

Bills Seek to Streamline Housing Approvals, Tighten Site Inventories

BY WILLIAM FULTON

Gov. Jerry Brown’s idea of by-right approval of certain affordable housing projects may have gone by the wayside, but the Legislature is teeing up a whole range of possible policy changes that would create more carrots and sticks to local governments in California to allow affordable housing – including one by Assemblymember Richard Bloom, D-Santa Monica, creating a state board that could

override local decisions in certain circumstances. (Bloom has introduced 11 housing bills altogether.)

At the core of the debate is the role that local governments play in creating or preventing housing. “The League of California Cities would say, ‘We don’t produce housing so don’t hold us accountable,’” said Marina Wiant of the California Housing Coalition at the recent Housing

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insight
WILLIAM
FULTON

Would Gorsuch Overturn *Chevron* Ruling?

The U.S. Supreme Court’s newest justice, Neil Gorsuch, is an outdoorsman from Denver who has spent a decade on the 10th U.S. Circuit Court of Appeals. He clearly has an affinity for the outdoors and feels some sense of connection to conservationists. But he’s also a reliable

judicial conservative who has made strong statements opposing the overreach of government agencies and he has often limited the participation of environmental groups in litigation.

So it’s likely that even though he is a friend of the outdoors, Gorsuch won’t be

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New Version of CalEnviroScreen Released

The Office of Environmental Health Hazard Assessment (OEHHA) and California EPA [announced](#) the release of the California Communities Environmental Health Screening Tool: CalEnviroScreen 3.0. The new screening methodology can help identify communities that are disproportionately burdened by multiple sources of pollution. CalEnviroScreen ranks each of the state's 8,000 census tracts using data on 20 indicators related to pollution, environmental quality, and socioeconomic and public health conditions. The goal of the updated tool is to help implement a variety of state programs aimed at reducing pollution and providing healthier environment in the State's most disadvantaged communities. Major changes include more recent data for indicators, two new indicators that reflect health and socioeconomic vulnerability to pollution, improvements in the way some indicators are calculated, additional information on pollution along the California-Mexico border, removal of "children and elderly" age indicator, and change in overall scoring methodology.

Los Angeles Seeks to Accelerate Community Plan Updates

Los Angeles Mayor Eric Garcetti [signed](#) an executive directive that has banned City Planning

Commissions from meeting or communicating privately with real estate developers whose plans they are vetting. Executive Directive 19 is designed to help help L.A. build the transportation infrastructure and affordable housing that voters funded through Measure M and Proposition HHH last fall. The directive reforms the city's planning process by directing the Department of City Planning to develop a specific program and timeline for updating all 35 of the City's Community Plans — a process that will take place within six years. The directive also bans certain types of ex parte communications between developers and government officials. The directive was partially inspired by the debate over Measure S, which was defeated two days prior to the signing of the directive. Yes on S campaign director Jill Stewart said the ban was too limited and that "backroom meetings" could happen before a developer formally files an application.

Trump Budget Threatens California Transit Projects

Several California transit projects are [threatened](#) with cuts in funding according to the Trump administration budget unveiled last week. Projects include Bay Area Caltrain electrification, Los Angeles Downtown Streetcar, Los Angeles

Purple Line Phase 3 Subway, Orange County Streetcar, Sacramento Streetcar, San Bernardino Redlands Rail, San Francisco Transbay Rail Corridor, San Jose BART to San Jose, San Jose El Camino Real BRT, and San Rafael SMART Extension to Larkspur. Sacramento-area transportation officials hope to persuade Congress and the administration to maintain spending for transit and road projects when a final federal budget is approved later this year. The Trump budget proposes a 13 percent cut in transportation spending overall, including funding for roads. However, Sacramento Regional Transit chief Henry Li told the Sacramento Bee that he "suspects the Trump administration's planned but not-yet-unveiled trillion-dollar infrastructure package may include some way to allow projects like the proposed airport light rail line to compete for funding, but probably only if the local agency is innovative in bringing some private funding into the mix."

Tahoe Regional Transportation Plan Seeks to Reduce Car Use

The Tahoe Regional Planning Agency [released](#) the draft 2017 Regional Transportation Plan/Sustainable Communities Strategy, calling it "[Linking Tahoe](#)" (pdf). The plan addresses congestion and environmentally friendly alternatives to the current car-centric approach.

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TRPA wants to prioritize spending on bicycling, walking and transit in the coming decades to allow more seamless around-the-lake bus service. New initiatives considered under the plan include a \$44 million water taxi between north and south shores, \$74 million to realign Highway 50 through South Lake Tahoe and Stateline, and \$44 million to improve car, bicycle, and pedestrian travel through Fanny Bridge area of Tahoe City. The goal is to have free transit throughout the lake Tahoe Basin, with service every 30 minutes, by 2021. Area officials [estimate](#) Tahoe will have access to \$2 billion in federal, state and local transportation funds over the next quarter century.

LAO Report Underscores Shortage of Housing Approvals

The Legislative Analysis Office [released](#) a report, “Do Communities Adequately Plan for Housing?” contending in no uncertain terms that California cities are not planning for or approving enough housing to meet the state’s population demands. The report finds that many communities—particularly coastal—limit construction of new homes, which has driven up costs. Communities’ decisions about housing can limit home building such as their long-term land use plans and implementations through zoning or creating onerous processes for approval of new housing developments. The LAO looked at relationships between overall general plans, housing elements, and Regional Housing Needs Allocations, finding that housing elements fall short of their goals by having zoning rules out of sync with the types of projects

developers would like to construct. Changing this mindset of coastal communities to allow more home development will be difficult. The report echo a series of reports published by the department of Housing and Community Development last year that were also critical of cities’ housing production.

Fresno to Become More Pedestrian-Friendly

The Fresno City Council unanimously [adopted](#) a plan to improve and expand the city’s network of sidewalks, trails and bicycle lanes, and paths. The new Active Transportation Plan envisions the expansion of the city’s 491 miles of bike lanes to nearly 1,440 miles. The plan also sets forth a strategy to identify areas that have no sidewalks, and other improvements for pedestrians. A newly created rubric assigns points to projects based on the following criteria: access and equity (20 points), connectivity (30 points), traffic control, mode shift, and user comfort (35 points), and feasibility and engineering considerations (15 points). The plan is [divided](#) into near-term priorities to be built over the next 5-10 years and long-term needs over the next 30-50 years. To qualify for transportation grants from the state and Fresno County’s Measure C, an adopted plan is required.

SANDAG Board Members Call for Investigation into Flawed Forecasting

Board members of the San Diego Association of Governments are calling for an [independent investigation](#) into the agency’s [flawed forecasting](#) of revenue projections from a tax increase

that it sponsored on the November ballot to pay for transportation investments. The agency reportedly over-estimated revenues — by \$4 billion out of an estimated total of \$18 billion — possibly to make the tax more appealing to voters. When the over-estimation was discovered, it was reportedly withheld from board members. “None of us are suggesting the result of such an examination is a foregone conclusion — it may indeed exonerate SANDAG — but for the public to be well-served an impartial and thorough examination must be conducted,” wrote Poway Mayor Steve Vaus and six other board members, according to Voice of San Diego.

Federal Funding for Caltrain Electrification Threatened

Recently appointed Transportation Secretary Elaine Chao has ordered a [stop](#) payment on the \$647 million grant for electrification of the Caltrain right of way in the Bay Area until a full audit is done on high-speed rail. The move essentially kills the electrification process for the foreseeable future as contracts were set to be issued March 1. The current Caltrain system runs on diesel and is costly to operate and slow. Officials had seen electrification as a way to increase ridership and save money on operating costs. Caltrain has already spent \$150 million on the project but needs the federal funding to move forward. Electrification of Caltrain is also a crucial component of the state’s planned high speed rail system, which will share the Caltrain right of way from San Jose to San Francisco. Withholding of these funds is seen as a significant blow to that project.

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Developer Proposes Thousands of Units, Soccer Stadium for Qualcomm Site

A La Jolla-based investment group, FS Investors, presented the most detailed proposal yet for the redevelopment of the Qualcomm Stadium site to the city. The proposal includes a new river park, commercial development, and a Major League Soccer stadium. Additionally there would be 480 units of on-site affordable housing, 800 units of on-site student housing, and 3,520 units of market rate residential. The group has also planned for \$50 million worth of mitigation to balance the traffic impact. The \$1 billion redevelopment, dubbed “SoccerCity” would either include an MLS stadium with seats for 22,000 or a combined San Diego State Univ. football and soccer stadium with up to 40,000 seats. FS Investors would set aside 15 acres for an NFL

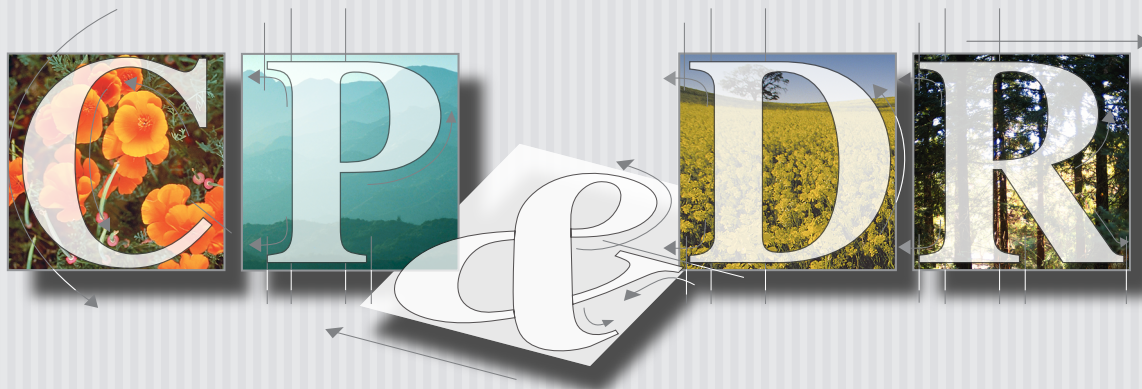
stadium to be built in the next five years if another city’s team wants to relocate and replace the Chargers. The plan will be presented to the City Council soon. Developers will ask to fast-track the process, rather than refer the initiative to voters, in time to meet MLS deadlines for granting new franchises this year. Meanwhile, San Diego developer Doug Manchester has contacted the NFL expressing a desire to build a privately financed 70,000-seat NFL stadium at the Qualcomm Stadium site.

Los Angeles City Planning Announces Incentives for Transit-Oriented Housing

The Los Angeles Department of City Planning released guidelines for its Transit Oriented Communities and Affordable Housing Incentive Program. Mandated by Measure JJJ, an inclusionary housing measure passed in November, the program is designed to promote

the development of housing within a half-mile radius of major transit stops. The guidelines grant exemption from certain code restrictions in exchange for providing on-site affordable housing provided that the meet certain criteria, including the provision of affordable housing. The program is tiered so that developments closest to transit stops receive the greatest increases in density, among other potential incentives. The program offers the option of an in-lieu fee for developments that do not include on-site affordable units. The guidelines are adopted at the discretion of the Planning Department — without City Council approval — and a project’s eligibility for incentives will be determined by the Planning Department and will not need further approval. The program will apply to nearly 100 light rail and busway stops in the city. ■

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Has Trump Ordered EPA to Ignore the Supreme Court on Wetlands?

BY WILLIAM FULTON

In an extraordinary action, President Donald Trump has issued [an executive order](#) calling for a reframing of federal wetlands regulation in a way that would in effect overturn a U.S. Supreme Court ruling and include policy considerations that extend far beyond those contained in the text of the Clean Water Act.

Among other things, the executive order calls for the Trump Administration to balance water quality against “minimizing regulatory uncertainty” and instructs federal agencies to interpret the Clean Water Act in a manner consistent with Justice Antonin Scalia’s plurality opinion in the 2006 case [Rapanos v. United States](#).

Scalia’s opinion called for the Clean Water Act to be interpreted narrowly, requiring a federal wetlands permit only if the wetland has a “continuous surface connection” to a “relatively permanent, standing, or continuously flowing” body of water.

But Scalia’s opinion only got four votes. The deciding vote in the *Rapanos* case came from Justice Anthony Kennedy, who said a permit would be required “if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as navigable.”

Ever since *Rapanos*, the Environmental Protection Agency has been flummoxed trying to interpret the case. Ironically, the “Waters of the United States” rule represented [the Obama Administration’s attempt](#) to eliminate the resulting uncertainty. Seeking to slipstream in between the Scalia and Kennedy opinions, the WOTUS rule does appear to bring marshes, peat bogs, vernal pools, and other small and sometimes disconnected wetlands into federal wetlands.

The vernal pool aspect of the rule is especially important in California.

But the Trump executive order essentially instructs federal agencies, including EPA, to ignore Kennedy’s opinion. It also orders agencies to use a balancing test that goes far beyond the Clean Water Act’s language, which was reflected in Kennedy’s opinion.

The first paragraph of the executive order declares his administration’s “policy” on water quality, saying that it is in “the national interest” to keep the nation’s waters “free from pollution,” but also “promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of Congress and the States under the Constitution.”

Such a statement is remarkably far-reaching compared to the typical presidential executive order. [The Clean Water Act itself](#) calls on federal agencies “to restore and maintain the chemical, physical, and biological integrity of the Nation’s

waters” and that discharge of pollutants into “the nation’s waters” be eliminated. It is the definition of “the nation’s waters” that has been subject to constant debate since the Reagan Administration.

Implementation of the new rule [was halted in late 2015 by the Sixth U.S. Circuit Court of Appeals](#), which issued a stay. The litigation was brought by several attorneys general, mostly in the Midwest and Plains states, including Oklahoma’s Scott Pruitt, who is President Trump’s new EPA administrator. The Sixth Circuit [has now halted the litigation temporarily](#) while the U.S. Supreme Court considers another case that poses the question of whether federal district or appellate courts have jurisdiction over Clean Water Act issues. ■

The Trump executive order essentially instructs federal agencies, including EPA, to ignore Kennedy’s opinion. It also orders agencies to use a balancing test that goes far beyond the Clean Water Act’s language, which was reflected in Kennedy’s opinion.

New SGC Program Targets Fresno, Los Angeles

BY JOSH STEPHENS

Typically, the allocation of half of any pot of state funding to a single city would probably generate cries of favoritism. That's even if it could get out of the legislature. That's not the case, though, when the money is dedicated to disadvantaged communities and the city is Fresno.

Last year's Assembly Bill 2722 established the Transformative Climate Communities program. It will allocate \$140 million in "Implementation Grants" for "place-based" programs to promote greenhouse gas reduction, economic prosperity, and public health — in addition to a range of implicit co-benefits. There will be \$1.5 million in planning grants available to ten communities. The program, which is administered by the Strategic Growth Council, applies to the most disadvantaged communities in the state: those ranking in the top five percent according to CalEnviroScreen 2.0.

SCG staff is currently writing a new draft of the scoping guidelines — the Council just concluded a series of public workshops, and public comment closed March 13 — and hopes to launch the program this summer.

Projects in Fresno will receive \$70 million in grants over the lifetime of the program. It has the highest concentration of disadvantaged communities in the state. The City of Los Angeles, which has the highest absolute number of disadvantaged residents, will get \$35 million. The remaining \$35 million will be available to disadvantaged communities throughout the state.

"We're pleased because Fresno has traditionally always been at the bottom of the list of getting resources," said Fresno Spokesperson Mark Standriff. "The possibilities are endless for us, especially for the amount of funds."

The remainder will be available to projects in any other community that meets the CalEnviroScreen threshold.

"The list is not very long," said SGC Executive Director Randall Winston. "You're talking about three or four other cities that have clearly high concentrations of disadvantaged residents."

In all cases, eligibility is just a start. Projects in each community will go through a competitive process to win grants.

Winston describes TCC as a "place-based program," meaning not only that it is limited to certain places but also that each community, and each applicant, will define "transformation" on its own terms.

"As opposed to our other California climate investment programs, where we provide a pretty prescriptive understanding of what we would like to see with the project: vehicle miles traveled, urban greening, planting of trees, funding of electric vehicles," said Winston. "That is not this."

TCC applicants must select six strategies to achieve the goals that support the program objectives. These strategies include: equitable land development, transit access and mobility, urban greening and green infrastructure, decarbonized energy and energy efficiency, water efficiency, robust food systems, land preservation and restoration, materials management, climate resiliency, health and well-being, workforce development and education, and high quality job creation and local economic development.

Winston said that communities will be able to propose their own strategies and combinations of strategies. The program will prescribe quantitative indicators that applicants will have to track, with different indicators for different strategies.

"What we are saying is, all of our suite of climate investments are available as tools to help not just reduce GHG but achieve a whole other host of benefits," said Winston. "Then it is up to the applicant and the community it is up to the community to determine what transformation looks like for them."

With that said, Winston said that the public workshops and other feedback have yielded four critical thresholds for eligibility: 1) projects must not cause displacement of existing residents; 2) they must include long-

>>> New SGC Program Targets Fresno, Los Angeles

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term community engagement; 3) they must leverage TCC funding with funds from other sources; and 4) they must include methods for tracking greenhouse gas reductions.

TCC’s approach contrasts with the approaches most of SGC’s other grant programs, including the Urban Greening program and the highly competitive Affordable Housing and Sustainable Communities program (AHSC), which prescribe specific solutions even though they aim for similar goals as TCC does.

For all the freedom that TCC offers, Winston emphasized that expected benefits must be quantifiable and meet strict performance criteria. The program encourages co-benefits and, unlike AHSC, requires leveraging and integration of combinations of climate-friendly strategies.

Winston emphasized the TCC’s requirements for partnerships and leveraging set it apart from AHSC. SGC expects applicants to be teams rather than individual developers or governmental entities.

Disadvantaged communities’ dire need for funds, especially in the absence of tax-increment financing that redevelopment agencies used to use, means that there’s a certain irony to the TCC application process: many communities may not have the capacity to apply for the

grants and demonstrate how they will meet such complex criteria.

Winston insisted that the process will be manageable. Like AHSC, it will include a two-step process, with applicants submitting concept proposals and then full applications.

Disadvantaged communities’ dire need for funds, especially in the absence of tax-increment financing that redevelopment agencies used to use, means that there’s a certain irony to the TCC application process: many communities may not have the capacity to apply for the grants and demonstrate how they will meet such complex criteria.

“While we hope that the application process won’t be too difficult, we absolutely expect that defining what transformation looks like in communities where there are histories of inequity and environmental injustice is not an easy thing,” said Winston. He added that the state is committed to assisting communities with the process.

Fresno’s Standoff said that the city will have no trouble identifying eligible projects.

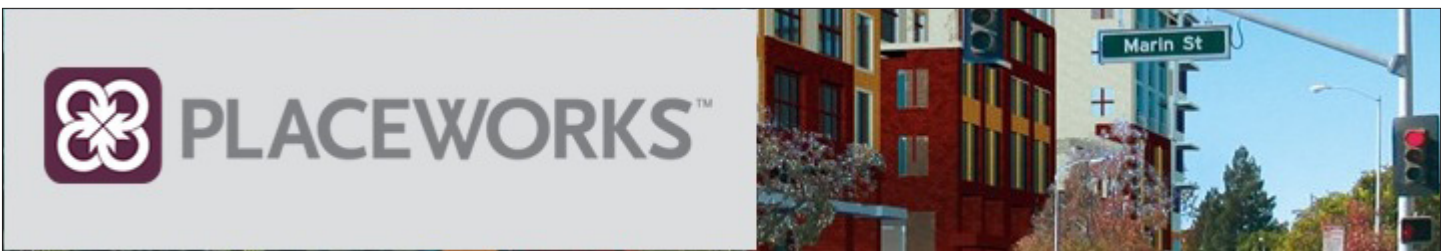
“Whatever the amount, for us, it just goes directly to those projects that we’ve already had, whether they’re currently in progress or have been in the planning stages,” said Standriff. ■

Contacts & Resources

[Transformative Climate Communities Draft Scoping Guidelines](#)

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State May Step In To Fair Housing Debate

BY WILLIAM FULTON

Now that federal government seems likely to pull the plug on the federal [Affirmatively Furthering Fair Housing](#) rule (AFFR), California is considering several countervailing steps, including a state law backstopping the rule.

The AFFR rule – guidance for which was issued by the Department of Housing & Urban Development the day before the Obama Administration ended -- requires many recipients of federal public housing funds to formally assess whether their actions promote fair housing. Though the rulemaking predates the opinion, the AFFR rule will inevitably be used to implement the need to focus on “high opportunity” – i.e., affluent – areas, as called for by the U.S. Supreme Court in *Texas Department Of Housing And Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. __ (2015).

New HUD Secretary Ben Carson appears likely to try to unwind the rule – it was the only housing issue [he ever commented on](#) prior to his appointment – and [a pair of Republican bills in Congress](#) would repeal the rule and, further, prohibit the federal government from collecting data on housing segregation.

California is prepared to strike back, however. AB 686, introduced by Assemblymember Miguel Santiago, D-Los Angeles, would require agencies to “affirmatively further fair housing” in all of their activities – including land-use planning and permitting decisions.”

“Affirmatively furthering fair housing” is defined in the bill as “taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation, promote fair housing choice, and foster inclusive communities free from barriers that restrict access to opportunity-based characteristics protected by this part; and that transform racially and ethnically concentrated areas of poverty into areas of opportunity, while protecting existing residents from displacement.”

Furthermore, at the recent Housing California conference in Sacramento, state officials indicated that they will continue to work to implement the federal rule and also find stronger ways to promote affordable housing in “high opportunity” areas. “We are beginning to crank away and think about where our investment is going and what more we should be doing,” said Ben Metcalf, director of

the California Department of Housing & Community Development.

Both the *Inclusive Communities* ruling and the federal AFFR rule have focused national attention on the question of how affordable housing might be more evenly distributed across all neighborhoods, not concentrated only in low-income neighborhoods. In part this policy direction is the result of research showing that poor children growing up in “high opportunity” areas are likely to do better in life.

Although the issue has generally been partisan, with Democrats in favor and Republicans opposed, some Democrats have struggled with the issue. Many affordable housing developers and their funders have noted that their projects often stabilize housing for families in poor neighborhoods and some Democrats, such as Houston Mayor Sylvester Turner, have expressed similar views to Carson in saying that poor children shouldn’t have to move to affluent neighborhoods to succeed.

The California Tax Credit Allocation Committee is also working on how to work “opportunity” into its formula for low-income housing tax credits. But TCAC has pulled back on a proposed incentive-based rule to provide more points in high opportunity areas to “think about how we might want to approach this in the future,” said Mark Stivers, TCAC’s staff director.

“We are oversubscribed two-to-one,” Stivers said at the Housing California conference. “But we are probably not funding ones that are in higher opportunity areas that ones we are funding.”

Dating back to the era with Phil Angelides was state treasurer, TCAC allocates points for proximity to transit, groceries, health services, and other services. “But we have not focused on quality,” Stivers said. “Being close to a school isn’t the same as being close to a high-quality school, and the state has no determiner of what a high-quality school is.” ■

Sources:

Ben Metcalf, HCD Director, (916) 263-7400

Mark Stivers, TCAC Director, (916) 654-6340

Assemblymember Miguel Santiago, <https://a53.asmdc.org/>

Measure S Goes Down In Flames In Los Angeles

BY WILLIAM FULTON

Voters in the City of Los Angeles resoundingly rejected a ballot measure that would have radically reshaped the city's approach to planning and influenced the city's urban fabric for generations. Billed variously as a measure to slow down "out of control" growth, reform the process of updating community plans, and curbing so-called "pay to play" political favors, Measure S — known originally as the Neighborhood Integrity Initiative — failed by a 69 percent to 31 percent margin, 171,831 to 77,748 votes. Early reports indicate that voter turnout may have hit new lows, possibly as low as 11 percent. This turnout was not unexpected, given an off-year election and no major contested city offices. Measure S opponents feared that low turnout would favor the measure with a disproportionate number of older homeowners.

The measure's most highly publicized and controversial provision was a moratorium on almost all development that does not conform to the city's existing zoning code. This was billed as an effort to curb "spot zoning," especially to accommodate luxury "mega-developments." Opponents argued that the moratorium would have severely hindered the city's ability to approve new housing, including developments with subsidized units for low-income and homeless residents.

The vote may also have been a repudiation of what many considered to be misleading and even unethical tactics on the part of Measure S's supporters. The pro-S campaign made various promises about the measure, saying that it would stop corruption, preserve neighborhood character, prevent evictions, house veterans, curb traffic, and fight back against "greedy" real estate developers. The campaign even falsely claimed support from public figures including Leonardo DiCaprio and Mayor Eric Garcetti.

One email, sent a day before Election Day, attempted to dismiss the city's housing crisis by claiming that there are 213,649 vacant residential units out of 1.4 million total units in Los Angeles. The email cites only "Los Angeles

governments" as the source. It appears that the number of vacant units in fact applies to Los Angeles County, whereas the 1.4 million units applies to the City of Los Angeles. Measure S applied only to the city.

For many, these tactics recalled those of President Donald Trump's campaign, which also relied on misinformation and vague rhetorical bluster. One of the supporters' slogans — "Take Back Your City!" — recalls the populist, parochial appeal of "Make America Great Again." The "yes" coalition repeatedly claimed that unnamed "billionaires" and "Trump's pals" were leading the opposition.

The measure's opponents repeatedly called out these claims as misleading, exaggerated, and regressive. For instance, analyses showed that the provisions of Measure S would have no direct impact on evictions and that the vast majority of evictions in recent years — typically for apartments being covered or renovated, present to the Ellis Act — would not have been prevented by Measure S.

In some ways, Measure S's defeat signals a sense of optimism about the city's future, development and all, that the pro-S campaign lacked.

"When people feel that Los Angeles is on the right track, they are not as open to things that are going to derail it," Mike Shimpoek, campaign manager for the Coalition to Protect L.A. Neighborhoods and Jobs, told the [Los Angeles Times](#). "And this certainly would have derailed a lot of the resurgence that's happening."

Measure S inspired a broad coalition of opponents that included organizations and individuals representing nearly every facet of Los Angeles civic life. Mayor Eric Garcetti, nearly the entire City Council, and many other elected officials officially opposed Measure S. So did many trade unions, public employees unions, and professional organizations, including the American Institute of Architects and the local section of the American Planning Association.

"Tonight Los Angeles can breathe a great sigh of relief,"

>>> Measure S Goes Down in Flames in Los Angeles

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said Gary Toeppen, President & CEO of the Los Angeles Area Chamber of Commerce, in a statement released by No on S coalition. “And tomorrow, the coalition that formed to defeat this dangerous initiative will continue advocating to make Los Angeles better—pushing for updated community plans, transparency in government, and the creation of the housing at all levels that Los Angeles needs to truly thrive.”

Recently established grassroots pro-development groups seized upon Measure S as an issue on which to cut their teeth and establish legitimacy.

“We want to be excited about the win. But ultimately, this doesn’t fix anything,” Shane Phillips, policy director for the advocacy group Abundant Housing L.A, told the L.A. Times. “Beating Measure S just means we don’t make things worse.”

Meanwhile, Measure S was sponsored and promoted by, essentially, a single organization: the Hollywood-based nonprofit AIDS Healthcare Foundation. The organization waded into local land use under the premise of making Los Angeles livable for HIV/AIDS patients and other marginalized groups. The foundation reportedly contributed 99 percent of the roughly \$5 million spend on the Yes on S campaign. Throughout the campaign, opponents questioned the organization’s ethical and legal footing, claiming that advocating for Measure S strayed too far from the organization’s mission and represented a personal crusade by AHF Executive Director Michael Weinstein.

With the measure defeated, members of the city’s land use community are already considering how to act upon the lessons of Measure S and, indeed, to see that some of its hoped-for reforms come to pass, just without the pressure and inflexibility of a citywide ballot measure.

Even Mayor Eric Garcetti (who won re-election yesterday with 81 percent of the votes) has gone on record, via a Sept. 8 letter to Weinstein, as agreeing with many of the concerns raised in Measure S.

The vote may have been a repudiation of what many considered to be misleading and even unethical tactics on the part of Measure S’s supporters.

Many of Measure S’s opponents agree that the city’s development is haphazard, and it is often inequitably distributed and inefficiently located. These groups have pledged to lead efforts to update community plans and promote more sensible development. For its part, the City Council has already made moves to fund Planning Department efforts to accelerate the community plan update process, with as many as 13 updates well underway already.

“These fights aren’t going to stop,” Shane Phillips, policy director for the advocacy group Abundant Housing L.A, told the L.A. Times.. “Figuring out where housing should go — where it’s appropriate and where it’s not appropriate — that’s not going to go away. But it’s going to go from a citywide debate to a community-by-community discussion.”

As for Measure S’s backers, Weinstein reportedly told a crowd of supporters last night, “This is the opening shot... this is the opening gambit.” ■

Resources

[Coalition to Preserve L.A.](#)

[Coalition to Protect L.A. Neighborhoods and Jobs/No on S](#)

Prior CP&DR Coverage

[Ballot Initiative Takes Aim at Planning in Los Angeles](#)

[Coalitions Square Off Over Los Angeles Anti-Growth Measure](#)

Redondo Beach Voters Downsize King Harbor Project

BY JOSH STEPHENS

Los Angeles's Measure S, which was [overwhelmingly rejected](#), was a monumental ballot measure in an otherwise quiet election statewide March 7. In fact, there were more measures on local ballots in Los Angeles County than there were in the rest of the state combined. This is in contrast with a bumper crop of land use measures, plus a raft of marijuana-related measures, that appeared on November 2016 ballots.

The tentative approval of the Measure M, Los Angeles County's quarter-cent sales tax to fund homeless services, continues a statewide trend of funding measures to support and end homelessness. As a tax measure, it requires a two-thirds majority and appears to have a slight edge.

Voters in Redondo Beach went in the opposite direction from their neighbors in Los Angeles by voting to downsize a long-anticipated but hugely controversial \$400 million redevelopment of the city's pier and surroundings. The measure applies to more than just the pier, though, and affects the entire waterfront. There is some debate over whether the measure in fact will apply the pier. It may require Coastal Commission approval, and developer CentralCal may claim that the measure cannot apply retroactively to approvals that have already been granted.

Finally, voters in the City of Los Angeles and in Sonoma County approved regulations on marijuana operations, thus continuing the trend of jurisdictions trying to establish regulatory clarity in the post-Proposition 64 age of recreational marijuana (see prior CP&DR coverage).

Los Angeles County Measure H Sales Tax for Homeless Services and Prevention

To fund mental health, substance abuse treatment, health care, education, job training, rental subsidies, emergency and affordable housing, transportation, outreach, prevention, and supportive services for homeless children, families, foster youth, veterans, battered women, seniors, disabled individuals, and other homeless adults;

shall voters authorize Ordinance No. 2017-0001 to levy a ¼-cent sales tax for ten years, with independent annual audits and citizens' oversight?

Outcome Pending

Yes 379,005 67.44%

No 182,969 32.56%

City of Los Angeles Measure M Marijuana Regulation and Taxation Referred Ordinance

Shall an ordinance providing for enforcement, taxation and regulation of cannabis and/or cannabis products (cannabis) by: 1) providing that the City Council retains the authority to amend existing and adopt new regulations regarding cannabis activity in the City after conducting public hearings regarding various aspects of the commercialization of cannabis and medical cannabis, and giving priority in the processing of applications to existing medical marijuana dispensaries operating in compliance with current City law; 2) authorizing criminal penalties, nuisance abatement, increased civil fines and disconnection of water and power utilities for unauthorized cannabis activities; and 3) establishing new business taxes, effective January 1, 2018, including taxes of \$100 per each \$1,000 of gross receipts from cannabis sales and \$50 per each \$1,000 of gross receipts from medical cannabis sales, \$10 per each \$1,000 of gross receipts from cannabis transportation, testing or research, and \$20 per each \$1,000 of gross receipts from cannabis manufacturing, cultivation or other commercialization of cannabis; be adopted?

Approved

Yes 192,054 79.36%

No 49,964 20.64%

Note: Measure M, which was placed on the ballot by the Los Angeles City Council, had been competing with Measure N, which had been placed on the ballot by a group of marijuana advocates. The sponsors of Measure

>>> Redondo Beach Voters Downsize King Harbor Project

– CONTINUED FROM PAGE 11

N are now supporting Measure M.

Redondo Beach Measure C King Harbor-Pier Development Restrictions

Shall Redondo Beach approve amendments to its Coastal Land Use Plan Implementing Ordinance (partially adopted in 2010 in Measure G) to provide additional analytical procedures and additional limits reducing the amount and type of development in the Coastal Commercial Zones and the Parks, Recreation, and Open Space Zone (Seaside Lagoon), located in the Redondo Beach King Harbor-Pier area?

Approved

Yes 6,102 57.33%
No 4,541 42.67%

Sonoma County Measure A Marijuana Tax

Shall an ordinance be adopted imposing a cannabis business tax in unincorporated Sonoma County on cultivation up to \$38 per square foot (annually adjusted by CPI increases) or 10% on gross receipts, and on other cannabis businesses up to 10% on gross receipts, to fund essential county services such as addressing industry impacts, public safety, fire, health, housing, roads, and environmental protection, with funds staying local and subject to audits, generating undetermined revenue until repealed?

Approved

Yes 56,713 72.43%
No 21,586 27.57%



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legal digest

Napa County Properly Kept Oak Woodlands Initiative Off Ballot, Court Rules

BY WILLIAM FULTON

A proposed Napa County initiative designed to protect oak woodlands should not be placed on the ballot because the attachments did not contain complete information about all the new legal requirements it would impose, the First District Court of Appeal has ruled.

The initiative would create additional buffer zones along streambeds and increase the mitigation required for lost oak woodlands from a 2:1 ratio to a 3:1 ratio. The measure is [intended to address the question](#) of agricultural property owners removing oak trees on hillsides in order to plant wine grapes.

However, the initiative also would have required compliance with the county's best management practices for oak woodlands, which are currently voluntary. The appellate court concluded that the initiative would have the effect of converting these best management practices from voluntary to mandatory, meaning they had to be attached to the initiative petition.

"The measure does not simply cross-reference another provision of law but would enact as binding conditions for permission to remove certain oak trees what are now only recommended measures for voluntary compliance," Justice Stuart Pollack wrote for a unanimous three-judge panel.

Two citizens submitted the 18-page initiative to the county registrar of voters in 2016. The registrar declined to place the measure on the ballot, saying it violated Elections Code Section 9101, which requires an initiative petition to contain the full text of the initiative it proposes to enact. Napa County Superior Court Judge Diane Price ruled in favor of the county and the two citizens then appealed the ruling.

On appeal, the citizens made two basic arguments.

First, relying primarily on *We Care—Santa Paula v. Herrera* (2006) 139 Cal.App.4th 387, the citizens argued that other legal requirements can simply be cross-referenced in an initiative petition. But Pollak noted that the cross-referenced requirements in the *We Care* case were general plan provisions that had already been adopted as mandatory. By contrast, he said, the cross-referenced provisions in this case were voluntary.

"Cross-references are commonly and permissibly used in both initiatives and referendums," Pollak wrote. "Their inclusion presents no problem so long as the reference does not create or impose new legal obligations that are not otherwise specified in the measure." Other initiatives using cross-references "did not purport to

enact cross-referenced provisions by making previously voluntary practices mandatory, as does the initiative before us.

Second, the citizens argued that the voluntary best management practices gave the county planning director sufficient discretion over the oak woodlands permits that the initiative did not constitute the creation of a new legal mandate. But Pollak and his colleagues didn't buy that argument either.

"[D]espite the discretion that the measure would confer on the director to issue a permit and under certain circumstances to waive compliance with the specified practices, the best management practices are stated to be minimum standards with which permit applicants will normally be expected to comply," he wrote. ■

The Case:

Wilson et. al. v. County of Napa, A149153 (February 28, 2017)

The Lawyers:

For Wilson: Rachel Hooper, Shute, Mihaly & Weinberger, hooper@smwlaw.com

For Napa County: Arthur Coon, Miller Starr Regalia, <mailto:arthur.coon@msrlegal.com>

>>> Bills Seek to Streamline Housing Approvals, Tighten Site Inventories

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California conference in Sacramento. “But what we’re talking about in terms of enforcement is mostly, whether a site is actually developable or whether they are denying projects that otherwise meet the criteria.

There’s no question that 2017 is shaping up as the year of housing in Sacramento. By far the two most bills getting the most attention in Sacramento are part of Senate Pro Tem Kevin DeLeon’s “infrastructure package”: SB 2 (Atkins), which would create a \$300 million permanent source of funding for affordable housing by creating a \$75 recording fee on real estate transactions, and SB 3 (Bell), a \$3 billion housing bond that would go on the 2018 ballot. Brown is receptive to the first bill but hostile to the second because it would affect the state general fund.

But there are more than 100 bills on housing floating around Sacramento right now and a lot of them would either induce or pressure local governments to allow more housing generally and affordable housing in particular. Several bills would seek to overturn or mitigate the effect of recent court decisions. Here’s a rundown by topic:

Tightening Up Housing Element Site Lists

The list of sites contained in every local government’s Housing Element is supposed to be one of the keys to increasing housing supply. But state officials are concerned that the housing element lists aren’t “real” and include many sites that aren’t really in play or won’t become available anytime soon. Both Senator Nancy Skinner of Berkeley and Assemblymember Evan Low of Campbell have bills in the hopper that would try to tighten up the lists.

“How do we make sure the housing element process from start to finish is a real process and not a paper one,” commented Brian Augusta of California Rural Legal Assistance at the Housing California conference. “Are these real sites? Are they capable of being developed?”

SB 469, Skinner’s bill, would simply prohibit a local government’s list of sites from providing less housing than is called for in the housing element. It would also require written findings if a local government approves a project below the capacity called for in the housing element.

AB 1397, Low’s bill, would require parcels on the site list to have sufficient infrastructure or be included in a mandatory plan to develop that infrastructure within three years.

Streamlining Infill Permit Processing

SB 35 (Weiner) is the big by-right bill. The bill would require by-right approval of multifamily and accessory dwelling projects in urban infill locations if the jurisdiction is falling far short of its regional housing targets. However, the bill requires the project to be built with prevailing wage – a condition that might discourage developers from pursuing such projects.

AB 73 (Chiu) would allow “zoning incentive payments” from the state to local governments that create “housing sustainability districts” that permit residential development by right. The districts would have to meet a variety of criteria, including a minimum of eight units per acre for single-family development and 20 units per year for multi-family development as well as exemption from any moratoria imposed in the city. Payment to cities in exchange for

There’s no question that 2017 is shaping up as the year of housing in Sacramento. There are more than 100 bills on housing floating around Sacramento right now.

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>>> Bills Seek to Streamline Housing Approvals, Tighten Site Inventories

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housing production [has been successful in the past](#).

SB 540 (Roth) would similarly create “workforce housing opportunity zones” that would form the basis of a specific plan that would have environmental work done up-front and then permit residential development by-right.

AB 30 (Caballero) would specifically authorize local governments to create an infill specific plan that would become an overlay zone with by-right development, but only in “underperforming” infill locations.

State Override of Local Affordable Housing Denials

Undoubtedly the most controversial of the housing bills will be **AB 1585** (Bloom), which would adopt Massachusetts’s “Chapter 40B” system of permitting state overrides of local decisions on affordable housing. The Bloom bill would create an “affordable housing zoning board” in every local jurisdiction (with planning commissioners serving ex-officio) and a housing appeals board at HCD that would rule on appeals when affordable projects are denied. The affordable housing zoning board would be alternative process that developers could choose to move through rather than the conventional project approval process.

Inclusionary Housing

Two bills would codify the ability of local governments to

adopt inclusionary housing ordinances requiring residential developers to set aside a certain percentage of their units for affordable housing.

The issue has been contentious ever since 2009, when [a court struck down](#) Los Angeles’s inclusionary ordinance. In 2013, Gov. Jerry Brown vetoed an override, saying he wanted to see how a subsequent California Supreme Court ruling was decided. In 2015, the Supreme Court [ruled in favor of inclusionary housing](#).

AB 1505 (Bloom) is the favored vehicle at the moment, though **SB 277** (Bradford) also deals with the same topic.

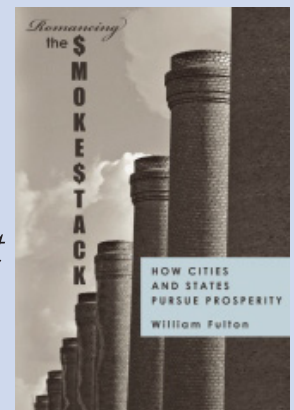
Workaround Around the Tuolomne Tactic

Finally, one bill would create a workaround around the so-called Tuolomne Tactic, the practice of adopting a voter initiative prior to an actual vote in order to end-run the California Environmental Quality Act review process. The California Supreme Court [approved the tactic](#) in 2015, thus allowing developers to slipstream between election officials’ option of approving an initiative and court rulings saying initiatives are exempt from CEQA.

AB 890 is sponsored by Assemblymember Jose Medina, whose district includes Moreno Valley. Moreno Valley [used the Tuolomne Tactic](#) to approve a 40-million-square-foot logistics district. ■

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

Bill Fulton’s Book On Economic Development



>>> Would Gorsuch Overturn *Chevron* Ruling?

– CONTINUED FROM PAGE 1

a friend of environmental and land use regulation. That could make it more difficult for government agencies in California and elsewhere to assert strong regulatory control over private landowners.

Since he was nominated, most of the publicity around his environmental philosophy has focused, his view of expansive government regulation as it was upheld in the seminal case of *Chevron v. NRDC*, 437 U.S. 867 (1984).

Chevron stands for the proposition that courts must give considerable deference to administrative agencies if Congress’s legislative direction is not clear. In the majority opinion, Justice John Paul Stevens – a former city attorney who often took the government’s side in these types of cases – wrote: “If ... the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute . . . Rather ... the question for the court is whether the agency’s answer is based on a permissible construction of the statute.”

In other words, given the choice between an activist regulatory agency and an activist court, Stevens ruled that the activist regulatory agency wins. This case is so important that judicial deference to a regulatory agency is now known as *Chevron* deference.

Gorsuch took *Chevron* on directly in a concurring opinion last summer in *Gutierrez-Brizuela v. Lynch*, an immigration case. He called *Chevron* “the elephant in the room” and said

both that ruling and succeeding rules that rely on it “permit executive bureaucracies to swallow huge amounts of core judicial and legislative power and concentrate federal power in a way that seems more than a little difficult to square with the Constitution of the framers’ design.” He said that, thanks to *Chevron*, “legislative ambiguity represents a license to executive agencies to render authoritative judgments about what a statute means.” He concluded by saying: “[W]hatever the *agency* may be doing under *Chevron*, the problem remains that the *courts* are not fulfilling their duty to interpret the law and declare invalid agency actions inconsistent with those cases and controversies that come before them.”

In other words, Gorsuch would overturn *Chevron* and return the power to interpret ambiguous federal laws to the courts, rather than giving deference to the agencies. His opinion last August was considered so significant that the *Washington Post* [wrote an article about it](#), even though it was just a concurring opinion in an appellate ruling.

Ironically, the key figure in the *Chevron* case was Gorsuch’s own mother, Anne Gorsuch, who was President Reagan’s controversial Environmental Protection Administrator, and the case involved not aggressive regulation to protect the environment but aggressive regulation to benefit industry. The Natural Resources Defense Council challenged the Anne Gorsuch’s decision that, under the Clean Air Act, each new individual component of a power plant did not have to

Gorsuch would overturn *Chevron* and return the power to interpret ambiguous federal laws to the courts, rather than giving deference to the agencies. Ironically, the key figure in the *Chevron* case was Gorsuch’s own mother, Anne Gorsuch, who was President Reagan’s controversial Environmental Protection Administrator.

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>>> Would Gorsuch Overturn *Chevron* Ruling?

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meet federal air quality standards so long as the entire plant met the standard. This ruling was part of a broader Reagan-era effort to give polluters more flexibility under the Clean Air Act. These efforts led the way for the various pollution credit trading systems now in place, including California’s cap-and-trade system, which is opposed by industry.

You can see how Gorsuch’s philosophy about *Chevron* could affect any number of pending regulatory controversies affecting land use. Take, for example, the so-called [WOTUS rule](#) – the recent Obama-era EPA regulation designed to clarify what constitutes the “waters of the United States” that are subject to regulation under the Clean Water Act. The rule has been [stayed by the Sixth Circuit](#) and the Trump Administration [has vowed to repeal it](#), especially since the new EPA Administrator, Scott Pruitt, was one of those who sued the rule when he was the attorney general of Oklahoma.

Let’s imagine that the WOTUS litigation goes to the Supreme Court. The rule was put into place specifically because the Clean Water Act is unclear as to what constitutes Waters of the United States, which had led to conflicting appellate court rulings. The court might split 4-4 with Gorsuch the deciding vote. It seems probable that Gorsuch would strike the new rule down and write an opinion that puts pressure on Congress – currently controlled by Republicans – to amend the law to create clarity.

After all, in his concurring opinion in [Gutierrez-Brizuela v. Lynch](#), Gorsuch wrote: “When the political branches disagree with a judicial interpretation of existing law, the

Constitution prescribes the appropriate remedial process. It’s called legislation. Admittedly, the legislative process can be an arduous one. But that’s no bug in the constitutional design: it is the very point of the design.

Of course, as the *Chevron* case proved with Gorsuch’s own mother, this judicial philosophy does not automatically benefit the environmentalists. *Chevron* upheld a regulation that environmentalists believed harmed the environment rather than protected it – a regulation that, were it before the Supreme Court today, Gorsuch would presumably strike down.

Indeed, such a situation may well occur under the Trump Administration. EPA Administrator Pruitt is a zealous opponent of strong environmental regulation and may well seek to replace the WOTUS rule – or some other rule – with regulations that push the envelope in the other direction. A Trump/Pruitt WOTUS rule may, for example, define the Waters of the United States very narrowly – which would still involve an administrative agency using its rulemaking power to resolve an ambiguity in federal law. In that case, no matter where the other members of the Supreme Court go, Gorsuch might still vote against the EPA and argue that the ambiguity should be resolved by Congress instead.

So, Gorsuch’s ascension to the Supreme Court isn’t likely to be good news for environmentalists. But it *is* likely to be good news for those who value judicial consistency over judicial partisanship. Gorsuch seems likely to gore the ox on both sides of the aisle. ■



guide to
CALIFORNIA PLANNING

4th
edition

William Fulton
Paul Shigley

Challenge Of Vision Zero Looms Large in Los Angeles

The sun was still 20 minutes from rising when he crossed Broadway south of downtown Los Angeles early one February morning. The police offered few details about what happened next. The 69-year old, who went unidentified in news reports, was struck and killed by a motorist who fled the scene.

There area where he was walking, part of a six-mile stretch of Broadway that runs between Adams and Century Boulevards, is among the most dangerous in Los Angeles for pedestrians and bicyclists. In fact, according to the Los Angeles Department of Transportation, just 6 percent of the city's streets — including that six-mile stretch — account for 65 percent of deaths and serious injuries for pedestrians involved in traffic collisions.

And, to be clear, these incidents are indeed “collisions,” not “accidents,” said Nat Gale from LADOT. Whether through engineering, enforcement or education, he said, “they are preventable tragedies.”

That's the idea behind the city's [Vision Zero](#) program. Borrowed from Sweden, the strategy has the ambitious goal of eliminating all traffic deaths and severe injuries and has been adopted in roughly two dozen cities, according to the national [Vision Zero Network](#). For years, streets were designed with the goal of moving as many cars through as quickly as possible. (See prior CP&DR [commentary](#) on Vision Zero.)

But as cities look to become increasingly multi-modal, they have to confront the uneven consequences that this logic has had for pedestrians and bicyclists. Though the majority of collisions in Los Angeles — 85 percent — occur between two vehicles, roughly half of all traffic deaths involve people walking or biking.

New York City, Chicago and Los Angeles each have official Vision Zero plans, but many large cities have not

approved a plan. Los Angeles, which released its [action plan](#) in January, is hopeful that it can transform its sprawling, car-focused streets into safe place for everyone, starting with the 6 percent of streets identified by LADOT as the city's [High Injury Network](#).

“Los Angeles is a big city...so 6 percent of our streets is still 450 miles,” added Gale, who is heading the Vision Zero effort for the department. He said the city would focus first on roughly 80 miles of priority corridors.

In addition to reworking dangerous intersections and other engineering changes, cities also look to enforcement and education to reduce traffic deaths. In New York City for example, to combat the spike of collisions during the darker winter rush hour, the city added more lighting to crosswalks. It also stationed more cops at hot spots to catch drivers who sped through crosswalks. During first two months of the effort, “pedestrian deaths dropped to half of what they had been during that stretch the year before,” according to *Governing* magazine.

In Los Angeles, the city has set two goals. It aims to reduce traffic deaths by 20 percent by 2017. By 2025, it wants to eliminate them. The city has already started making changes to its streetscape to achieve those goals, like adding a “scramble crosswalk” at a popular intersection in Hollywood that allows pedestrians to cross from every street corner while car traffic remains stopped. The city has also added curb extensions that effectively restrict the turning space for cars in an intersection, forcing them to reduce their speeds.

Other tools like pedestrian medians in the middle of streets, new signage and striping, dedicated bike lanes and pedestrian intervals that give people crossing the street a head start at traffic lights have all been put to work on the city's streets.

“Los Angeles is a big city... so 6 percent of our streets is still 450 miles,”

Challenge Of Vision Zero Looms Large in Los Angeles

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And Los Angeles has taken a particularly data-driven approach, looking at not only collision data but neighborhood level disparities. By doing that, LADOT found that nearly half of the city's High Injury Network sits inside some of the poorest communities with the worst health outcomes.

“In L.A., as in most cities that have analyzed their data closely, some communities are disproportionately impacted by traffic crashes,” said Leah Shahum, founder and director of the organization Vision Zero Network, “This includes seniors, children, low-income people, people of color, people with disabilities, and those walking and bicycling.”

Gale put it bluntly: “We can prove that where people are dying are in communities already overburdened with other conditions.”

But he said the data also point to the need to tread carefully, particularly around enforcement. “It can't mean that we're criminalizing walking and biking or overburdening them with law enforcement,” said Gale.

Most Vision Zero plans require governments to work simultaneously in very local contexts and at a broader systemic level.

“Traditionally, we have over-emphasized the education

or training of individuals to ‘do the right thing’ with very mixed success,” said Shahum. “Vision Zero holds that, while education and training still have a role to play, this is not as effective as focusing on the systems level changes that will have far greater impacts.” That means both changes to the built environment but also a collaborative approach between city departments, particularly law enforcement, health and transportation, and updated policy.

In Los Angeles, said Shahum, “They have set clear benchmarks with years and measurables and named which agency is responsible, which is important. Not all Vision Zero plans by all communities have done this.”

“In the end,” said Shahum, “Vision Zero acknowledges that people will make mistakes, and there will always be crashes. But, it is the speed that kills. By managing speed effectively, we can prevent the most serious crashes and, hence, fatalities and severe injuries. People can still get where they need to go, of course, but in a Vision Zero community, safety is prioritized over fast speeds.”

A version of this piece originally appeared on the [Kinder Institute/Urban Edge Blog](#)

– LEAH BINKOVITZ | MAR 3, 2017 ■

