

Using Tuolomne Tactic, Moreno Valley Approves Development of 40 Million Square Feet

BY JOSH STEPHENS

For years, National Football League teams have been trying to find places to play in the Los Angeles area. Soon enough, 700 of them could move to Moreno Valley, with room to spare.

In what may be the largest single commercial development in the history of California — or possibly the universe — the World Logistics Center will, as currently envisioned, cover 40 million square feet, most of which will be dedicated to storage, transshipment, and other functions related to the logistics industry. It will be three

times bigger than New York City’s much-heralded Hudson Yards project.

WLC was approved last summer on a 3-2 vote of the Moreno Valley City Council. That vote was reaffirmed in November as the council voted to adopt a ballot initiative to approve the project — using the so-called “Tuolomne Tactic” [<http://www.cp-dr.com/node/3791>] after developer Highland Fairview qualified a measure for the ballot.

“I think it’s as important a choice as any that a council has made in my some 50 years of being a professor at

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insight
WILLIAM
FULTON

Consensus, Not Clarity, From Cal Supremes on CEQA

Now that comprehensive legislative reform of the California Environmental Quality Act seems unlikely, all eyes are turning to the California Supreme Court — if not for reform, then at least for clarity that will make the world of CEQA a little

simpler, a little cleaner, and a little more understandable.

Good luck. Although the Cal Supremes have a heavy CEQA docket — and the justices are clearly putting a lot of thought

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Groups Sue over Riverside County General Plan

Three environmental groups are [suing](#) Riverside County over a climate action plan and amendments to its general plan. Plaintiffs claim that, contrary to the plan's stated goals to combat climate change and protect the environment, the plan actually creates increased traffic, air pollution and threats to wildlife. Plaintiffs include the Center for Biological Diversity, San Bernardino Valley Audubon Society, and the Sierra Club. The groups argue that the Board of Supervisors violated CEQA by certifying an inadequate environmental impact report. The county argues its plans are up to the state's standards and designed to assist California in meeting its GHG emission-reduction targets. According to the groups, Riverside County is not discouraging sprawl by increasing density in existing cities, not actively reducing pollution, and allows for developments near sensitive wildlife areas. A hearing is scheduled for Feb. 22.

SGC Expands Agricultural Lands Conservation Grants

With a significant increase in cap-and-trade funding for 2016, the Strategic Growth Council [announced](#) the expansion of the Sustainable Agricultural Lands Conservation program (SALC). SALC provides funds that compensate farmers and ranchers for creating conservation

easements. It also assists local governments' plans to preserve agricultural lands, with an eye towards mitigation of greenhouse gas emissions. Available funding in 2016 will amount to \$40 million, a eightfold increase over the previous year. Funds will be made available through a competitive application process. Last year, SGC received \$45 million worth of applications. The new funding level comes with new guidelines from SGC. Funding match thresholds have been reduced, particularly for projects in disadvantaged communities. Pre-applications are due Feb. 16. Further information, including new guidelines, is available [here](#).

DMV Issues Draft Regulations for Autonomous Vehicles

Anticipating what could be one of the most significant urban trends of the coming decade, the Department of Motor Vehicles released a draft of preliminary regulations of autonomous vehicles ([pdf](#)). The regulations primarily focus on safety issues. Proposed regulations include the following: third-party safety certification; presence of licensed operators capable of controlling vehicles at all times; initial three-year deployment permits for manufacturers; privacy and cybersecurity protection for vehicles that collect and relay data while driving. DMV initially intends to allow only autonomous passenger vehicles. Two upcoming workshops will be held

to discuss the draft regulations and receive input: Jan. 28 in Sacramento and Feb. 2 in Los Angeles.

NFL Approves Rams' Move to Los Angeles

After a 21-year wait, the National Football League has finally approved the [relocation](#) of a team to the Los Angeles area starting in the 2016 season. NFL owners voted, 30-2, to allow the St. Louis Rams to transfer to Los Angeles. They will temporarily play at the Los Angeles Memorial Coliseum and then move to a new stadium complex in Inglewood. The San Diego Chargers have a one-year option to join, but must decide by Jan. 15, 2017 or else the Oakland Raiders will get the year-long option. If they both choose to stay in their home markets they will each get \$100 million for their own new stadiums. The proposed stadium in Inglewood will open in 2019 and cost almost \$3 billion with no public funds. The 298-acre site will include entertainment, retail, housing, performing arts venue, and privately financed stadium with 70,240 seats.

Study of Bay Area Carbon Footprint Released

UC's CoolClimate Network, which includes researchers from UC Berkeley and the Bay Area Air Quality Management District, recently [released](#) a ranking of census blocks in the nine-counties in the Bay Area according to carbon consumption.

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The per-household measurements are based on transportation use, food consumption, goods and services used, energy to heat or cool home, materials going into construction, electricity use and waste. The study is the first detailed carbon study of a major metropolitan area. “One of the things that really struck me the most was the wide variation within cities,” Christopher Jones, program director of the CoolClimate Network, told the San Francisco Chronicle. “Oakland, for example, has some of the highest and lowest carbon footprints in the entire Bay Area, all within the same city.” The study found that Atherton has the largest per-household carbon footprint in the Bay Area, at 85.7 tons; Emeryville has the smallest, at 30.7 tons.

Caltrans Issues Statewide Bikeway Guidelines

Caltrans has issued a long-awaited “Class IV Bikeway Guidance” ([pdf](#)) document to assist planners and engineers in building protected bike lanes. In 2014 the Protected Bikeways Act mandated Caltrans create a category and guidance documents. The guidelines provide, for the first time, a statewide standard to help local planners design and implement bike infrastructure. The document is written with a permissive rather than restrictive attitude to encourage the local jurisdictions to specialize to fit their communities. The guidance document are continuing protected intersections, loading zones and driveways. This document is designed to help engineers and planners build bike lanes for those commuters less comfortable with using the road alongside vehicle traffic. “We didn’t want to dictate from a Caltrans

statewide perspective,” Kevin Herritt, chief of Caltrans’ Office of Standards and Procedure, told [Streetsblog](#). “The guidelines are intended to be flexible, so that all local jurisdictions can do what they need to do given their specific local circumstances.”

Legislature Considers Major Homelessness Bill

To address the state’s intensifying [homelessness](#) crisis, state senators proposed a \$2 billion bill to help provide up to 14,000 units of permanent housing for the state’s mentally ill homeless population. California has roughly 116,000 homeless people. The monies, to be raised as bonds, would be repaid over 20 to 30 years with money from the tax for mental health services approved in 2004 (Proposition 63). Backers of the bill say they hope that state funds will encourage local governments to address their respective homelessness problems. The Senate President Pro Tem Kevin de León also proposed \$200 million from the state’s general fund to assist with rent subsidies until the new housing projects are completed. A spokeswoman for Gov. Jerry Brown said, “the administration is supportive of efforts to empower local governments to tackle homelessness, poverty, and mental health issues in our communities and we will take a close look at the proposals in this package.” Los Angeles Mayor Eric Garcetti said that he embraces more state funding, while others criticized the proposal for not allowing local leaders to make financial decisions.

Group Files Pair of Suits Against Warriors’ Arena

A citizens group called the Mission

Bay Alliance recently filed [suit](#) to halt the development of The Golden State Warriors proposed \$1 billion arena in San Francisco’s Mission Bay. The arena was recently approved unanimously by the Board of Supervisors. Parents fear that game time traffic to the Warriors arena, located 1,000 feet from UCSF Children’s Hospital, could block life-saving care. The lawsuit argues that the plan violates California Environmental Quality Act for failing to consider other locations and for causing significant, air quality, noise, and traffic impacts. It also claims that the area plan violates a 1998 redevelopment plan, which, they say, does not include a sports arena. A separate [suit](#) filed by the group argues that UCSF Chancellor Sam Hawgood signed memorandum supporting the project without authorization from the UC Board of Regents.

Los Angeles Drafts Regional Strategy to Combat Homelessness

The City of Los Angeles released a draft Homelessness Strategy Report, which backers say lays the foundation for a regional approach to addressing the chronic issue. The report calls for expanded staffing, services, rental subsidies, and permanent housing for the city’s homeless residents. Its recommendations will guide the Mayor Eric Garcetti’s and city council’s short- and long-term homelessness policy decisions. The report also identifies potential funding streams and begins to estimate initial costs that will help inform the mayor’s proposed 2016/2017 budget. The draft, which is designed to complement a strategy being issued by the Los Angeles County Board of Supervisors, will

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be heard by the Homelessness and Poverty Committee on January 13, with a follow-up meeting later in the month. It is expected to be considered by the full City Council in February. Garcetti said in a statement that his three top priorities center on “scaling up the Coordinated Entry System; preventing people at-risk for homelessness from landing on the streets; and balancing health and safety concerns with the rights and needs of people who are living in unacceptable conditions.”

Los Angeles Goes After Nuisance Properties

A new plan approved by the Los Angeles City Council would allow the city to take control of [vacant nuisance](#) properties from banks and

put them under the control of a court-appointed overseer who would hire contractors to fix the houses for sale. Under the plan, proceeds from the sales, not taxpayer dollars, would pay for that work, including the fees of private attorneys who would handle the legal paperwork. “It offers an effective way to turn a property around quickly,” City Attorney Mike Feuer told the LA Times. “This program costs nothing.” Feuer’s proposal now goes to Los Angeles Mayor Eric Garcetti for approval. If he signs off, the city attorney would be able to have outside firms start working on takeovers after 30 days.

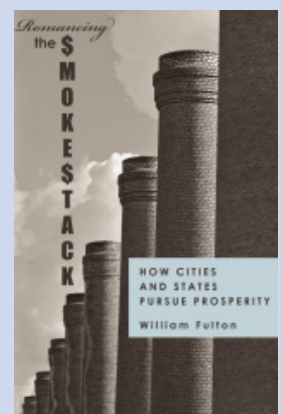
Mayors Form Homelessness Alliance

Five West Coast mayors announced

the creation of an alliance united in addressing the growing crisis of homelessness. The alliance, consisting of Portland Mayor Charlie Hales, Seattle Mayor Ed Murray, Eugene Mayor Kitty Piercy, San Francisco Mayor Ed Lee and Los Angeles Mayor Eric Garcetti, was developed during the West Coast Mayors Summit addressing homelessness, housing, and climate action. It first plans to elevate the importance of homelessness and housing in their communities and among their federal delegations. It would be committed to data collection and sharing — getting the right data for the West Coast — and sharing of best practices. ■

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

Bill Fulton’s Book On Economic Development



OPR Revises SB 743 Guidance, Putting Thresholds in “Advisory” Category

BY WILLIAM FULTON

A new set of recommendations for implementing SB 743 [https://www.opr.ca.gov/docs/Revised_VMT_CEQA_Guidelines_Proposal_January_20_2016.pdf] – which would require traffic analysis to be based on vehicle miles traveled -- proposes moving many proposed significance thresholds from the legally binding CEQA guidelines to a technical advisory memo. These recommendations also call for stricter thresholds on the so-called “regional averages” and provide simpler methodologies for dealing with safety issues. The thresholds of significance are important because they often trigger an environmental impact report.

The new recommendations were released by the Governor’s Office of Planning and Research last week. OPR will be taking comments for 45 days – until the end of February – before turning the proposal over to the Natural Resources Agency for a formal rulemaking process.

SB 743 requires that traffic analysis under the California Environmental Quality Act be shifted away from the long-standing “Level of Service” metric, which focuses on congestion. OPR’s original draft recommendations were issued almost a year and a half ago. [<http://www.cp-dr.com/node/3549>] They called for a shift to a VMT standard and called for a variety of thresholds to be included in

The recommendations also call for stricter thresholds on the so-called “regional averages” and provide simpler methodologies for dealing with safety issues.

the CEQA Guidelines. Among other things, projects would be deemed less than significant if they are located within a half-mile of transit and/or if they generate less than the regional average for VMT on residential and office developments. The proposal also permitted CEQA analysis of safety issues that might be related to congestion, such as queueing – a matter of concern to Caltrans.

After a roadshow in the fall of 2014, OPR got significant pushback on a variety of issues and slowed the process down. [<https://www.cp-dr.com/node/3581>].

Among the highlights of the proposed revisions are the following:

Regional Average

On the question of the regional average, the new recommendations say that if a residential or office project’s VMT is 15% below either the regional average or your own city’s average – whichever is higher – that’s not a significant impact.

On retail – where OPR analysts claim that the construction of move stores often move traffic around rather than increase or reduce it – the suggested threshold would be any increase in VMT, rather than a required decrease. There would be a presumption that smaller stores generate less VMT.

>>> OPR Revises SB 743 Guidance, Putting Thresholds in “Advisory” Category

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It remains to be seen whether these methods will help lead agencies meet the locally specific greenhouse gas emissions reduction analysis requirement laid out by the California Supreme Court in the recent Newhall Ranch case. <http://www.cp-dr.com/node/3835>.

Transportation Projects

There’s also a recommended significance threshold for any transportation project contained in a regional transportation plan that is scheduled to be built by 2030. It’s a fair-share amount. OPR used a statewide VMT budget created by the Air Resources Board in order to help meet the state’s 2030 targets (approximately an additional 2

million miles per year) and simply allocated a proportional share of the VMT to each project.

Safety

One of the most controversial issues was the question of safety. Although congestion technically could not be analyzed under CEQA, the original proposal permitted safety concerns related to congestion to be analyzed, such as queuing. The new proposal simply makes a wide variety of suggestions about strategies that could improve safety, including slower speeds and a focus on bike/ped fatalities, and refers to academic literature on these issues that practitioners can use to make their own judgments. ■

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Can Bertoni Help Garcetti Run L.A. City Hall's Planning Gauntlet?

BY WILLIAM FULTON

Los Angeles Mayor Eric Garcetti announced Monday [<http://www.lamayor.org/mayor-garcetti-announces-nomination-new-planning-director>] that he has selected Vince Bertoni as the city's new planning director, replacing Michael Lo Grande. Bertoni is currently planning director of Pasadena and a former deputy director in Los Angeles. Bertoni must be confirmed by the L.A. City Council.

Lo Grande's departure had been rumored for some time. He was selected as planning director by former Mayor Antonio Villaraigosa in 2010 following the departure of Gail Goldberg. [<https://www.cp-dr.com/node/2739>] In contrast to Goldberg – a visionary long-range planner – Lo Grande was a nuts-and-bolts guy who had previously served as the city's zoning administrator.

Bertoni's selection suggests that Garcetti wants to return to a more visionary approach. He has held top planning posts in such cities as Malibu, Beverly Hills, and Santa Clarita – and recently worked Pasadena through a general plan revision that included an innovative approach to traffic metrics similar to the switch called for in SB 743. [<http://www.cp-dr.com/node/3713>] He could play a key role in implementing Garcetti's new transportation plan, Mobility

Bertoni's selection suggests that Garcetti wants to return to a more visionary approach.

2035, which contains similar ideas. [<https://www.cp-dr.com/node/3812>]

In making the announcement, Garcetti praised Bertoni as a consensus builder: "He is a professional who leads by collaborating and consensus-building – skills that will help him balance the diverse needs of our communities, and facilitate real progress in the ongoing conversation about development in this city."

The L.A. planning director's job is notoriously difficult, in large part because much of the power over development projects lies in the offices of the city council members. It is not uncommon for developers to win the de-facto support of a councilmember's planning deputy before pursuing the project through the planning department.

However, Bertoni has long experience operating at the plan level, meaning he may be able to work the plan system, rather than development projects, to his advantage. And learned how to navigate L.A. City Hall as one of Goldberg's deputy directors. Garcetti's press release noted that in that capacity Bertoni oversaw 16 historic preservation overlay zones, new guidelines for the Broadway Historic District, the bicycle master plan and the Hollywood community plan. ■

legal digest

CDFA Erred in EIR on Pest Control Action, Court Rules

BY WILLIAM FULTON

The California Department of Food & Agriculture erred in preparing an environmental impact report for a program intended to eradicate with an invasive pest without examining the long-term consequences of an alternative program to control the pest rather than eradicate it, the Third District Court of Appeal has ruled.

As it happens, CDFA actually switched the program at the last minute from eradication to control, but the Third District said the defeat in the EIR would have been a legal problem under any circumstances. Relying on *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, the Third District said CDFA's action was "prejudicial," requiring the appellate court to reverse two trial court rulings related to the case.

The case involves CDFA's efforts to eradicate the light brown apple moth, or LBAM, an invasive "leaf-roller" moth that was first seen in California in 2007. Because LBAM represented a threat to all California ornamental plants as well as fruits and vegetables, and its invasion of California was moving fast, the legislature quickly

authorized CDFA to undertake a temporary LBAM program with the goal of eradicating the pest.

The draft EIR was released in July 2009, stating the goal was to eradicate the LBAM in California by 2015 (a date that was later extended to 2017). The final EIR was approved in February 2010, but a month later the U.S. Department of Agriculture reported that the LBAM had moved so fast in California, eradication was no longer possible. A few days later, CDFA Secretary A.G. Kawamura approved a seven-year program to control the LBAM while certifying the EIR as adequate. As the appellate court wrote, "Although the DEIR had stated eradication was 'fundamentally different' from control, CDFA now found the new objectives merely 'differ somewhat' from the objectives in the draft."

CDFA was sued in two different actions by two groups of advocates, who appeared motivated largely by a desire to replace the use of pesticides with an aggressive program of integrated pest management, or IPM. Although the two lawsuits challenged the EIR on a wide variety of grounds,

the most significant challenge argued that the EIR was wrong because a control program, as opposed to an eradication program, would continue indefinitely, the potential environmental impact of a control program could be significantly different than the environmental impact of an eradication program. Sacramento County Superior Court Judge Lloyd Connelly, a former member of the Assembly, ruled in favor of CDFA. On appeal, the Third District consolidated the two cases.

Writing for a unanimous three-judge panel, Justice Harry Hull ruled that even if Secretary Kawamura had not changed the program from eradication to control at the last minute, CDFA erred in not analyzing the impact of control as a possible alternative in the EIR.

"The EIR acknowledged the project's "purposes" included protecting California native plants and agricultural crops from damage," Justice Hull wrote. "While a control program may have achieved these "purposes" to some extent (as evidenced by the ultimate approval of a control program), the EIR declined

>>> CDFA Erred in EIR on Pest Control Action, Court Rules

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to evaluate a control program as an alternative to an eradication program on the ground that a control program would not achieve the “objective” of eradication.

“The EIR did not even address in its cumulative impacts discussion the incremental effect of the reasonably foreseeable future need to continue anti-LBAM measures after expiration of the seven-year period,” he continued. “The EIR’s omissions leave the record devoid of evidence to prove CDFA’s claim that the last-minute change was legally acceptable because the adopted control program was narrower than the EIR’s eradication program.”

In approving the control program, Kawamura argued that it was covered by the EIR for the eradication program because the control program was “narrower”. But the plaintiffs argued that the control program may not be narrower because it could go on indefinitely, whereas the eradication program would not.

In any event, Hull wrote, “[W]e cannot tell whether the approved control program was narrower than the EIR’s described eradication program, because the EIR expressly declined to evaluate a control program as an alternative to an eradication program.” He called CDFA’s argument that a control program would probably have a lesser environment impact “supposition” unsupported by the evidence. “Instead, the record supports an opposing inference that a control program may be more harmful to

The EIR declined to evaluate a control program as an alternative to an eradication program

the environment than an eradication, because the EIR acknowledged a control program would need to go on “forever.”

Hull noted that the EIR’s alternatives analysis “reveals a failure to appreciate CEQA’s requirement to study alternatives *to the program*. (§§ 21001, subd. (g), 21100, subd. (b)(4); Guidelines, § 15126.6.) It studied as ‘alternatives’ seven tools (five of which were approved) to be used in whatever combination was best suited for particular sites to be treated.”

The five approved tools were:

- (1) sterile insect technique (SIT), releasing sterile moths into the environment to mate with wild moths;
- (2) mating disruption pheromone (to attract males and prevent them from mating without killing them) using twist-ties (MD-1), placing plastic twist-ties infused with LBAM pheromone in places of small isolated LBAM infestations;
- (3) mating disruption pheromone

applied using ground-based equipment (MD-2), applying LBAM pheromones to trees and shrubs in residential yards and to telephone poles and trees on public property along roadways;

(4) inundative parasite wasp release (Bio-P) releasing an egg parasitoid, which is a native stingless wasp -- a predator to the moths -- near foliage where LBAM have been detected; and

(5) foliar ground treatments with approved insecticides (Btk and S). Btk is the biopesticide *Bacillus thuringiensis kurstaki*, a live bacterium that invades the host organism. “S” is the chemical pesticide Spinosad.

The plaintiffs made many other arguments against the program but the Court of Appeal either rejected them or determined them to be mooted by the main ruling.

The cases:

North Coast Rivers Alliance v. A.G. Kawamura, C072067, and Our Children’s Earth Alliance V. CDFA, C072617, <http://www.courts.ca.gov/opinions/documents/C072067.PDF>

The lawyers:

For North Coast Rivers Alliance: Stephan C. Volker, svolker@volkerlaw.com

For Our Children’s Earth Alliance, Kathleen H. Goodhart, Cooley LLC, kgoodhart@cooley.com

For CDFA: Gavin G. McCabe, Supervising Deputy Attorney General, gavin.mccabe@doj.ca.gov ■

Fish & Wildlife Created Physical Taking In Flooding Del Norte Subdivision

BY WILLIAM FULTON

In a 61-page opinion, the Third District Court of Appeal has ruled that the Department of Fish & Wildlife's actions in managing coastal flooding around Lake Tolowa and Lake Earl in Del Norte County constituted a physical taking of the adjacent landowners' property.

However, the Third District also ruled that the regulatory processes that led to the periodic flooding of the nearby property did not constitute a regulatory taking on the part of the Coastal Commission.

The case involves the Pacific Shores subdivision in Del Norte County, located along the beach just a few miles south of the Oregon border. The 1,500-lot subdivision itself was approved in 1963. Infrastructure such as roads is in place. But no homes have ever been built on the property, partly because the Coastal Commission has never approved a local coastal program land use plan for the area.

The Department of Fish & Wildlife has long managed flooding in the nearby coastal-area lakes by breaching a sandbar separating the lakes from the ocean when flooding occurred. However, after long permitting the breach when the water level stood at four feet above mean sea level, starting in the early 1990s, DFW changed its practice to

The Supreme Court remanded the East Bay case to the First District after ruling in the San Diego State case earlier this year.

breaching at eight feet. This had the effect of flooding much of the Pacific Shore subdivision from time to time. DFW used the eight-foot breach practice based on emergency permits until 2005, when a permanent permit was approved by both DFW and the federal Army Corps of Engineers. Background in a local newspaper story from 2011 can be found here. [<http://www.triplicate.com/News/Local-News/Pac-Shores-owners-win-in-court>] The Pacific Shore homeowners sued.

In 2011, Sacramento County Superior Court Judge David De

Alba ruled that a physical taking had occurred but a regulatory taking had not and awarded the property owners a total of \$114,500 in damages. The Third District upheld De Alba's ruling in all respects.

On the question of DFW's physical taking of the property, the Third District concluded that DFW had quite deliberately made the decision to use the eight-foot breach practice and flood Pacific Shores not for flood control purposes but for environmental protection.

In the environmental impact report for the 2005 permit, the court said, "the Department concluded in the EIR that breaching at four feet msl would reduce habitat, an adverse environmental impact that could not be avoided or mitigated. Breaching at four feet msl would also adversely affect the amount of available wetlands and the wildlife that depended on those wetlands. The EIR concluded that continuing to breach when the lake reached eight to 10 feet msl was the environmentally superior alternative 'because it represents a balance between adverse effects on resources under the Department's trusteeship and adverse effects on other land uses in the lagoon vicinity'."

In upholding the trial court's ruling, the court applied a "strict liability"

>>> Fish & Wildlife Created Physical Taking By Flooding Del Norte Subdivision

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standard. Third District Justice George Nicholson – a former aide to Gov. George Deukmejian – wrote: “The project – breaching at eight to 10 feet msl – will operate not primarily to protect against flooding, but to protect environmental resources at the expense of plaintiffs’ property rights. It certainly will not operate to protect plaintiffs’ lands from flooding.”

The regulatory takings claim against the Coastal Commission, however, was another story. In 1981, the commission approved a local coastal program land use plan for the entire area except the Pacific Shores subdivision, which it designated as a “area of deferred certification” because ongoing environmental concerns and the flooding issue. The Pacific Shores homeowners argued

that the commission had created a regulatory taking by retaining jurisdiction over the property ever since. But Nicholson wrote that a regulatory taking hadn’t occurred, because Del Norte County has never submitted a revised land use plan to amend the existing LCP.

The Third District also affirmed the Judge De Alba’s ruling that the plaintiffs’ attorneys fees should be \$45,800 – 40% of the judgment, as called for in the contingency fee agreement with the plaintiffs – rather than the \$556,000 than the plaintiffs’ lawyers claimed they actually billed to the project.

The Case:

Pacific Shores Property Owners Association v. Department of Fish &

Wildlife, No. C070201 [<http://www.courts.ca.gov/opinions/documents/C070201.PDF>]

The Lawyers:

For Pacific Shores Property Owners Association: Kelly Smith, The Smith Firm, manager@thesmithfirm.com

For Department of Fish & Wildlife: Daniel L. Siegel, Deputy Attorney General, dan.siegel@doj.ca.gov

The Case:

The Third District concluded that DFW had quite deliberately made the decision to use the eight-foot breach practice and flood Pacific Shores not for flood control purposes but for environmental protection. ■



No Triable Issue of Fact in Venice AirBNB Case

BY WILLIAM FULTON

A Venice tenant who was renting her attic or loft out through AirBNB does not have a “triable issue of fact” on an eviction case brought against her by her landlord, the appellate division of the Los Angeles County Superior Court has ruled.

The case highlights one of a myriad of legal issues created by the such online services as AirBNB, which facilitates occupants of regular housing to rent out their bedrooms as if they were hotels, often in violation of zoning ordinances and homeowner association rules.

The case involved Joella Kraft, who lived in a rent-controlled unit in the Venice neighborhood in Los Angeles pursuant to a written agreement with the property’s then-landlord dating back to 1997, which also permitted her two then-young sons to live there on a part-time basis.

In 2014, the current landlord, Louise Chen, filed an unlawful detainer action against Kraft in Los Angeles County Superior Court after filing three notices with Kraft demanding that she pay rent, stop using her attic as living space, and stop “illegally subletting” to short-term tenants through AirBNB. In seeking a motion for summary judgment, Chen produced a wide variety of documents, including a letter from Deputy Planning Director Alan Bell noting that short-term rentals were not permitted in R-1 zones in Los Angeles.

Kraft never denied that she was running an AirBNB operation, even after the 10-day notice had expired; in fact, she had a transient occupancy permit from the city.

Kraft, who represented herself *in pro per*, responded by arguing that the motion for summary judgment should not be granted because there were triable issues of fact, including the approval of AirBNB use, the express approval given by the previous landlord that AirBNB tenants could be accommodated, the question of whether AirBNB use was illegal, and the tenant’s assertion that she did not know AirBNB use was illegal when she moved in.

L.A. County Superior Court Judge H. Jay Ford issued the motion for summary judgment, stating that the plaintiff “has shown that there is no triable issue of any material fact” and plaintiff’s use of the premises as a vacation rental violated the applicable zoning ordinances. Kraft appealed, again appearing *in pro per*.

On appeal, the appellate division noticed that in order to meet the

requirements for summary judgment, Chen had to show that the defendant was using the attic/loft for an illegal purpose; that the so-called “10-day notices” were properly served under Section 1162 of the Code of Civil Procedure; and that the illegal activity continued after the expiration of the 10-day notices.

Kraft never denied that she was running an AirBNB operation, even after the 10-day notice had expired; in fact, she had a transient occupancy permit from the city. However, she argued that the previous landlord had given her express permission to do so in a 2009 amendment to the 1997 written agreement.

But, wrote the appellate division, “any purported consent by the prior landlord is not dispositive. This is because the Addendum constituted an illegal contract in violation of existing regulations, and was therefore void and unenforceable.” In other words, because the activity was illegal under the zoning ordinance, it did not matter that the previous landlord had agreed to it.

The Case:

Chen v. Kraft, BV 031047 (January 13, 2016), <http://www.courts.ca.gov/opinions/documents/JAD16-01.PDF>

The Lawyers:

For Chen: Lisa M. Howard, law@howardlaw.pro

For Craft: Joelle Kraft, *in pro per*. ■

Court Says Anaheim Played Bait-And-Switch With Hotel Developer

BY WILLIAM FULTON

Court Says Anaheim Played Bait-And-Switch With Hotel Developer

The Fourth District Court of Appeal has blocked the City of Anaheim's attempt to build a surface parking lot on a property adjacent to two new hotels rather than a parking structure, as was implied in a conditional use permit the city approved in 1999.

Technically, the appellate court affirmed a trial judge's ruling that the city was estopped (a legal term essentially meaning prohibited) from enacting a subsequent conditional use permit – applying to the city's own property, not the hotel developer's property – that called for a surface lot rather than a parking garage and deviating from the city's own Resort Development Standards, which the hotel developer's own project had to meet.

The case involves a complicated arrangement in which Intercontinental Hotel Group had agreed to a smaller, redesigned project because of the city's plans to build an overpass over I-15 along Gene Autry Way that better connects Disneyland with Anaheim Stadium and other destinations east of the freeway. The overpass, which opened in 2012, takes up part of the hotel developer's property and also part of an adjacent property.

In negotiating the conditional use permit to allow the hotel, the city apparently agreed to build a parking

structure on the remnant triangle of the adjacent parcel (known in the case as "The Triangle") immediately adjacent to I-5 and then convey that property to the developer. Both hotels – a Holiday Inn and a Staybridge Suites -- were subsequently built.

However, many years later, the city decided instead to build a surface parking lot, adopting a separate conditional use permit to do so. The separate CUP also permitted the city to deviate from the Resort Development Standards. For example, whereas the hotel was required to provide 20 feet of dense landscaping under the Resort Development Standards, the parking lot was built with 23 inches of landscaping on the Triangle site.

The original CUP for the hotel was obtained by R.D. Olson Co., which subsequently sold the property to an entity called HPT IHG-2 Properties Trust, which developed the hotel. This entity is apparently the land ownership entity created to hold the land while IHG Management Maryland – part of Intercontinental Hotel Group -- developed the hotels.

The project was redesigned several times because of the overpass project. A parking study for the original hotel project had found that condemnation of part of the HPT property would rob the hotel of 142 necessary parking spaces out of a needed total in excess of 350. Though the original CUP

did not involve actual approval of a parking structure on the Triangle site, it did include many references to the parking study and to multi-parcel plans that showed construction of the parking garage.

The dispute arose in 2011, 12 years after the original CUP was issued and while the city was engaged in an eminent domain proceeding to obtain both part of the HPT property and the Triangle property to build the overpass. The city argued that it construct 62 spaces on the condemned part of the hotel property and 83 on the Triangle property, thus mitigating the loss of the 143 spaces without building a parking garage.

First, the city attempted to adopt an "administrative amendment" to the original hotel CUP, building the surface lot into the conveyance of the Triangle property back to the hotel developer. When the HPT appealed that decision – saying, among other, that it had occurred at the staff level without any public review – the city rescinded the amendment and instead pursued a separate CUP to permit construction of a parking lot on the Triangle site with deviation from the Resort Development Standards. This CUP was approved by the city and the hotel developer sued, claiming Anaheim was "estopped" (prohibited) from implementing the second CUP.

The case turned on whether the

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>>> Court Says Anaheim Played Bait-And-Switch With Hotel Developer

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situation met a four-part criteria to meet the legal test for “equitable estoppel,” which seeks to enforce the concepts of equity and fair dealing. The four-part test, laid out by the California Supreme Court in *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, is as follows:

1. The city to be estopped must have been apprised of the facts;
2. The city must have acted intentionally;
3. The hotel developer must have been “ignorant of the true state of the facts”; and
4. The hotel developer must have been injured by its rely on the misinterpreted facts.

The bar is especially high when a government agency is the defendant. Under *Schafer v. City of Los Angeles* (2015) 237 Cal.App.4th 1250 [<http://www.courts.ca.gov/opinions/documents/B253935.PDF>], equitable estoppel “ordinarily will not apply against a governmental body except in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy.

The city made a wide range of arguments, drawing on a large number of legal precedents, in asserting that none of these four tests could be met in this case. But the Court of Appeal concluded that all four were met.

Writing for a three-judge panel of the Fourth District, Justice David said that without estoppel in this case, the hotel developers would suffer a grave injustice because they had “spent \$40 million to develop the Project, despite losing a significant amount of the Property to defendants for the Overpass, and were induced to do so based on defendants’ agreement to construct the Parking Structure and comply with Resort Development Standards on the Triangle.”

As for the protection of public policy, Justice Thompson wrote: “There is no danger applying estoppel will set a precedent that will adversely affect public policy. Indeed it is defendants [meaning the City of Anaheim] who are

attempting to diverge from the agreement they made, and, in the process, deviate from the Resort Zone Standards to which the Resort Area and the Project are subject.”

The city’s many arguments that the situation did not meet the four-part test all pretty much came down to the claim that because the original CUP allowed construction of the hotel and did not actually cover the construction of a parking garage on the Triangle property, the city was not bound by the CUP to build the parking structure. The city made this argument from several different angles and Justice Thompson batted it away each time.

In particular, he concluded that in approving the original CUP, the city also approved the parking study, which included the Triangle site and the parking structure. “The Parking Structure to be built by defendants on the Triangle was discussed throughout a good portion of the negotiations,” he wrote. “Defendants point to no evidence where they refused to build it or even challenged the concept. The Parking Structure is shown in the interim and ultimate plans, and the approval of CUP 4153 was based on the approved Parking Study that included the Parking Structure.”

The Case:

HPT IHG-2 Properties Trust v. City of Anaheim, No. G049695

The Lawyers:

For HPT: David B. Cosgrove, Rutan & Tucker, DCosgrove@rutan.com.

For City of Anaheim: Michael H. Leifer, Palmieri, Tyler, Wiener, Wilhelm & Waldron, mleifer@ptwww.com

The Case:

The dispute arose in 2011, 12 years after the original CUP was issued and while the city was engaged in an eminent domain proceeding to obtain both part of the HPT property and the Triangle property to build the overpass. ■

>>> Using Tuolumne Tactic, Moreno Valley Approves Development of 40 Million Square Feet

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UCR...and 33 years in elected office,” said Ron Loveridge, director of UC-Riverside’s Center for Sustainable Suburban Development and former Mayor of Riverside.

Tethered to the ports of Los Angeles and Long Beach by rail lines and freeways, the Inland Empire has long provided the real estate where overseas shipments get stored and redirected en route to consumers across the country. Unlike many of its neighbor, though, the relatively new city of Moreno Valley (incorporated in 1984), has had only a small share of the logistics industry, which employs over 100,000 workers in the region.

Consisting largely of one-story structures, the World Logistics Center will occupy no small footprint. Its 3,181 acres, including a 2,610-acre specific plan, represents roughly one-tenth of Moreno Valley’s land area. The property, assembled from several parcels, has long been owned by Highland Fairview. Parts of the property had, prior to the 2008 recession, been tapped for a luxury housing development. Plans for the logistics center developed later, as the housing market softened but Highland Fairview President and CEO Iddo Benzeevi saw long-term strength in the logistics industry.

“It does hit a sweet spot in the Inland Empire in terms of the type of development that seems to be of interest,” said Moreno Valley Planning Director Richard Sandzimier. Warehouse vacancy rates in the Inland Empire have plummeted since the depths of the recession, and tens of millions of square feet of new warehouse space is expected to come on-line region-wide in the coming years.

In fact, as massive as WLC will be, the logistics industry is ever so much more massive.

“While we were approving the project itself, there’s been over 50 million square feet of logistics built....it’s basically a two-year supply,” said Benzeevi.

Known as an outspoken and buoyant promoter, Benzeevi

has become a fixture in Moreno Valley civic life. In a state where a misplaced garage can trigger California Environmental Quality Act lawsuits, Benzeevi pushed through approval by the Moreno City Council with what some consider to be undo influence, or at least some big promises.

“The developer...has contributed a great deal of money to the campaigns for three of the city council people,” said Penny Newman, executive director of the Center for Community Action and Environmental Justice, which was one of several groups that filed CEQA suits against the project. “He is getting what he paid for.”

Benzeevi acknowledges the high-profile role he has played in Moreno Valley but insists that he has done nothing improper.

“We’re not any different than anyone else,” said Benzeevi. “Every leader or elected leader has fundraisers because they want to be able to procure the resources to inform constituents about their view of the world”.

Sandzimier said the plan is consistent with the city’s vision for the property.

“Original city general plan, that area was identified as industrial-type development,” he said. “Industrial development in that area of the city has been a concept for a long time.”

Benzeevi convinced more than just the city council. In the face of lawsuits that were threatened almost from the moment the city council approved the project, Benzeevi promoted a ballot measure asking city voters to adopt the project by ballot initiative, thus shielding the project from CEQA lawsuits. These efforts yielded over 49,000 signatures — out of a total population of 201,000. This show of support prompted the city council to invoke the “Tuolumne Tactic,” named for a 2014 court case, which bypasses the public vote and enables the council to

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immediately exempt the project.

The council voted unanimously to do so in November. It is but the latest large, high-profile development to invoke Tuolumne (see prior CP&DR coverage <http://www.cp-dr.com/node/3724>).

“Delaying the WLC project, which the City Council previously approved, would only bring harm to our community,” said Mayor Jesse Molina in a statement. “The project’s significant job creation, coupled with an estimated \$150 million annual economic benefit, requires that the WLC be allowed to proceed as quickly as possible. Delaying this project for two to three years would cost this community nearly \$500 million. That’s a price we’re just not willing to pay.”

Supporters of WLC say that it will bring jobs to Moreno Valley residents and a windfall to city coffers. The company estimates that the facility will employ up to 20,000 workers at full build-out.

“In terms of an economic stimulus, obviously the interest to the city is, ‘what are the benefits to the city to approve such a development?’,” added Sandzimier.

Opponents say that the jobs will not, on average, pay nearly the \$49,000 per year that Benzeevi predicts. A 2013 USC study suggests that average wages are less than half that, especially when the widespread use of low-pay temporary workers is taken into account. Many jobs currently performed by humans may be automated by the

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time the project comes on-line. And, regardless, Newman claims that the city is unlikely to check up and make sure that the project ultimately employs the numbers that Benzeevi is anticipating.

“My guess is it’s not easy to find a \$46,000 person in the warehouses here,” said Loveridge.

“I think a lot of our elected officials and decision makers have very low self-esteem for this area... that we’re only good for these crappy jobs,” said Newman. “Nobody one ever goes back and makes them show that they produced 20,000 good-paying jobs. Once the approval goes through, that’s it.”

Along with those jobs, WLC will also attract up to 14,000 truck trips per day. Despite the Inland Empire’s traditional mix of transportation modes, Moreno Valley is considered a curious location for such a development in part because it has no direct connection to the region’s rail lines.

“I think the developer has picked that location not because it’s good for the industry but because he happens to own some of that land and because his former plans for building high-end homes...went down the tubes,” said Newman.

Benzeevi counters that the appeal of rail is overstated, with inefficiencies in the process of transferring goods between modes as compared with truck-only transportation. Moreover, Benzeevi envisions WLC serving the local market in addition to national distribution networks.

“By the time you did all of that (transshipment), you can get there by overnight trucking,” said Benzeevi. “The reality is Southern California in and of itself is a huge

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market with hundreds of thousands of locations.”

Truck pollution, among other environmental impacts, raised the ire of WLC’s opponents, including those who filed the now-moot CEQA suit.

“This project, because it is so massive, it kind of magnifies the questions and concerns that one would have about an individual warehouse or smaller project,” said Newman.

Prior to the City Council vote, Benzeevi dismissed the logic of a CEQA suit as an expression of community frustration rather than genuine environmental concern.

“It appears that for opponents of projects, no one is capable of doing an adequate EIR after 40 years of CEQA,” said Benzeevi.

Whatever the economic benefits WLC may confer to Moreno Valley, the aesthetic consequences may be less appealing. As currently constituted, Moreno Valley is mainly low-density development with commercial strips. Hundreds of acres of warehouses may not improve matters.

“The sheer size of the project in some ways I think has important placemaking consequences for the city of

“I think the developer has picked that location not because it’s good for the industry but because he happens to own some of that land and because his former plans for building high-end homes....went down the tubes,” said an opponent

Moreno Valley,” said Loveridge.

Contacts and Resources

Official WLC Website

<http://theworldlogisticscenter.com/>

<http://theworldlogisticscenter.com/>

<http://theworldlogisticscenter.com/>

Moreno Valley Planning Dept.
WLC Page & Documents

<http://www.moreno-valley.ca.us/misc/wlc-deir.shtml>

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>>> Consensus, Not Clarity, From Cal Supremes on CEQA

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into CEQA cases – the result is not exactly clarity.

When the *Berkeley Hillside* case [<http://www.cp-dr.com/node/3693>] went before the Cal Supremes, everybody hoped the result would be clarity about when the unusual circumstances exemption can be used. But the result was a complicated two-step test that actually may strengthen the exemption but requires a lot more effort to do so.

And when the most recent Newhall Ranch [<http://www.cp-dr.com/node/3835>] went up to the court, everybody hoped there would be clarity about how practitioners might approach the question of what percentage reduction in greenhouse gas emissions would be an acceptable target in CEQA analysis. In that case, the justices was pretty clear about what *wouldn't* be acceptable – simply using the Air Resources Board's regional number – but they weren't very clear about what methodology should be used.

What's going on? Shouldn't we be able to count on the California Supreme Court to provide clear lines?

CEQA is an unusually complicated, mostly procedural law that is deliberately designed to be enforced through litigation. It's so ubiquitous and complicated that every county's superior court has a designated CEQA judge. Since its passage 45 years ago, it has evolved far more through court rulings than legislation. And that's not likely to change soon. Despite a lot of rumblings about comprehensive CEQA reform in recent years, the moment appears to have passed. [<http://www.cp-dr.com/node/3437>] Meanwhile, the Supreme Court is working through a big backlog of CEQ cases. [<http://www.cp-dr.com/node/3541>]

But there a couple of other things going on here. First, CEQA litigation issues are getting ever more complicated and arcane. When I first started writing about CEQA lawsuits back in the '80s, the issues seemed, in retrospect, pretty clear-cut: Who had standing? Was an environmental impact report required? What level of independent judgment did a

lead agency have to apply if the draft EIR was done by the applicant? And, later, were specific mitigations feasible or not. Yes, there were often legal debates about adequacy of the analysis, but there was also a lot of deference given to lead agencies.

Compare those kinds of questions to the issue that came up in *Berkeley Hillside*: Did the City of Berkeley put enough evidence on the record that a very large proposed house was *not* unusual within the context of the city, and therefore the city's use of two categorical exemptions was not overridden by the "unusual circumstances" rule contained in the CEQA Guidelines. That is a long, long way from, "Do you have to do an EIR"?

But there's another factor at work here, as veteran CEQA attorney Tina Thomas pointed out at last week's 30th annual UCLA Land Use Law and Planning Conference last week. It's the way the California Supreme Court works these days.

Since he re-election as governor in 2010, Jerry Brown has reshaped the court to some extent, appointing three of the seven justices: Berkeley law professor Goodwin Liu, Stanford law professor Mariano-Florentino Cuéllar; and former deputy attorney general Leandra Kruger. Unlike a lot of Brown's selections back in the '70s, they're all solid choices. Along with Wilson and Schwarzenegger holdovers – including Chief Justice Tani Cantil-Sakauye – they represent a lot of intellectual horsepower. And, unlike the U.S. Supreme Court, they apparently work hard to reach consensus and avoid a lot of concurring and dissenting opinions.

Which, apparently, is the problem.

"The justices go to great length to avoid scathing dissent," Thomas told the crowd of 300 people at the Biltmore Hotel in downtown Los Angeles. "So they go out of their way to compromise. The result is sometimes complicated, nuanced ways of spiltting standards of review that are difficult for

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lower court to apply. You may want clear answers, you may not get them.”

This problem became immediately apparent after the *Berkeley Hillside* ruling, when the Third District considered the case of a rodeo fundraiser at the Santa Cruz Fairgrounds in Watsonville. [<http://www.cp-dr.com/node/3830>]

The Supreme Court had concluded the lead agency must first review the record to see whether unusual circumstances exist and if so courts must use the “substantial evidence” test in determining the validity of an exemption under those circumstances. The court ruled that a categorical exemption can be defeated by a “fair argument” that supports a reasonable possibility that significant environmental effects will result from the “unusual circumstances.”

But it also held that “a party may establish an unusual circumstance with evidence that the project will have a significant environmental effect.”

In the Santa Cruz rodeo case, the Third District said the environmentalist plaintiffs didn’t meet either test. The plaintiffs are appealing the case but the Supreme Court hasn’t decided yet whether to take it.

Kevin Bundy of the Center for Biological Diversity, another panelist at the UCLA event, said he feared that the Supreme Court’s ruling would lead others to conclude that merely qualifying for an exemption would be substantial evidence that unusual circumstances don’t exist. “That reads unusual circumstances out of the law,” he said.

In some ways the latest Newhall Ranch case is even more

CEQA litigation issues are getting ever more complicated and arcane.

confusing, because the court rejected the idea that Los Angeles County could use the Air Resource Board’s regional estimate for required greenhouse gas emissions reduction (29% by 2030) as the standard against which to measure an individual project. But does this mean less deference to lead agencies?

“Courts need to look carefully at the record to make sure that the record really connects the dot,” said Bundy, the winning lawyer in the case. “The record needed to show the quantitative link between those two assumptions

[the ARB target and the Newhall Ranch project] and it did not.”

But Thomas, who was the losing lawyer in the case, had a different view. “In my personal opinion, I’ve always understood the standard to be, good faith effort for full disclosure,” she said, “and I didn’t understand it to be mathematical precision.”

In a way, the disagreement between Thomas and Bundy may simply be a traditional disagreement between an agency lawyer who wants the courts to give deference to the agency and an environmental lawyer who wants the courts to push agencies harder for environmental protection.

Or it may be a generational thing. Thomas, like me, came to CEQA maturity in the ‘80s, while Bundy passed the bar 25 years later.

But it reinforced one thing for me: It’s not just that CEQA never going to get any *simpler*. (We crossed that bridge a long time ago [<https://www.cp-dr.com/node/3279>]). It’s probably not going to get any *clearer*, either. ■

Hyperloop and Hyperbole

On December 21, the Falcon 9 rocket launched from Cape Canaveral, deployed a suite of communications satellites, and, in impressive fashion, came back down to Earth. Using its engines to dull the force of gravity, it survived re-entry and hit its football-field sized landing pad like a Tesla backing into a garage.

The Falcon 9's [return](#) from the heavens was an early Christmas miracle, courtesy of Elon Musk, one of the world's few celebrity engineers. It is a product of SpaceX, Musk's pioneering private space-travel company based in Hawthorne. He can now add space to the list of fields — from electric cars, to battery power, to credit card payments — that his ventures have conquered. (A [similar launch](#) Jan. 17 didn't go quite so well.)

Next, Musk hopes to revolutionize long-distance transit. That one may make rocket science look like child's play.

For the uninitiated: Hyperloop is — depending on whom you ask — either the name brand or the generic concept behind the next generation of magnetic levitation technology. It's envisioned as either a train or as a set of individual pods that, unlike conventional maglev (which never really caught on, except on a 21-mile line in Shanghai), would run through depressurized tubes. Yes, tubes. As in under the ground.

The technology makes intuitive sense. It uses the estimable power of magnetic propulsion while avoiding the mortal enemy of all moving things: air resistance. With potential speeds north of 600 miles per hour, the “hyper” is obvious; whether “loop” refers to the circular tube or to the idea that these things will be encircling us sooner than you can say “[California High Speed Rail](#)” is but one of its delightful mysteries.

It's hard to tell whether Hyperloop is a technology, a thought experiment, a company, or just a rumor. Thanks to a mushy public relations campaign and an open-source type of platform, Musk has unleashed yet another visionary idea but, unlike his other companies, he seems to be letting it develop of its own accord.

So far we have [Hyperloop Technologies](#), which is based in downtown Los Angeles and seems to be affiliated with Musk. That's not to be confused with [Hyperloop Transportation Technologies](#) (HTT), which is based vaguely

in “California,” according to its [Twitter](#) page, and has plans for a test track in Quay Valley, Calif. HT wants to build one in [Nevada](#). Then there's the SpaceX's own Hyperloop Pod [Competition](#). Who knows what's really going on.

Right now, buzz is overshadowing confusion. And how could it not? Thirty-minute travel times between Los Angeles and San Francisco is the stuff of dreams. And how about Silver Lake to Marina del Rey in 30 seconds?

Hold on a minute. No matter how fast it does, Hyperloop isn't Uber. You can't push a button and tell it to go wherever you want. And yet, that's what some Hyperloop backers would have us think.

While Los Angeles-to-San Francisco is the holy grail of medium-haul transportation, the mustache-to-mizzenmast commute probably isn't at the top of planners' priorities. But it was one of the selling points that Hyperloop Technologies CEO Rob Lloyd proposed, quite offhandedly, at the [Milken Institute California Summit](#), which I attended a few weeks ago. That kind of speed is a mouthwatering notion for weary urban commuters, just as the L.A.-S.F. leg is for tourists and business travelers. But it has little to do with reality.

Hyperloop Technologies claims that “Hyperloop is changing the way we think about transportation.” That's not quite right. It's changing the way we think about propulsion. As transportation, Hyperloop runs into the same wearisome challenges that every other project since the Appian Way has faced.

It would be one thing to launch a Falcon 9 from Sunset Junction and land it at Mothers Beach. Where the Falcon 9 goes, they don't need roads. But Hyperloops still need rights of way. If we're in urban Los Angeles, it has to run either on stilts or below ground, lest it plow through your living room.

In fairness, Lloyd was mainly trying to illustrate Hyperloop's speed. But his attempt to illustrate the limitless possibilities of technology still disingenuously elided the drab pragmatism issues that surround land use and transportation policy — the same issues that plague high-speed rail.

Hyperloop seems more exciting than California's halting high-speed rail project for two reasons. First, it has the

Hyperloop and Hyperbole

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swagger of Elon Musk rather than the stigma of a public bureaucracy. Second, it's going to be, like, a billion times faster than HSR. *That's really fast.* There's a lot that we might be willing to sacrifice, financially and otherwise, for the travel times that Hyperloop's backers are promising.

And yet, this combination of enthusiasm and magnetism doesn't buy farmland. It doesn't ease eminent domain takings. It doesn't blast through bedrock or relocate utilities. It doesn't design station area plans. It doesn't write EIRs or dismiss CEQA suits.

Trains, whether propelled by steam, diesel, or a frictionless tube, are still terrestrial things. And what *terra* we have in California. The very same mountains, cities, canals, farmers, and habitats that complicate HSR also complicate Hyperloop. The more the Hyperloop people drop hints and make innuendoes about zipping this way and that without addressing the monumental public policy challenges that they're going to face, governmental

cooperation they're going to need, and money that it's going to cost, the less it's going to sound like Tesla for the masses and the more it's going to sound like a lost chapter of "Atlas Shrugged."

Shooting for the stars is awesome, of course. Imagine, for instance, California had dreamed about a high-speed rail system 50 years ago, when Japan was actually building one. Imagine if we decided not to dream about it today, now that the cost is approaching \$100 billion. Dreaming big is especially exciting when it involves Elon Musk, who has an uncanny knack for actually getting things done. But pragmatism deserves its day too. Otherwise, Hyperloop may be just another project destined to go off the rails.

– JOSH STEPHENS | JANUARY 16, 2016 ■

