on the way to the hospital.

Lake’s hypothetical is, possibly, a bit out there. But these potential unintended consequences are surely worthy of discussion, especially when the Vision Zero movement is gaining so much momentum. That’s a lot of preordained failure.

The planning field hasn’t had much luck lately with vague, ominous slogans. [Agenda 21](#), anyone? Let’s hope that, unlike Agenda 21, Vision Zero faces not unhinged opposition but rather a more nuanced, thoughtful strategy than its name implies and a willingness to strive for realistic goals.

– JOSH STEPHENS | AUGUST 12, 2015 ■

