

Transit Funding Woes Threaten to Undercut SB 375

State Raid Of Transit Money Takes Some Of The “T” Out Of “TOD.”

BY JOSH STEPHENS

To supporters, the wisdom of Senate Bill 375, the 2008 law that promotes emissions reductions through coordination of transportation and land use, lies in its holistic approach to planning and its kitting together of disparate elements of the urban fabric. But, in light of budget crises at all level of government, one piece that is essential to SB 375's success is rapidly coming off the rails: Money to run buses and trains

If California's commuters are to reduce their dependence on personal autos and thereby reduce the state's aggregate vehicle-miles traveled under SB 375 (Darrell Steinberg – D, Sacramento), they are expected to rely in part on public transit. Transit oriented development – most crudely defined as high-density development with access to high-frequency bus or rail service – is expected to be a key component of the sustainable communities strategies that 18 of the state's largest metropolitan planning organizations will be required to develop in the coming years.

“Transit agencies across the board are aware that for the goals of (SB 375), public transit has to be an important component. It's kind of a truism,” said Jeff Wagner, spokesperson for the California Transit

Association.

The question, however, that planners are facing may be more worthy of Zen masters than of public-sector bureaucrats: How do you do transit-oriented developments if there's no transit?

While transit demand nationwide has hit record highs in recent years, transit agencies been decimated by a combination of higher costs and lower fare revenues that have accompanied the recession of the past three years. Nearly every agency in the state has either cut service or raised fares in what Wagner called “an epidemic statewide of service reductions, fare increases, layoffs.”

The Orange County Transportation Authority, Los Angeles Metro, and San Francisco MTA all face operating deficits in excess of \$100 million. Agencies have eliminated hundreds of thousands of hours of service, and many bus lines have been consolidated or erased from the service map entirely. Commuter rail services such as the Los Angeles area's Metrolink and the Bay Area's Caltrain are no better off. While many agencies are still proceeding with cap-

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Low-Income Development Comes With An Embarrassment of Riches

Dammit, it's not fair! Residents of affordable housing get all the lucky breaks. Just look at all the money they're getting from all directions: local government, the local power company, the feds, the green-building lobby. Case in point: the Casa Dominguez development in East Dominguez Hills, an unincorporated area of south Los Angeles County, even has a child care center and a medical clinic, on site.

How can a conventional home builder compete? Don't try and be reasonable, by pointing out that the market-rate home builders could take advantage of many of the same programs, if they chose to. I'm not in a reasonable mood! I mean, Abode Communities of Los Angeles, the developer of Casa Dominguez, is *not even trying to make a profit*. Where's the level playing field here?

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deals

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Fremont's shuttered NUMMI auto has been purchased by Tesla Motors for \$42 million. Tesla, which is pioneering the manufacture of electric cars, will manufacture its new model S sedan at the 5 million square foot factory. Tesla is purchasing 207 acres, which accounts for just over half the site. Tesla had also been considering sites in Downey and Long Beach.

The remainder of the NUMMI site is still being promoted by the city as a potential stadium for the Oakland A's baseball team. However, the team has indicated that it would prefer to relocate to San Jose. That ambition got a boost recently when the San Jose Planning Commission approved, on a 4-1 vote, a revised environmental impact report for a proposed ballpark. The stadium would seat up to 36,000 but, according to the EIR, would not require the construction of any new parking around the downtown site. The EIR contends that the area already has sufficient parking.

The supervisors of El Dorado County have threatened to file a lawsuit against the City of South Lake Tahoe over what it considers an improper approval of a redevelopment project area. Implementation of Redevelopment Area No. 2 would cost the county between \$4.6 and \$17 million in diverted tax increments over the 45-year lifespan of the area, according to some estimates.

The county further contends that the area does not meet the proper definition of blight. Despite warnings issued by county supervisors and invitations to negotiate rather than face litigation, the city council approved the project area on a 3-1 vote.

Los Angeles Metro CEO Art Leahy has announced hiring of architect and urban planner Martha Welborne to the Los Angeles County Metropolitan Transportation Authority's top planning job. Welborne, a moving force in many forward projects in the Los Angeles region and the nation, will join Metro June 1 as Executive Director of Countywide Planning.

In that capacity, she will be involved with delivery of voter-approved projects funded by Measure R, which provides for roughly \$40 billion in

infrastructure improvements over the next two decades. Many of these projects involve new rail lines or rail extensions that will likely involve transit oriented development and close coordination between developers and Metro. Welborne previously served on the board of Metro's Expo Line Construction Authority and is currently the managing director of the public/private Grand Avenue Committee."

If a proposed development goes forward, the population of the Bay Area city of Brisbane will triple in the coming three decades. Universal Paragon Corp has unveiled a plan to develop 4,500 homes on a 660-acre brownfield site adjacent to the bay. The site is currently zoned for commercial uses. Brisbane officials say they would not rezone the site without voter approval. Brisbane is currently home to 3,600 residents.

Universal Paragon's plan, estimated to cost \$425 million, would include not only housing but also 3 million square feet of commercial and institutional space designed to attract tenants such as biotech firms or a university. The proposed project also has extensive green elements, including a 10-megawatt solar array, a renewable energy research facility, and a light rail and/or Caltrain station.

After nearly a decade of planning, the Port of San Diego and City of Chula Vista have given the go-ahead for the development of the Chula Vista bay front, one of the largest waterfront planned developments in the state and one that promises an economic boost to the city and region. The San Diego Port Commission, the Chula Vista City Council, and the city's Redevelopment Corporation and Planning Commission have certified the environmental impact report for the Chula Vista Bayfront Master Plan and approved requisite amendments to the city's general plan and local coastal program, respectively.

The plan calls for the redevelopment of 556 acres along the community's waterfront that will include a resort and conference center, three smaller hotels, 1,500 residential condominiums,

and a mix of office and commercial uses, as well as parks and other public spaces. The development is projected to generate \$1.3 billion for the regional economy over a 20-year period, including more than \$11.5 million in annual tax revenues.

The port is expected to seek State Lands Commission approval of a critical land exchange with Pacifica Companies this fall. In 2011, the port and city will ask the Coastal Commission to approve amendments to the master plan.

Voters in the City of Redlands will decide on a ballot measure that, if passed, would effectively kill a Walmart proposed in the northern part of the city and ban any other future big-box developments in the city. After the Redlands Good Neighbor Coalition gathered over 5,000 verified signatures, the city council voted to put the Measure O on the June 8 ballot.

Redlands already has one Walmart, but opponents object to additional big-box stores on aesthetic and economic grounds. It would ban stores larger than 100,000 square feet that devote less than 3 percent of their floor space to non-taxable sales (i.e. groceries). According to estimates, the city stands to lose \$17 million in sales tax revenue over 10 years – especially if Walmart opts to build a supercenter in a nearby city – and \$5.7 million in development-related fees.

The San Francisco Port Commission approved an agreement that could bring a massive, multifaceted development to 16 acres adjacent to AT&T Ballpark near downtown San Francisco. The Mission Rock District, which would be developed by a team led by the San Francisco Giants, could include such elements as a 5-acre park, 10 commercial and residential buildings up to 300 feet tall, and several thousand parking spaces. A concert hall or an arena for the Golden State Warriors have also been proposed for the site.

The development agreement between the developers and the Port Commission gives developers six years to secure necessary approvals; the project was originally scheduled to break ground in 2013 but was slowed by the recession. ■



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legal digest

Court Upholds Broad Use Of Housing Funds

Article 34 Permits Joint Development

BY WILLIAM W. ABBOTT

Use of redevelopment funds by a city-formed nonprofit organization to develop school administrative buildings and a housing project with units reserved for low- and very low-income residents was valid and did not require voter approval, the Second District Court of Appeal has ruled.

In reaching its decision, the court had to interpret the various restrictions in redevelopment law as well as Article 34 of the state constitution.

Adopted by Voters in 1950, Article 34 had the effect of requiring voter approval of "low rent housing projects." Over time, the Legislature has codified various interpretations of Article 34, excluding from the voter approval process certain types of affordable projects. On a parallel path, the Legislature has modified redevelopment law to ensure that cities spend a certain amount of their tax increments on affordable housing.

With that as background, the City of Cerritos, its redevelopment agency, the ABC Unified School District, and a nonprofit public benefit corporation formed by the city, entered into a complex financing and development agreement to develop a 247-unit senior housing project. Under that agreement, the school district would lease the site of its administrative facilities to the redevelopment agency. The agency in turn would transfer its lease interest to the nonprofit corporation. The agency would clear the property, guarantee the sublease, and finance the construction of the senior apartments. The agency would invest about \$81 million of redevelopment funds designated for low- and moderate-income housing.

In addition, the city/agency would use about \$18.5 million of low- and moderate-income housing funds to acquire private

property and renovate that property for the district's replacement administrative offices. The various agreements allowed the nonprofit organization and the school district to acquire their respective sites, which in fact transpired.

As a legal insurance policy, the city, agency, and district brought a validation action under Code of Civil Procedure § 860. A validation action essentially seeks a judicial blessing for a government activity. Cerritos Taxpayers Associations (CTA) answered the action and challenged the use of the low- and moderate-income housing funds to develop a non-housing facility (the replacement district offices). Taxpayers also challenged the lack of voter approval under Article 34. The trial court ruled in favor of the agencies. CTA appealed and was joined by the Western Center on Law and Poverty (WCLP).

As to the use of low/mod housing funds for replacement offices, the Second District Court of Appeal concluded the redevelopment statutes were not as narrowly drawn as urged by CTA and WCLP. While the redevelopment law contains limitations (for example, offsite infrastructure funded with low/mod housing money must be a "reasonable and fundamental component of the housing units") the overall statutory scheme is sufficiently broad to allow expenditure on the district administrative buildings as part of a plan to generate the senior housing project. In other words, the court found a nexus between the non-residential investment and the housing project. The non-residential investment supported the legislative purpose of increasing the supply of affordable housing.

The taxpayer group did not fare any better with respect to its Article 34 argument. Of the project's 247 units, 25 units were restricted to households of very low income, and 15 units were restricted to low-income residents. Health and Safety Code §§ 37000-37002 exempt from voter approval projects that are privately owned and which have less

than 49 percent low-income residents. Plaintiffs argued that the project was not privately owned because it would be developed by the city-formed nonprofit public benefit corporation. The court disagreed, finding the corporation was a separate legal entity. That characterization as a separate entity was not lost simply because the nonprofit corporation was formed by the city, the court ruled.

In early Proposition 13 cases (*Rider v. County of San Diego*, (1991) 1 Cal.4th 1, and *Rider v. City of San Diego*, (1998) 18 Cal.4th 1035) courts had frowned on local government's use of alter egos to skirt constitutional restrictions. However, the Second District panel in the Cerritos case declined to follow the alter ego argument.

Cerritos further argued that the project was exempt from the voter-approval requirement because the percentage of low- and very low-income units was too small to trigger Article 34. But the appellate court did not reach that issue, because it was satisfied that the project met the private ownership test.

CTA also argued that the school district failed to follow government code provisions on the disposition of surplus lands, that the redevelopment agency failed to provide supporting information for a resolution authorizing property acquisition with tax increment funds, and that the same people could not legally sit on the City Council, the redevelopment agency board and the nonprofit corporation board. The appellate court rejected all of the contentions. ■

■ The Case:

City of Cerritos v. Cerritos Taxpayers Association, No. B214530, 2010 DJDAR 5923. Filed April 20, 2010.

■ The Lawyers:

For the city: Dan Slater, Rutan & Tucker, (714) 641-5100.

For ABC Unified School District: Constance J. Schwindt, Atkinson, Andelson, Loya, Ruud & Romo, (562) 653-3200.

For Cerritos Taxpayers Association: Timothy Quick, (562) 799-6020.

BALLOT MEASURES

JOSH STEPHENS

Is Santa Clara Ready For Some Football?

San Francisco 49ers ask voters to decide whether \$937 million stadium will benefit Santa Clara.

The San Francisco 49ers of the National Football League are trying to punt themselves out of creaky Candlestick Park and into a shiny new home in Santa Clara. Whether political winds will carry them roughly 35 miles to the south to the City of Santa Clara or whether they'll be blown back to the line of scrimmage now depends on the voters of Santa Clara.

Measure J, otherwise known as the Santa Clara Stadium Taxpayer Protection and Economic Progress Act, was placed on the ballot by a 3-2 city council vote, but it is based on the language of a citizens' initiative brought forth by Santa Clarans for Economic Progress, which is backed by the 49ers. Measure J asks voters to approve a complex deal that would bring a 68,500-seat, \$937 million stadium to a commercial area near Great America theme park, between the 101 and 237 freeways. The stadium would be publicly owned by a joint powers authority consisting of the city and the stadium authority and leased to the team and other tenants.

Several lawsuits are pending, including one filed by the owners of Great America, which contends that the stadium will interfere with business there.

The deal involves \$114 million in contributions from the city's Redevelopment Agency; its utility, Silicon Valley Power; and a hotel tax on eight hotels surrounding the would-be stadium. The tax is part of the ballot measure and is estimated to generate \$35 million over the 40-year lifetime of the deal.

While Measure J stipulates that no general fund monies will be dedicated to the stadium, a public stadium authority will be created to operate the stadium and help finance its construction through the sale of \$330 million in bonds. Those bonds are intended to be financed through naming rights, seat licens-

es (season tickets), and ticket surcharges. Measure J includes a clause indicating that the 49ers would cover any cost overruns.

Supporters say that the city's costs will total only \$79 million while generating \$249 million in local economic activity, \$26 million in local school funding, and \$1 million annually in guaranteed ground rent. Measure J stipulates that none of the city's contributions will come from its general fund or enterprise funds.

"For me, the direct benefits are what convinced me to be supportive of the project as it's been negotiated thus far," said Santa Clara Mayor Patricia M. Mahan. Mahan noted that at a time when the state is raiding local coffers, stadium revenues are "a

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SOURCE: SAN FRANCISCO 49ERS

The fate of a new 68,500-seat stadium for the San Francisco 49ers rests in the hands of Santa Clara voters. It would be located near Great America theme park and tech companies in the city's industrial/commercial district.

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revenue stream that the state can't lay their hands on."

An April poll by the San Jose State University found 52 percent of respondents in favor of a stadium and only 36 percent opposed.

Opponents contend that revenues are based on overly optimistic projections and that the contribution of redevelopment funds and stadium authority bonds still exposes the city to too much risk, even if no general fund monies are used.

"If you read the ballot measure, you will not find any mention of the \$114 million upfront subsidy or the \$330 million Stadium Authority contribution that has to be raised," said Bill Bailey, treasurer of Santa Clara Plays Fair. "The 49ers are leaving us a miserable \$8 million in fixed ground rent over 40 years...it does nowhere near to compensate for our \$67 million in costs."

Moreover, though Mahan said that she believed the stadium would benefit the city regardless of indirect economic activity, Bailey said that estimates of local spending on game days were exaggerated.

"The EIR proves that of the 20,000 vehicle trips, all 20,000 will be made out of the city within two hours," said Bailey. "If the people in those 20,000 vehicles are stuck in a traffic jam on Great America Parkway, they're not thinking in terms of patronizing Santa Clara businesses." Bailey added that the stadium "barely passes muster under California Redeployment Act" and that the traffic it creates will "contribute to blight" rather than alleviate it.

Supporters contend, however, that few parcels could be better suited for a redevelopment project such as a football stadium and that, in fact, such a project has been envisioned for decades. The stadium site is located in the Bayshore North Redevelopment Area.

"I see it as the culmination of all the land use planning that's gone into that area over the last 30 years," said Mahan. "We attracted major businesses, and those in turn attracted other businesses. It has always been planned that we should have a sports venue. That was part of the redevelopment area plan to begin with."

Mahan noted that the stadium is located in the city's industrial area,

which sees tens of thousands of car trips daily to its major Silicon Valley employers.

Though Mahan insists that the city's estimates are based on "very conservative" analyses, if Measure J passes and the stadium does prove to provide a net benefit to the city, it would contradict a long-standing trend in public-private stadium partnerships. Despite the glamour that comes with stadiums, many of those partnerships have proven disastrous for cities.

"No reasonable person reading the economics research on stadiums could possibly believe that a football stadium is an economic boom to a city," said Roger G. Noll, professor emeritus of economics at Stanford and editor of *Sports, Jobs, and Taxes: The Economic Impacts of Sports Teams and Stadiums*. "The general history has been that the estimated benefits...tend to be substantially overstated and the costs substantially understated."

Noll said that benefits are often based on optimistic scenarios such as consistent sell-outs, and he said that lately stadiums have had trouble selling seat licenses and naming rights for their full anticipated amounts. He also said that he is concerned about the stadium authority's \$330 million bond obligations because they essentially obligate the city to promote the team in order to pay off the bond debt.

Mahan, however, said that attracting fans will be the responsibility of the 49ers. "We're not in it to promote the 49ers per se," she said. ■

■ Contacts & Resources:

Official 49ers New Stadium Website: <http://www.49ers.com/stadium/new-stadium.html>.

Santa Clara For Progress Website: <http://scforprogress.com>.

Bill Bailey, Treasurer, Santa Clara Plays Fair, <http://www.santaclaraplaysfair.org>, (877) 703-4300.

Patricia M. Mahan, Mayor, City of Santa Clara, (408) 615-2200.

Official Ballot Text: <http://www.sccgov.org/SCC/docs%2FRegistrar%20of%20Voters%20%28DEP%29%2Fattachments%2FE81%20June%202010%20Primary%2F6-8-10%20List%20of%20Local%20Measures%20%28Final%203-13-10%29.pdf>.

City of Santa Clara Stadium Page: <http://santaclaraca.gov/index.aspx?page=1197>.

Measure D Seeks To Uphold Sanctity Of City's Master Plan.

As residents of one of the nation's oldest master-planned cities, Costa Mesa voters will be asked, essentially, to decide whether the city's planners got it right the first time.

Measure D, billed by its backers as the "Right to Vote Amendment," would update the city's general plan to require all projects seeking a "major amendment of planning policy documents" to not only go through the city's existing approvals process but also receive final approval via a popular vote. The measure is intended, say backers, to provide an extra layer of protection against projects that might be inconsistent with or detrimental to the city's character.

"The uses that were designated were intended to provide an econom-

BALLOT MEASURES

JOSH STEPHENS

Another OC City Considers Vesting Zoning Power In Voters

ically sustaining community....with the right balance of commercial, residential, and open space," said community activist Dale Tyler, who co-authored Measure D. "Absent reasons that are compelling to change that strategy, I think we should maintain it."

Opponents see the measure as a threat to both existing and potential businesses. It would, they say, prevent businesses from expanding their facilities, assembling parcels, or undergoing any major changes without run-

ning into the hassle and expense of sponsoring a ballot measure.

"Measure D is classic ballot-box planning," said Michael Suydam, spokesperson for the South Orange County Chamber of Commerce. "We're opposed because of... the exorbitant cost that would be imposed on Chamber members in Mission

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Viejo who, in order to grow their business....(would have to) potentially fund a campaign to get voter approval of their expansion.”

Measure D is modeled after two other growth control measures approved by Orange County cities: Yorba Linda’s Measure B, which passed in 2006, and Newport Beach’s 10-year-old Greenlight Initiative. “There’s concern among people throughout Orange County that this could be yet another domino that would lead to similar initiatives in other cities,” said Suydam.

But proponents argue that the measure warrants no such worries. Tyler said that the measure was inspired by four proposals that have come forth in the past two decades that, he said, would have been out of place. He said that Measure D would therefore be invoked only rarely, especially because the city is nearly built-out.

“I don’t see businesses over the past 15 years or so wanting to expand and needing to change the zoning to do so,” said Tyler. “I don’t see any possibility that Measure D is even operative for businesses wanting to expand.”

Moreover, Tyler, who described himself as a “critic of ballot-box zoning,” said that voter control simply adds a check to the approvals process.

“All of the practices inherent in the city decision-making process are still complied with, and only at the end, everybody says, this is a great project, we commend it to you voters, please approve it. Only then would it be placed on the ballot,” said Tyler. “It seems to me the only argument for opposing it is if you trust the city council to makes these decisions and you don’t trust yourself.”

Regardless of the actual projects that would invoke Measure D’s voting requirement, Suydam said that, as written, the measure uses

a controversial definition of voting. The text of the measure refers to a “majority vote of the electorate,” which could be interpreted as the entire potential electorate, not just those voters who cast ballots in a given election.

“Whether (the wording is) a mistake or whether it’s intentional, the result is there’s going to be confusion and likely tons of litigation,” said Suydam.

Tyler said that it means nothing of the sort. “I think that’s being confused deliberately,” he said. “It means people who are voting: regular majority wins.”

Regardless of how many people vote, opponents also say that Measure D could end up giving veto power to the state. Suydam said that Measure D could be interpreted such that it cedes planning power to the state because of the clause “Nothing in this ordinance shall be applied to preclude City compliance with housing regulations under State law.” Suydam said that some opponents read that statement as an invitation to the state to impose affordable housing on the city.

“I believe they are misinterpreting that clause,” said Tyler. “The clause simply states that nothing should preclude compliance with state law. That’s almost an obvious statement. There’s no saying that the state can come in and do whatever it wants.”

Ultimately, opponents of Measure D argue that it is simply unnecessary, since none of the four projects that Tyler cited as being troubling ever came to fruition.

“You could argue that the existing process actually did its job,” said Suydam. ■

■ Contacts:

Michael Suydam, South Orange County Chamber of Commerce, (949) 635-5800.

OC Vote: Official Text of Measure D, http://www.ocvote.com/election/pri2010/MV_FT.pdf.

A great many long, hard-fought battles have been waged for the control of high ground, and the one surrounding Pleasanton’s Measure D is no exception.

Measure D asks whether a 51-home development known as Oak Grove may be built on a parcel of 562 acres in the southeastern hills above the city, a Bay Area bedroom community which sits in a valley in inland Alameda County. Measure D was placed on the ballot by the City Council following a long saga of denials, approvals, lawsuits, new ordinances, and community outcry. A yes vote allows the development to go forward per the agreement with the city council; a no vote forces would-be developers to start from scratch.

Landowners have been trying to develop the property since 1992, when landowners Jennifer and Frederick Lin received council approval for a 122-unit housing development and 18-hole golf course. That development was rejected in a 1993 ballot referendum. Since then, a 1996 general plan update provided for up to 98 homes on the property.

In 2007, however, the city council approved, on a 4-1 vote, a development with only 51 homes of up to 9,000 square feet (and no golf

BALLOT MEASURES

JOSH STEPHENS

Pleasanton Asks Voters, What’s In A Ridgeline?

course). That development agreement included the deeding of over 500 acres of open space to the city, which would preserve and maintain it as recreational space in perpetuity. The city was also promised other public benefits, including a one-time \$2 million contribution to the school district, the purchase of new fire-fighting equipment, and funding to maintain the deeded parkland.

“This presents a marvelous opportunity for our community to acquire some beautiful

parkland,” said Mayor Jennifer Hosterman, who supports the project and Measure D.

Soon after the council issued its approval, citizens group Save Pleasanton Hills successfully circulated a petition to put the project to a vote, and the developers sued to keep that measure off the ballot. After two rounds of litigation, the First District Court of Appeals ruled last year that the vote should go forward. The state Supreme Court refused to hear the developers’ appeal, and the city council placed the measure on the ballot on a 3-2 vote.

Meanwhile, in 2008 Pleasanton voters

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approved Measure PP, sponsored by Save Pleasanton Hills, which prohibits development on slopes with more than a 25% grade or within 100 vertical feet of a ridgeline.

Measure D's opponents contend that the proposed development, even though it may comply with the city's 1996 general plan, should have been subject to a hillside ordinance such as the one that Measure PP instituted, all along. Kay Ayala, co-chair of the No On Measure D Committee, contends that a hillside ordinance was mandated by that general plan and that the council was remiss in approving Oak Grove in the absence of such an ordinance.

"They broke the general plan when they approved the project," said Ayala. Hosterman called this contention "absolutely false."

"This city council is still working on all the language we have available to us in order to define what development in the hillsides makes sense to what doesn't make sense," said Hosterman. "We have a number of pieces of language in a number of different documents that speak to ridgeline protection and hillside protection in the city."

The agreement's provision of open space and financial contributions to the city and school district do not sway opponents, according to Ayala, who served on the city council for eight years.

"We're not willing to trade our ridges for open space," said Ayala.

Hosterman, however, contends not only that the city will benefit considerably from the agreement but also that the proposed homes would not in fact impinge on any ridgelines.

"The highest ridgelines stretched across that entire 600 acres are going to be left undeveloped and in their current pristine condition," said Hosterman, who added that the definition of a ridgeline should not include minor rises.

If Measure D fails, the current general plan would allow developers to build up to 96 homes on the property; those homes would have to comply with Measure PP. Hosterman said that defeat of Measure D means that the landowners would be free to go ahead with another, larger development. And she said that Measure D could set a precedent



The Oak Grove EIR includes a Google map depicting the location of the proposed development in the southeastern hills of Pleasanton.

for preserving open space throughout the city.

"If Measure D gets passed, I'll be able to take this development agreement to other two property owners and say, take a look at what we've been able to do," said Hosterman. "If you can match it and set aside some additional acreage, you might get the green light to be able to develop." ■

■ Contacts:

Kay Ayala, Co-Chair, No on Measure D/Save Pleasanton Hills,
<http://www.savepleasantonhills.com>.

Jennifer Hosterman, Mayor of Pleasanton, (925) 931-5001,
<http://www.ci.pleasanton.ca.us/government/council/>.

Passage of Measure C means that any major changes would require voter approval.

Whether or not the state's "fleet reduction" plan to sell 11 properties for an estimated \$2 billion makes the slightest bit of fiscal sense remains to be seen (see *CP&DR Blog* April 29, 2010). As the state wallows in a \$20 billion deficit, the most palpable impacts of the sale may fall someplace other than Sacramento, including Costa Mesa.

BALLOT MEASURES

JOSH STEPHENS

State Liquidation Of Fairgrounds Puts Costa Mesa Voters In Control

Wary of intensive development of the 150-acre site of the Orange County Fairgrounds, residents of the City of Costa Mesa will vote on whether to amend the city's general plan requiring voter approval for any future zoning changes or major developments. The intent of the plan is to ensure that any future, post-sale uses will remain consistent with the site's historical uses.

"City council was looking at the option to ensure that the fair-

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grounds would remain so in the future,” said Costa Mesa Development Services Director Kimberly Brandt. “It pursued the track of amending the general plan land use description of fairgrounds to be more expansive and to better define the uses that the city wants to see there in the long term.”

A yes vote would effectively maintain the property for events, equestrian uses, flea markets, concerts, and the County Fair itself, and it would prevent any major construction on the property. It would also maintain the 8,500-seat Pacific Amphitheater.

Placed on the ballot by the city council, Measure C reaffirms the city’s existing general plan, which currently does not apply to the fairgrounds because they are state-owned. But the property will come under the general plan’s jurisdiction once the state disposes of it.

“Even though we don’t exercise land use control at this point, we do already have designation on the property,” said Brandt. “With the state in the process of selling the property, should a transfer to a private property owner take place, at that time, we would be able to exert our land use authority.”

Expecting to sell the property for between \$96 million and \$180 million, the Department of General Services received seven bids and rejected all of them in March. Outlet mall developer Craig Realty later submitted a bid of \$65.5 million. However, the city has now entered

into exclusive negotiations with Facilities Management West, which has bid \$55 million and has vowed to operate and maintain the property as fairgrounds, in accord with Measure C and the existing general plan. Costa Mesa officials argue that the city benefits from maintaining the status quo at the fairgrounds.

“(Measure C gives an) extra layer of comfort to the community,” said Brandt. “The council is very serious about wanting to preserve the fairgrounds as a community- and county-wide resource.”

As for its value as a statewide resource, Brandt did not comment on whether the potential passage of Measure C would affect the property’s value. She noted that the property has always been zoned, under the city’s general plan, as fairgrounds but noted that the state’s request for proposals includes a clause that allows the state access to a share of the profits that might stem from a change of use.

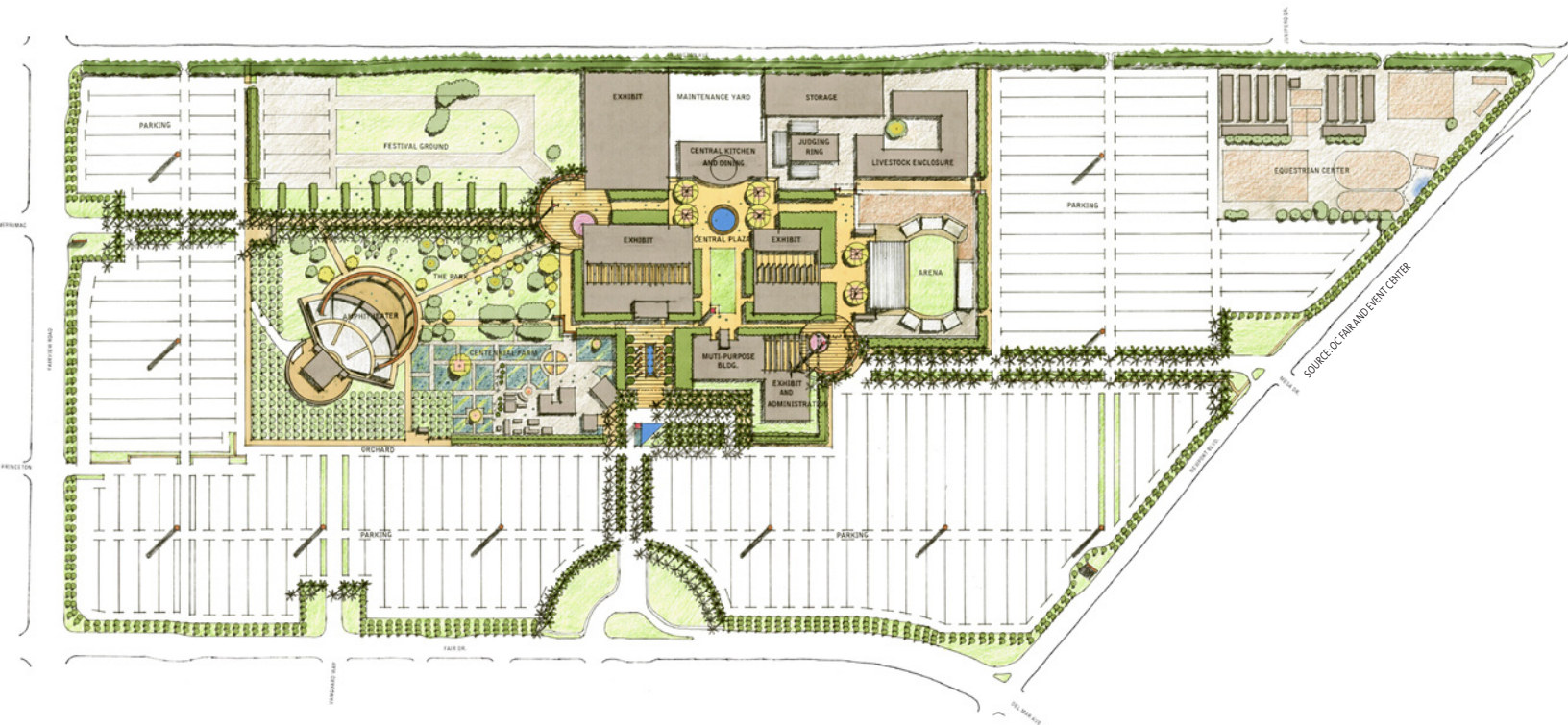
If the measure fails, the existing general plan designation will remain in effect for the property; however, proposed changes would not require voter approval. ■

■ Contacts:

Kimberly Brandt, Costa Mesa Development Services Director, (714) 754-5270.

OC Vote Official Measure C Website:

<http://www.ocvote.com/election/pri2010/measurec.htm>.



The passage of Measure C would require that any development of the Orange County Fairground
– over 100 acres of prime real estate – would go to a popular vote.

Affordable Housing, With Bells And Whistles

— CONTINUED FROM PAGE 1

True, life as a not-for-profit home builder is not all a triple-scoop of cookie-dough ice cream with crumbled Oreos on top. I will admit that housing providers for low- and median-income people face their challenges on occasion. Unlike a market-rate home builder, who can put together construction financing with one or two loans, the not-for-profits often need up to eight or nine different lenders, each with its own social-service agenda. (“Good news, colleagues! We’ve gotten a loan from Hypothetical Foundation X! Bad news: We have to redesign the project again to suit the mission of Hypothetical Foundation X.”) The time required to line up all these loans from multiple sources,

home builder’s executive director, told us in an interview that the not-for-profit home builder has eight housing developments either under construction and completed, and all of them incorporate extra services into housing. I assume the reader already knows that childcare is hard to find for working-class people who live on the border of Compton. It’s also probably unnecessary to mention that the area is critically underserved by health care providers.

Well, here come the lenders and the foundations, many of whom are focused on sustainability these days. As a result, Casa Dominguez is so green, it’s almost turquoise. Casa Dominguez is the first commercial project in Los Angeles County to use double piping, which recycles so-called “grey water,” or partially treated non-sewage water, for landscape irrigation. (Suspension of irony: Can this truly be the first commercial project making use of this sensible, low-tech method of water conservation, in a drought-impacted region?) Inside the apartments, all the appliances are Energy Star accredited for energy savings, while none of the furnishings will make tenants sick from formaldehyde fumes.

With the help of a grant from Southern California Edison, in cooperation with US Bancorp Community Development Corporation, much of the roof of this stucco-and-tile complex is covered in photovoltaics. Solar-powered generators are expected to provide all the electricity for common areas, such as the clinic, child care center and classrooms. Hallways are designed for plentiful natural light, and to be ventilated by prevailing breezes.

Additional funding sources are Citi Community Capital, L.A. County’s Community Development Commission, the county Housing Authority, Federal Home Loan Bank of San Francisco, and the Ralph M. Parsons Foundation. Another funding source for Casa Dominguez is Enterprise Green Communities, which pools the contributions of Seattle businessman Paul Allen, Fannie Mae, Freddie Mac and BP America, among many others.

Back to irony: Well, I say bah to special privileges for the creators of low- and moderate-income units. (With renters typically earning only 30 to 60 percent of the county median, that means that many households in Casa Dominguez will be earning about \$29,000 to \$31,000 a year.) What can’t commercial, for-profit builders take advantage of the same loans and grants in their projects?

Actually, there is no reason why they cannot—except the irrational customs of commercial real estate investment. Market-rate home builders don’t take advantage of those programs, because those programs requires builders to spend money on items that add nothing to the market value of apartment complexes. Investors, you see, are not interested in energy savings and photovoltaics. Those items do not fetch a higher price in the apartment market, so why spend money on them in the first place?

Here’s where the real unfairness comes in: Abode Communities does not plan to sell its rental units to investors! Like many affordable home builders, Abode plans to operate Casa Dominguez forever. As a landlord, Abode benefits from energy efficiency. Until commercial apartment developers begin worrying about the costs of heating and cooling and cleaning, they are not going to invest in the stuff that makes life cleaner and more enjoyable. Until that time, innovative non-profits like Abode will have all the advantages.

Oh, the injustice of it all! (He beats his breast, producing a hollow sound.) ■



Adobe's Casa Dominguez complex includes educational programs, sustainable elements, and on-site childcare.

meanwhile, means that affordable projects require years to complete, as opposed to a fraction of that time for the high-priced spreads.

To make my point, let’s examine Casa Dominguez, a 70-unit rental complex that Abode Communities plans to finish within the month. As a satirist specializing in irony, I always assumed that the best way to build rental housing for working-class people is to build as cheaply and unattractively as possible. What are these tenants gonna do, complain? (Pause for knee-slapping laughter.) So why are these low- and median-income households receiving champagne-quality amenities for their small-beer rental payments?

They are not only getting a pleasant courtyard environment, designed as well as built by Abode Communities. They’re also getting a childcare center with the capacity for 66 toddlers. And they are getting an on-site medical clinic, operated by St. Johns Hospital of Santa Monica. (Liz Taylor goes there, so you know it’s a good one.) Not to mention the community rooms where nearby colleges plan to offer adult education courses in English as a second language, computer skills, and the like. To help make sense of all these goodies, Casa Dominguez will employ a full time “services coordinator.” Hell, I could use a services coordinator myself; just ask my wife.

Joint use, or the combination of different public and private agencies under a single roof, is nothing new to Abode. Robin Hughes, the

SB 375 Implementation Relies On Transit

— CONTINUED FROM PAGE 1

ital projects – including those backed partially by federal stimulus money – capital funding typically has no bearing on operational funding.

The biggest culprit in this crisis, however, may be the State of California itself. Since 2007, the state has diverted almost the entirety of the \$1 billion annual State Transit Assistance Fund – over \$3 billion in total – to its General Fund and it has diverted a voter-approved gas tax that was intended to go to transportation.

“Right now the state has decided that they don’t want to fund mass transit anymore,” said Carolyn Cavecche, mayor of the City of Orange and board member of the Orange County Transportation Authority. “They’re out of the bus business. Somebody’s going to have to step up and fund that if you want a transit system in the state of California.”

The recent adoption of budget bills ABx8 6 and ABx8 9 provide \$400 million of operations funding for fiscal year 2010-11 and \$350 million for the following year. These funds – along with some federal stimulus money that can be used for operations – has postponed a complete melt-down of the public transit system, at least for now.

“In the short run, it may prevent people from getting to work, whether it’s not going to be affordable or the service simply is not going to be available,” said Chris McKenzie, executive director of the League of California Cities.

The longer term, however, may be even more certain. This month the California Air Resources Board will release its draft greenhouse gas emissions targets, and it will finalize them in September. At that point, the burden falls to the state’s 18 largest MPOs to draw up sustainable communities strategies (SCS) and marry them to their regional transportation plans (RTP). Whatever the targets turn out to be – preliminary presentations from the Southern California Association of Government suggest that they may be between 6 percent and 10 percent GHG reductions – achieving them will be difficult if the buses don’t run on time.

“The planning is just a piece of it,” said Gary Gallegos, executive director of the San Diego Association of Governments and member of ARB’s Regional Targets Advisory Committee (RTAC) [▲]. “The more important piece is the implementation. I think that’s where we may fall short if the state continues to rob transit or redevelopment funds. Our ability to implement some of our strategies may be weakened.”

“If transit is going to be how we hit those numbers, I don’t know where they’re going to come up with the money to do it,” said Cavecche.

Even though SB 375 includes a long time horizon – targets will be set at 2020 and 2035 – the current uncertainty of transit funding and service may make planning a dicey, uncertain affair for MPOs, cities, and transit agencies alike.

“You can’t expect cities to re-zone land and adopt a new development pattern that assumes transit systems are going to be a principle part of moving people if the state is backing out on its commitment to fund transit,” said McKenzie.

Although SB 375 explicitly charges MPOs with drawing up regional plans – and offers cities ways to opt out – the assumption is that cities will have to adjust their land use patterns and general plans to complement MPOs’ regional plans.

These assumptions may have been reasonable in the more buoyant economic times when SB 375 was developed and enacted. But today the disconnect between the law’s requirements and the transit funding necessary to meet those requirements strikes many critics as another example of Sacramento’s disregard for local realities.

“I think there was a very reasonable expectation that funds would be

available to fund this effort,” said McKenzie. “Sen. Darrel Steinberg, committed not only to that but to finding additional funding for local infrastructure projects.”

“(Localities) don’t print money any more than the state does, but they’re the ones who adopted the mandate, and they have the obligation to fund it,” added McKenzie.

Steinberg did not respond to repeated requests for comment for this article.

Frustrated by what he describes as SB 375’s “unfunded mandate,” McKenzie said that the League of Cities has discussed whether to lobby for a suspension of SB 375 implementation (as well as that of its sister climate change law, AB 32) but as of yet League leadership has declined to take an official position.

Meanwhile, ARB’s [▲] target-setting process is proceeding as if firing on all cylinders. The targets will be determined mainly by efficacy and feasibility but will not necessarily take into account funding constraints or the current transit crisis.

“My focus and the ARB’s focus is completely on the benefits and how we can achieve those benefits from implementing SB 375,” said ARB Chair Mary Nichols.

Nichols said that regardless of budget constraints, cities, MPOs, and other public agencies should be prepared to coordinate and collaborate. She noted that the type of dense, mixed use development that AB 375 promotes serves many cities’ interests regardless of what the law requires. And she noted that, in the case of sustainability, funding may in fact follow from good planning. Therefore, even if the current situation makes some plans seem infeasible, money may arrive down the road.

“I’m not saying that there are enough resources being provided for people to do all the things they would like to do,” said Nichols. “But the only way we’re going to get that funding...is by having plans in place that the funding can flow to.”

Much of that funding may come from the federal government, which has recently announced programs such as the Department of Housing and Urban Development’s Sustainable Communities Planning Grant Program.

“The federal agencies are going to recognize the fact that California agencies have charged ahead here,” said Steve Heminger, executive director of the San Francisco Metropolitan Transportation Commission and RTAC member. “I think it’s certainly in the interest of the federal government and the Obama administration to keep California moving so we can serve as a model for the rest of the country.”

Moreover, ARB’s targets – whatever they turn out to be – can be achieved without heavy reliance on transit.

“There’s a danger of overstating the role that transit plays,” said Heminger. “One of the things about TOD is that those communities are walkable and bikeable. That can account for just as many trips as public transit, and as long as they’re not auto trips then we’re doing what we’re trying to do.” ■

■ Contacts:

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Steve Heminger, Executive Director, San Francisco Metropolitan Transportation Commission <http://www.mtc.ca.gov>, (510) 817-5810.

Mary Nichols, Chair, California Air Resources Board, <http://www.arb.ca.gov/>, (916) 322-5840.

Jeff Wagner, Spokesperson, California Transit Association <http://caltransit.org/>, (916) 446-4656.

SB 375 And Political Realities

When it comes to reducing greenhouse gas emissions in California, one size does not even come close to fitting all.

That's all I could conclude after the SB 375 Regional Targets Advisory Committee (RTAC) and metropolitan planning organization (MPO) representatives touched on an amazing array of policy and technical issues during an all-day meeting on May 25.

All right, I could also conclude that what has been a highly technical process may be on the verge of becoming very political.

The session provided a way for the state's 18 MPOs and the committee to give final input to Air Resources Board staff before it issues greenhouse gas (GHG) emissions reductions targets to the MPOs in late June. Under SB 375, the MPOs must use the GHG targets to formulate regional sustainable communities strategies that guide transportation and land use decisions. Because passenger vehicles account for more than one-third of GHG emissions in California, the idea behind SB 375 is to employ land use planning and transportation policies that reduce the amount that people drive.

Repeatedly, the MPO representatives and even the RTAC members said that policies which reduce GHG emissions in one region may have little effect in another region. Concepts that are obvious in major metropolitan areas are foreign in more lightly populated regions. Political agendas in San Diego, San Francisco, Stockton and Thousand Oaks are

not the same. A moderate transit expansion in Sacramento may produce significant results, while a far more expensive transit expansion in L.A. would have virtually no impact on vehicle miles traveled. "Smart growth" policies that are mainstream in San Luis Obispo County are unknown in Shasta County.

"I've heard some things today that have illustrated some fundamental differences in what regions are going to be able to achieve,"

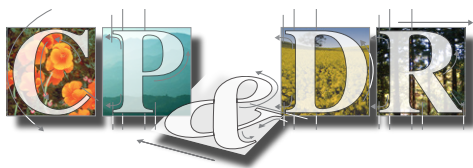
said Pete Parkinson, who represents the American Planning Association's California chapter on the RTAC.

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Much of the meeting's focus was on defining "achievable." What became clear is that technical achievability and political achievability are not the same.

Just about everyone in the room on Tuesday was on board with transit-oriented development, compact mixed-use communities, highway tolls, building mixed-income housing next to employment sites, reducing the amount of free parking, and vastly expanding transit service. The environmental, economic and social benefits are obvious, right?

Well, no, they're not, at least not to the people who make decisions and to the voters who elect those people. Repeatedly, RTAC members and MPO representatives insisted that whatever comes out of the SB 375 process must contain a large dose of political reality.

"There are clearly local political issues," warned RTAC member Carol Whiteside, a former mayor of Modesto. "I think we underestimate the political difficulties local jurisdictions are going to have with implementing some of the land use recommendations."

Southern California Association of Governments Executive Director Hasan Ikhrata said that MPOs must "attach reality to what we are doing." Preparing a politically unrealistic "fantasy plan" will only cause people to turn away from the larger effort, he said.

Two representatives from the house-building industry provided a measure of that political reality on Tuesday. They argued that the

assumptions in MPOs' models for future development – which leaned heavily toward multi-family housing – were faulty.

"Many of the housing type of assumptions and the density type of assumptions ... may not pan out in the real world," California Building Industry Association lobbyist Richard Lyon said.

Andy Henderson, Building Industry Association of Southern California general counsel, sounded what may become a familiar theme as SB 375 implementation goes forward: Make someone else do it. Raise parking prices, tax gasoline or provide incentives for people to buy cleaner-burning cars, he suggested.

"You could interfere with the recovery we need to see in building houses," Henderson said. "We can't be putting in place impediments to that recovery."

Those are the type of arguments we'll probably be hearing often in September, when the campaigns for and against repealing AB 32 (*CP&DR* Vol. 25, No. 7) – the 2006 state law that mandates GHG emissions reductions – grow heated. September is also precisely the time when the Air Resources Board is scheduled to finalize regional GHG emissions reductions targets.

Political reality, indeed.

– PAUL SHIGLEY | MAY 26, 2010 ■

How Can A Broke State Fund Housing For People Who Are Merely Poor?

(Please note that the word "draconian" does not occur once in the following post concerning the ongoing budget debacle. Readers susceptible to cliché-induced seizures (CIS) can read this article without ill effect.)

By his own characterization, the governor's latest proposal attempts to close the \$19 billion shortfall in the coming year's budget almost entirely through cuts. For *CP&DR* readers, it's probably unnecessary to explain that many of these cuts affect – or have effectively eliminated – services for low-income people, not limited to affordable housing, health care and early childhood education. Hell, we can't even afford our prisons – an irony well deserved by the Lock-'em-Up State.

I'm going to skip the usual jeremiad about short-sightedness and greed, not because I don't think it's true, but that it's been said often before, by wiser heads. Except I will add that if there ever had been a post-war "social contract" in California, it's fast evaporating. We are no longer upholding the side of the bargain that calls for sheltering and lifting up those less fortunate. This brings a sour dénouement to the all-American narrative of opportunism and occasional public spiritedness that made California the capital of postwar American optimism.

Amid the loss of our once-enviable social contract, then, how are we going to provide continue to provide low income housing? This goal was hard to attain even when times were good and real estate was even more expensive. One proposal allows the state to steal (my word) a portion of local redevelopment money, generated by local tax increment, to toss some additional dollars at the state's money fire (*CP&DR* Vol. 25, No. 9, May 2010). As most readers know, siphoning off local redevelopment dollars has a direct impact on the creation of low-income

housing, because 30 percent of redevelopment monies are set aside for affordable units.

Although not unprecedented, I think such raids on local money are actionable, and possibly illegal, if the "nexus" theory of taxation, created in case law, holds up in court (although my guess the state would prevail by claiming the right under emergency powers).

In any event, we need to invent new and creative ways to provide low income and moderate income housing (including workforce housing). Joint use, meaning the sharing of resources, such as land and money and access to funding sources, among public agencies—has never seemed as attractive as it does now. But how will smaller cities with very few redevelopment funds meet their low-income housing requirements? Am I insane for suggesting that organizations like Habitat for Humanity could be invited to build a half-dozen homes at a time in certain places? I'd be happy to start a thread here, if you think any of these ideas, or others, are workable. And if not, please set me straight.

Then again, things could be worse ... much worse. A brief tour of some urban ills that California policy makers can bless the stars are not theirs: In 40 years, seven out of 10 people will live in mega-cities (from the *Christian Science Monitor*), Ten Places in the world where you don't want to live [↩] (from Hottnez).

And for a worst-case in civic liability, how 'bout a suddenly liquefied landscape that swallows an entire house, leaving little trace behind [↩] (must be seen to be believed).

Yes, things could be worse.

– MORRIS NEWMAN | MAY 21, 2010 ■

