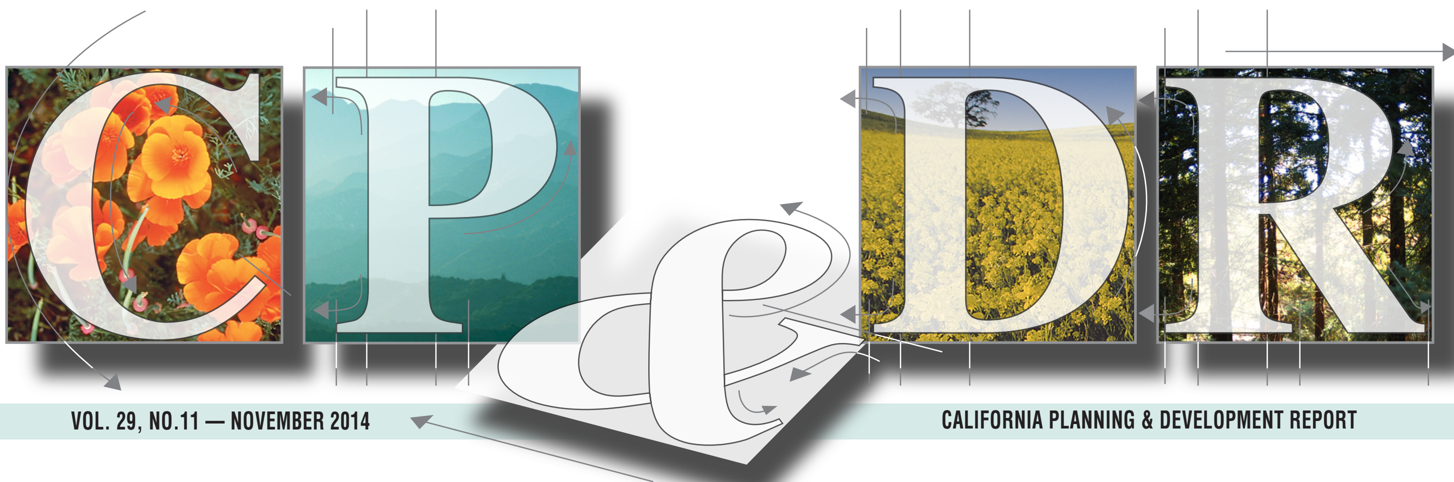


VOL. 29, NO.11 — NOVEMBER 2014
CALIFORNIA PLANNING & DEVELOPMENT REPORT

# Fourth District: SANDAG EIR must consider EO S-3-05

BY WILLIAM FULTON

In a long-awaited decision, the Fourth District Court of Appeal has ruled that the San Diego Association of Governments (SANDAG) should have analyzed an executive order's 2050 greenhouse gas emissions goals in the environmental impact report for its Regional Transportation Plan and Sustainable Communities Strategy.

The ruling was not as broad as some expected. It did not, for example, conclude that SANDAG actually had to meet the onerous emissions reduction goal set by Governor Arnold Schwarzenegger's Executive Order S-3-05: a reduction in GHG emissions of 80% below 1990 levels by 2050. Rather, the majority ruling, by Presiding Justice Judith McConnell, said the EIR was deficient in not analyzing the SCS against the policy contained in the executive order.

In a strongly worded dissent, Justice Patricia Benke stated that the Executive Order "does not have an identifiable foundation in the constitutional power of the Governor or in statutory law."

Justice McConnell's majority opinion, which was joined by Justice Joan K. Irion, found the EIR inadequate under CEQA in other respects as well, including through an insufficiently detailed analysis of air quality impacts.

The 86-page ruling, which emerged as CP&DR went to press, is available at http://www.courts.ca.gov/opinions/documents/D063288.PDF. For further coverage of this major decision see http://www.cp-dr.com/node/3632. ■

insight
WILLIAM FULTON

# Are Millenials different or just poor?

So, one of the biggest questions in planning and development today – in California and elsewhere – is what accounts for the Millenials' preferences for urban living and less driving. Is it generational? Or a lousy economy?

"I think our answer is yes," says Brian Taylor, an urban planning professor at UCLA and head of the Lewis Center for Regional Policy Studies there.

Taylor is one of many academic researchers – most of them, it seems, based in Los Angeles – who are trying to understand one of the most remarkable

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# inbrief

THE LOS ANGELES COUNTY BOARD OF SUPERVISORS on November 12 certified the EIR for the Antelope Valley Area Plan (AVAP) and gave initial consideration to the Plan itself. The Statement of Proceedings reports the Board certified the EIR, adopted the Findings of Fact and Statement of Overriding Considerations, and adopted the plan's Mitigation Monitoring and Reporting Program. The Board did not actually approve the AVAP nor its related zoning changes, instead stating its intent to adopt a list of revisions, including a promise that "if a conflict exists" between the AVAP and "any new or existing Significant Ecological Area (SEA) ordinance" the AVAP would control. (As discussed in CP&DR's news feature on the AVAP at http://www.cp-dr.com/node/3603, an SEA Ordinance for areas both in and outside the AVAP area is moving on a separate track in the county's General Plan revision process.)

The amendments that the Supervisors previewed are mainly technical but in general reduce possible impediments to project approvals. One amendment also spells out the requirement of compliance with the Southern California Association of Governments' Sustainable Communities Strategy. For plan materials see http://planning.lacounty.gov/tnc/. For the Board of Supervisors agenda see the November 12 entry at http://bos.co.la.ca.us/BoardMeeting/BoardAgendas.aspx. Links to the Board's agenda materials are at http://file.lacounty.gov/bos/supdocs/89590.pdf and include the 118-page draft Statement of Overriding Considerations.

A LAWSUIT CHARGING THAT A TRIBE DID NOT FOLLOW THE WILLIAMSON ACT has been dismissed by a Santa Barbara County judge. The *Santa Maria Times* reported dismissal of a lawsuit brought by the Save the Valley group against Vincent Armenta, as tribal chair of the Santa Ynez Band of Chumash Indians. According to the paper, the suit alleged that Armenta failed properly to assume responsibility for Williamson Act ag-preservation commitments when the Tribe purchased the 1400-acre Camp 4 property, because the Tribe wrote clauses into the transfer documents "including that nothing in the assumption agreement would limit or erase the tribe's sovereign immunity or change the tribe's terms of ownership." The paper reported Judge Timothy Staffel cited the Tribe's sovereign immunity in dismissing the case.

A NEW FCC RULING COULD INFRINGE LOCAL POWER ON CELL TOWERS, according to attorney Robert May of the LA-based Telecom Law Firm. Writing in the *Daily Journal*, May said a new order from the Federal Communications Commission (FCC) could limit local power to regulate cell phone towers. The October 17 FCC approval interprets Sec. 6409 (a) of the Middle Class Tax Relief and Job Creation Act of 2012 to allow the addition of new equipment within the areas of currently used wireless sites. He writes that new rules will "require local governments to do more, with less information, in a shorter time, or face harsher consequences." Telecom Law Firm has posted detailed analysis and commentary on the ruling at https://telecomlawfirm.com/sec6409/. The FCC announcement is at http://www.fcc.gov/document/fcc-boosts-wireless-broadband-easing-infrastructure-burdens.

THE STATE WATER BOARD issued a proposed ruling November 21 responding to 37 challenges, mainly by municipal governments, to Los Angeles' main MS4 permit, issued November 8, 2012, limiting pollution in run off from local streets and municipal storm sewers. The permit affects the Los Angeles and San Gabriel Rivers but not Long Beach. The permit imposes Total Maximum Daily Load (TMDL) limits on the amounts of trash and specified pollutants allowed to flow out of municipal storm sewers. The water board announced a workshop on the proposed ruling December 16 and set a public comment deadline of January 21, 2015. As of this writing the text had not yet been posted on the Los Angeles area stormwater page of the State Water Board, which is at http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/.

The proposed ruling would agree to some revisions in the 2012 permit's language but would essentially

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*is published semi-monthly by*

Solimar Research Group
Post Office Box 24618
Ventura, California 93002

Telephone / Fax: 805.652.0695

Subscription Price: $238 per year

ISSN No. 0891-382X

*Visit our website:*
WWW.CP-DR.COM

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uphold it. Among the proposed revisions is an alternative program to reward extra effort toward compliance for dischargers that cannot meet the prescribed water quality standards immediately. The proposed ruling interacts with, but is not directly pursuant to, a major 2013 U.S. Supreme Court ruling on LA-area local governments' responsibility for cleaning up municipal street runoff, *NRDC v. County of Los Angeles* (2013) 133 S.Ct. 710. (The Supreme Court declined to hear an appeal of a Ninth Circuit offshoot from that case last spring, on which see http://www.cp-dr.com/node/3489 for coverage and links to context.) The litigation, however, concerns the 2001 predecessor to the 2012 regulation at issue in the new draft ruling.

And in the new draft ruling the water board says the 2013 Supreme Court case "did not invalidate any requirements of the Los Angeles MS4 Order and did not result in any changes to the Order." This summer the EPA featured the Los Angeles runoff permit among several examples of innovation in the field: see http://www.epa.gov/npdes/pubs/sw_ms4_compendium.pdf. The program requires permittees to require building owners to either retain runoff on their property or do something to compensate for failure to do so.

A SLEW OF UPDATES AND REVISIONS ON GENERAL PLANS and specific plans were in the news, including the following:

CUPERTINO'S GENERAL PLAN went to a hearing November 10 with emphasis on its housing element, which was released for comment in October. The *Silicon Valley Business Journal*'s Nate Donato Weinstein livetweeted the meeting, noting 62 people submitted cards for public comment and many speakers opposed the draft, especially the proposed allocations of affordable housing and office construction and future uses of the Vallco Shopping Center property. The *Mercury News* later reported the meeting ran until almost 5 a.m. without resolution. The City Council next takes up the matter December 2, but the *Mercury News* reports that by then members Orrin Mahoney and Mark Santoro will be off the Council, replaced by their newly elected successors, Savita Vaidhyanathan and Darcy Paul.

MENLO PARK VOTED a week before the election to limit medical office space under its downtown and El Camino Real specific plan. An office space limitation measure on the ballot, Measure M, lost by 61.6% to 38.4%.

THE CITY OF TULARE adopted a general plan that shrank its Urban Development Boundary by six miles.

PALO ALTO'S COMPREHENSIVE PLAN REVISION (local equivalent to General Plan) is focusing on "retail preservation" amid some disagreement on what that exactly means.

IN OTHER NEWS:

- Los Angeles Metro held a groundbreaking on the Purple Line. For initial reactions see the #purpleline Twitter hashtag. Ethan Elkind posted a bittersweet note of celebration. The *LA Times* reports the line that was once dreamed of as the "subway to the sea" will in fact most likely stop at the VA hospital in Westwood. It's a long if pretty walk from there to the ocean.
- Land use obsessives may or may not find it heartwarming that the Ocean Beach Town Council in San Diego County voted to designate the Ocean Beach Community Plan as grand marshal of the OB Holiday Parade.
- The *LA Times* reported on tensions over the possibility of broader federal tribal recognition policies that could lead to more tribal exercises of sovereignty in places with strictly regulated land use such as Napa.
- The *SF Chron* reported that housing giant Lennar and another developer, Macerich, have contracted to build a shopping center on the site of the former Candlestick Park stadium, to form the center of a new dense development projected to include 6,000 housing units.
- The Santa Clara Valley Transportation Authority (VTA) proposed to cut two BART stations planned for San Jose and Santa Clara. The station in San Jose, on 28th Street in the Alum Rock area, has been popular with its proposed neighbors, who worked willingly with public officials on a transit-oriented development project. Details via *Planetizen* at http://www.planetizen.com/node/71983 and in the *San Francisco Business Times*.
- A Modesto group, Stamp Out Sprawl, started a petition drive to place an urban growth boundary limit on the November 2015 ballot to steer big-box retail stores away from the Wood Colony area. The *Modesto Bee* has details at http://www.modbee.com/news/local/article3545807.html.
- *Planetizen* has a roundup at http://www.planetizen.com/node/71873 of attempts by the City of Lancaster to close its Metrolink station, which serves 400 commuters, based on claims that it brings homeless people to the city. ■

# OPR's talking tour built collegiality if not consensus

BY MARTHA BRIDEGAM

Officials with the Office of Planning and Research (OPR) have created a "new normal" baseline for discussing possible changes to CEQA transportation metrics under SB 743. They've succeeded pretty much by having the stamina to keep discussing their August 6 preliminary discussion draft. Over. And over. And over. For three months.

In an extended public workshopping process the key OPR drafters – Chris Calfee and Chris Ganson – have spoken before many different California groups to explain their August draft, often appearing with leading experts and spokespeople who raise challenging questions about it. Bill Fulton was already referring to "The SB 743 roadshow" in mid-September. (See http://www.cp-dr.com/node/3576.) Now, in late fall, with public comments on the draft due November 21, the roadshow returned, well-tested, to Sacramento.

Comments on the August 6 transportation metric guidelines draft under SB 743 were due November 21 to CEQA.Guidelines@ceres.ca.gov. The OPR presentation is available on video at http://www.opr.ca.gov/s_sb743.php.

The recent appearances didn't build complete agreement on CEQA transportation metrics – nothing could – but through public debates and informal consultations, it appears OPR has built up a corps of influential loyal-opposition advisor/critics who are at least willing to keep arguing constructively and maybe willing to edge toward consensus.

With one or two exceptions, as a panel discussion at the University of San Francisco on November 4 highlighted. Holland & Knight's Jennifer Hernandez came out swinging – as expected – though her critique is not so much about a switch to VMT as it is about the overall regime contained in the California Environmental Quality Act.

**OPR's loyal opposition on display**

An OPR-sponsored panel discussion November 3 brought together many of the leading figures in the SB 743 debate to argue and clarify the outstanding dilemmas – including a now-standard presentation by the two OPR Chris's. (Video is online at http://www.opr.ca.gov/s_sb743.php.)

As he frequently has, Calfee emphasized local agencies' authority to pick their own methodologies for estimating VMT, and he described many of the draft's practical suggestions for thresholds and mitigations as being recommendations, not hard requirements. Though in explaining local lead agencies' authority to choose their own methodologies, Calfee warned attorneys that the assumptions underlying transportation studies are best included in the administrative record.

Calfee said the January 1, 2016, implementation date "may change" and said he doesn't expect a formal rulemaking process to begin until mid-2015.

Veteran CEQA lawyer Jim Moose expressed a few concerns during the panel, including the idea that ordinary people dislike congestion, rural county officials dislike taking instructions from "urban liberal elites," and a reduction in CEQA litigation threats over LOS issues might reduce the "fear factor" that could motivate his clients to cooperate with other jurisdictions on reducing congestion.

The rest of the panel was a dream team of CEQA transportation expertise: Jeffrey Tumlin, the respected Nelson/Nygaard transportation specialist; Eric Ruehr, chair of the Institute of Transportation Engineers' SB 743 task force; Ron Milam, director of technical development with Fehr and Peers and an expert on VMT analysis; Viktoriya Wise, San Francisco Planning's lead on VMT analysis; Curt Johansen of the Council of Infill Builders, and Amanda Eaken of the National Resources Defense Council (NRDC), who frequently invokes her role as a key figure in shaping SB 743 in the first place.

Eaken – who served on the ARB's target-setting committee for SB 375 – reiterated two objections she's been making since August: First, that the draft is too lenient to grant a "less than significant impact" presumption to projects within half a mile of good transit because mere presence near transit doesn't guarantee transit-oriented design. And second, that when projects are analyzed individually, the threshold of significance could be stricter than OPR's

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# >>> SB 743: experts ask to keep main guidelines simple

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suggested rule to generate less than the existing regional average VMT in order to meet 2050 climate protection goals more quickly

On thresholds of significance – an area where Calfee has already indicated willingness to change the draft (http://www.cp-dr.com/node/3582) – Tumlin suggested projects should be considered acceptable if they fell 15% below any one of four standards: the expected average VMT for new development in municipal general plans; the regional average; Air Resources Board goals, or the local SCS. He suggested projects can often reduce their VMT by as much as 40% and 15% should be possible for most.

**Some panelists repeated calls for preserving local agencies' flexibility by lifting the more specific or technical requirements out of the guidelines themselves and moving those into technical advisory memos or possibly OPR's revised General Plan guidelines**

Some panelists repeated calls for preserving local agencies' flexibility by lifting the more specific or technical requirements out of the guidelines themselves and moving those into technical advisory memos or possibly OPR's revised General Plan guidelines. This persistent recommendation came in light of disagreements running since August about whether OPR's "recommendations" could carry the force of law – especially due to objections by the Holland & Knight law firm about possible mitigation measures listed in the OPR draft's Appendix F (see http://www.cp-dr.com/node/3560).

Tumlin, among others, questioned whether the metrics should include recommendations on safety rules at all – since safety has never been a CEQA concern up to now. Tumlin said, "I can't believe that I'm actually arguing against safety," but for the sake of avoiding unintended consequences and litigation, he urged against definite road safety rules in a CEQA context. This was in part, he said, because of current controversy over conflicts between the overlapping road design manuals of CalTrans and of the National Association of City Transportation Officials (NACTO). (Caltrans Deputy Secretary Kate White, who moderated the panel, said CalTrans was now encouraging use of the NACTO manual in urban areas.)

**Hernandez as CEQA skeptic**

The USF debate had fewer fireworks than one might have expected, but it featured one speaker who is distinctly not a convert to the Office of Planning and Research (OPR) view of CEQA transportation impact metrics: Holland & Knight's Jennifer Hernandez.

Back in August, Hernandez was the lead author of her firm's polemical criticism against OPR's discussion draft on guidelines to substitute vehicle miles traveled (VMT) analysis for the existing Level of Service (LOS) analysis. The article, titled, "OPR Proposes to Increase CEQA's Costs, Complexity and Litigation Risks with SB 743 Implementation [http://www.hklaw.com/publications/opr-proposes-to-increase-ceqas-costs-complexity-and-litigation-risks-with-sb-743-implementation-08-22-2014/]," especially warned against litigation potential in a group of very specific suggested VMT mitigation approaches that were proposed to be added to Appendix F of the guidelines. (See http://www.cp-dr.com/node/3560.)

On the USF panel with Hernandez were NRDC's Eaken and UCLA Prof. Ethan Elkind, both of whom had published indignant responses to the Holland & Knight article. Elkind's called the article a "misleading diatribe" [http://legal-planet.org/2014/08/28/misleading-attacks-on-californias-new-transportation-analysis-under-ceqa/]. Also participating was Michael Schwartz, San Francisco's top transportation planner. Eaken's blog post, titled "Setting the record straight on the Governor's CEQA reform proposal," [http://switchboard.nrdc.org/blogs/aeaken/setting_the_record_straight_on.html] didn't say directly what it was answering but did announce "an effort to clarify misconceptions and stop the ill-intended rumors" before launching into a string of arguments, including "Fact:

– CONTINUED ON PAGE 6

# SB 743: 'This does not get rid of LOS. It adds VMT.'

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Suggestions of Mitigation Measures are Just Suggestions...".

Eaken and Schwartz made the general case for the LOS to VMT transition, with Eakin saying LOS to VMT "has been a dream of mine ever since planning school" (admitting a colleague had told her, "You have very weird dreams"). In arguing the case for VMT, Schwartz said the Van Ness BRT project would have gone much faster under a VMT standard.

While Elkind suggested CEQA was "not particularly environmental," he said the new rule would help the "E" in CEQA to "make a little bit more sense." Where others have talked about risks of new litigation against projects, Elkind said he knew some "lawyers who go after infill projects" who found the new rules worrying.

Hernandez came in on a different note entirely, working to introduce a student audience to a generally critical view of CEQA litigation as a tool for exclusive, self-serving and sometimes racist obstruction of projects. Using a confidential tone and frequent invitations to shared skepticism, she identified herself with environmentalist and politically liberal principles, but moved on to relate her firm's research on CEQA outcomes in general – she said 43% of CEQA lawsuits are successful. [http://www.cp-dr.com/node/3319]

She said NRDC and others had decided "LOS is really stupid," and "I couldn't agree more." But her objection was to the addition of VMT standards. Observing that LOS rules still apply to many aspects of CEQA analysis, she said, "This does not get rid of LOS. It adds VMT."

Instead of applying VMT analysis she suggested projects should be approved more easily without "re-asking the question" about each project's appropriateness, allowing it to be litigated "by the neighbor, by the union, by the competitor, by the bounty-hunting lawyer."

She asked, "Why would you give another tool to a CEQA litigant?"

Though Elkind and Hernandez agreed on some things, they disagreed on how to get to the desired outcome. She said she fears the methodological flexibility Calfee described (above) will lead to more litigation. Elkind countered that VMT analysis is "a fairly off-the-shelf technology" and a lot of California is actually in areas covered by the VMT analysis exemption for projects within half a mile of transit, where new construction would be presumed to have no significant impact under the VMT rules.

Elkind's own account of the debate is at http://www.ethanelkind.com/a-debate-on-sb-743/. ■


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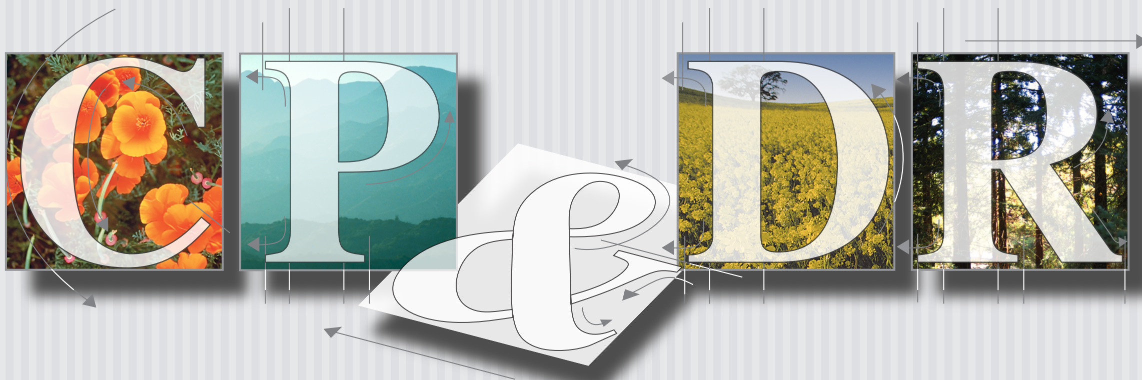

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# CalEPA Expands Definition of Disadvantaged Census Tracts

BY MARTHA BRIDEGAM

CalEPA made a politically cautious decision October 31 to expand its definition of "disadvantaged communities" in cap-and-trade grantmaking programs under SB 535 to the most environmentally burdened 25% of all census tracts. Meanwhile the Affordable Housing and Sustainable Communities (AHSC) program, which will incorporate the census tract designations, moved toward creating final guidelines on a fast schedule imposed by its founding statute – and some commenters were asking for the program to slow down and reconsider its approach.

CalEPA originally had proposed designated the most burdened 20% of all census tracts, not the larger 25% pool. Although the 25% announcement changed the definition of disadvantaged communities from what CalEPA originally envisioned, it continued to propose using the CalEnviroscreen 2.0 environmental justice mapping tool.

As *CP&DR* reported in September [http://www.cp-dr.com/node/3570], CalEPA officials had noted that for most SB 535 programs 25% is the minimum proportion of benefits required to serve "disadvantaged communities", so in those programs a 25% cutpoint guarantees "disadvantaged communities" no more than their proportional share of the total. On the other hand, 50% of funds must be spent to benefit disadvantaged populations in the new AHSC program. *CP&DR*'s previous coverage on how the metric and the AHSC program interact can be found at http://www.cp-dr.com/node/3594.

The original proposal for a 20% "cutpoint" had more starkly disproportionate effects by region. It would have denied the "disadvantaged" label to many coastal, northern or hilly census tracts that have suffered from environmental injustice and disinvestment, but that have comparatively good air quality, and/or comparatively high absolute incomes. The metric does not incorporate factors that compare individuals' incomes to local costs of living, and it emphasizes types of environmental injustice that are especially severe in the Central Valley and Southern California.

Accordingly there was pressure to either widen the designation pool or change the metric.

Activists and legislators from the San Francisco Bay Area had been especially indignant. The expansion from 20% to 25% adds the "disadvantaged" designation to more Bay Area neighborhoods, including parts of Bayview/Hunter's Point in San Francisco.

The CalEPA press release said, "In response to comments, CalEPA said it will evaluate suggestions to further refine the information and methodologies used to develop CalEnviroScreen." New materials posted at http://www.calepa.ca.gov/EnvJustice/GHGInvest/ include a 40-page narrative of the selection process that, from the "Public Input" discussion onward, acknowledges some of the regional concerns, some methodology concerns raised by the Bay Area Air Quality Management District through its complex "Method 6" proposal, and the possibility of including factors like cost of living in the future.

Although the CalEPA report landed a month late, on Halloween, it arrived in time to become part of the AHSC design. In October SGC officials said they would release final proposed guidelines December 1. As we went to press, the SGC announced it would move its next Council meeting on adoption of the guidelines, originally scheduled for December 11, to January 20, 2015.

Video from the AHSC program's last main public workshop on October 28 is available now at http://sgc.ca.gov/. New guidance documents issued based on the CalEPA decision include this Air Resources Board redraft on benefits to disadvantaged communities.

Following CalEPA's announcement, hopeful news analyses appeared in the *Fresno Bee* [http://www.fresnobee.com/welcome_page/?shf=/2014/10/31/4209701_fresno-valley-in-line-for-greenhouse.html] and the *Stockton Record* [http://www.recordnet.com/article/20141103/NEWS/141109866] about cap-and-trade funding possibilities for Central Valley regions where bad air quality and agricultural poverty combine to meet definitions of disadvantage under the CalEnviroScreen 2.0 standard.

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# >>> SGC guidelines hearing moved to January

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Texts of public comments have not yet been posted on the SGC site but some commenters were willing to share their views or submitted texts.

The League of California Cities' comment [http://www.cacities.org/CMSPages/GetFile.aspx?nodeguid=85f30f10-5bff-4f42-9b66-5d674a662302] called the draft guidelines "extraordinarily complex" and suggested a review for overlapping provisions, yet it noted some details remained to be filled in, such as greenhouse gas measurement methodology and the exact numbers of points to be available for each element in the point-based scoring process for the grant competition. It suggested allowing more comment once such details are also proposed to the public, and also more time to address coordination with Metropolitan Planning Organizations and local governments.

**The new definition seems likely to make Central Valley locations more competitive**

More acerbically, the League comment said, "The Guidelines don't seem to acknowledge that at last 50% of program expenditures must go to projects benefiting disadvantaged communities. There doesn't seem to be anything in the Draft Guidelines that encourages a disadvantaged community to apply or recognizes that a disadvantaged community may need technical assistance."

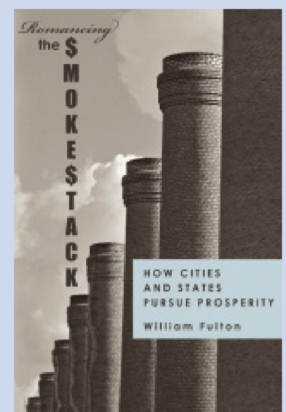
The California Coalition for Rural Housing submitted a comment on the AHSC program suggesting the program was all but exclusively oriented toward transit-oriented development at major transit hubs, and was "designed to fail" in smaller communities and places poorly served by transit. Among other detailed criticisms it asked for a rural set-aside and questioned why the minimum affordable housing percentage in Section 103 of the proposed guidelines was not more than 20%.

*Streetsblog LA* reported the Metro Board of Directors had instructed its CEO to report on transit-oriented development efforts that could prepare Los Angeles County to be a grantee under the AHSC program.

Because CalEPA chose the 25% cutpoint, the "disadvantaged communities" category expanded to include the census tract next to the refinery that most concerns community activist Janet Pygeorge in Rodeo. (See http://www.cp-dr.com/node/3570 for more on her local concerns.) She wrote: "I was pleased to be recognized as disadvantaged. Some are embarrassed, but we can overcome a lot. Where this town and Crockett start is a question. I think it would be pollution, our beach area, and that wrecking yard that is leaching into the creek and eventually the Bay." She wrote, "We have not got the word out on AB535, as it will not be a large amt. given [but] we take any help that comes our way." ■

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

*Bill Fulton's Book On Economic Development*



# Coastal Commission issues two big rulings on Central Coast water and growth

BY MARTHA BRIDEGAM

California American Water won clearance from the Coastal Commission on November 12 to dig its disputed slant well from the Cemex sand mining plant in North Marina on the Monterey Peninsula. The well would allow feasibility studies for a desalination plant fed by sand-filtered water to be drawn from under Monterey Bay. The project had some unbudging opponents but received support from some conservation groups, in part because it called for subsurface rather than open-water intakes.

Proof of legal access to the starting point for the dig was a prerequisite for the approval. Days before the Commission meeting, Cal Am reached a settlement allowing it to dig the well from the Cemex plant. Cal Am had previously sued Cemex to take the use of the land by eminent domain.

The contemplated desalination plant would offer a way out of the bind created by the State Water Board's 2009-issued cease and desist order requiring Cal Am to stop all illegal water diversions from the Carmel River by the end of 2016 – but the river is still the Monterey Peninsula's primary water supply.

The conditional approval of the permit request overruled a denial by the City of Marina. The *Monterey Herald* reported the Commission rejected arguments that the well could harm nearby water supplies [http://www.montereyherald.com/20141112/coastal-commission-unanimously-backs-cal-am-test-well-appeal]. Critics included the Marina Coast Water District and the Ag Land Trust, which two years ago were suing each other over a separate desalination issue. Howard "Chip" Wilkins III of the Remy Moose Manley firm, representing the Marina Coast Water District, wrote to the Commission that the matter was not ripe for Commission review, that the Commission lacked jurisdiction over the whole site and that, although the well was described as temporary, it could possibly become a supply source for desalination.

The 1110-page staff report [http://documents.coastal.ca.gov/reports/2014/11/W14a-s-11-2014.pdf] included supporting letters from the mayors of Seaside and Carmel, and the statewide and Monterey Peninsula Chambers of Commerce.

Conservationist supporters included the Sierra Club and Surfrider Foundation, both of which were among parties to a settlement of a prior Public Utilities Commission dispute over the desalination proposal – formally the Monterey Peninsula Water Supply Project. (For the settlement see http://www.watersupplyproject.org/testwellappeal.)

Susan Jordan of the California Coastal Protection Network wrote in support as well – in part citing Cal Am's interest in using subsurface intakes. Jordan has fought the proposed use of open-water intakes for desalination in Huntington Beach. [http://www.noozhawk.com/article/city_council_starts_reactivation_process_for_desalination_plant_20140506] Open-water intakes have been criticized, including by the National Oceanic and Atmospheric Administration (NOAA), because ocean organisms may be drawn into the intake pipes or pressed against their protective screens.

The *Monterey County Weekly* reported Cal Am hoped to start construction quickly ahead of Western snowy plover nesting season. [http://www.montereycountyweekly.com/blogs/news_blog/coastal-commission-green-lights-cal-am-appeal-to-build-desal/article_5ad592be-6ace-11e4-9249-1f7902cb9c56.html] The company announced in September it received a $1 million state grant to dig the test well. The *Carmel Pine Cone* reported the company also had a foundation grant to test the water for human pathogens, [http://www.pineconearchive.com/downloads141121.html]

(For further coverage of Monterey water supply tensions see http://www.cp-dr.com/node/3598.)

The annotated November agenda with linked staff reports is at http://coastal.ca.gov/meetings/mtg-mm14-11.html.

**UCSB plan approved with sustainability settlement**

The Commission unanimously endorsed UC-Santa Barbara's new 15-year Long Range Development Plan, which calls for expanding the 1100-acre campus and adding housing and academic structures for

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# >>> Coastal Commission issues two big rulings on Central Coast

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up to 5,000 undergraduate and 1,380 graduate students. The staff report called for 20 modifications, all of which the university accepted [http://documents.coastal.ca.gov/reports/2014/11/Th11a-11-2014.pdf].

The Sustainable University Now (SUN) Coalition, formed in response to the plan, reached a settlement in 2011 agreeing to support it. (See pp. 268ff of the staff report.) The *Independent* reports SUN's principal organizer was Prof. Richard "Dick" Flacks [http://www.independent.com/news/2014/nov/12/state-commission-hear-ucsbs-15-year-expansion-plan/], a legendary 1960s figure, coauthor of the 1962 Port Huron Statement from Students for a Democratic Society. A SUN representative, longtime Santa Barbara environmental attorney Marc Chytilo, endorsed the plan at the hearing. The agreement calls for specific measures on sustainable transportation, habitat stewardship, water supply, energy conservation, community participation in governance, and housing availability, including improvements to the jobs/housing balance.

**The contemplated desalination plant would offer a way out of the bind created by the State Water Board's 2009-issued cease and desist order requiring Cal Am to stop all illegal water diversions from the Carmel River by the end of 2016**

Commissioner Jana Zimmer questioned the sufficiency of water supply for the plan. The staff report includes assurances by the Goleta Water District – but often with reference to its 2010 Urban Water Management Plan. (See http://www.goletawater.com/documents/.) Zimmer noted the district was currently not allowing new water connections, and is supplied from the State Water Project and the diminished Lake Cachuma. Jack Ainsworth, Coastal Commission Deputy Director for the region, responded that the Goleta district's groundwater was sufficient, continuing "feedback loops" would recheck adequacy of supply, and new projects would have to offset their effects through conservation.

**In other Coastal Commission action:**

- The Commission overruled its staff by a 7-4 vote to issue a determination of consistency with the Coastal Act that allowed the Navy's Silver Strand coastal campus facility to go forward in San Diego County. The *San Diego Source* has details, including that its functions would include assisting SEAL teams. Concerns had included effects on the Nuttall's Lotus, "traffic and visual impacts," and the staff's complaint of insufficient access to enough information to decide if the project would create a need for a seawall or otherwise affect coastal dunes.

- The Commission approved amendments to a Coastal Development Permit for beach management by the City of Santa Cruz. The Pacific Legal Foundation, which livetweeted all three days of the November meeting with exceptional diligence, reported the vote was 9-2 and came only after Commissioner Mary Shallenberger, supported by at least two others, questioned whether provisions for a nighttime curfew served the goal of preserving beach access.

- The Commission heard many single-family home disputes including a number of teardown-rebuild applications for single-family houses in suburban Southern California neighborhoods. It heard public comments on usual-suspect issues including Venice zoning and the Banning Ranch. It granted extensions of time on consideration of Local Coastal Program (LCP) revisions for Chula Vista, Imperial Beach, and Malibu. It approved an amendment to the Santa Barbara LCP to create buffers between agricultural uses and "new non-agricultural development and uses."

- The Commission approved 12 grants totaling $1 million for work on LCPs.

- It rejected an appeal of a decision to allow emergency call boxes on Highways 1 and 128 in Mendocino County.

- The meeting was the Commission's first in San Mateo

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# >>> Coastal Commission: coastal visitor access up next

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County. Commissioner Groom, the local host, pronounced herself "ecstatic" but the *Half Moon Bay Review* noted there were few local items on the agenda. A Commissioners' field trip included the site of the "Big Wave" project proposal, subject of a recent redesign mainly affecting a part of the project designed as affordable housing for 50 adults with developmental disabilities and 20 staff. Per a recent county Planning agenda, there would also be 108 business condominium units. The Coastal Commission rejected an earlier design for the project two years ago. (The project's own site is at http://bigwaveproject.org/. The Midcoast Community Council's page with timeline and links for the project is at http://www.midcoastcommunitycouncil.org/big-wave-project/.)

- As part of this month's anti-fracking protest, the Center for Biological Diversity announced it was delivering a petition with 30,000 signatures.

- The December meeting, in Monterey, will include a long-anticipated workshop on lower-cost visitor-serving accommodations – that is, on preservation of the cheap California seaside vacation as public resource. See http://coastal.ca.gov/mtgcurr.html.

- In Coastal Commission action apart from the recent meeting, the *Malibu Times* reported Coastal Commission Enforcement Officer Pat Veesart was invoking the Coastal Commission's recently augmented enforcement authority under SB 861, to warn the owners of the Paradise Cove beach access area to stop charging visitors for public access. As the *Los Angeles Times* reported previously, complaints about parking charges have included some from members of the Black Surfers Collective who said they had not been allowed to carry their surfboards across the sand.

- Separately the *Monterey Herald* reported that legal troubles continue for the Sand City "eco-resort" plan in Sand City (see prior coverage of the Coastal Commission settlement at http://www.cp-dr.com/node/3474), while a separate hotel and time-share proposal for the Sand City dunes, by developer King Ventures, goes before the Coastal Commission in December on appeal by the Ventana Chapter of the Sierra Club. ■

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# legal digest

## In possible preview of SANDAG case, appellate court strikes down San Diego County CAP

BY WILLIAM FULTON

In an unpublished opinion, the Fourth District Court of Appeal has ruled that in adopting a climate action plan, San Diego County violated the California Environmental Quality Act by not following the mitigation measures the county laid out in the general plan process.

The ruling is a significant victory for environmentalists and could portend future rulings from the Fourth District in the facing environmental plaintiffs, especially in the pending environmental challenge to the sustainable communities strategy adopted by the San Diego Association of Governments (SANDAG) (See http://www.cp-dr.com/node/3625). The ruling might also influence the pending City of San Diego Climate Action Plan, in which many of the same issues are at play. (Disclosure: As most *CP&DR* readers know, the author was until recently the planning director for the City of San Diego and as such was in the middle of the debate on this very issue.)

San Diego County adopted its general plan in 2011. The general plan's environmental impact report contained a mitigation measure requiring the county to adopt a climate action plan that would reduce greenhouse gas emissions from county operations by 17% between 2006 and 2020 and community emissions by 9% between 2006 and 2020. The county also agreed to adopt significance thresholds to implement the CAP.

However, the appellate court found that the actual climate action plan, adopted by the county in 2012, did not fulfill this promise. "[W]hen it approved the CAP and Thresholds project, the County stated that the CAP does not ensure the required GHG emissions reductions," wrote Justice Gilbert Nares for a unanimous three-judge panel. "Rather, the County described the strategies as recommendations."

The court also concluded that, in the general plan EIR and mitigation monitoring and reporting program (MMRP) adopted with it, the county agreed to follow the "trajectory" called for in Executive Order S-3-05, issued by Gov. Arnold Schwarzenegger in 2005 but did not do so in the CAP. EO S-3-05 requires state agencies to pursue a goal of reducing GHG emissions by 80% by 2050. Its application to SANDAG's SCS via

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# >>> Court strikes down San Diego County CAP

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the environmental review process is also an issue in the SANDAG case.

The county's defense consisted largely of an argument that the statute of limitations had passed by the time the Sierra Club filed the lawsuit because the Sierra Club should have challenged the general plan EIR, not the CAP. The court rejected this argument and in so doing gave the county a stern lecture for attempting to consider the CAP, as well as adoption of significance thresholds associated with the CAP, as part of the same "project (for CEQA purposes) as the general plan itself.

On this point, the court relied heavily on the Second District's decision in *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal. App.4th 425, 443-444 (*Lincoln Place II*). In that case, the court rejected the City of L.A.'s argument that a tenants' association could not sue to enforce mitigation measures resulting from a tentative vesting map approval because the 180-day window for suing under the Permit Streamlining Act had closed.

Although the court concluded that both the CAP and the significance thresholds were separate projects – and relied on that conclusion to strike down the County's defense – it did not order the County to prepare a CEQA analysis for other one.

Nor did the court explain in detail its conclusion that the general plan and its EIR committed the county to meeting the "trajectory" of EO S-3-05. Although the EIR provides a description of EO S-3-05 [http://www.sandiegocounty.gov/pds/gpupdate/environmental.html], it acknowledges that AB 32, the state statute calling for greenhouse gas emissions reductions, sets no targets past 2020. Furthermore, the MMRP [http://www.sandiegocounty.gov/pds/gpupdate/docs/BOS_Aug2011/EIR/H5_MMRP_7.13.11.pdf] makes no mention of EO S-3-05 or targets past 2020. AB 32 does contain general language saying that emissions reduction efforts should continue past 2020, and the court does cite general language in the EIR about the ongoing risk of climate change.

**The ruling is a significant victory for environmentalists and could portend future rulings from the Fourth District in the facing environmental plaintiffs, especially in the pending environmental challenge to the sustainable communities strategy adopted by the San Diego Association of Governments (SANDAG).**

The court apparently based its conclusion on the idea that, in adopting the CAP and the significance thresholds as plan-level documents, the county sought to truncate or eliminate environmental review based on GHG emissions past 2020, even though the county staff acknowledged that GHG emissions might increase after 2020. In the ruling, the court noted that in appearances before the Board of Supervisors the county staff stated that because EO-S-3-05 was an executive order and not a statute, the county was not required to follow it.

The Fourth District's ruling in the county case could portend a similar ruling in the SANDAG case. The environmentalists were successful at the trial level in using this argument, though the case involves a different kind of plan produced by a different type of government agency operating under a different state law (SB 375 as opposed to the general plan law). Judge Taylor's ruling [http://www.cp-dr.com/node/3301] was issued almost two years ago. The case is still pending in the Court of Appeal, though oral arguments occurred [http://www.cp-dr.com/node/3584] in August and a ruling is expected soon.

Environmentalists have been aggressive in promoting the same set of arguments during the development of the City of San Diego's CAP. Recent press reports suggest that Mayor Kevin Faulconer and environmentalists are on the same page regarding the proposed CAP [http://voiceofsandiego.org/2014/10/23/san-diego-explained-an-enforceable-climate-action-plan/], although the post-2020 targets have become softer in recent drafts.

The case is *Sierra Club v. County of San Diego*, D064243, at http://www.courts.ca.gov/opinions/nonpub/D064243.PDF. ■

# DWR Must Reopen Environmental Review on Kern Water Bank

BY MARTHA BRIDEGAM

Some 20 years after the Monterey Agreement sewed up disputes among contractors of the State Water Project (SWP), opponents of the deal have come as close to unstitching it as they've been in many years.

In an early October ruling on the Kern Water Bank cases [http://www.cp-dr.com/sites/default/files/KWB%20ruling%20100214.pdf], Judge Timothy Frawley ordered the environmental impact report on the "Monterey Plus Project" settlement to be revised and submitted for recertification, but with the revisions to focus only on the environmental impact of the "use and operation" of the Kern Water Bank.

Frawley refused to reopen the question of whether the Kern Water Bank was correctly transferred to a local joint powers authority, the Kern Water Bank Authority (KWBA), in 1995-6. Environmental and community groups in the dispute contend the transfer effectively privatized a public resource for the benefit of large landowners – especially Roll Global's Paramount Farms, known for its thousands of acres of almond and pistachio trees.

Adam Keats, lead counsel with the Center for Biological Diversity (CBD), an important petitioner in the matter, wrote after the decision: "At this point petitioners are planning on appealing Judge Frawley's ruling, both because we disagree with his remedy that has left the approvals of the transfer in place and because we disagree with other parts of his ruling related to the rest of the Monterey Amendments. It is possible that the new EIR process could proceed alongside any appeal."

Although everyone got something in the decision, Frawley ruled petitioners were the prevailing parties for purposes of attorneys' fees.

Previously on March 5, Frawley issued a more sweeping decision in the matter, as reported at http://www.cp-dr.com/node/3456. That decision – really, two rulings in consolidated cases – upheld most aspects of the EIR on the Monterey Plus Project but found the EIR's analysis was deficient as to the Kern Water Bank component of the deal.

Per the limits of the March ruling, this month's order did not reopen the broader question of whether the Monterey Agreement itself (and the resulting Monterey Amendments to the SWP's contracts) served the public interest. Disputes include whether the original 1994 agreement should have eliminated the "urban preference," which formerly required that city populations should receive first priority for water in times of shortage.

Located at the foot of the Central Valley south of Bakersfield, the Kern Water Bank is the largest of several area water banks: a system of pipes, wells and recharge ponds that allow massive quantities of water – potentially up to 1.5 million acre-feet – to be stored in the loose sandy ground of the Kern Fan Element and drawn out again at need. The water bank's Web site says it now has "about 0.8 million acre-feet in storage."

A statement issued by the KWBA said "the Court appropriately rejected the extreme remedy of shut down of the Kern Water Bank as advocated by the Center for Biological Diversity (CBD) and other petitioners in the Central Delta case." It quoted Frawley's statements that "shutting own the Bank would result in more environmental harm than allowing it to remain operational" and noted he "ruled it would be 'contrary to the public interest' and 'reckless and irresponsible to suspend Kern Water Bank operations particularly under current severe drought conditions. As the Court's ruling also states, the 'point of having a water bank is primarily to provide water in times of shortage.'"

On the shutdown issue, Keats wrote: "Petitioners argued that the transfer needed to be reversed and the water bank returned to the state, and we intend to take that argument up on appeal. We also argued that the judge should – but was not absolutely required to – shut the water bank down pending future environmental review. As an alternative, recognizing the economic factors that the judge may consider, we argued that while the law required the judge to return the water bank to the state, it allowed him to permit continued operation and use of the water bank pending future environmental review. He kind of did this, stating that the bank can

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# >>> Kern: No geographic limit to new EIR review

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continue to operate pending future environmental review while also not disturbing the transfer."

Frawley wrote in his ruling that the court faced "the fulcrum of a pointed dilemma" created "because DWR approved and completed transfer of the Kern Water Bank lands to KWBA in 1995-96, but did not complete its environmental review of the transfer until approximately fifteen years later, in 2010."

The initial transfer of the Kern Water Bank was made under the terms of the original Monterey Agreement; its terms were modified by a 2003 settlement of litigation brought by a prior, separate group of environmental plaintiffs, led by the Planning and Conservation League (PCL). A major question in the current phase of litigation has been what latitude remains to the current set of petitioners since, as Frawley's opinion puts it, they have "arrived late to the party."

In the two cases that Frawley considered together, the two sets of petitioners had sought different levels of reopened review. The neighboring water districts that were petitioners in *Rosedale-Rio Bravo Water Storage District v. DWR*, Case No. 34-2010-80000703, had offered to accept an order changing much less of the status quo. Their proposed order would have limited EIR decertification to the Kern Water Bank portion of the Monterey Plus Project while providing for only a "supplemental, geographically-limited EIR focused on the potential impacts (particularly as to groundwater and water quality)... in the immediate vicinity of the Kern Water Bank lands."

**Environmental and community groups in the dispute contend the transfer effectively privatized a public resource for the benefit of large landowners**

But the Center for Biological Diversity (CBD) and other activist plaintiffs held out for more in the larger, more political case of *Central Delta Water Agency v. California Department of Water Resources (DWR)*, Sacramento Superior Court Case No. 34-2010-80000561. In his decision, to the environmental groups' delight, Frawley went farther than the Rosedale group had asked.

KWBA recounted Frawley's order that operation continue during DWR's work to revise the EIR, "subject to certain conditions including the interim operating plan jointly developed by and between KWBA and neighboring Rosedale-Rio Bravo and Buena Vista Water Storage Districts for protection of local groundwater. KWBA is committed as a responsible agency to diligently assisting DWR with timely completion of its supplemental review as required by CEQA and the Court and bringing closure to 19 years of litigation."

**EIR could need to consider far-flung effects**

The new EIR review is topically but not geographically limited, so arguably the analysis could extend to any site served by the SWP if the Kern Water Bank is involved. Keats wrote: "Anything in the EIR that deals with the Kern Water Bank in any way needs to be revisited in the new EIR. At this point it is hard to say how much the analysis will change, but anything related to the KWB is on the table."

Carolee Krieger of the California Water Impact Network (C-WIN), which was also a party, praised Frawley's decision not to limit the new EIR review geographically.

Krieger cited her own home town of Montecito as an example of physically distant effects from current priorities at the Kern Water Bank. She said on joining the State Water Project, Santa Barbara County agreed to build 144 miles of pipeline and pumping facilities from the main State Water Project line in Kettleman City over the hills to Lake Cachuma. She said the county was paying down $1.76 billion in costs for the pipeline, far more than voters had been led to expect, and Montecito's share of that came close to $6 million out of an $11.4 million revenue stream, "whether we get any water or not." And she noted the State Water Project is delivering only 5% of the amounts

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# >>> Kern: water bank has important ties

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in its contracts this year.

"Now what galls me," she said, "is, if the Kern Water Bank were a public asset as DWR had planned and if the urban preference were in place as DWR had planned, Montecito would never have gotten to this place."

Montecito's water shortage has been especially severe. Krieger said city water users have cut back by 45% and the city has had to purchase water on the open market. As she noted, *Politico* reported in August that celebrities in the area, including Oprah Winfrey, were hauling water by tanker truck to their estates.

**Allegations of private benefit**

The water bank system, which the Department of Water Resources (DWR) had begun but not finished, was transferred in exchange for the receiving entities' retirement of 45,000 acre-feet in annual water rights.

The Kern Water Bank says on its Web site, "The KWBA had to construct significant infrastructure to turn the [Kern Fan Element] lands into a functioning water bank" including "approximately 7,000 acres of recharge ponds, 85 recovery wells, 36 miles of pipeline, and a six-mile-long canal." But AP's Garance Burke writes that the Department of Water Resources previously put $74 million of its own and $23 milllion of bond proceeds into earlier stages of the project.

Critics have focused on the benefit to Paramount Farming Co., a company in the Roll Global holding company of investors Stewart and Lynda Resnick. Paramount reportedly owns the Westside Mutual Water Co., which as of 2011 owned 48.06% of the base shares in the KWBA. Critics say Paramount and the neighboring Tejon Ranch Co. also have significant influence with other large shareholders in the KWBA.

Krieger noted the judge's words that the water bank exists "to provide water in times of shortage," but said, "the way the Kern water bank is operated with the Resnicks controlling 58%, they do not sell to the public without getting a huge profit. They are a private company." She said it was the DWR's intention "to have a place to store surplus water" south of the Delta, with the urban preference in place, to serve the public. "It's people who need the water in times of severe dought. Crops can be fallowed."

She said Frawley "just doesn't get it" when it comes to objections about private profit from the sale of Kern Water Bank water and about the loss of the urban preference in the Monterey Agreements.

**Potential effects on both sides of the Tehachapis**

Although the Kern Water Bank case is discussed most frequently as benefiting Paramount, it also affects water districts that work with the Tejon Ranch Company on both sides of the Tejon Pass, and even the Newhall Land and Farming Company, whose proposed Newhall Ranch development at the north edge of Los Angeles suburbia is currently before the State Supreme Court.

The Newhall Land and Farming Company holds a right to store 55,000 acre feet of water with the Semitropic Water Storage District, which in turn owns 6.67% of the Kern Water Bank. The Semitropic Water Storage District has been named as a real party in interest named in the Kern Water Bank suit.

As for the Tejon Ranch Co., a detailed 2011 California Lawyer article on the litigation reported CBD's Adam Keats first turned his attention to the Kern Water Bank because it was listed as a possible water source for the company's upscale Tejon Mountain Village development in the Tejon Pass highlands, which has won initial approvals.

*Bakersfield Californian* columnist Lois Henry tangled with the Tejon Ranch Co. in March when she suggested Judge Frawley's initial ruling might affect the Tejon Mountain Village project; she reported that the company's Barry Zoeller wrote to her then, "It's not a concern" and that the project also had other water sources. Henry has also reported that the Tejon Ranch Co. has been making purchases of water rights in recent years. (Her more recent comment on the impending Kern Water Bank

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# >>> Kern: Unclear if any effect on Tejon plans.

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decision this September included some insights into the Rosedale-Rio Bravo water district parties.)

It is even less clear how or whether the Kern Water Bank decision may affect the proposed planned town of Centennial, whose proponent is a joint venture by the Tejon Ranch Co. and others, known as Centennial Founders, LLC. Centennial would place some 23,000 units of housing on land at the south edge of Tejon Ranch, around Quail Lake on Highway 138 east of I-5, in unincorporated Los Angeles County. The west branch of the California Aqueduct runs through the proposed site. But in a recent public comment on the Draft EIR for the Antelope Valley Area Plan, which affects the Centennial site's zoning, the Tri-County Watchdogs activist group mentioned the Kern Water Bank decision in calling on Los Angeles County planners to scrutinize water sources for new Antelope Valley development.

It's likewise unclear how the Kern Water Bank might affect the portion of Tejon Ranch real estate development that is physically closest to it: the existing industrial, travel and outlet-mall complex near the junction of the I-5 and 99 highways south of Bakersfield, and, next to it, a proposed new development with 12,000 residential units to be known as Grapevine.

The Tejon Ranch Company, Tejon-Castac Water District (TCWD), and, on some court papers, the Wheeler Ridge - Maricopa Water Storage District (WRMWSD), have been described as real parties in interest in the Kern Water Bank case. The Tejon Ranch Company has large water delivery contracts with TCWD, which as of 2011 owned 2% of the Kern Water Bank, and WRMWSD, which as of then owned 24.03% of the Kern Water Bank. The company's profile of Dennis Atkinson, Senior Vice President, Agriculture and Water Resources, states he is "president of the Tejon Castac Water Agency, vice president of the Wheeler Ridge Water Agency and is also a member of the Kern County Water Bank Authority board of directors."

The Tejon Ranch Co. gives its own accounts of its real estate projects and water holdings in its initial and amended 10-K reports for 2013.

### An old public argument

The Monterey Agreements, the Kern Water Bank, and land development between Bakersfield and Los Angeles are long-established matters of entrenched political conflict.

The Kern Water Bank's 1994 transfer from the Department of Water Resources to the Kern County Water Agency, and thence within days to the Kern Water Bank Authority, can be viewed either as privatization or as devolution to local control. The question whether the water became privatized depends on the view taken of water districts that are public entities but governed by and for large private water users, i.e. major landowners. Background on the arguments that a public resource was transferred for private enrichment appears in 2011 *California Lawyer* article and in a paper titled, "Water Heist" published in 2003 by Public Citizen at http://www.citizen.org/documents/water_heist_lo-res.pdf .

The Public Policy Institute of California has taken a more favorable view. Key papers by senior water scholar Ellen Hanak and others include Hanak's 2003 "Who Should Be Allowed To Sell Water in California?..." at http://www.ppic.org/content/pubs/report/r_703ehr.pdf and its 2012 update at http://www.ppic.org/content/pubs/report/r_1112ehr.pdf . The 2012 PPIC report, in characterizing effects of the 1994 Monterey Agreement, wrote, "This agreement also led to the transfer from state to local ownership of a part of the Kern Fan, near Bakersfield, where the state had unsuccessfully attempted to launch a groundwater bank. This area, now known as the Kern Water Bank, has become one of the leading examples of groundwater banking."

The Kern Water Bank's own account of its history is at http://www.kwb.org/index.cfm/fuseaction/Pages.Page/id/360. It maintains a "Myth and Reality" page offering rebuttals to the Center for Biological Diversity's allegations as of a time when the lawsuit's filing was "recent". ■

**Oral argument in *Berkeley Hillside* set for December 2**

The Supreme Court announced it will hear oral arguments in Los Angeles December 2 in *Berkeley Hillside Preservation v. City of Berkeley (Logan)*. The case concerns application of a categorical CEQA infill exemption to a proposal for a very large private house, and more generally whether or when "unusual circumstances" can create exceptions to the exemption. On November 21 the Court partially denied and partially granted Respondents' Request for Judicial Notice and denied judicial notice requests by two amici.

Other pending CEQA cases before the California Supreme Court are:

- *Citizens for Environmental Responsibility v. 14th District Agricultural Association (Stars of Justice)*, S218240, held awaiting the decision in *Berkeley Hillside*.
- *Center for Biological Diversity v Dept of Fish and Wildlife* (the Newhall Ranch case), S217763, reply brief due November 26.
- *California Building Industry Association v. Bay Area Air Quality Management District*, S213478 (the "CEQA In Reverse" case): Fully briefed.
- *City of San Diego v. Board of Trustees of CSU*, S199557, fully briefed.
- *Friends of the College of San Mateo Gardens v. San Mateo County Community College District*, S214061, fully briefed.
- *Sierra Club v. County of Fresno*, S219783, opening brief due December 2.

**In other recent State Supreme Court actions:**

- The high court denied review of *San Francisco Tomorrow v. City and County of San Francisco (ParkMerced Investors Properties)*, Case No. S221844. William Abbott of Abbott & Kindermann recently posted an analysis of this case, which approved a major rebuilding and expansion of the ParkMerced highrise complex in southwestern San Francisco. See also http://www.cp-dr.com/node/3555.
- The Supreme Court refused a depublication request made by Caltrans, the High-Speed Rail Authority, and other parties in *Town of Atherton v. High-Speed Rail Authority,* which upheld the programmatic EIR's analysis of a route through Pacheco Pass en route to the Peninsula. The underlying decision, issued in July by the Third Appellate District, is discussed in detail at http://www.cp-dr.com/node/3540. In an email exchange, petitioners' attorney Stuart Flashman explained why the apparent losers in a ruling would work to keep it as citable authority. He wrote: "While we lost on the specific CEQA claims, the court of appeal firmly affirmed that CEQA was NOT preempted by federal law. This was an important ruling - actually far more important than the specific CEQA claims."
- The Court denied review of an appellate ruling against Target Corporation in the recent case of *Target Corp v. La Mirada Ave. Neighborhood Association*. As described by *Curbed LA* and the *LA Weekly*, the litigation previously won an October order stopping construction of a Target store at Sunset and Western Avenue. It's another success for the La Mirada Avenue Neighborhood Association and its counsel, Robert Silverstein. They are profiled in the *Weekly* article, which includes a catalogue of their recent victories.
- The Court rejected a depublication request in *City of San Diego v. Shapiro*, the case invalidating the San Diego special hotel tax district that had been meant to pay for a convention center expansion. For coverage of the underlying case see http://www.cp-dr.com/node/3545.
- The Court denied review of several appellate court orders in litigation between the Taxicab Paratransit Association of California and Internet-dispatched transit companies Uber, Lyft and Sidecar. Per the *San Francisco Business Times*, the taxi association has been suing since last year over the Public Utilities Commission's decision to legalize the "ride sharing" companies. See Supreme Court case nos. S218427, S220982, and S218564.
- The Court denied review November 12 on an unpublished August decision in *Harper v. Canyon Hills Community Association*, by the Fourth District Court of Appeal.
- The Court refused a depublication request in *Olive Lane Industrial Park, LLC v. County of San Diego*. For prior brief coverage on this Fourth District case upholding a belated transfer of a Proposition 13 reassessment exclusion, see http://www.cp-dr.com/node/3534.
- The League of California Cities noted a chance to comment by December 5 to a State Supreme Court commission on the way California courts are run.

In other state and federal courts:

- The Ninth Circuit upheld a grant of summary judgment against the National Resources Defense Council and local environmental groups in late October, allowing a project to go continue linking the Ports of Los Angeles and Long Beach to the I-405 freeway. The case is *NRDC v. USDOT*, No. 12-56467.
- The Coastal Commission requested rehearing in the Bowman sisters' case, now formally *SDS Family Trust v. CA Coastal Commission,* about whether daughters who inherited a property were bound by a coastal access easement imposed as a condition for a

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Coastal Development Permit that their late father had requested. The rehearing request, posted by the Pacific Legal Foundation, asks the court to return to the version of the facts it stated in March, which suggested the current landowners' father did some work in anticipation of the permit he requested, hence was bound by its terms. The request also argues the court had no right to exercise independent judgment in its October finding that the coastal easement was unfair because it had little to do with the permit sought: for work on a farmhouse and barn a mile inland. The PLF, which represents the sisters, noted the review request indignantly on its blog. The *Cambrian* has local coverage.

- The *Saltonstall* petitioners lost again at the appellate level in their effort to halt construction on the new Sacramento Kings arena. Dale Kasler of the *Sacramento Bee* has details. Earlier the *Bee* reported the Kings basketball team released plans for mixed-use residential, commercial and office construction ancillary to their new arena in downtown Sacramento.

- The *San Diego U-T* reported Superior Court Judge John Meyer upheld a $120 million infrastructure bond issue over a challenge brought by activist litigator Cory Briggs on behalf of San Diegans for Open Government. The paper said Meyer "essentially agreed" with Briggs that the bond issue was structured to avoid a public vote via "subterfuge", but that he ruled, "like it or not, it's legal."

- The *Porterville Recorder* reports former councilman Greg Shelton is claiming vindication from a recent opinion by state Attorney General Kamala Harris. The opinion, requested by Assemblymember Connie Conway, R-Tulare, says board members for post-redevelopment successor agencies are bound by the conflict-of-interest rules for redevelopment agencies' boards. It says these generally prohibit board members from buying property in redevelopment districts but they make a limited exception for "personal residential use". Shelton reportedly said that land he controversially acquired in 2012 fits the residential-use exception.

- The AG also issued an opinion clarifying that members of oversight boards for local post-redevelopment successor agencies may not receive compensation or reimbursed expenses from the authority that appoints them. For details see Best Best & Krieger's writeup.

- A Superior Court judge in San Jose allowed a contractor to go forward with construction on an aviation terminal primarily serving planes of Google executives. (CP&DR reported on a prior phase of San Jose airport litigation at http://www.cp-dr.com/node/3526.) Meanwhile Google signed a contract to lease Moffett Field, including the historic Hangar One, from NASA. See http://www.cnbc.com/id/102172594.

- Developer-side law blogger Art Coon noted the case of *Paulek v. CA Dept of Water Resources*, a Fourth District Court of Appeal ruling issued October 31. The case upheld a local activist's standing to bring a CEQA challenge the Perris Dam Remediation Project in Riverside County where the Department of Water Resources said he had merely asked questions, not made comments, at a hearing. However, the court rejected the challenge itself.

- The HomeAway vacation rental Web site sued San Francisco over the city's recently passed law legalizing certain vacation rentals, saying it favors Airbnb over other companies. Carolyn Said reported on the dispute in the *San Francisco Chronicle*. As she noted, City Attorney Dennis Herrera posted a statement saying he would "vigorously defend" against the suit, and complaining, "HomeAway's challenge pushes a dubious legal theory that the U.S. Constitution's Commerce Clause somehow prohibits local jurisdictions from making local land use decisions."

- Sunnyvale neighbors appealed a court ruling that disappointed their campaign to recover public access to the Raynor Activity Center after the city sold it. The suit is partly under CEQA, partly under the Public Park Preservation Act. The neighbors' most recent update describes the ruling. The appellate case is *Save Sunnyvale Parks and Schools, Inc. v. City of Sunnyvale*. ■

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# November votes: cautious if not all conservative

BY MARTHA BRIDEGAM

Californians voted cautiously in November if they chose to vote at all. It would be foolish to look for just one electoral mood in such a large state – but when voters considered ballot measures related to land use, they mainly chose to preserve status quos.

This was conservatism in a sense not necessarily pro-business or libertarian, but almost more Tory than American in pattern. The current conditions that California voters chose to protect included existing open spaces, existing public services, and, in some cases, existing development potential. Voters were often willing to accept small new taxes. General-purpose sales taxes were most likely to pass but some special-purpose taxes were approved, especially for schools, infrastructure, transportation, parks and open space.

Voters tended to reject dramatic hard-sell appeals or egalitarian political gestures related to land use. Tenant protections were scarce on the ballot and not favored. Anti-development measures tended to succeed when they defended open space but fail when they resisted infill. "No" campaigns often won by raising doubts about hidden consequences of complex measures.

**Not In My Back Forty**

Open space measures did well, notably the passage of Santa Clara County Measure Q, a tax to preserve open space. Measure P, a much-criticized parks tax in Los Angeles County (see http://www.cp-dr.com/node/3613), failed to reach the required 2/3 vote but won 62.82% of the vote.

Anti-development campaigns did well when they focused on preservation of open space, as with the defeats of two eastern Bay Area measures: Dublin's Measure T, which would have countermanded open space measures, mainly on the eastern Doolan Canyon area; and Union City's Measure KK, which would have relaxed development limits for a proposed 63-acre mixed-use project with potential impacts beyond the current proposal.

Measures did badly if they were presented as anti-development but had complex provisions that opponents could characterize as stealth upzoning.

El Dorado County anti-development measures M, N and O all lost, but the strongest margin – 75.0% no to 25.0% yes – was against Measure N, which was criticized as having mixed effects that could support a Sacramento-based developer. (See http://www.cp-dr.com/node/3613 and http://www.cp-dr.com/node/3565.)

Similarly, the City of Riverside's Measure L would have approved a specific plan that both promised open space and was criticized as seeking development authorizations, lost by 56.83% "No" to 43.17% "Yes". The *Press-Enterprise* reported a small grassroots campaign, and skepticism about an out-of-town developer, defeated the measure.

In Santa Monica, both Measure D and Measure LC used anti-development rhetoric (see http://www.cp-dr.com/node/3613) in characterizing their measures as limiting potential future development of the Santa Monica Airport, but the winner was Measure LC, supported by conservationists and longtime opponents of airport noise.

As the *SF Chron*'s architecture critic, John King, has noted, on three Bay Area measures, positions against downtown infill development lost: Measure R in Berkeley, which failed, would have imposed especially strict community-benefit requirements to exceed downtown height limits. (See our discussion of Measure R at http://www.cp-dr.com/node/3613.) Measure M in Menlo Park would have limited the size of commercial projects and would have capped new office space overall. It failed dramatically in Menlo Park's small voting electorate, with 61.35% (6,179 voters) opposed. In working-class San Bruno, near the airport, over two-thirds of voters supported increasing height limits to add density around the Caltrain commuter station.

The Escondido Country Club Homeowners Organization (ECCHO) handed a setback (likely temporary) to developer Michael Schlesinger in the defeat of the Lakes Specific Plan via Proposition H. That long-running dispute, however, is unlikely to be resolved by one vote.

Voters did go for measures that were presented as offering them a chance to undo a specific act by local officials: for example, Measure S to undo a prior 2013 Berkeley redistricting choice; Measure P, an advisory measure opposing the Highway 405 toll lanes in Costa Mesa; Measure S to undo a City Council billboard replacement deal in Santa Clarita, and Dublin's Measure T as mentioned above. Irvine's Measure V, a financial accountability measure on the Irvine Great Park, passed with a steep

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# >>> Voters: Big transportation wins in SF, Alameda Co.

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88.7% "yes" vote.

And then *Streetsblog LA* and Nelson/Nygaard's Jeffrey Tumlin picked up on the Case of the Placerville Roundabout Menace. As we last discussed in July, some Placerville voters became agitated this summer over a plan to resolve an awkward meeting of streets by installing a roundabout. (For links to the campaign Web site and a Google Terrain map of the intersection, see our July item at http://www.cp-dr.com/node/3532.) California voters may be turning Tory in their politics, but not so in their taste for street design. Placerville voted by 58.23% to 41.77% to approve Measure K, requiring a public vote for construction of any roundabout in the city.

Voters tended to reject dramatic hard-sell appeals or egalitarian political gestures related to land use.

**Tax choices**

Voters' tax and other revenue choices are helpfully tabulated in a report by the California Local Government Finance Almanac. The charts there show specially earmarked sales taxes did not do well overall – just four passed of 13 – but one of the four winners was the large-scale Measure BB for BART to Livermore. A differently structured big transportation proposal, San Francisco's Proposition A, also succeeded (and so did Supervisor Scott Wiener's disputed Measure B to support the Muni system). Measures passed for streets and drains in Monterey, paratransit on the Monterey/Salinas system, and the Fresno Zoo. Measures that failed included one for the Del Norte County Fair, a library measure in Sonoma County, and a streets measure in Turlock.

Proposals to raise or extend transient occupancy taxes were surprisingly unpopular: only four passed out of 14. Sales and use taxes did better, almost regardless of the tax increment's amount.

**Rental affordability measures disfavored**

Tenant protection and affordable housing measures generally failed when they were substantive rather than symbolic. In San Francisco, the nonbinding Measure K passed, with a policy statement in favor of affordable housing, but Measure G, the anti-speculation tax, was defeated, in a major defeat for San Francisco's embattled pro-tenant lobby. The vote against Measure G also fits a larger pattern in that, like Berkeley's Measure R, it sought to redress inequality by placing what could easily be characterized as arbitrary burdens on a very specifically defined type of real estate activity. Opponents were able to create significant doubt about whether Measure G would be applied fairly to individual property owners' business and family situations. In Santa Monica, Measure FS, to raise registration fees for rent-controlled landlords, won narrowly but Measure H, to increase the transfer tax on million-dollar properties, failed. Its companion Measure HH, an advisory measure to spend the Measure H proceeds, if any, on affordable housing, won narrowly but has no effect because H was defeated.

**Few grand gestures**

Voters in general rejected grand gestures if they threatened to have substantive effects.

Where anti-fracking measures affected less current business in Mendocino and San Benito Counties, they passed. (An analysis by the Stoel Rives firm says San Benito County does have "significant reserves within its jurisdiction that require unconventional extraction techniques to produce.") Where it mattered the most economically, in oil-rich Santa Barbara County, the anti-fracking measure failed.

San Francisco's dueling astroturf measures, Propositions H and I, were subjects of an environmentalist campaign against health risks of artificial turf through the summer and fall, but voters chose to allow the Golden Gate Park playing fields to install astroturf and nighttime lighting.

San Francisco Proposition L, the pro-car "Restore Transportation Balance" measure backed by tech billionaire Sean Parker, failed resoundingly.

Sacramento's strong-mayor Measure L, another grand gesture in its way, also failed. ■

# Selected local land use ballot measure results

BY MARTHA BRIDEGAM

Here's *CP&DR*'s rundown of November land-use election results. Results appearing here are as reported soon after Election Day, with 100% of precincts reporting. Final vote counts are slightly different. For exact final tallies, click on the names of the counties for links to their final election results.

## Alameda County

**Countywide:**
**Measure BB**

County voters passed a transportation commission sales tax to implement the 30-year 2014 Alameda County Transportation Expenditure Plan [https://d3n8a8pro7vhmx.cloudfront.net/yesonbb/pages/1/attachments/original/1402608360/2014_Transportation_Expenditure_Plan.pdf], significantly to pay for extending BART to Livermore. Would renew existing half-cent sales tax and add another half-cent for a one-cent transportation funding tax until 2015.

**Yes:** 69.56% **No:** 30.44%

**City of Berkeley:**
**Measure F**

A special parks tax to raise the existing levy by 16.7% for parks funding passed.

**Yes:** 74.90% **No:** 25.10%

**Measure R**

Voters overwhelmingly rejected zoning ordinances for downtown Berkeley construction, including requirements of community benefits in exchange for exceeding maximum height limits.

**Yes:** 26.13% **No:** 73.87%

**Measure S**

Voters approved a redistricting map approved by the City Council in 2013.

**Yes:** 64.16% **No:** 35.84%

**City of Dublin:**
**Measure T**

Voters rejected the "2014 Let Dublin Decide Initiative," which would have set the stage for annexation of Doolan Canyon and partly override prior conservation measures.

**Yes:** 17.21% **No:** 82.79%

**Union City:**
**Measure KK**

Voters rejected a proposal for 63 acres of senior-focused development. The vote was required by a previous voter initiative

**Yes:** 34.86 **No:** 65.14%

## El Dorado County

**Countywide**
**Measure M**

Voters rejected a measure that would have prohibited construction of any housing developments of five parcels or more unless CalTrans certified that two preconditions exist: first, that the stretch of Highway 50 west of Placerville has traffic levels that do not reach Level of Service F, and, second, that traffic will remain at an LOS above F in the foreseeable future. Would have prohibited rezoning of land currently designated as farming or open space for other purposes. Limits up zoning low-density residential areas, creates exemptions for non-residential and ag-related development.

**Yes:** 42.06% **No:** 57.94%

**Measure N**

Voters also rejected Measure N, which was framed as a competing alternative to Measures M and O. It would have extended 1995 Measure Y's slow-growth restrictions but opponents allege it would change the General Plan to allow more development in some areas.

**Yes:** 25.00% **No:** 75.00%

**Measure O**

Voters also rejected Measure O, which would have rezoned a large portion of the county from "Community Region" to a "Rural" designation, changing the required traffic Level of Service of D instead of E.

**Yes:** 33.20% **No:** 66.80%

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# >>> Results: Santa Monica airport opponents win

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## Humboldt County

**Measure P**

Voters approved a measure defining as a public nuisance the act of growing genetically modified organisms in the county, with an exemption for research institutions that contain their work. GMO human foods, animal feeds, and medicines would be allowed into the county.

**Yes:** 59.43% **No:** 40.57%

## Lake County

**Measure O**

The "Medical Marijuana Control Act" was one of many marijuana regulation items on local ballots, competing with Measure P. It was an attempt to limit cultivation to a scale consistent with personal medical use.

**Yes:** 36.5% **No:** 63.5%

**Measure P**

The "Freedom to Garden Human Rights Restoration Act" would have recognized a "fundamental self evident right to have and grow the natural plants of this earth," with possible anti-GMO implications in a duty to "take reasonable care to prevent environmental destruction". It would have pre-empted the competing Measure O and many regulations imposed on medical marijuana by the currently applicable Measure N.

**Yes:** 32.0% **No:** 68.0%

## Los Angeles County

**Countywide**

**Measure P**

A parcel tax of $23 per year per land parcel for park funding failed to win the necessary two-thirds supermajority.

**Yes:** 62.82% No: 37.18%

**Santa Monica**

**Measure D**

Voters rejected Measure D, which would have prohibited new development of Santa Monica Airport property without voter approval.

**Yes:** 41.70% **No:** 58.30%

**Measure LC**

Voters approved the competing Measure LC, placed on the ballot by the city Airport Development Council, which would also prohibit new development on the site without voter approval, but would except parks and related facilities, and would also "affirm the City Council's authority to manage the Airport and to close all or part of it."

**Yes:** 59.73% **No:** 40.27%

**Measure FS**

Voters narrowly approved Measure FS, which would raise registration fees for rent-controlled landlords from $174.96 to amounts of up to $288 per unit per year, allowing half of each unit's fee to be passed through to its tenant.

**Yes:** 51.50% **No:** 48.50%

**Measure H**

Voters rejected Measure M, which would have raised the local real estate transfer tax from $3 to $9 per thousand of sale price, only on sale prices of $1 million or more

**Yes:** 42.20% **No:** 57.80%

**Measure HH**

Voters narrowly approved this advisory measure stating that proceeds from the single-H measure should be spent on affordable housing, but of course the question is moot.

**Yes:** 50.10% **No:** 49.90%

**Malibu**

**Measure R**

Voters approved Measure R, which will require voter approval for any commercial project of more than 20,000 square feet. The measure was supported by film director Rob Reiner, an environmental activist.

**Yes:** 59.27% **No:** 40.73%

**Santa Clarita**

**Measure S**

Voters rejected a proposal to remove existing billboards and replace them with three digital billboards.

**Yes:** 43.81% **No:** 56.19%

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# >>> Results: Costa Mesa's anti-toll-lane measure passes

– CONTINUED FROM PAGE 23

## Mendocino County

**Measure S**

An anti-fracking initiative passed.

**Yes:** 67.18% **No:** 32.82%

## Orange County

**Costa Mesa**

**Measure P**

Costa Mesa voters approved an advisory measure opposing the Highway 405 toll lanes, though it's not clear how much impact the measure will have since Highway 405 is a state highway.

**Yes:** 53.8% **No:** 46.2%

**Irvine**

**Measure V**

Voters approved a parks accountability measure related to management of Irvine Great Park, which has been subject to investigations over how money has been expended.

**Yes:** 88.7% **No:** 11.3%

**Newport Beach**

**Measure Y**

Newport Beach voters sounds rejected Measure Y, which would have limited development in beachfront neighborhoods but increased allowable development in the downtown.

**Yes:** 30.7% **No:** 69.3%

## Sacramento County

**Isleton**

**Measure D**

A tax to support "Public Safety and Parks and Recreation projects and services" did not receive the necessary two-thirds vote.

**Yes:** 60.22% **No:** 39.78%

**Rancho Cordova**

**Measure H**

Voters approved a half-cent sales tax for general purposes. The proceeds are not actually restricted, but measure has been promoted as raising money to reduce "blight" on Folsom Boulevard and to assert local control.

**Yes:** 58.79% **No:** 41.21%

**City of Sacramento**

**Measure L**

Mayor Kevin Johnson again failed to gain voter support for his strong-mayor idea. This one would have imposed term limits and brought the measure back for permanent approval in 2020..

**Yes:** 42.78% **No:** 57.22%

## San Benito County

**Measure J**

An anti-fracking measure passed.

**Yes:** 57.36% **No:** 42.64**%**

## San Francisco County

**Proposition A**

Voter approved a $500 million bond measure for roads and transportation.

**Yes:** 71.23% **No:** 28.77%

**Proposition B**

Voters also approved Supervisor Scott Wiener's measure to increase the share of general fund spending to the Muni transit system in proportion to future daytime and nighttime population increases.

**Yes:** 61.14% **No:** 38.86%

**Proposition F**

Voters approved a major redevelopment of the decayed Union Iron Works plant at Pier 70 on the southeast waterfront. The vote was required to comply with the new Proposition B waterfront height limits passed in June.

**Yes:** 72.28% **No:** 27.72%

**Proposition G**

Voters rejected the anti-speculation tax, which would have increased transfer taxes for most multi-unit residential properties resold within five years of their last purchase or transfer.

**Yes:** 46.01% **No:** 53.99%

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# >>> Results: Santa Clara County open space measure passes

– CONTINUED FROM PAGE 24

**Proposition H**

Voters rejected the measure to block artificial turf and stadium lighting on Golden Gate Park playing fields.

**Yes:** 45.85% **No:** 54.15%

**Proposition I**

In opposition to Proposition H, voters supported the Golden Gate Park artificial turf and renovation plans

**Yes:** 54.80% **No:** 45.20%

**Proposition K**

Voters supported an affordable housing policy statement against displacement of existing city residents and in favor of finding land and money to build new affordable housing.

**Yes:** 65.05% **No:** 34.95%

**Proposition L**

Voters rejected the "Restore Transportation Balance" measure designed to protect car drivers' parking opportunities, restrict expansion of "demand-responsive pricing" of parking meters, and otherwise shift city priorities to favor car drivers.

**Yes:** 37.67% **No:** 62.33%

## San Luis Obispo County

**Pismo Beach:**
**Measure H**

Voters approved the "Area R Development Standards General Plan Amendment," which would increase voter control over the Price Canyon area, outside the town of Pismo Beach but within its sphere of influence. It was a responce to the "Spanish Springs" golf/residential development proposal.

**Yes:** 65.70% **No:** 34.30%

## Santa Barbara County

**Measure P**

Santa Barbara was the only county in the state to defeat an anti-fracking ballot measure.

**Yes:** 39.29% **No:** 60.71%

## Santa Clara County

**Measure Q**

Voters approved a measure to impose a 15-year parcel tax across San Jose, four suburban cities, and unincorporated areas to preserve open space.

**Yes:** 67.03% **No:** 32.97%

**City of Palo Alto**
**Measure B**

Voters easily approved a measure to increase the Transient Occupancy Tax from 12% to 14% and dedicate the funding to infrastructure improvements.

**Yes:** 75.61% **No:** 24.39% ■

insight WILLIAM FULTON

# >>> Are Millenials different or just poor?

– CONTINUED FROM PAGE 1

trend reversals in American history: the end of growth in driving. Since 2007, vehicle miles traveled (VMT) has been flat, after growing consistently for a hundred years.

This trend reversal coincided, of course, with the biggest economic downtown since the Great Depression. But by most analyses, this reversal began before the big recession began in 2008, and it has continued to persist even though that recession is long past. So what's going on? Are people – especially young people – permanently changing their patterns? Or can they just not afford to drive as much as they used to?

The popular media's narrative is, of course, the first explanation: A new generation of Americans – the Millenials, who supposedly prefer a more urban lifestyle in overwhelming numbers. The truth, apparently, is a little more complicated – as many of the L.A. researchers discussed at the recent American Collegiate Schools of Planning conference. Among other things, the drop in driving may be due not to urbanites who choose not to drive – but, rather, to poor people who can't afford to.

**Among other things, the drop in driving may be due not to urbanites who choose not to drive – but, rather, to poor people who can't afford to.**

In the one hand, Taylor said, UCLA's researchers have found that there actually is a statistically significant relationship between your age and amount of driving you do (not just the amount you personally drive, but the amount of traveling you do in private autos even if others are driving). People born in the '60s – now between the ages of 44 and 54 – tend to drive 5% more than average. For people born in the '80s, it's 7% less. And for people born in the '90s, it's 16% less.

On the other hand, the actual number of people engaged in the urban millennial lifestyle isn't very high – at least according to research reported by one of Taylor's Ph.D. candidates, Celsie Ralph. After analyzing data about young adults – who she defined as people between the ages of 16 and 36 – Ralph divided the population into five categories: "drivers" and "long-distance trekkers" (who drive virtually all the time), "urbanistas" and "multimodals" (who drive between 50% and 80% of the time), and people who are carless.

What she found was that even among young adults, more than 80% of the population fall into the "driver" and "long-distance trekker" category. Only 6% can be classified as the classic Millenials – the "urbanistas" and "multimodals". But 14% of all young adults have no car at all, and most of them have low incomes.

Ralph said that although the urbanistas and the multimodals are growing in number, "the bigger story is what is happening in lowest income. There's a really dramatic increase in people without cars." These are not necessarily unemployed poor people. Many are working poor who have low-wage jobs.

And while it makes sense that poor residents in cities don't have cars, she and other researchers are finding that they're not the only ones. Poor residents in the suburbs and rural areas often don't have cars either. For example, Ralph found that the number of carless households in low-density residential areas is on the rise. "We see a really remarkable increase in people with fewest resources living in the worst place," she said. "The people in D.C. are doing it by choice but also there are people in rural Ohio who have no choice."

And this growing two-tier structure among people with lower incomes is creating a huge divide in the cost of

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insight WILLIAM FULTON

# >>> Poverty can mean no car, or car dependence

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travel and access to jobs. Another UCLA doctoral student, Trevor Thomas, found a stark relationship between the geographical location within a metropolitan region and the amount of driving the working poor must do.

Thomas compared poverty and VMT in three communities in the Los Angeles area: Boyle Heights, located in East Los Angeles just east of downtown Los Angeles; El Monte, further east in the San Gabriel Valley; and Palmdale, located in the Antelope Valley some 40 miles north of the San Fernando Valley.

All three are mixed communities with considerable poverty. But their proximity to job centers is vastly different. And so is the relationship between poverty and driving.

Not surprisingly, Thomas found that in Boyle Heights – a neighborhood with a 28% poverty rate located a short bus ride from downtown L.A. – a 1% increase in the community's poverty rate will yield a per-capita VMT reduction of 12 miles per year.

In El Monte, with a 24% poverty rate but located about 15 miles east of Boyle Heights, a 1% increase in the poverty rate will yield a per-capita *increase* of 12 VMT per year.

And in Palmdale, which has a 17% poverty rate, a 1% increase in the poverty rate will yield a per-capita increase of 47 VMT per year.

In other words, poor people in the suburbs are more dependent on their cars, probably because they can't take public transit to work.

The actual annual VMT numbers in this last study aren't that large. But the trend is clear: The urbanistas get a lot of publicity but there aren't that many of them. VMT is levelling off in part because there are more people who are carless – but those people are mostly poor. And there's an increasing bifurcation among the poor. The urban poor can survive a downturn because of public transit service, while the suburban poor are chained to their cars just like everybody else – only they have a much tougher time paying their car bills.

There are, of course, other measurements of Millenial behavior besides VMT. Millenials are buying houses and cars – and getting drivers' licenses – at a slower rate than their predecessors. These trends may hold over time; after all, habits engrained at a young age often last a lifetime. Or the urban-style Millenials may simply grow into a suburban lifestyle later than previous generations, as many demographers suggest.

But there's no question that, whatever's going on these days, it's not as simple as urbanistas sitting in coffee shops. The two-tier economy and the growing number of working poor – in both cities and suburbs – is an important part of the trend as well. ■

# Flatheaded skyscrapers: A Greek tragedy

By Morris Newman

News Item: The Los Angeles City Council has rescinded a long-standing ordinance requiring all high-rise buildings in the downtown area to have rooftop helipads. When the ordinance was in effect, all downtown buildings were flat-headed in design to accommodate the helipads. The result was a skyline of monotonous uniformity and "architectural mediocrity," according to the *New York Times.*

There is only one way to provide an adequate commentary on this situation: A Greek tragedy.

*SCENE: LATE NIGHT IN DOWNTOWN LOS ANGELES. A GREEK CHORUS, MADE UP ENTIRELY OF FLAT-HEADED BUILDINGS, CHANTS IN UNISON.*

*CHORUS OF FLAT-HEADED BUILDINGS:*
Oh, misfortune! Our reign has come to a sorry end.
Gone is our skyline, unique in all the world, of uniform flatness.
Gone, alas, are the days when 'copters swarmed us
The way butterflies swarm poppy fields. No more to hear
The sweet sound of chop-chop-chop-chubba-chubba-chop-chop.
Goodbye, copters! Goodbye cops! Farewell, first responders in MedEvacs!
For the Chief Fireman has said, in his annoying nasal voice,
'Go not to rooftops any more, oh thou office workers of LA!
People in emergencies should stay put, and wait for help.'
What kind of poppycock is that? Does this mean
That choppers are never more to land on our flat, bald heads,
Each with a target for helicopters marked "X" in the center,
Seen by none but birds, planes, God and Google Earth?
No more will high-rise buildings look like us, the flat-headed tribe.
The next generation won't have that special look – that is to say,
The look of a bunch of wooden boards at the hardware store,
Standing upright, that nobody has bought.

*Enter THE TRANSAMERICA TOWER, a famous pointy-headed building from San Francisco.*

*TRANSAMERICA TOWER:*
Oh, go ahead and moan, you inane band of overgrown cigar boxes.
Snivel, if you want. You're through. The future belongs to sharper shapes.
Just as skyscrapers with syringe-like tops were the toast of Manhattan
In the Golden Age, so once again pin-head buildings will come to rule
Your snoozefest of a skyline.

*FLAT-HEADED BUILDINGS:*
Insult added to injury! You pyramidal monstrosity, come to torment us
Just when we're feeling totally like we can't deal.

*TRANSAMERICA TOWER (being really obnoxious)*
But deal you must. This is progress, enlightenment, artistic freedom!
Face it, anvil-brains, you don't stack up when compared with Tokyo
Or all those Chinese cities with their pointy tower things.
Boring, boring!

*FLAT-HEADED BUILDINGS:*
You can laugh and scorn, you irresponsible pinhead!
You, who never shouldered any social responsibility.
Our very heads spoke of preparedness.

*TRANSAMERICA TOWER:*
Yes, and for that reason, you get no standout buildings by the Starchitects,
Those favorites of Zeus and Hera, who got them jobs with the other gods.

*FLAT-HEADED BUILDINGS:*
What bosh! Know ye not that we are of the International Style?
Just as the Seagram Building by Mies van der Rohe, and its wife,

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# >>> Flatheaded skyscrapers: A Greek tragedy

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the green-skinned Lever House by Skidmore Owings Merrill,
The legendary New York pair that gave birth to all the office buildings
that came after them, were both flat of brow?
What say you of that, you much-derided pinhead!

*TRANSAMERICA TOWER:*
Don't remind me of my poor reception when first built!
Though I stand by the Bay, I was by designed by an Angeleno,
The hard-partying Bill Pereira. Now I am a symbol of San Francisco!
Take that, you derivative clump of banalities!

*ENTER the Heydar Aliyev Cultural Centre, a recent building in Baku, Azerbajian by Zaha Hadid.*

*This exquisite building, widely portrayed in published photos during recent months, is elliptically curved in profile.*

*HEYDAR ALIYEV CULTURE CENTRE (with a slightly husky voice):*
Hey boys, stop fighting. You're not just wrong, you're stuck in the past.
Look at my beauty and be struck speechless as Buster Keaton.
Flat, pointed, who cares? It's irrelevant.

*FLAT-HEADED BUILDINGS:*
You look like a woman in a head-scarf
Standing in a strong breeze. I think we are in love.

*TRANSAMERICA BUILDING (to HEYDAR ALIYEV CULTURAL CENTER)*
You call us irrelevant? You're from Azerbajian, for crying out loud.
The client is a dictator who builds what he wants, regardless of cost.
Plus, you're a cultural center, not an office building, so you don't count.
And you were designed by Zaha Hadid. Her office buildings
On the whole, have flat tops!

*HEYDAR ALIYEV CULTURAL CENTER:*
All true. I'm just making a point, you pecan-brained dinosaurs.
The future can be flat, pointed or free-form like me.
The point is that LA can enjoy some variety, and catch up
With the skyline of a second-tier Chinese city, maybe, if it tries.
As for Tokyo or Dubai, however … oh, just give up now.

*CHORUS OF FLAT-TOP BUILDINGS (highly offended):*
You decadent hussy! Irrational product of extravagance and waste!

*HEYDAR ALIYEV CULTURAL CENTER:*
Don't try to fluster me with your bluster, bub.
Like the song says, you ain't so big, you're just tall, that's all. ■