

# Top Stories of 2016 on CP&DR

BY JOSH STEPHENS

If ever a year produced a greater variety land use news in California than 2016 did, we at CP&DR can't name it. Major stories about housing, transportation, infrastructure, innovations, development battles, and so many more emerged from all corners of the state. The ballot box and State House were especially busy this year. And, of

course, a small story out of Washington, D.C., inspired a few moments of contemplation out here on this side of the continent.

To sum it all up, here are our top ten stories of the year in each of our three major sections.

— CONTINUED ON PAGE 11

## Dispute over Gas Station Erupts into Legal Battle in Sacramento

BY JOSH STEPHENS

Paul Petrovich first started working on his Curtis Park Village development in the early 2000s. In a saga whose 15-year duration would surprise no one involved with urban land use in California, Petrovich produced countless iterations of his mixed-use infill project with 267 homes and a retail center on a 79-acre former rail yard in a close-in neighborhood in Sacramento. By his count, Petrovich

produced an environmental impact report 2,000 pages long and, after over 200 community meetings, made 43 concessions to a group of neighbors that commented on project.

After the EIR was certified in 2010 and entitlements secured, the final piece was what Petrovich assumed would be a cursory approval of a set of gas pumps to accompany

— CONTINUED ON PAGE 12

## TRPA Regional Plan Upheld In Court

A long-running conflict between environmental groups and the Tahoe Regional Planning Agency (TRPA) has ended with an appeals court **upholding** the controversial TRPA plan, which sets regulations for future development in the Lake Tahoe Basin. Earthjustice appealed the lawsuit to the U.S. Court of Appeals for the Ninth Circuit after U.S. District Court Judge John Mendez dismissed it in April 2014. Plaintiffs Sierra Club/Friends of the West Shore felt the 2012 Regional Plan did not do enough to protect Lake Tahoe's environment and TRPA felt the plan was a good combination of conservation and revitalization of communities. The residents in the area largely support the 2012 Regional Plan for its more walkable, bikeable and stormwater protecting vision. However, the challenge of affordable workforce housing is a complex issue with median home prices of \$500,000 on the North Shore and \$400,000 on the South Shore. This means many workers commute long distance, which causes a rise in pollution and traffic. TRPA believes by focusing on redevelopment of existing town centers will restore the outlying areas back to their natural function. (See prior CP&DR [coverage](#).)

## SANDAG Threatens Eminent

## Domain over Trolley Station Site

The San Diego Association of Governments has **threatened** to invoke eminent domain on a piece of land at the site of a planned trolley station in Clairemont. The agency would like to build a parking lot there, while developers who own the property had planned a transit oriented project. The development includes roughly 40 condos, retail space and commuter parking for the new trolley station near the new \$2.1- billion Mid-Coast Trolley set to open in 2021. SANDAG and Protea Properties will go to court Dec. 9 over the eminent domain case; SANDAG says it can force Protea to sell the land because it has an overwhelming need for 155 parking spaces. A principal at Protea feels he's reached an agreement with SANDAG officials. Protea proposes 155 parking spaces, and give SANDAG the land as a construction yard for the trolley station for three years and allow an electrical station to be built on site for the trolley station. For that, SANDAG would pay \$7.9 million instead of seizing the property and building those things for an estimated \$15-million.

## State Auditor Slams Irwindale over Spending, Housing Programs

The California State Auditor investigated the City of Irwindale and **concluded** it continued to

overspend and made questionable decision in the way it administers its housing programs. The city had not developed a long-term financial plan, not adjusted generous and costly programs it offers for its small population and city's employees were paid salaries and benefits that consume 51 percent of the city's general fund budget. Additionally the city forgave nearly \$9.1 million in loans to low-income residents and planned to forgive another \$10.2 million-and gave longtime residents an unfair advantage in these housing programs. Irwindale, known for gravel and sand pit mines, has received millions of dollars in mining tax revenue and thusly failed to develop a long-term financial plan to help weather future financial crises, instead the city has survived off one-time gains and revenue from the sale or redevelopment of pit mines. The California State Auditors' recommendations are: the city should seek long-term solutions to balance its budget; the city should reduce its employee benefits; revise purchasing policy for contracts; and the Housing Authority should consider alternative options in providing low-income housing.

## Plan Forming to Upgrade Oakland Coliseum, Keep Raiders

Oakland Mayor Libby Schaaf has **announced** a vague financing plan

- CONTINUED ON PAGE 3



is published semi-monthly by

Solimar Research Group  
Post Office Box 24618  
Ventura, California 93002

Phone / Fax: 805.652.0695

Subscription Price: \$238 per year

ISSN No. 0891-382X

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– CONTINUED FROM PAGE 2

to [keep](#) the Raiders from moving to Las Vegas. The \$1.3-billion plan includes \$600 million in private money from former NFLer Ronnie Lott's investment group, \$200 million in public money, \$200 million from the NFL, and \$300 million from Davis (owner of the Raiders). The deal is being shuttled between the Oakland City Council and the Alameda County Board of Supervisors for approval. The city money, with help from the county, would upgrade the infrastructure at the Coliseum site. The city and county would lease 125 acres of Coliseum property to the Oakland City Pro Football Group. Around 90 acres would be reserved for the new 55,000-58,000-seat stadium, plus about 8,500 parking spaces. The last 35 acres would be devoted to a mixed-use retail development. The NFL will be voting as early as January on the Raiders possible move to Las Vegas.

### Los Angeles Streetcar Gets City Approval

The Los Angeles City Council [approved](#), 12-0, the EIR for the proposed Downtown Los Angeles Streetcar through the city's historic core. Measure M sales tax, that voters approved three weeks ago, includes \$200 million to complete the streetcar project's funding plan. The project is 3.8-miles of fixed-rail modern streetcar system targeted to open in 2020. The City Council certified the environmental findings and selected the 7th Street alignment without an extension to Grand Avenue as the final route to be built. Ridership is expected to be approximately 6,000 riders per

day with a car coming approximately every 7 minutes during peak hours. (See prior CP&DR [coverage](#).)

### Quick Hits & Updates

The San Diego City Council voted unanimously to permanently [maintain](#) the city's Bicycle Advisory Committee under the city charter after three years operating as a temporary panel. The motion was partly because the city's Climate Action Plan calls for a sharp increase in commuting by bicycle. The permanent mechanism will advise the city on its evolving bicycle network, policies regarding bicycle safety, and infrastructure to improve bicycling as a form of mobility and recreation.

Redondo Beach slow-growth activist Jim Light is [suing](#) the city and developer behind a \$400-million renovation of its waterfront. The lawsuit was filed in Los Angeles Superior Court and alleges violations of CEQA. Light won a previous lawsuit, and \$313,000, against the city in 2010 over the right to vote on harbor development.

Remnants of abandoned piers, wharves and warehouses in San Francisco Bay are [poisoning](#) the Pacific herring with creosote, a distillation of coal tar used as a wood preservative and pesticide. The Pacific herring is a critical species to the ecosystem and described as a keystone species because it feeds many other animals in the Bay. The National Fish and Wildlife Foundation is spending millions of dollars to remove pilings.

The Anaheim City Council gave the Anaheim Performing Arts

Center Foundation exclusive right to [negotiate](#) with the city to develop and possibly purchase the site of the City National Grove and develop into a much larger performing arts center. The council voted 3-2 to approve the project.

BART's new people mover [connecting](#) the Coliseum station to the Oakland airport has not made the projected \$2-million profit in its first two years. It has instead cost the agency \$860,000. Data from the Mercury News finds that ride-hailing services such as Uber and Lyft have consumed nearly all the new business from the airport's growing passenger traffic. One obstacle is the \$6 one-way fare to ride the connector.

Los Angeles Metro has [agreed](#) to pay \$297.8-million to the contractor of the 405 Freeway expansion at Sepulveda Pass after year-long disputes over responsibility for schedule delays, design changes, and cost overruns. The 10-mile lane opened more than a year behind schedule. Metro directors will be formally asked to increase the project budget to nearly \$1.61-billion.

A group of residents are [suing](#) Laguna Beach and the California Coastal Commission on the recent decision to ban short-term rentals in residential areas. The group, known as BEACH Vacation Coalition (Backing Everyone's Access to Coastal Housing), alleges the two agencies are violating land-use laws. The lawsuit states the city failed to comply with CEQA and its guidelines and violates California planning and zoning law.

A joint committee of the Association

– CONTINUED ON PAGE 4

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of Bay Area Governments and the Metropolitan Transportation Commission has approved a draft [update](#) of Plan Bay Area. Called “the Final Preferred Scenario,” the update to the region’s long-range transportation and land use plan shows that the region will need to [accommodate](#) an additional 800,000 households in the next 30 years. The proposed plan, which serves as the region’s Sustainable Communities Strategy, also projects 3.4 million households in the region by 2040, a 30 percent jump from 2010. 46 percent of projected the housing growth will take place in San Francisco, Oakland and San Jose. The plan also projects a majority of new housing, 77 percent, will come in Priority Development Areas adjacent to transit and job centers. The draft plan now must now undergo an environmental review under CEQA and an action plan that includes measurement and monitoring components and actual policy prescriptions to meet housing goals when Plan Bay Area 2040 is officially adopted next summer. (See prior CP&DR [coverage](#) of second-generation SCS’s.)

### **Stanford Releases Ambitious Growth Plan**

Stanford University has [released](#) its plan for future growth between 2018 and 2035. The plan envisions construction of nearly 2.3 million square feet of new academic buildings and up to 3,150 new housing units. Instead of developing the 2,000 acres of open space, the university will develop its central campus more intensely and will develop new transit

programs. The most controversial part of the document will be traffic: first from long-term construction, second from increased commuter traffic, and third handling congestion management. Goals for the university include new research and teaching facilities, more on-campus housing for graduate students, faculty and staff, and more dormitories for growth in the undergraduate population. The university will hold a presentation about its plan in a “Community Forum” in late January and Santa Clara County will hold a public hearing in early February.

### **Oakland Mayor Schaaf Pledges to Support Space for Artists**

In the wake of the devastating “Ghost Ship” fire that killed over 30 people in an improvised live-work artists space in Oakland, Oakland Mayor Libby Schaaf [announced](#) the dedication of \$1.7 million in philanthropic funds to support sustainable, long-term solutions to creating affordable and safe spaces for Oakland’s artists and arts organizations. Funds coming from the Kenneth Rainin Foundation and the William and Flora Hewlett Foundation will go to the Community Arts Stabilization Trust (CAST)- a nonprofit real estate organization, that will have financial and technical assistance programs to support art organizations facing displacement. Mayor Schaaf also announced additional city staff will support arts and culture in Oakland. CAST’s new two-year pilot initiative “Keeping Space—Oakland” launches in December and will assist arts and cultural organizations that are seeking

real estate expertise and funding. The program will offer grants up to \$750,000 to arts organizations that have been or are facing displacement in Oakland.

### **San Jose Sues Santa Clara over Santa Row Development**

The City of Santa Clara [filed](#) a lawsuit regarding San Jose’s Santana West development project. Santana West is a 13-acre development across from Santana Row, south of Santa Clara’s municipal boundary. The project is proposed to have 970,000 square feet of office space and 29,000 square feet of retail. The property includes the Century 21 Theaters, which is a historic landmark. San Jose City Council approved the project and its EIR in October but Santa Clara had sent a letter to San Jose in September objecting the approval of the project. Santa Clara claims the project’s EIR is inadequate and that approving the project is inconsistent with San Jose’s General Plan. The City of San Jose had recently filed a similar lawsuit against Santa Clara’s 240-acre City Place Project. The suit comes on the heels of a lawsuit by San Jose protesting Santa Clara’s approval of CityPlace. (See prior CP&DR [coverage](#).)

### **Clovis Adopts Specific Plan to Enhance Downtown, Promote Mobility**

The Clovis City Council [approved](#) a new Central Clovis Specific Plan which covers 676-acres and is the long-term plan for the next 30 years. The city is proposing new bike lanes, additional pedestrian walkways, more housing and a downtown that would

– CONTINUED ON PAGE 5

– CONTINUED FROM PAGE 4

attract college students that attend the local colleges. Planning Director Dwight Kroll hopes to reinvest in residential development because more residents in Old Town mean an improved business environment. Kroll says building second units on the back of homes facing into alleys will double densities without changing the outward appearance. The plan follows the adoption of ambitious downtown plans for neighboring Fresno. (See prior CP&DR [coverage](#).)

### Los Angeles Moves Forward on Anti-‘Mansionization’ Policies

The Los Angeles City Council [voted](#), 13-0, to update two sections of two city ordinances that regulate size of homes. The aim of the policy is to place restrictions on “mansionization”—the practice of constructing houses that are far larger than those nearby. Councilmember Paul Koretz said the complaints about “very boxy, ugly homes” are led by developers who want to build as many bedrooms to make maximum profit. One measure would reduce the allowable square footage for houses in R-1 zones to 45 percent of overall lot size. This is down from 50 percent previously. The second change will be to eliminate provisions that allow homebuilders to build 20 percent larger houses when they followed environmentally friendly design standards.

### San Francisco Adopts Plan for Natural Areas

The San Francisco Planning Commission and Recreation and Parks Commission jointly [approved](#), with only one dissenting vote, a

comprehensive new plan for the city’s natural areas. The plan, originally proposed ten years ago, will review the biology and geology of the Recreation and Park Department’s 32 natural areas and trails, and it will outline maintenance and capital improvements within the next 20 years. The changes that would occur are changes in urban forestry management, removal of off-leash dog areas in sensitive environmental areas, and changes of Sharp Park’s golf course. Over 18,000 trees would be removed throughout the park system under the plan, with the majority being eucalyptus trees in Pacifica that will be replaced with native trees.

### Fresno Approves Plan for City’s Beleaguered Southwest District

The Fresno City Council [approved](#), 6-0, the Southwest Fresno Specific Plan, which will guide development of 3,200 acres in the next few decades. The area includes some of the city’s most impoverished neighborhoods. The new plan calls for two “magnet cores” that contain primarily retail, including grocery stores, high-density housing, medical facilities, possible community college, and a park. A major element of the plan includes eliminating industrial zoning for new development and instead replacing it with less-intensive office zoning. Developers say they have steered clear of the area because of its high costs and lack of good land-use planning. City staff and consultants will now begin a draft EIR and the Fresno Planning Commission and

City Council will vote next fall. (See prior CP&DR [coverage](#) of planning in Fresno.)

### Lancaster Eliminates Parking Minimums in Commercial Zones

The City of Lancaster, a relatively low-density bedroom community north of Los Angeles, has approved an ordinance [eliminating](#) parking minimums for commercial zones. This decision, according to the staff report, “will help to reverse... sprawling development patterns, and the resulting fiscal liabilities.” Requiring excessive parking increases the cost of doing business by needing more land and costs of maintain them, which is eventually paid by the customer, according to the staff report. The ordinance includes a safeguard clause to prevent extreme abuse by requiring developers to determine the number of parking spaces sufficient for the proposed use and providing justification to the Director of Development Services and/or the Planning Commission.

### Oakland Approves Last-Ditch Effort to Keep Raiders

The Alameda County Board of Supervisors, 3-1, and Oakland City Council, 7-0, approved to negotiate a formal [agreement](#) for a \$1.3 billion stadium that would seat 55,000 and include mixed-use retail in order to keep the Raiders in the city. The nonbinding term sheet showed the stadium would be funded with a mixture of private money from Ronnie Lott’s investment group for a total of \$400 million, \$500 million from the NFL and Raiders, and \$350 million

– CONTINUED ON PAGE 6

– CONTINUED FROM PAGE 5

in public money to fund infrastructure improvements. The public money would include \$200 million from the city of Oakland to fund storm drains and roadway parking and land that is valued at \$150 million. The land will either be sold or leased; this is one of the remaining issues that must be resolved. While Raiders owner Mark Davis, has previously said he was committed to move the team to Las Vegas, but NFL owners have the final say. Last week, NFL Commissioner Roger Goodell [hinted](#) that the Raiders are closer than ever to moving to Las Vegas.

### Sacramento Considers Transportation Impact Fee

Sacramento is expecting 68,000 houses and apartment units in the next two decades and may ask developers to pay a “[transportation impact](#)” fee on new construction to fund more and wider streets and improve biking and pedestrian facilities. The amounts from single-family and apartments, ranging from \$700 to \$2,000 per unit, could generate up to \$3 million per year and could provide a critical “local match” funds to allow the city to compete for federal and state

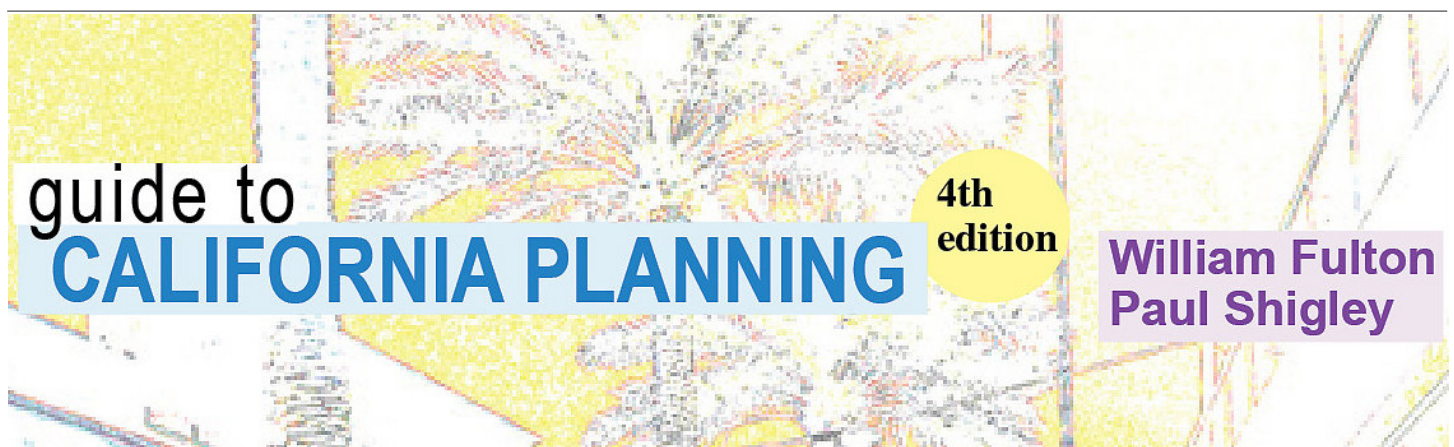
transportation grants.

### L.A. Adopts Renters’ Rights Ordinances

LA Mayor Eric Garcetti [signed](#) an ordinance that requires tenants facing eviction from rent-controlled apartments to be fully informed of their rights to relocation compensation. These costs range from \$7,900 to \$19,700 and provide renters sufficient time to move out. The new law requires landlords to tell tenants, prior to reaching a buyout agreement, that there is a more formal process with the city in which they may be entitle to more relocation money and protections than they initially realized. Los Angeles has roughly 624,000 rent-controlled units house about half of LA families. Garcetti also [signed](#) the Tenant Buyout Ordinance. This key addition to the City’s Rent Stabilization Ordinance is another step toward curbing the housing affordability crisis. The new ordinance required landlords to file buyout agreements with the City, so that staff can better monitor the process and permits renters to withdraw from the agreement within 30 days.

### Sustainable Planning Grant Deadline Extended

The Strategic Growth Council (SGC) in partnership with the Office of Planning and Research announced that the deadline for applications to the [Sustainable Communities Planning Grant and Incentives Program: Best Practices Pilot, Guidelines and Application](#) has been extended to February 9. The program is an effort to support local land use planning related to climate and the State’s statutory planning priorities. SCPGIP funding in the amount of \$250,000 will be available for applicants to apply for up to \$50,000. These grants will support the development and/or implementation of a specific portion of a land use plan, land protection or management practice, or development project, that targets sustainable development and the State’s climate policies. This small grant is not intended to fund a long-range plan or project in its entirety. Proposed applications must support local implementation of state policies, with a focus on creating more resilient communities through climate adaptation and mitigation. ■



# California APA Chapter Launches Pro Bono Assistance

BY JOSH STEPHENS

With the arrival of the holiday season, many cities are likely looking at their planning wish lists and wondering when they'll be able to tackle certain projects. For some communities, it's not a question of "when" but rather "if."

The California Chapter of the American Planning Association recently launched the [Community Planning Assistance Team](#) (CPAT) to help needy communities turn a few if's into when's. Through the program, the chapter will offer short-term pro bono planning assistance throughout the state and in Baja California.

Veteran planner Robert Paternoster, formerly of Sunnyvale and Long Beach, is directing the program. He spoke with CP&DR's Josh Stephens about the program's goals and status.

## What does the CPAT program entail?

This is modeled after the national CPAT program that APA national and some states run. We provide pro bono planning assistance to communities that don't have the resource to do their own planning projects. They don't have the money to hire a consultant or staff.

It's not for big things like doing a comprehensive plan or a general plan, but rather for specific projects, something like a revitalization plan for a downtown, an economic development strategy, perhaps just a visioning project of what community would like to become.

We can do it for either a municipality or a community group. A city that is well funded like Los Angeles, but community groups might not be. There might be a community group that wants to participate in a neighborhood planning effort or community plan. We can work with them over a period of 2-3 days and get them a strategy.

## What's the motivation for APA?

We want to do something good. It's really a give-back kind of thing. Most planners are in the profession because they do want to make improvements and better the lives of people in communities.

## Who are the planners doing these projects?

Generally they're people who are working now. I'm retired. Obviously the group of retired planners is a great resource.

Practically any planner can participate whether they're employed or [not](#). We're talking about projects that only last about 2-3 days. There's some preparation and some report-writing afterwards, but it's really only dedicating 2-3 full-time days.

Certainly you don't have to be retired in order to participate, but you do have to have some expertise. This isn't bringing in junior planners. This is bringing in people who are experienced. We try to match the planners who are going to be working on the project to the specific needs of the project. If it's an economic development project, obviously we're going to get an economic development specialist on the team. If it's an urban design project, we're going to get an urban designer on the team.

## What makes a successful application?

First of all, a real need. We have to be careful that we're not displacing paid consultants. We don't want cities to try to get something for free when they can pay for it.

We're looking for a real local commitment. There has to be a champion locally and hopefully a group that is championing a project. We don't want to go in just because somebody had a bright idea. The community feels a need for it. It's very important for the process is community participation. We do not want to go in and prepare some kind of analysis for a city manager or something like that. We want to work with the community and energize the community to carry the project forward after we leave. We want to help communities solve their own problems.

Very often this will be spearheaded by a planner. They will go ahead and try to get people organized. I just did one in the national program in North Beach Maryland. That was spearheaded by a member of the planning commission who was a city planner and a member of APA. They needed a downtown development strategy. We went down there and spent a few days.

— CONTINUED ON PAGE 8

## >>> California APA Chapter Launches Pro Bono Assistance

– CONTINUED FROM PAGE 7

### **What's the status of the program so far?**

We do not have any applications yet. We have plenty of volunteers. The hard thing is to get the word out to communities. There's no group that has all the email addresses of all the cities in the state. Getting the word out is really important.

### **How many projects would you like to have?**

Based on what national does and what other chapters have done, if we do two or three a year, that would be about it. In the beginning you have trouble getting people to apply. When you do get people to apply, then you begin to choose what you want to do. Everybody who applies will not get selected.

### **Are there certain trends or types of projects that you would like the program to champion?**

I think it's pretty wide-open. What is the real need of the communities we're talking about? That's the key thing. We don't have a preference.

I think what we're going to find is that we're going to get smaller communities, perhaps in the Central Valley, where they do not have large planning staffs. The large cities may need support for community groups.

### **What's your perception of the need for this kind of assistance? How big a backlog is there?**

California is much better than many states. We've had state planning law for a long time. I think there's much

more need than we could ever really satisfy. There are a lot of communities that do not have planning staffs. Or they do have planning staffs but do not have sufficient budgets to hire consultants.

### **Are regulations like SB 375 or grant opportunities like AHSC opportunities for these communities? Could this program help them take advantage of those programs?**

It definitely could. We aren't specifically orienting this towards helping communities qualify for funding. But that certainly could be the outcome of a project. We might say, if you apply for this or for that, you could actually get the funding to hire a consultant for that. That's one of the things we can do.

In Maryland, the developer was having trouble lending for a hotel they wanted to build. We contacted the State of Maryland, and they told us of programs they had that might assist the developer in getting the loans they needed.

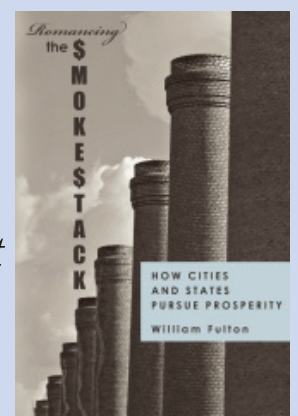
### **What other strategies do you have for outreach?**

We've contacted the League of Cities, and some of the Indian tribes. We've been advised by other states and national that word of mouth is most important. The recent conference in Pasadena we had a full-page ad in the program there oriented towards getting communities involved. It's very often the planner who will advise the community to do this. ■

*This interview has been edited and condensed.*

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

*Bill Fulton's Book On Economic Development*



# legal digest

## New General Plan Trumps Old Specific Plan, Cal Supremes Rule

BY WILLIAM FULTON

In an important new decision, the California Supreme Court has ruled that a new general plan trumps an old specific plan in determining a property's development potential. The Supreme Court's ruling overturned a Court of Appeal decision and affirmed a successful citizen referendum reversing the Orange City Council's decision to permit 39 houses on 51 acres on a golf course site in Orange Park Acres.

The case turned on the question of whether Milan Rei, the developer, needed an amendment to Orange's general plan, which designated the property open space, in order to build the project or could instead rely on Orange Park Acres' 1973 specific plan, which appeared to permit low-density housing on the site if the golf course was no longer feasible.

"The main question before us is whether the 1973 resolution is part of the City's current general plan," wrote Justice Goodwin Liu for a unanimous court. "The City frames its approval of Milan's development application and reliance on the 1973 resolution as an exercise of its legislative discretion to which we owe deference.

"But deference has limits," he added. "In light of the contents of

the City's 2010 General Plan, no reasonable person could interpret that plan to include the 1973 resolution. Because we conclude that the City abused its discretion in interpreting the 2010 General Plan to permit residential development on the Property, we reverse the Court of Appeal's judgment upholding the City's approval of the Project."

The city had originally agreed that a general plan was necessary – and the Orange City Council adopted such an amendment in 2011. After Orange Park Acres neighbors began circulating a referendum petition, the city – at the suggestion of the developer – changed its interpretation and concluded that because the 1973 specific plan permitted low-density development a general plan amendment was not necessary after all.

The case highlights the difficulty of reconciling a city's current planning policies with the musty plans of the past – especially when changes are proposed to longstanding land uses in an existing development that was built long ago.

In 2006, Milan purchased the former Ridgeline Country Club property in Orange Park Acres – a

project originally governed by a specific plan approved by the City of Orange in 1973. In 1977, the Orange City Council directed that the Orange Park Acres Specific Plan be amended to permit low-density residential on the country club property (and for the word "Specific" to be dropped from the plan's title). However, the city never actually made these changes.

In 2007, Milan applied for a change in the general plan designation and zoning for the golf course property. Two years later, after reviewing a 1973 resolution unearthed by Milan's lawyer, the city attorney concluded that the Specific Plan is part of the city's general plan; that it permitted low-density residential development; and that it was inconsistent with the general plan. However, the city attorney downplayed the inconsistency.

However, in 2010, Orange adopted a new general plan, which retained the open space designation on the Ridgeline property. In 2011, in order to resolve the inconsistency and move Milan's project forward, the Orange City Council approved a general plan amendment to permit low-density residential on the Ridgeline property.

Three days after the city council

# >>> New General Plan Trumps Old Specific Plan, Cal Supremes Rule

– CONTINUED FROM PAGE 9

action, neighboring residents began circulating a referendum petition to overturn the general plan amendment. Subsequently, Milan’s attorney suggested an “elegant” solution: The city’s failure to implement earlier resolutions directing that the low-density residential be incorporated into the Orange Park Acres Specific Plan – and, hence, into the city’s 2010 general plan -- was a “clerical” error. Therefore, a general plan amendment was not necessary and the referendum was moot.

Milan also persuaded a trial judge to order the city to remove the referendum from the ballot. The Court of Appeal subsequently overturned the trial judge’s ruling and placed the referendum on the ballot again. In 2012, voters overturned the general plan amendment by 56%-44%.

In 2013, the Court of Appeal ruled that, in spite of the referendum’s approval, the Milan project court go forward. As Liu summarized in the Supreme Court ruling: “The Court of Appeal identified ‘contradictions and ambiguities that call into question the possibility of definitively determining the land use designation of the Property in the general plan,’ including ‘ambiguity in the land use classification of the Property’ and ‘ambiguity in [the City’s] planning documents.’ But the court found that this uncertainty counseled in favor of deferring to the City Council’s judgment.”

**“In light of the contents of the City’s 2010 General Plan, no reasonable person could interpret that plan to include the 1973 resolution,” Justice Liu wrote. “Because we conclude that the City abused its discretion in interpreting the 2010 General Plan to permit residential development on the Property, we reverse the Court of Appeal’s judgment upholding the City’s approval of the Project.”**

In assessing the situation, Liu wrote that “the relevant land use designation for the Property is not the general plan designation from 1973, but rather the designation in effect in 2012 after the voters rejected the City’s general plan amendment.” He concluded that, essentially, the 2010 General Plan means what it says: That the Ridgeline property is designated for open space and nothing else.

“No consistency between the 2010

General Plan and the Project can be found,” he wrote. “The City does not point to any countervailing policy consideration from the General Plan that the Ridgeline Project furthers, nor does the City contend that it was trying to balance various competing interests in its consistency finding.”

He added: “The City could have vested an amended version of the OPA Plan with general plan authority by adopting resolution No. PC-85-73 as a separate document that was incorporated into the 2010 General Plan. The City could have decided to conduct its general planning piece by piece, accumulating a general plan over time. But that was not what the City did, and on this point, the 2010 General Plan is unambiguous.” ■

**The Case:**

*Orange Citizens for Parks & Recreation v. Superior Court*, S212800 (December 15, 2016)

**The Lawyers:**

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## >>> Top Stories of 2016 on CP&DR

– CONTINUED FROM PAGE 1

### News

- [Land Use Ballot Measure Results, Nov. 2016](#)
- [Governor’s Housing Proposal Faces Stiff Opposition](#)
- [Housing Bills Dominate 2016 Legislative Slate](#)
- [Oakland Seeks Social Equity, Efficient Spending from New Department of Transportation](#)
- [California Voters Face Bumper Crop of Land Use Ballot Measures](#)
- [Second-Generation SCSs Focus on Incremental Change](#)
- [Ballot Initiative Takes Aim at Planning in Los Angeles](#)
- [2016 Legislative Roundup: Brown Embraces Housing Bills Large and Small](#)
- [Massive Development Sparks Border War between San Jose, Santa Clara](#)
- [Revamp of Fresno Plans, Zoning Code Aims to Create “Next Great American Downtown”](#)

### Commentary & Analysis

- [Time To Tackle California’s Housing Problem](#)
- [A Philadelphia Solution to California’s Housing Woes](#)
- [L.A. Metro’s Prop. 13-Driven Christmas Tree](#)

[Tom Hayden Is Gone, But Will the Westside Make It to the 21st Century?](#)

[Calexit in Reverse](#)

[An Old Slow-Growth Reshapes Himself As Trumpian](#)

[Insight: Bifurcated California](#)

[Insight: New Climate Bills Likely to Put Pressures on SCSs](#)

[Fetishizing Families: Review of ‘The Human City’](#)

[Urban Laboratories of Democracy](#)

### Court Cases & Legal Analysis

- [Court Shoots Down Urban Decay CEQA Argument](#)
- [General Plan Language Matters](#)
- [Inclusionary Housing Powers Reaffirmed By New Court Ruling](#)
- [General Plan Policy Not Sufficient For Insignificance](#)
- [SCS Doesn’t Need To Take State Mandates Into Account](#)
- [Sepastopol Developer Wins \\$2.855 Million Judgment](#)
- [Coastal Act Trumps Density Bonus Act](#) ■



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## >>> Dispute over Gas Station Erupts into Legal Battle in Sacramento

– CONTINUED FROM PAGE 1

the retail development's anchor tenant, a Safeway supermarket. The Sacramento Planning Commission approved the pumps' conditional use permit on an 8-3 vote in June 2015, replete with 86 conditions of approval to which Petrovich had agreed. That decision was appealed by neighbors and reversed by the City Council, 7-2.

Like a match in a gas tank, the City Council's denial threatened to blow up the entire project. Now, with the retail project on hold, Petrovich is firing back.

In what may be an unprecedented protest against a municipal land use decision, Petrovich, through his company, Petrovich Development Co., is suing the city both to overturn the denial of the CUP and to claim damages, punitive damages, and attorneys fees. The logic of latter suit appeals all the way to the United States Constitution. Petrovich claims that the denial of the CUP — coming on the heels of the approval of the project as a whole, replete with gas pumps — amounts to an improper taking, in violation of the Fifth Amendment. Meanwhile, his suit claims that improper communications among Planning Commission members and between Planning Commission members and City Council members deprived him of due process rights under the 14th Amendment.

For what seems like a technicality and a tiny part of a 230,000 –square-foot retail project, the stakes are high. On the one hand, Petrovich stands to lose a crucial anchor tenant if Safeway cannot sell gas. On the other hand, the city is facing \$20 million in damages. Petrovich arrived at that figure by estimating his carrying cost for the would-be Safeway parcel plus the carrying costs of adjacent parcels that await activation.

Petrovich derives his motivation not only from financial interest but also, he says, from a sense of principle.

“My dad was a D-Day lander -- Bronze Star. He was a master sergeant” said Petrovich. “I was raised to take no (flack) from anybody and to fight for my own rights.”

Petrovich has been involved with numerous lawsuits over the years as both a plaintiff and defendant.

Petrovich has choice words for certain Sacramento public officials, including Mayor Kevin Johnson and Council Member Jay Schenirer, who represents the south Sacramento district that includes Curtis Park. He said that he is uniquely situated to take on what he describes as a combination of incumbency and borderline corruption in city government. Some developers with pending projects in the city might be wary of making enemies, while other developers might have financial partners who are wary of litigation.

By contrast, Petrovich, though he is based in Sacramento, has no other major business in the city, and he has the independence and financial wherewithal to fight City Hall.

“No one has ever taken them to task like this,” said Petrovich. “Everybody is used to having people just go away.”

The court is expected to rule on some major discovery issues January 6 and the full hearing will take place sometime in March.

(Meanwhile, the California Supreme Court recently heard *City of San Jose et al. v. Superior Court of Santa Clara County*, which concerns how the Public Records Act bears on communications between public officials via private communication devices and accounts. Petrovich's claims of collusion rest in part on the alleged existence of text messages between Planning Commission members and City Council Members.)

Petrovich's case rests on the claim that the Planning Commission made a legislative decision when in fact the circumstances required a ministerial decision. The Planning Commission was entitled only to determine whether the project complied or not. Instead, Petrovich claims, the commission overstepped its bounds to deny the project despite apparent compliance. It effectively re-zoned the parcel to Petrovich's detriment, he says.

“It's an allowed use,” said Petrovich. “It's just how many conditions you put on it.”

Planning Commissioner Alan LoFaso, who was vice chair

– CONTINUED ON PAGE 13

## >>> Dispute over Gas Station Erupts into Legal Battle in Sacramento

— CONTINUED FROM PAGE 12

at the time of the hearing, argues that the commission's considers were not quite so simple. The gas pumps presented commissioners with numerous concerns, even with the concessions. In particular, LoFaso said he was "surprised" that the stationary emissions source analysis didn't automatically trigger the city's general policy against gas stations within 300 feet of residences.

"I was very concerned about all levels of the project, but my 'no' vote was not based on emissions, zoning, or the general plan, but related to the site plan issues," said LoFaso. LoFaso also said he was particularly concerned that the placement of the gas pumps would make the retail center less friendly to pedestrians and cyclists, contrary to the vision for the project.

As for the City Council's discretion, LoFaso said that it was acting within its bounds.

"The council as 'law giver' and policy maker has more discretion to view its policies in a new or different manner," said LoFaso.

Petrovich counters that the council members who voted against the CUP were essentially doing the bidding of project opponents in the Sierra Curtis Neighborhood Association (SCNA), who, Petrovich claims had the ear of Schenirer. SCNA members claim that their concerns were legitimate and that the project violated the project's approved plan and environmental regulations. Petrovich is, they imply, being cavalier about his characterization of the city's ministerial discretion.

"A 16-nozzle fuel center is completely out of character from what the developer submitted in his original plan, which was for a walkable, bikeable infill project," said SCNA President Eric Johnson. "It also ran counter to the California Air Resources Board's guidelines for fuel center locations, as outlined in their Air Quality and Land Use Handbook."

"We would like to see the developer fulfill the vision he original presented: green space, communal areas, and a development that encourages walking, biking and a sense of community," added Johnson.

Schenirer's office declined to comment for this article, citing ongoing litigation.

Petrovich says that SCNA arrive at their positions more from anti-development dogma than genuine concern for the city.

"We're talking about people that are so left (wing), all-important, and elitist...they've decided it's their right to say no to something that isn't green," said Petrovich.

As self-avowed fiscal conservative, Petrovich said he was nonetheless proud to ensure that the Safeway would hire all of its workers from nearby low-income neighborhoods. He chides Curtis Park residents and Schenirer for spiting his efforts to promote social justice.

"I'm conservative, but I developed this with a social conscience," said Petrovich.

Petrovich also highlighted his commitment to environmental justice: whereas there are 10 gas stations in nearby low-income neighborhoods, wealthier Curtis Park has none. He implied that the community should be willing to share in the environmental impacts. By contrast, Petrovich's opponents see nothing altruistic in his legal aggressiveness.

"(City Council) saw through the developer's cynical attempts to pit one neighborhood against the other," said Johnson. "The lawsuit is an attempt to intimidate private citizens who exercised their right to petition the government," said Johnson. "It is frustrating that the city of Sacramento is forced to devote its scarce resources to defending against the charges."

With that said, \$20 million — plus attorneys fees — are at stake. Petrovich said that the city's most prudent move would be to pay him fairly for damages and drop the case.

"What they will do is take this thing to the end, lose, and appeal it," said Petrovich. "I'm not going to stop. If I have to got out and get a ballot measure that say that gas stations are allowed in a former brownfield in a grocery store, I will." ■

## California's Nastiest Urban-Rural Rivalry

This week there was a new development in an old story that I thought had been dead and, well, buried a long time ago.

Needless to say, the City of Los Angeles generates its fair share of sewage. I don't think any of us want to imagine just how much that is. The people who least want to imagine it are the folks of Kern County. That's where, for many years, the Los Angeles Department of Sanitation has shipped treated "biosolids" from its Hyperion Swage Treatment Plant. The department owns a euphemistically named Green Acres Farms, where it puts 450,000 annual tons of waste to use as fertilizer.

In 2006 some of those Kern folks decided that these shipments were both insulting and unhealthy. They launched a countywide voter initiative to ban the shipments. The campaign used slogans such as "Measure E will stop LA from dumping on Kern," and "We got the bully next door flinging garbage over his fence into our yard." Sensationalist headlines have read, "L.A. Dumps 500 Tons of Human Excrement on to Kern County Daily."

The ban passed.

Meanwhile, L.A. kept on flushing and kept on trucking. The city filed lawsuits to oppose the ban and was allowed to maintain its practice. Last week, a superior court judge struck down the ban, possibly for good. We'll see whether the anti-sludge forces turn up their noses yet again or whether they learn to live with indignity.

(Meanwhile, a similar protest has arisen over the arrival of high-speed rail. Whereas Fresno has largely embraced the train, Bakersfield is ground zero for protests over eminent domain takings. Some aren't even sure that they

want a station.)

This spat has long fascinated me. It is certainly the most pungent example of intra-state rivalry in California, and possibly the most petty. It's a rivalry that's become even more poignant in the wake of Donald Trump's presidential victory, which put the nationwide divide between urban and rural areas on full display.

**"For every bale of cotton, head of lettuce, and handful of almonds that comes out of the Kern soil, there's someone in Los Angeles ready to buy it at Whole Foods. Solid waste is part of the cycle of life. Farming itself is hardly a pristine industry."**

As the Trump vote suggests, rural areas revile urban areas just as much as urban areas ignore rural areas. The implication is that cities somehow exploit rural areas and that rural areas are irrelevant to cities. Of course, neither case is true — but rivalries are not always rational. Kern County voters took personal offense. Los Angeles became a menacing invader that literally craps on rural folk. Unfortunately, these stereotypes belie the benefits that both places derive from each other.

Whereas the anti-sludge campaign implied that every Kern resident lives within a whiff of L.A.'s shipments, that's not exactly the case. Kern County is 8,100 square miles. It's one of the biggest counties in the country. Green Acres Farm is 4,600 acres, in a nondescript quadrant between Taft, Buttonwillow, Mettler, and Bakersfield.

It's the sanitation equivalent of the Princess and the Pea.

In reality, there's no reason to think that Los Angeles' trash isn't Kern County's treasure. All that manure isn't going to tend to itself.

In fact, nasty as it sounds, Green Acres is a perfect symbol of the symbiosis between rural and urban areas. For every bale of cotton, head of lettuce, and handful of almonds that comes out of the Kern soil, there's someone in Los Angeles ready to buy it at Whole Foods. Solid waste is part of the

## California's Nastiest Urban-Rural Rivalry

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cycle of life. Farming itself is hardly a pristine industry.

And, indeed, the relationship between the counties is much more complex than trees and turds. Los Angeles has, by some measure, sending entire people to Kern County for decades. Places like Bakersfield, which have always been skeptical of dense urbanism (and, incidentally, supportive of property rights), have become bedroom communities for places like Los Angeles, thanks in part to planning regulations that push development out further and further from center cities (that trend is even more acute in communes like Tracy, farther up the Central Valley). Kern farmers probably don't like competition for their land, but surely everyone else — from the shopkeepers to county supervisors — is glad to have more residents.

In other words, the age-old exchange of material goods for cold, hard cash persists. The odd reversal of Green Acres Farm is but an anomaly in an otherwise healthy, vigorous economy. The lawsuit suggests that the only thing

unhealthy is the relationship between places and the images that we have of each other.

And, in case sewage sludge still makes you cringe, don't forget that Kern County exports something far more disgusting than human waste: oil.

– JOSH STEPHENS | DEC 28, 2016 ■

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