

# Governor’s Housing Proposal Faces Stiff Opposition

BY JOSH STEPHENS

As California’s housing affordability crisis has gone from bad to perilous since the end of the recession, the solution has generally relied on a combination of Regional Housing Needs Assessments and wishful thinking about market forces.

Now Gov. Jerry Brown has decided to give the system a market jolt. His Streamlining Affordable Housing Proposal – introduced in May as a budget trailer bill -- would grant by-right approvals to residential developments that, among other criteria, conform with existing zoning and planning regulations and includes a certain percentage of below-market-rate units.

Conforming projects will be exempt forms of local discretionary review, which often slows down projects and imposes significant costs on developers. Importantly, these projects would also be exempt from review under the California Environmental Quality Act.

The proposal is currently under discussion in the legislature and on its third revision. It is accompanied by a separate trailer bill that would provide \$400 million in affordable housing funds. Brown introduced the proposal to much fanfare and is expected to spend a significant amount of political capital to see it through. While the rest of the budget is expected to be approved imminently, the

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**insight**  
WILLIAM  
FULTON

## Time to Reverse “Calexit” and Attack California’s Housing Problem

Time to Reverse “Calexit” and Attack California’s Housing Problem

The recent Brexit vote seemed a lot like the typical California NIMBY fight to me: Basically, a whole bunch of old white people

who don’t like how society is evolving tried to shut the door, probably screwing their own children and grandchildren in the process.

The main upsides of Brexit, for those

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## Carbon Auction Nets Fraction of Expected Proceeds

In a possible blow to High Speed Rail and climate-change programs like the Affordable Housing and Sustainable Communities grant program, the most recent cap-and-trade auction fell short of expectations. Only 2 percent of carbon credits were purchased -- 785,000 of the 43 million offered, all sold at the floor price of \$12.73. The Department of Finance had anticipated revenues of \$2.4 billion for the fiscal year. Three previous auctions met expectations, resulting in a total of \$1.8 billion for the year. The rail authority was expecting \$150 million and received \$2.5 million from the \$10 million that was generated last week. Some analysts suggest that emitters of carbon dioxide have cut back on emissions more than anticipated. Other reasons for the low turnout are because there is less need for credits, litigation may overturn the entire system and volatility by speculators in a secondary trading market. There is a \$500 million reserve set up for volatility that could help close the gap, which will be decided on by Gov. Jerry Brown and the legislature.

## L.A. Metro Revises \$120 Billion Expenditure Plan

The Los Angeles County Metropolitan Transportation Authority released a

revised expenditure plan, to be approved by a November ballot measure, that would fund an estimated \$120 billion of transit and highway projects, road improvements and pedestrian and bike paths. The Metro Board adopted the plan, 11-2; it now goes to the county Board of Supervisors for placement on the ballot. Titled the Los Angeles County Traffic Improvement Plan, the plan would impose permanent countywide sales tax, augmenting and extending one that was approved by voters in 2008. The Metro board will decide whether to put the plan on the November ballot at its meeting this month. A previous version of the plan had called for a half-cent sales tax that would expire in 40 years. In the revision, the agency is recommending a "no sunset" measure that would raise billions in perpetuity. This means nine projects could be accelerated for a combined 42 years earlier than previously expected and saving approximately \$9.4 billion. In addition to funding major projects, the plan would return 20 percent to 88 cities across the county to fix roads, repair potholes and add bicycle and pedestrian paths. A recent survey showed 72 percent of residents were in favor of a permanent tax for sustainable transportation. The new plan would cost the average county resident about \$25 more a year.

## Sacramento Releases EIR for Rail Yards Project

The City of Sacramento released a preliminary environmental impact report for a new version of the long-discussed redevelopment of its downtown rail yards. The EIR describes a dense neighborhood of up to 21,000 residents on the 244-acre site, with residential structures ranging from five stories to 15. Included in the plan is a Kaiser Permanente medical campus, a 25,000-seat soccer stadium, a 1,100 room hotel, and 3.9 million square feet of office space. The plan is designed to discourage the use of cars, by having offices and light-rail stations nearby. The 3,700-page EIR identified expected traffic problems, need for new schools, appropriateness of proposed 450-foot riverfront residential towers, noise and light pollution, as well as the potential use of the transit. Much of the issues are related to the stadium and potential for noise and light pollution and increased traffic before sold-out events. Additionally, the site already has soil and groundwater pollution that must continue to be filtered and cleaned. Construction is estimated to begin in 2018 and will take several decades.

## Los Angeles, San Diego Receive Federal Promise Zone Designations

South Los Angeles and a section of

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San Diego south of downtown have been designated federal [Promise Zones](#). Instituted in response to the recession of the late 2000s and administered by the Department of Housing and Urban Development, the designation enables the country's neediest neighborhoods to receive competitive federal grants to tackle poverty-related issues. This is the third round of designations; there are now 13 urban Promise Zones nationwide. Promise Zones are usually evaluated on number of empty foreclosed homes. After multiple unsuccessful applications, South L.A. won the designation in part because of high rates of multiple families living in a single apartment and one of the worst homelessness rates in the country; in San Diego's Promise Zone, the youth unemployment rate of 40 percent was cited as a reason for the designation. Los Angeles is the only city to have two designations within its boundaries, with another area designated in 2014. Since the first designation, Los Angeles has secured nearly 30 grant awards in more than \$100 million for education, workforce development, healthy food access and economic opportunity.

### **Initiative Would Significantly Revise Ventura County Open-Space Policy**

A proposed [initiative](#) in Ventura would weaken the existing open-space laws that were approved in 1995 and 2002. The Save Our Agricultural Resources (SOAR) and Hillside Voter Participation Area ordinances were put in place by voters in order to give them a say in whether farmland could be converted into other land

uses. Now, SOAR staff is updating its plan to include unincorporated county and assorted city measures. Opponents to the staff initiative have collected 30,000 signatures to place a new initiative, Sustain VC, on the ballot. The Sustain VC initiative would require voter approval to develop farmland and open space in unincorporated county, as well as designate up to 225 acres for food processing plants and rezone farm parcels.

### **UC Berkeley Releases Tool for Analyzing Housing Supply Statewide**

The Turner Center for Housing Innovation at UC Berkeley released a new [Housing Development Dashboard](#), an interactive platform to allow stakeholders to easily understand and interact with land use measures and market conditions for housing production. The Dashboard was designed in response to the state's housing affordability crisis with an eye towards evaluating the supply of housing statewide. The Dashboard is designed to simulate a variety of housing strategies and outcomes: Will a higher level of inclusionary housing stall production? How much more housing would get built if we streamlined the approval process? The Dashboard was built on multiple data sets and default assumptions about economic factors that influence housing production. Next the researchers assessed how various policies change the cost of development. Currently the system has a Development Calculator and Policy Gauge, although the latter is

only developed for four Bay Area cities.

### **Riverside to Reconsider Governance of March Air Base**

Riverside County supervisors are [sponsoring](#) a measure to ask the Board of Supervisors to restructure the March Joint Powers Authority, which in 1993 was tasked with overseeing the transition from military to civilian use. The former March Air Force Base is significantly smaller now and does not need the annual \$600,000 subsidy. The remaining land would be parceled equally among the three cities: Riverside, Moreno Valley and Perris. The JPA will still exist but its role would be as airport authority, overseeing civilian use of the March base and promoting base's importance in case of downsizing or elimination by Congress. Disbanding the JPA has been considered before and failed, but the supervisors are more hopeful because the vision and most land has been developed.

### **California Cities Rank Near Top, Bottom of ParkScore**

[ParkScore](#), a project of the Trust for Public Land, ranked the 100 largest U.S. cities on their needs for parks by using mapping technology and demographic data on a 0-to-100 scale. Five California cities appear in the top 20: San Francisco with 77.5 (ranked 5 overall), Irvine 75 (8), San Diego 71.5 (12), Oakland 70 (14), Sacramento 67.5 (17); other cities fared poorly, including Stockton 40 (82), Santa Ana 38.5 (83), and Fresno 29 (97). The score, out of 100, is based on acreage (median size of parks),

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investments and amenities (spending per resident), access (percentage of people within ten-minute walk of a public park). Twenty points are given for median park size and another twenty for percentage of city area. Twenty for investment and forty for percentage of population within short park distance.

**West Coast Cities Agree to Climate Change Pact**

San Francisco, Oakland, Los Angeles and three other West Coast cities have [agreed](#) to work together to reduce greenhouse gas emissions and fight climate change under the Pacific Coast Action Plan on Climate and Energy. The plan encourages zero-emission vehicles, reporting of energy

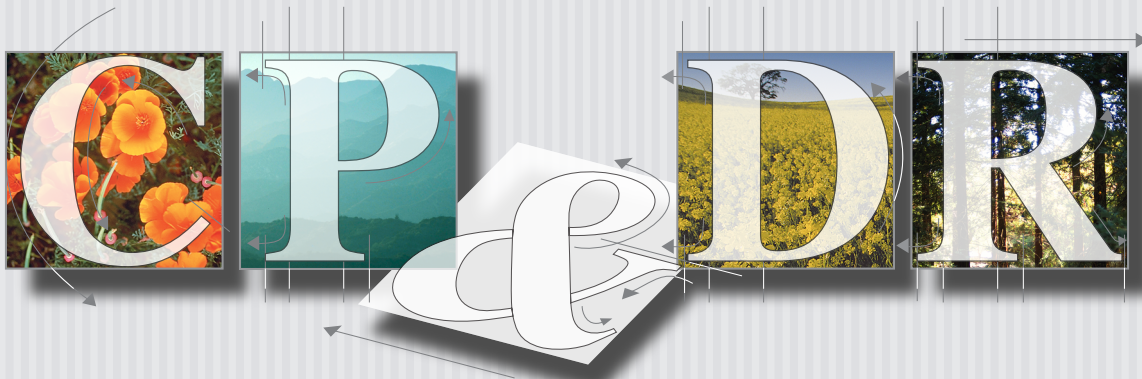
usage for large buildings and install more charging stations for electric vehicles. These cities are working with California Gov. Jerry Brown, governors of Oregon and Washington and the premier of British Columbia. Together this region hopes to build an electric car-charging network that allows individuals to drive from Southern California to British Columbia.

**Bus Rapid Transit Line to Break Ground in Fresno**

After years of discussion, Fresno will finally begin [construction](#) on two new bus rapid transit lines to provide faster connections from the north and east ends of the city with downtown. The system, operating on

the city's busy Blackstone and Kings Canyon/Ventura corridors, should be operational in November 2017 and will cost around \$30 million. Most of the money comes from U.S. Department of Transportation grants that include new buses, reinforced bus parking areas and new shelters, modifications to traffic signals and vending machines to buy tickets. It is estimated that improvements could cut travel times in half. The Fresno system provides nearly 14 million rides annually, with 1.6 million annual passengers on the two corridors that will be upgraded to BRT. Fares will increase 25 cents next year to help pay for the new and improved system. ■

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# Ballot Measure Results: Many Marijuana Measures Fail; Voters Reject Growth

BY JOSH STEPHENS

Yuba and Butte counties aren't usually seen as political bellwethers for California. But their hard line on marijuana-related land use issues in the June election means that not everyone is in lockstep as the state progresses towards another statewide ballot measure that could legalize recreational marijuana.

Yuba County voters soundly rejected two pro-marijuana measures: one that would have legalized cultivation and another that simply would have legalized medical marijuana dispensaries, which are already common throughout the state. Meanwhile, Butte County approved two anti-marijuana measures, one that excludes the crop from the county's "right to farm ordinance" and another that places explicit restrictions on its cultivation. Add to these measures an overwhelming defeat of a measure to include marijuana dispensaries among San Jose's land use designations.

Butte County voters made it harder to pull something else out of the ground: hydrocarbons. Voters there overwhelmingly approved a ban on hydraulic fracturing, 71 percent to 29 percent.

Rounding out voters' opinions on *au courant* topics, Nevada County voters broke with a recent trend to limit short-term rentals. They defeated a measure that would have beefed up an existing city ordinance regulating STRs.

Among more traditional issues, multiyear trends held sway. Voters in San Francisco approved funding for open and recreational space, and they continued their trend, from last November, of supporting affordable housing. An infrastructure measure passed in the City of San Diego. And the nine counties of the Bay Area soundly approved, 69.3 to 30.7 percent, a parcel tax to protect the ecosystem of the San Francisco Bay and mitigate the effects of climate change on it. The measure required a two-thirds majority. A rare multi-county effort, the measure had backing from

such diverse groups as Save the Bay, Audubon Society, Silicon Valley Leadership Group, Bay Area Council, PG&E, Google, and Facebook. Some property rights group opposed the measure, in part because they felt that areas without much bay frontage should not pay the same rate as other areas.

Of several planning and development questions on local ballots, only one was a clear victory for pro-growth interests: a small housing development in Pleasanton. Results in El Dorado County were mixed. Measure E, designed to reduce the board of supervisor's powers of discretionary approval, passed. Measure G, arguably even less friendly to development, failed; it would have expanded open spaces rules to restrict development near agricultural lands. Both are the latest volleys in a longstanding debate about growth in the county. In 2014 voters rejected a trio of growth-control measures, which themselves were responses to a 2004 decision to uphold a relatively permissive 1996 general plan update that was restricted by a 1999 court order.

In Dana Point, a council-sponsored measure to guide growth of the city's village-like downtown lost out to a more restrictive citizen-led initiative.

The following are complete results, with vote tallies that were available as of press time.

## **Pleasanton (Alameda County) Measure K Lund Ranch Development Project Referendum**

Shall the Lund Ranch project in Southeast Pleasanton, which consists of 43 single-family homes on approximately 17 acres and 174 acres for permanent public open space and 2 miles of public trails, be approved?

### **Approved**

Yes 6,852 50.94%

No 6,598 49.06%

# >>> Ballot Measure Results: Many Marijuana Measures Fail; Voters Reject Growth

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## **Butte County Measure E Fracking Ban Initiative**

Shall the ordinance entitled “Ordinance Imposing a Ban on Hydraulic Fracturing Within Butte County” be adopted?”

### **Approved**

Yes 34,772 71.54%

No 13,836 28.46%

## **Butte County Measure G Marijuana Exclusion from Right-to-Farm Ordinance Referendum**

Shall Ordinance No. 4106, an Ordinance of the County of Butte amending Sections 35-2 and 35-5 to Chapter 35 of the Butte County Code entitled the “Right to Farm Ordinance” be adopted? This measure would clarify that the cultivation of marijuana is not an agricultural operation that is subject to the benefits of Chapter 35 of the Butte County Code, known as the “Right to Farm Ordinance.”

### **Approved**

Yes 27,952 59.47%

No 19,053 40.53%

## **Butte County Measure H Restrictions on Cultivation of Medical Marijuana Referendum**

Shall Ordinance No. 4107, an Ordinance of the County of Butte amending Sections 34A-2, 34A-3, 34A-4, 34A-13, 34A-16 AND 34A-19 of Chapter 34A of the Butte County Code, entitled “Restrictions on Cultivation of Medical Marijuana” be adopted?

### **Approved**

Yes 28,218 58.54%

No 19,982 41.46%

## **Richmond (Contra Costa County), Measure N Riviera Residential Development Initiative**

Shall the ordinance to amend the Richmond General Plan

2030 to allow a 59 unit single family detached project on a site south of the intersection of Marina Way South and Hall and approve a development agreement and related actions be adopted?

### **Rejected**

Yes 4,009 34.35%

No 7,663 65.65%

## **El Dorado County Measure E Road and Traffic Congestion Policies Initiative**

Shall the ordinance be adopted amending the El Dorado County General Plan to (1) change when and how El Dorado County mitigates impacts to traffic levels of service, (2) impose restrictions on use of tax revenue and mitigation fees and on formation of infrastructure financing districts, and (3) require El Dorado County to make findings of compliance with those policies prior to approving any residential development project of five or more units, as more fully described in the proposed ordinance?

### **Approved**

Yes 24,487 51.81%

No 22,776 48.19%

## **El Dorado County Measure G Land Use and Zoning Policies Initiative**

Shall the ordinance be adopted to (1) add, amend, or delete fifteen distinct policies in the El Dorado County General Plan concerning land use, agriculture, mixed use, cultural and historical resources, and water supply and (2) preclude El Dorado County from approving any future discretionary project until it implements twelve enumerated General Plan policies related to community design guidelines, cultural and historical resources, water supply, and scenic corridors, as more fully described in the proposed ordinance?

### **Rejected**

Yes 22,964 48.76%

No 24,132 51.24%

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## **Lassen County** **51st State of Jefferson State Split Advisory Question**

Advisory vote on forming State of Jefferson.

### **Rejected**

Yes 2,288 42.26%  
No 3,126 57.74%

## **Redondo Beach (Los Angeles County) Measure K** **Residential Care Facilities Amendment**

Shall the City approve amendments to the City Charter, General Plan, Coastal Land Use Plan, and Coastal Zoning Ordinance to conditionally allow residential care facilities for the elderly in the P-CF zoning district on properties over one acre in the Coastal Zone pursuant to a request from the School District to rezone surplus school property?

### **Approved**

Yes 8,271 64.55%  
No 4,542 35.45%

## **Pomona (Los Angeles County) Measure Y** **Billboard Zoning Ordinance Amendment**

Shall the Pomona zoning ordinance be amended to authorize the installation of outdoor advertising signs within specific freeway adjacent corridors and to impose planning regulations and restrictions concerning the number and location of the outdoor advertising signs, and to establish development fees to be paid to the City of Pomona in an amount of \$1 million for each billboard installed?

### **Rejected**

Yes 6,819 48.25%  
No 7,313 51.75%

## **Nevada County Measure W** **Voter-Approved Outdoor Marijuana Cultivation Ban**

Shall an ordinance be adopted which (a) bans outdoor cultivation, commercial cultivation and other commercial cannabis activities, (b) limits indoor cultivation to 12 plants

per parcel in residential and rural areas, (c) prohibits indoor marijuana cultivation in unpermitted structures and areas used or intended for human occupancy, and (d) allows marijuana cultivation only by qualified patients and primary caregivers and only for medicinal purposes?

### **Rejected**

Yes 11,585 42.23%  
No 15,845 57.77%

## **Nevada City (Nevada County) Measure Y** **Short-Term Home Rental Ordinance**

Shall the recently enacted hosted short-term rental regulations resulting from adoption by the City Council of Nevada City of a prior voter initiative (effective January 8, 2016) be repealed and replaced with the more restrictive provisions of an alternative voter initiative permitting on-line type home-sharing short-term rentals of two units in a single-family residence or small guest house only if the owner occupies the main dwelling and off-street parking is provided and making related General Plan amendments?

### **Rejected**

Yes 400 34.69%  
No 753 65.31%

## **Dana Point (Orange County) Measure I** **Town Center and Public Parking City Council Referral**

Shall the Town Center and Public Parking Improvement Measure, which ratifies the Town Center Plan previously approved by the City Council and the California Coastal Commission, as well as the amendments thereto approved by the City Council in 2015, be adopted?

### **Rejected**

Yes 3,251 41.05%  
No 4,669 58.95%

## **Dana Point (Orange County) Measure I** **Town Center and Public Parking City Council Referral**

Shall the Town Center and Public Parking Improvement

## >>> Ballot Measure Results: Many Marijuana Measures Fail; Voters Reject Growth

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Measure, which ratifies the Town Center Plan previously approved by the City Council and the California Coastal Commission, as well as the amendments thereto approved by the City Council in 2015, be adopted?

### **Rejected**

Yes 3,251 41.05%  
No 4,669 58.95%

### **City of San Diego (San Diego County) [Proposition H](#) Infrastructure Fund Establishment Amendments**

Shall the Charter be amended to require certain unrestricted General Fund revenues to be deposited in an Infrastructure Fund used exclusively to pay for capital improvements including streets, sidewalks, bridges, bike paths, storm water and drainage systems; public buildings including libraries, recreational and community centers; public safety facilities including police, fire and lifeguard stations; and park facilities, but expressly not used for new convention center facilities and new professional sports venues?

### **Approved**

Yes 109,768 64.63%  
No 60,063 35.37%

### **City of San Diego (San Diego County) One Paseo Development Project Veto Referendum**

A referendum on the contentious One Paseo development qualified for the June 7. The city council pre-empted the popular vote by rescinding the targeted project ordinance directly.

### **San Francisco Bay Restoration Authority [Measure AA](#) (Nine Counties) 'Clean and Healthy Bay' Parcel Tax**

To protect San Francisco Bay for future generations by reducing trash, pollution and harmful toxins, improving water quality, restoring habitat for fish, birds and wildlife, protecting communities from floods, and increasing shoreline public access, shall the San Francisco Bay Restoration Authority authorize a parcel tax of \$12 per

year, raising approximately \$25 million annually for twenty years with independent citizen oversight, audits, and all funds staying local? Asked in Alameda, Contra Costa, Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma counties.

### **Approved** (required two-thirds supermajority)

Yes 826,352 69.32%  
No 365,650 30.68%

### **City & County of San Francisco [Proposition B](#) Park, Recreation, and Open Space Fund Charter Amendment**

Shall the City amend the Charter to extend the Park, Recreation and Open Space Fund until 2046 and give the Recreation and Park Department each year a minimum baseline amount from the General Fund in addition to the Fund set-aside of 2 1/2 cents for each \$100 of assessed property value?

### **Approved**

Yes 101,816 60.35%  
No 66,901 39.65%

### **City & County of San Francisco [Proposition C](#) Affordable Housing Requirements Charter Amendment**

Shall the City amend the Charter to increase affordable housing requirements for private developers of new market-rate housing projects of 25 or more units until the Board of Supervisors passes an ordinance changing those requirements and also authorize the Board of Supervisors to change affordable housing requirements by ordinance?

### **Approved**

Yes 113,129 67.27%  
No 55,049 32.73%

### **City of San Jose (Santa Clara County) [Measure C](#) Medical Marijuana Collectives Initiative**

Shall an ordinance be adopted amending the San Jose Municipal Code to include Medical Marijuana Collectives

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as an allowed land use in agricultural, commercial pedestrian, commercial neighborhood, industrial park, light industrial, heavy industrial zoning districts, and certain planned development zoning districts, and to establish a registration process and zoning code verification certificate process?

**Rejected**

Yes 44,506 35.13%  
 No 82,180 64.87%

**Davis (Yolo County), Measure A  
 Nishi Property Land Use Designation and Development Project**

A yes vote is a vote in favor of changing the land use designation for the Nishi property from Agriculture to University-Related Research Park and establishing requirements for the residential and mixed-use development of the Nishi property

**Rejected**

Yes 7,395 49.01%  
 No 7,693 50.99%

**Yuba County Measure A  
 Medical Marijuana Cultivation Act of 2015**

Shall the ordinance that would increase the number of medical marijuana plants that may be cultivated on parcels of land greater than one acre and allow for cultivation of medical marijuana outdoors and within residences be adopted?

**Rejected**

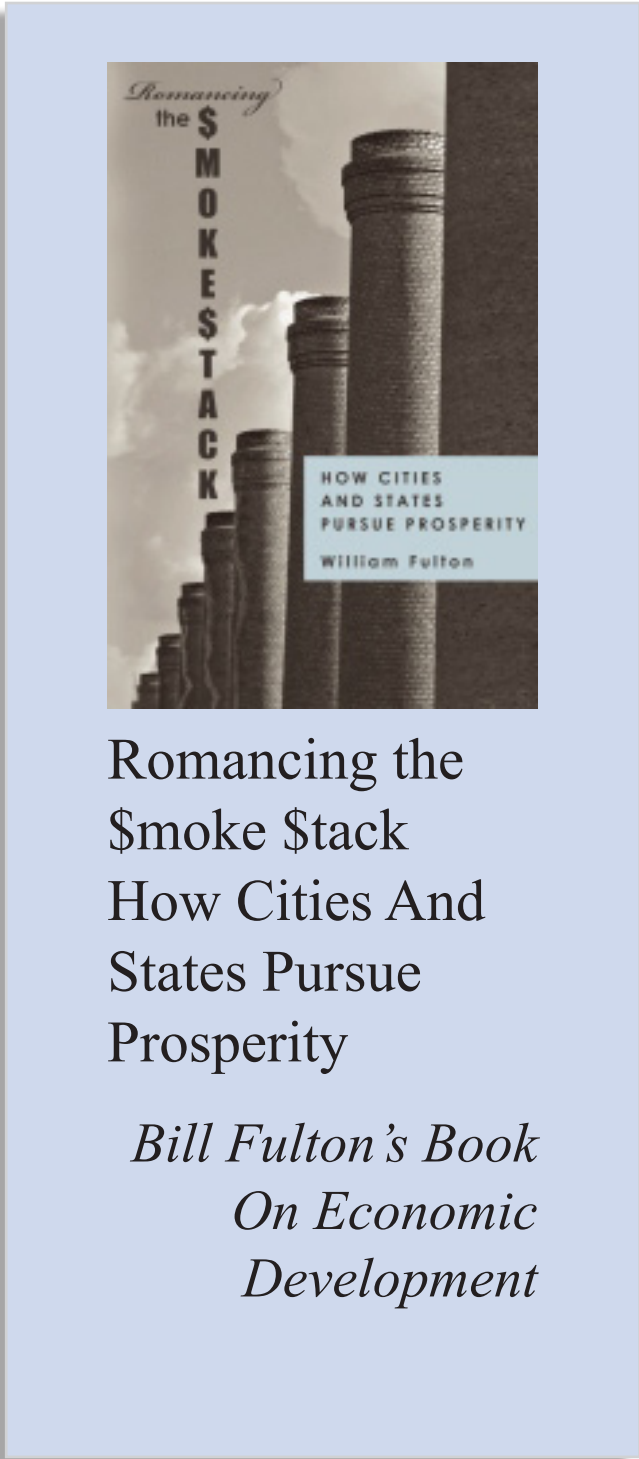
Yes 3,139 36.17%  
 No 5,539 63.83%

**Yuba County Measure B  
 Patients Access to Regulated Medical Cannabis Act of 2015**

Shall the ordinance that authorizes licenses medical marijuana dispensaries that will provide medical marijuana to qualified patients and primary caregivers in a retail setting be adopted?

**Rejected**

Yes 3,728 43.03%  
 No 4,935 56.97% ■



Romancing the  
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 How Cities And  
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# legal digest

## General Plan Language Trips Up Victorville Wal-Mart

BY WILLIAM FULTON

Here's an appellate case that's a good illustration of why the actual words of a general plan are so important: The Fourth District has struck down a Victorville environmental impact report for a Wal-Mart shopping center because, among other things, the city didn't try hard enough to force Wal-Mart to follow its general plan policy and implementation measure of generating electricity on-site to the maximum extent feasible.

This deficiency, in turn, rendered the city's parcel map approval invalid because the city did not have could not make a finding that it had substantial evidence that the project conforms with the city's general plan. In so doing, the court ruled that in order to approve a parcel map, a jurisdiction must make all the findings called for in the Subdivision Map Act – the first clean appellate court ruling that clarifies this long-muddy area of law.

For the appellate court, the case turned not on whether it was economically feasible for Wal-Mart to build solar panels, as the City of Victorville argued. Rather, the case turned on the actual wording of the general plan policy: how much electricity Wal-Mart could

generate on-site – a policy that can be interpreted to mean far more than just the installation of solar panels.

A Superior Court judge ruled against the city but struck down many causes of action filed by the homeowner association opposing the project. Both sides appealed the case to the Fourth District Court of Appeal in San Bernardino, which mostly sided with the homeowner association, though it rejected some causes of action.

Among other things, the Fourth District found the EIR process inadequate because the city should have recirculated the EIR based on new information about air quality as well as hydrology and water quality. (A similar argument about traffic was rejected.)

By far the most interesting cause of action, however, had to do with the city's general plan policy requiring Wal-Mart to produce as much electricity onsite as is feasible to do. This came up in the context of the EIR's review of the project's general plan consistency.

In the EIR and the response to comments, the city noted that Wal-

Mart's building would be equipped to accommodate the placement of solar panels – “solar ready,” was the phrase the city used – but said that the actual installation and operation of those panels was not currently feasible for Wal-Mart. In its responses to comments in the EIR, the city said, among other things, that the time frame for tax credits required to make the solar panels feasible (short) was out of whack with the time frame for construction of the project (most likely long, not least because of the litigation about the solar panels).

Upholding Superior Court Judge Donald Alvarez, the Fourth District found even though it may be true that installation of solar panels are financially infeasible for Wal-Mart now, the city did not provide sufficient evidence that on-site electricity generation is infeasible altogether.

“Although the City's responses to comments editorialize one factor relevant to the feasibility of solar power generation, cost-effectiveness, the responses fall short of bridging the analytical gap between the raw evidence and the City's ultimate decision,” wrote Presiding Justice Judith McConnell for a unanimous

# >>> General Plan Language Trips Up Victorville Wal-Mart

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three-judge panel. “They do not provide facts, reasonable assumptions, or expert opinion amounting to substantial evidence to support a conclusion solar power generation or other alternatives for on-site electricity generation are completely infeasible.”

She added that the responses to comments “show only that Wal-Mart is unwilling to commit to on-site solar power generation in advance of construction and the City did not consider the feasibility of any other potential means of on-site electricity generation. Thus, neither the EIR nor the City’s responses to comments provide substantial evidence the project complies with IM 7.1.1.4. [the relevant general plan implementation measure].”

The appellate court also concluded that the Spring Valley Lake Association was correct in arguing that, as a result of the discussion above, the city did not have substantial evidence to prove that it could make the required findings that the parcel map and zone change approvals related to the project were consistent with the city’s general plan.

Most of the appellate court’s ruling on the findings focused on the parcel map findings. The Subdivision Map Act (Government Code Section 66474) states that a jurisdiction *must deny* a parcel map if it fails to make any one of five findings, including a

**The case turned on the actual wording of the general plan policy: how much electricity Wal-Mart could generate on-site – a policy that can be interpreted to mean far more than just the installation of solar panels.**

finding of conformity with the general plan and all applicable specific plans. However, up to now there had been no clean appellate ruling on the converse of the question: May a jurisdiction *approve* a parcel map if it makes some but not all of the rulings – which was the situation with the Victorville Wal-Mart once the Fourth District completed its analysis on the solar panels issue.

Writing for the court, Justice McConnell concluded that Victorville could not approve the parcel map for the Wal-Mart unless it could make all five findings. In so doing, McConnell relied in large part on a 40-year-

old attorney general’s opinion. (58 Ops. Cal. Atty. Gen. 21, 28 (1975).) She said none of the parties in the Victorville case could provide any case or other authority contradicting the AG’s opinion.

The case involved the city’s EIR certification for the Tamarisk Marketplace project – a 215,000-square-foot shopping center on vacant land in Victorville. The project would include a 185,000-square-foot Wal-Mart. After the project was approved, the city was sued on CEQA grounds by the Spring Valley Lake Association, the homeowner association for a nearby upscale golf course community. The association was represented by Cory Briggs, the notorious San Diego CEQA lawyer, who also has an office in Upland.

**The Case:**

*Spring Valley Lake Association v. City of Victorville*, No. D069442

The Lawyers:

For City of Victorville: Harvey W. Wimer III, Graves & King, [hwimer@gravesandking.com](mailto:hwimer@gravesandking.com).

For Spring Valley Lake Association: Cory Briggs, Briggs Law Corporation, (619) 497-0021

For Wal-Mart (real party in interest): John C. Nolan, Gresham, Savage, Nolan & Tilden, [John.Nolan@greshamsavage.com](mailto:John.Nolan@greshamsavage.com) ■

# Oakland Can't Use CUP Retroactively on Crematorium

BY WILLIAM FULTON

You all know how this one goes: A project raises a new concern, so the city adopts a new ordinance after the project is approved – and then tries to apply the ordinance retroactively to the project that caused all the ruckus.

If you think such a sequence of events won't fly in court, you would be right – at least if you're talking about a crematorium in East Oakland.

The First District Court of Appeal has upheld a trial judge's ruling that the City of Oakland can't approve a crematorium, then pass an ordinance three days later subjecting crematoria to a conditional use permit requirement, and then try to apply the new CUP to the crematorium that was just approved.

Instead, the First District ruled, the crematorium had a vested right to move forward without seeking a CUP.

Relying heavily on *Davidson v. County of San Diego*, (1996) 49 Cal. App.4th 639, the First District wrote: "The City relies on various canons of statutory interpretation and cases supporting its general authority to impose a CUP requirement and override preexisting legislation through an emergency ordinance in arguing that the emergency ordinance here 'controls' over the permit-vesting ordinance. These arguments are misdirected. The determination whether Stewart had a vested right in the building permit 'is not made by looking at the effect of the [City's]

**“Under its plain terms, the permit-vesting ordinance conveyed a vested right because it shielded the holder of a lawfully issued building permit from having to comply with any subsequently adopted zoning regulations if such regulations would ‘prohibit the construction . . . authorized by said permit.’ “**

subsequent enactments but is made as of the time' Stewart obtained the permit. And under its plain terms, the permit-vesting ordinance conveyed a vested right because it shielded the holder of a lawfully issued building permit from having to comply with any subsequently adopted zoning regulations if such regulations would "prohibit the construction . . .

authorized by said permit.”

The case involved a proposal by Stewart Enterprises to build a crematorium in East Oakland. The company received a permit from the Bay Area Air Quality Management District that limited the crematorium to 3,000 bodies per year to limit air pollution hazards and on May 10, 2012, Stewart received a building permit from the City of Oakland. Concern about the project, however, had led the city to draft a ordinance subjecting crematoria to a conditional use permit. That ordinance was adopted as an “emergency ordinance” by the City Council five days later – on May 15, 2012 – after a long hearing where the potential neighborhood impacts of crematoria were debated. The following day, the city attempted to apply the CUP ordinance to the Stewart project.

Stewart sued, claiming that it had a vested right to build the project. Alameda County Superior Court Judge Evelio Grillo agreed and the city appealed.

On appeal, the city made three arguments:

First, that Stewart no vested right.

Second, that even if Stewart had a vested right, it was not impaired by the CUP ordinance.

And third, that even if the vested right was impaired, the impairment was supported by substantial

## >>> Oakland Can't Use CUP Retroactively on Crematorium

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evidence.

The First District ruled against the city on all counts.

In California, a vested right usually requires a building permit and a substantial investment. On the vested right itself, as the quote from the ruling above indicates, the court found that a vested right did exist.

“Even if we assume, as the City argues, that the emergency ordinance was lawfully passed and the City Council intended it to override the permit-vesting ordinance, the City offers no argument as to why the permit-vesting ordinance failed to confer a vested right on Stewart when Stewart obtained the building permit,” wrote Presiding Justice Jim Humes, a former top aide to Jerry Brown, for a three-judge panel of the

First District.

On the impairment question, Humes concluded that the vested right was impaired because Stewart could not build without taking an additional step. “Once the emergency ordinance was applied to the project, Stewart was no longer allowed to build the crematorium because it did not have a CUP,” Humes wrote. “The possibility that Stewart could regain the right to build the crematorium if it applied for and was granted a CUP does not change this fact: a project can be “prohibited” even if the fulfillment of certain contingencies might at some later date reauthorize it.”

Humes didn't buy the third argument, either – that impairment was supported by substantial evidence. “We agree with the City

that, as a general principle, ‘the public welfare’ is an expansive concept,” he wrote. “None of the cases the City cites, however, involved the impairment of a vested right. Where the issue is whether such impairment is sufficiently necessary to be constitutional, it is not enough to identify evidence of an impact on some aspect, no matter how minor, of the public welfare.”

### **The Case:**

*Stewart Enterprises v. City of Oakland*, No. A143417

### **The Lawyers:**

For Stewart Enterprises: [Les A. Hausrath](#), Wendel, Rosen, Black & Dean.

For City of Oakland: [Kevin Siegel](#), Burke, Williams & Sorenson. ■



# CEQA Catch-22 From Ukiah

BY WILLIAM FULTON

Here’s a CEQA Catch-22 for you:

The Ukiah City Council tried to fix a problem in an environmental impact report for a Costco by adopting an addendum that included precise energy consumption calculations missing in the original EIR. But an appellate court has now said that fix won’t work EIR – even though the overall conclusions of the EIR didn’t change -- because an addendum can only be used when an EIR is adequate. And, the court concluded, the original EIR was inadequate because the energy consumption calculations were missing.

Costco proposed a 180,000-square-foot store along Highway 101 on the south side of the city. Ukiah approved the project in late 2013. In early 2014, a group called Ukiah Citizens for Safety First sued the city on a wide range of issues associated with the EIR. Weeks after the lawsuit was filed, however, the Third District Court of Appeal issued its ruling in *California Clean Energy Committee v. City of Woodland*, 225 Cal.App.4th 173 (2014). In that case, the Third District ruled that the EIR for a retail store was inadequate because even though the city had calculated the precise number of vehicle trips that would be generated by a new retail store, it had not calculated the specific amount of energy that would be created by the store’s operations or by the added vehicle trips. In Ukiah, the citizen group asserted that the city had made

**In the lawsuit, the citizen group argued that the EIR failed to calculate actual energy use and that the addendum was an inadequate fix. The appellate court agreed.**

the same mistake in the Costco EIR.

After the Ukiah Costco lawsuit had been filed and the Woodland ruling had been issued, the Ukiah City Council adopted an addendum to the Costco EIR that included the precise energy calculations missing in the original EIR. However, the First District ruled that the addendum was incorrectly adopted without public comment. The court noted that can be adopted without public comment if it does not materially

alter the EIR’s conclusions – as was the case here – but only if the EIR is otherwise adequate. But the court concluded that this procedure was not permissible in this case because the EIR was inadequate – because the energy calculations were missing. The appellate court overruled the trial court, which had accepted the addendum as an adequate fix to the problem.

The appellate court rejected most of the citizen group’s other arguments about the inadequacy of the EIR.

Much of the case turned on Appendix F of the California Environmental Quality Act Guidelines, which lists both potential impacts and potential mitigation measures that must be considered in a CEQA analysis. Energy issues were considered throughout the EIR and certification included a statement of overriding consideration on the energy question among others.

In the lawsuit, the citizen group argued that the EIR failed to calculate actual energy use and that the addendum was an inadequate fix. The appellate court agreed.

Relying on the reasoning of the Woodland case, the First District in the Ukiah Costco case said: “[T]he Costco EIR concludes that the project will generate 11,204 new vehicle trips per weekday and 8,708 new trips per weekend day, but fails to calculate the resulting energy impacts of those trips. The EIR also improperly relies

## >>> CEQA Catch-22 From Ukiah

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on compliance with the building code to mitigate operational and construction energy impacts, without further discussion of the appendix F criteria. Finally, as in *CCEC*, the city's reliance on mitigation measures designed to reduce greenhouse gas emissions is misplaced."

The court also agreed with the citizen group that the addendum was not an adequate fix. "Under Code of Civil Procedure section 1094.5, courts can only review evidence that was actually before the administrative decision makers prior to or at the time of their decision." (*Sacramento Old City Assn. v. City Council* (1991) 229 *Cal.App.3d* 1011, 1032, fn. 13.) Accordingly, the addendum is not a

part of the administrative record and cannot be considered in deciding whether the city abused its discretion in certifying the EIR."

In addition, the court said: "The fact that the city considered the addendum when later approving certain replacement agreements and minor project changes does not, as the city contends, excuse the failure to consider the information contained in the addendum when approving the project itself."

Hence the Catch-22: The city can use an addendum without public comment to fix the problem in the EIR, but only if the EIR was adequate in the first place, and in this particular case the EIR was not adequate because

it did not include the information contained in the addendum, even though that information didn't substantively change the EIR's impacts and mitigations.

In an unpublished portion of the opinion, the First District rejected all of the citizen group's other arguments.

### **The Case:**

*Ukiah Citizens for Safety First v. City of Ukiah*, No. A145581

### **The Lawyers:**

For Ukiah Citizens for Safety First: [William D. Kopper](#), Kopper & Morgan.

For City of Ukiah: [David J. Rapport](#), Rapport & Marston. ■



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# City of San Diego Not Off The Hook Yet in Brown Act Case

BY WILLIAM FULTON

## City of San Diego Not Off The Hook Yet in Brown Act Case

By William Fulton

A citizen group may yet be able to file a Brown Act lawsuit against the City of San Diego, challenging its past practice of permitting public comment on only day day of its weekly two-day city council meeting, according to a new ruling by the Second District Court of Appeal.

For many years San Diego permitted non-agenda public comment only on Tuesday mornings even though the City Council also meets on Mondays. The city's argument was that the two convenings represent one continuous public meeting. The Center for Local Government Accountability sued, claiming a violation of the Brown Act. The city adopted a new ordinance permitting non-agenda public comment on Mondays also and argued that the lawsuit was moot. San Diego Superior Court Judge Gregory Pollack agreed, but the Fourth District Court of Appeal overturned on appeal.

Writing for a unanimous three-judge panel, Presiding Justice Judith McConnell noted that the city had not conceded that it had violated the Brown Act in the past and could change its ordinance again in the future. For this reason, she said, the Center may have a "viable claim" for declaratory relief – a judge's ruling

**Writing for a unanimous three-judge panel, Presiding Justice Judith McConnell noted that the city had not conceded that it had violated the Brown Act in the past and could change its ordinance again in the future.**

ordering the city to permanently abandon the no-comment-on-Monday practice. The appellate court remanded the case to Pollack.

The most significant part of the ruling was McConnell's conclusion that changing the ordinance after the lawsuit was filed to permit Monday public comment did not necessarily moot the case. She came to this conclusion even though the Center's

lawyer, Craig Sherman, "was unable to articulate facts suggesting a reasonable expectation the City would pass another ordinance resuming its former practice."

"Nonetheless," she wrote, "the City's counsel acknowledged the change in the City's practice for handling nonagenda public comment periods did not equate to a change in the City's legal position. The City stills consider its two-day regular weekly meetings to be one continuous meeting, rather than two separate meetings, for Brown Act purposes. The City also has not conceded its former practice of allowing only one nonagenda public comment period violated the Brown Act. Thus, the Center may be able to at least plead a viable claim for declaratory relief."

### The Case:

*Center for Local Government Accountability v. City of San Diego*, D068432

### The Lawyers:

For Center for Local Government Accountability: Craig A. Sherman, [shermanlaw@aol.com](mailto:shermanlaw@aol.com).

For City of San Diego: Walter Chung, Deputy City Attorney, [wchung@sandiego.gov](mailto:wchung@sandiego.gov). ■

# Anti-SLAPP Motion Denied In Carson NFL Case

BY WILLIAM FULTON

Reversing a trial court judge, the Second District Court of Appeal has denied an anti-SLAPP motion against a developer who has engaged in a long-running legal dispute over negotiations to bring a National Football League team to Carson.

The dispute involving Beverly Hills developer Richard Rand, San Diego financier Leonard Bloom, and the City of Carson has been well documented in the press. (See, for example, articles in the *Los Angeles Times* and *Voice of San Diego*. Rand is the owner of 12 of the 91 acres near the 405-110 interchange that Carson has identified as a potential site for an NFL stadium.

Rand's partnership partnership with and litigation against Carson goes back many years. After refusing a bribe request from the mayor of Carson, Rand won a federal civil rights case against the city in 2006. Both parties appealed, but as part of a partial settlement the Carson redevelopment agency gave Rand an exclusive negotiating agreement (ENA) to pursue an NFL team. In 2012, that ENA was renewed with the city for two years because the redevelopment system had been killed by the state.

In April 2013, Rand and the city reached a settlement in the federal court action. At that point, Rand alleged, the city began working with Bloom on attracting an NFL team, even though the ENA with Rand was

still in effect. Press accounts claim that Bloom even created letterhead that looked like Rand's and quoted Carson's mayor as saying Rand wasn't getting anywhere with the NFL on his own.

Rand sued, including a wide variety of claims. Among other things, he charged with city with breach of contract and promissory fraud. He charged the city, Bloom, and former mayor Jim Dear with fraud; and he charged bloom with intentional interference with a contract and with economic advantage.

Carson, Dear, and Bloom responded by filing an anti-SLAPP motion against Rand's claims. An anti-SLAPP motion, contained in California Code of Civil Procedure section 425.16, [allows defendants to file a motion to strike](#) causes of action if the intent of the litigation is to chill the exercise of free speech in matters of public interest. SLAPP stands for "Strategic Lawsuit Against Public Participation."

Los Angeles County Superior Court Judge Michael Stern granted the SLAPP motion, saying, essentially, that because the proposed project was an NFL stadium, the entire litigation involved a "matter of public interest".

The Second District reversed on all counts. Writing for the three-judge panel, Justice Elwood Lui said: "While having an NFL team, stadium, and associated developments in Carson is no doubt a matter of substantial public

interest, plaintiffs' complaint does not concern speech or conduct regarding a large scale real estate development or bringing an NFL team to Carson and building it a stadium. It instead concerns the identity of the person(s) reaching out to the NFL and its teams' owners to curry interest in relocating to Carson. The identity of the City's representative is not a matter of public interest."

Quoted by Courthouse News Service, City Attorney Sunny Soltani [said Carson may appeal](#) to the California Supreme Court. She claimed that Lui's ruling created a conflict among appellate districts in the state.

## The Case:

*Rand Resources v. City of Carson*, B264493

## The Lawyers:

For Rand Resources: Joseph Ybarra, Huang Ybarra Singer & May, [Joseph.Ybarra@hysmlaw.com](mailto:Joseph.Ybarra@hysmlaw.com).

For City of Carson: Sunny K. Soltani, Aleshire & Wynder, Sunny K. Soltani, [ssoltani@awattorneys.com](mailto:ssoltani@awattorneys.com).

For Leonard Bloom: John V. Tamborelli, Tamborelli Law Group, [jtamborelli@lawtlg.com](mailto:jtamborelli@lawtlg.com). ■

# >>> Governor’s Housing Proposal Faces Stiff Opposition

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deadline for trailer bills is not until August 31.

For all the appeal that “streamlining” would seem to offer, the proposal has drawn stiff criticism – including some from traditional proponents of affordable housing. A range of environmental groups, affordable housing advocates, and advocates for local control of land use have voiced opposition to it. Housing advocacy groups, social justice groups, unions, and even environmental organizations have voiced opposition to the proposal. Many fear that it would undermine CEQA, threaten union jobs, and favor market-rate housing over subsidized housing.

One letter, signed by more than 50 organizations, claims, “a law that promotes building housing that is 90% or 95% unaffordable to the majority of people in our communities is not an inclusive ‘affordable housing’ policy.” The Alliance for Community Transit, a coalition of 31 organizations in Los Angeles, slammed the proposal for, among other things, disregarding input from low-income communities and undermining existing state and local affordable housing programs.

The League of California Cities has voiced opposition to the bill in part because, regardless of RHNA requirements and other state mandates, it believes that land use should remain firmly under local control. Officials from individual cities across the state have echoed those concerns.

“I don’t think the public really wants to toss the keys to the developers when it comes to land use,” said Dan Carrigg, deputy executive director for legislative affairs

at the League of California Cities. “I think they appreciate having a voice.”

Carrigg said that the bill might even “backfire.” That’s because cities that are wary of increased densities that by-right projects might create can simply downzone. Carrigg said that opportunistic developers will start inflating their projects according to the proposal’s provisions, almost immediately — prompting cities to change their regulations accordingly.

“Once communities begin to figure out what was going on... ..I think there’d be a backlash,” said Carrigg. He predicted that the proposal could spawn local and statewide ballot referenda, possibly as early as 2018.

Given this prospect, Carrigg suggested that the proposal is mainly an opportunity for Brown to weaken CEQA. Brown has often spoken out against what

he considers the shortcomings of CEQA, particularly the constraints that it can put on urban infill development.

Carrigg’s point about the primacy of planning may, however, be a reason for planners to support Brown’s proposal. It respects general plans and zoning and seeks to reduce political decisions that often run contrary to planning efforts in many cities.

Then again, some say that the proposal elevates planning and enables land-use decisions to rise above quotidian politics that tend to influence local decisions.

“I think this one is a real affirmation of the professional integrity and importance of planning,” said Ben Metcalf,

**“I don’t think the public really wants to toss the keys to the developers when it comes to land use,” said Dan Carrigg, deputy executive director for legislative affairs at the League of California Cities.**

## >>> Governor's Housing Proposal Faces Stiff Opposition

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director of the Department of Housing and Community Development. “Jurisdictions (are currently) taking the professional obligation out of the hands of planners and putting in the hands of hands of elected councils who are acting in very political ways that aren’t driven by good policy.”

Moreover, streamlining of the inclusionary projects covered by the proposal can help maximize the \$400 million subsidy as well as any other public subsidies that go towards affordable units. That’s because the very review processes that often hold up market-rate developments can also complicate subsidized developments.

“We’re not being good stewards of resources if we continue to invest into the headwinds of a very significant supply shortage,” said Metcalf. “If we want our subsidy dollars to stretch farther...we need to make sure that those funds can be efficiently used.”

Critics call even that a token gesture.

Carrigg suggested that the governor consider making planning grants to cities so that they can update their plans, presumably with more allowances for housing, rather than impose a regulation that infringes on local discretionary review.

“The governor is offering one-time \$400 million; doesn’t really register what the needs of California are,” said Carrigg.

He noted that the \$400 million that the governor is offering is but a fraction of the state funds that used to go annually

to redevelopment, which Brown disbanded in 2011. Much of those redevelopment funds went to affordable housing.

The proposal comes on the heels not only of widespread anecdotal evidence of the state’s housing crisis but also of a pair of Legislative Analysts Office reports released in the past 16 months that describe the crisis, and potential solutions, in frank terms: “California’s coastal communities are hesitant to allow new housing and, therefore, use their communities’ land use authority to limit housing construction.”

Statewide, rents are roughly double the national average. In the 2000s, the state produced scarcely half as much housing as would have been needed to maintain affordability. Significantly, the LAO called for the production not only of subsidized housing but also of market-rate housing, up to 110,000 new units per year.

“The objective shouldn’t be about more affordable housing. It should be about more housing period,” said Brian Uhler, senior fiscal and policy analyst at the LAO.

While the state has only so much money for subsidized housing, Brown identified local regulations and the often extensive process of public hearings, input, and municipal decision-making, that slows down and often shrinks residential development, as a common-sense reform that could have a nearly instant impact statewide.

“It’s fair to say that for this issue, the underlying problem that the bill is trying to address is fairly consistent across most communities in California,” said Uhler. “In that regard, having a rule that has a fairly consistent remedy seems reasonable to us.”

**“We’re not being good stewards of resources if we continue to invest into the headwinds of a very significant supply shortage,” said HCD Director Ben Metcalf.**

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## >>> Governor's Housing Proposal Faces Stiff Opposition

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Negotiations over the proposal are ongoing in Sacramento. One recently inserted provision ensures that projects that take advantage of streamlining cannot displace existing low-cost housing. A more contentious sticking point currently revolves around the percentage of affordable units that the measure would require. The current draft calls for 20 percent affordable for residents making 80% of area median income, a figure that was endorsed by several big-city mayors. (Thresholds are lower for projects near transit.) Some consider the 20 percent threshold too high, and perhaps even a recipe for generating fewer affordable units than a lower threshold would.

“By setting the percentage too high, we might be sacrificing some market-rate in order to get more affordable units,” said Uhler. “20 percent of ten is a lot less than 10 percent of 100.”

The state has no authoritative estimate on the number of projects that might take advantage of the streamlining measure. Its proponents hope that the measure will not only aid currently proposed projects but will also inspire projects to expand in order to trigger the benefits that the measure would confer on them.

“There’s no huge numbers of these projects,” said Kevin Keller, deputy director at the Los Angeles Department of City Planning. “However, it remains to be seen whether projects start including those components to take advantage of the incentives.”

While the measure could potentially make city planners’ jobs easier, by eliminating lengthy reviews and negotiations, some planners say that it leaves many questions unanswered. In particular, it may reduce opportunities for fine-grain decisions that can only be made through a review process.

In some jurisdictions, granting “by-right” status to projects that conform to existing code might seem redundant. But even conforming projects can trigger reviews. Keller noted that Los Angeles requires a review of all developments of over 50 units, regardless of whether a development is requesting a plan amendment or other discretionary action. And, regardless of a city’s review process, a project that requires discretionary approval may also require CEQA review – and, therefore, open itself to CEQA-based lawsuits.

“The question on the city side is, what kinds of interpretations or modifications will be necessary to ensure that the code-required level of review—the orientation, massing, curb cuts, yards—that component of review is still very valuable,” said Keller. “If that were to shift, it becomes an administrative review instead of an appealable discretionary review.”

### Contacts & Resources

#### [Streamlining Affordable Housing Proposal](#)

Legislative Analysts Office [Report on Streamlining Affordable Housing Proposal](#)

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## >>> Time to Reverse “Calexit” and Attack California’s Housing Problem

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who supported it, would be to restrain immigration from the rest of Europe and keep British tax dollars at home. These arguments are pretty familiar to anybody who has ever witnessed a NIMBY battle or an incorporation fight in California. The predicted downsides are pretty familiar as well: an severe economic downturn and a lack of opportunity and mobility, especially for the young.

In California, we’re more than 40 years into a similar experiment: shutting down growth in general and housing in particular in many parts of the state – a kind of a “Calexit” from market reality. There have been definite upsides: many communities have remained more manageable than they otherwise would be for those who live there; the environment is probably better off; and in many cases infrastructure has either not been strained – or taxpayer shave been saved the responsibility of expanding it.

However, 40 years down the line, Calexit has had a very significant impact on the California housing market. Specifically:

- The average home price in California today is \$440,000 or about 2 ½ times the national average.
- The housing affordability index – the percentage of households that could buy the median-priced home – is currently 34%, and even that maybe over-estimate the situation, given that there are so many low-wage households in the state and even middle-class families are still having trouble qualifying for mortgages.
- As the Legislative Analyst’s Office has pointed out, housing construction in California’s coastal metropolitan areas has slowed to a crawl – with a smaller annual percentage increase than inland metros for 50 years now.

**More and more people are arguing that the time for Calexit is over and it’s time to re-engage with the market.**

- In the Bay Area in particular, the housing market has gone crazy – so much so that even at inflated prices, you basically can’t buy a house unless you show up with an all-cash offer instead of a mortgage.

- Meanwhile, in Southern California, there’s a huge disconnect between new transit investment and housing construction. After adopting a widely acclaimed climate

action plan (which, full disclosure, I worked on as the planning director), San Diego is now embroiled in a neighborhood-by-neighborhood street fight over increased density. And in Santa Monica, just weeks after the Expo Line reconnected the beach to downtown for the first time in 60 years, a citizen initiative was filed to require voter approval for all projects over two stories.

The bottom line, as I estimated in this column last month, is that California is maybe 2 million housing units shy of where it needs to be to meet the population’s housing needs.

Nobody can say with a straight face that this isn’t a problem. Yes, it’s a problem of affordability and more affordable housing needs to be constructed. But it’s also a problem of sheer production. More and more people are arguing that the time for Calexit is over and it’s time to re-engage with the market.

Recently, Gov. Jerry Brown threw out a new proposal to expedite affordable housing at the local level. The proposal – which Brown threw in as a trailer bill to the budget – would require approval of housing projects that meet local planning and zoning requirements and a certain amount of affordable housing. He’s trying sweeten the pot with \$400 million for affordable housing.

But as Josh Stephens has reported, the vested interests in Sacramento are lining up against it – including the cities,

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## >>> Time to Reverse “Calexit” and Attack California’s Housing Problem

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who don’t want to “toss the keys to the developers when it comes to land use.” There are some 50 organizations in Sacramento opposed to Browns proposal, so I’m not betting on it.

Even if it did pass, however, this is not a problem that gets fixed overnight or only by one funding source or policy initiative. It’s a problem that gets fixed only through a prolonged and consistent combination of policy and funding approaches that doesn’t get undermined by the budget process in Sacramento or the regulatory underbrush in every city hall or county hall of administration.

One of the characteristics of California housing and planning policy is that there is a lot of it and it’s not always very well coordinated. There’s the Regional Housing Needs Assessment program, AB 857 which requires state actions to conform with smart growth principles, SB 375 which requires regional greenhouse gas emission reduction strategies for transportation investments, the SB 743 law that revises state-required traffic analysis, the Strategic Growth Council’s Affordable Housing and Sustainable Communities program, and on and on and on. And of course there’s everybody’s favorite whipping boy, the California Environmental Quality Act, which at the very least slows things down and makes them more expensive and complicated.

But these policies aren’t coordinated – indeed, sometimes

coordinated implementation is prohibited by law – and they aren’t always backed up by the right financial carrots and sticks at the state level. In a large state with such a diverse set of established vested interests, every major idea is opposed by some constituency that has the power to, at least, water it down. And we deep into the era of term limits, which means legislators have little interest in understanding policy deeply and pursuing comprehensive reform.

Since he was elected again in 2010, Jerry Brown has done a pretty good job of identifying small pathways to reform that have a shot at getting passed and might actually help. His CEQA reforms are good examples, as is SB 743. The as-of-right affordable housing idea is another example, if he can get it passed. (In retrospect, he probably should have focused his redevelopment efforts on reforming and targeting the program rather than eliminating it.)

But now Brown’s only got two years left. Since the first time he was elected governor, the average home price in California has gone from being something like 25% above the national average to being 240% above the national average. Maybe it’s time for him to commit himself to a Calexit exit, and use the state’s considerable money and power to bring about real, lasting change in California’s housing situation. It’s the single most important issue in the state, and nobody else will ever have a better shot at it. ■

