

VOL. 26, NO.19 – OCTOBER 1, 2011

CALIFORNIA PLANNING & DEVELOPMENT REPORT

Sacramento County Plan Embraces 'Paradigm Shift' in Growth Management

BY JOSH STEPHENS

SACRAMENTO COUNTY MAY NOT RANK among California's great wine countries, but it does appreciate the value of aging. Eight years in the making, the land use element of the county's new general plan update is on the verge of approval by the county Board of Supervisors. In contrast with the contentiousness that has surrounded many other recently updated county general plans, this one – save some concerns about the protection of wild habitats – seems to be pleasing just about everyone.

The plan still holds the theoretical potential to expand the "Urban Policy Area" by up to 20,000 acres. However, in order to direct development towards what county planners explicitly refer to as a "smart growth" pattern, the county has established a novel set of benchmarks that proposed development must meet before they can even think about treading beyond the established Urban Policy Area.

"They have fashioned a really innovative kind of approach that I'm

not sure anyone else has done exactly the same way," said Mike McKeever, executive director of the Sacramento Area Council of Governments. County Supervisor Phil Serna called it a "paradigm shift for how the county is going to consider growth in the future."

Critics of the growth management strategy contend that there will be political pressure to not follow through with the plan's density goals, which could then open up greenfields to development more quickly than planners anticipate.

"Our big concern is that despite strong criteria, the actual implementation of projects will involve a never-ending series of concessions and relaxations and decisions that will end up with the kind of development that we have historically seen at the edge of the urban area, which is primarily single-family residential, transportation systems that are inadequate, and

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Land Use Legislation Roundup

Governor signs bills regarding redevelopment, CEQA, transportation

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for last year's
roundup.



GOV. JERRY BROWN considered more than 870 bills that came to his desk this legislative session. Some of the most contentious involved land use, particularly bills concerning redevelopment and the California Environmental Quality Act. The City of Los Angeles got a CEQA exemption for its proposed football stadium and infill developments have received special dispensation; speculation is that other such exemptions may be on the horizon. High-profile failures and vetoes include a bill opposing the expansion of Walmart in San Diego and a bill that would have lowered parking requirements in transit-oriented districts.

Though the governor publicly griped about the number of bills that the Legislature presented him – the chambers considered a total of 2,719 bills this year – it was actually the lowest number in decades. Yet, he still managed to veto 14 percent of them. Herewith is CP&DR's roundup of bills relating to land use that made the cut.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

AB 320 (Hill) will prevent CEQA lawsuits and litigation from being thrown out in the event a "recipient of approval" appears only after the statute of limitations time period has passed. The bill will help bring

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IN BRIEF

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IN BRIEF

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Court rules for county in flood damage suit Page 5

LEGAL DIGEST

How long is a 'day' in land of CEQA? Page 6

FROM THE BLOG

Planners try to resurrect Westwood Village Page 12

THE U.S. DEPARTMENT of Housing & Urban Development has decided upon five neighborhoods to receive the first awards of a \$122 million federal initiative targeting blighted areas. The initiative by the Obama Administration gives out Choice Neighborhood Implementation Grants to cities with poor areas, in order to redevelop and revitalize those neighborhoods. Some of the goals of the program are to provide better quality public housing, improve public education, lower violence rates, and present a path for people to begin improving their lives. A grant of \$30.5 million went to the Alice Griffith Public Housing Development/Eastern Bayview community in San Francisco.

JOINING SEVERAL NONPROFIT ORGANIZATIONS, California Attorney General Kamala Harris has filed a lawsuit against Riverside County over an enormous warehouse project. The project includes plans to construct 1.4 million square feet of warehouse and industrial buildings just south of the 60 freeway, about three miles away from the small, low-income community of Mira Loma. Thousands of trucks from the Ports of Los Angeles and Long Beach already pass through Mira Loma to deposit cargo, contributing to massive truck pollution and lessened lung growth capacity problems in children, as documented by a USC study. The new facilities would mean an estimated additional 1,500 diesel truck trips to the area each day. All trucks which would enter the facility must have been manufactured after 2007, and will have particulate traps on them. Riverside County is presumed to oppose the intervention by the attorney general, but has not yet commented publicly.

U.S. DISTRICT COURT JUDGE Frank C. Damrell Jr. has decided that a joint federal-state attempt to restore the Paiute cutthroat trout population in Alpine County cannot include the use of an auger to dispense chemicals. The U.S. Forest Service and the California Department of Fish and Game want to put rotenone in 11 miles of Silver King Creek in the Carson-Iceberg Wilderness Area – poisoning all non-native fish species in the creek – and then fill the creek with Paiute trout gathered from other creeks. Further downstream, the agencies had planned on using the auger, which would be powered by a gasoline generator, to distribute potassium permanganate to neutralize rotenone's toxic effects be-

yond the 11-mile mark. Three nonprofit corporations sued, arguing that the use of the auger would violate the Wilderness Act, which forbids use of motorized equipment. The plaintiffs – Californians for Alternatives to Toxics, Wilderness Watch, and Friends of Silver King Creek – also argued that the plan prioritized recreational fishing over preservation of wilderness character. Judge Damrell agreed, saying that the agencies had neglected to take into account other native invertebrate species which may be negatively impacted, such as stoneflies, caddisflies, and mayflies.

RESEARCHERS AT THE WORLD BANK in Washington D.C. have analyzed per-capita emissions of major metropolitan areas in the United States and discovered that dense urban areas in warm climates with good transportation systems have far lower emissions per-capita. In a study published earlier this year, the researchers identified these trends and compiled a list of the top ten least-polluting metro areas in the country. San Francisco topped the list, with 10.1 tons of carbon emissions per capita. San Diego and, shockingly, Los Angeles also reached the top ten list at numbers four and eight, with 11.4 and 13.0 tons of carbon emissions per capita respectively. Other cities at the top include, in descending order, New York City, Philadelphia, Miami, Chicago, Portland, Boston, and Seattle. This research might indicate better development potential in large, dense cities with warmer weather, since those cities have emission levels below the U.S. average, and may pave the way toward incentives to build denser neighborhoods with better access to transportation.

INVESTORS HAVE ENTERED discussions with the Napa Valley Wine Train about bringing a light rail passenger train to wine country. The group of local investors, brought together by Keith Rogal and presided over by Chuck McMinn, wants the shuttle service to run on the tracks of the gourmet tourist train. Rogal is a developer, currently working to build a project called the Napa Pipe housing/light industrial project, and McMinn is the executive director of the Napa Valley Vine Trail Coalition. Both have particular interest in a light rail train – Rogal's project has been criticized for its potential to cause traffic congestion and a light rail could solve that, and the proposed Napa Valley

Vine Trail would be constructed on the right of way of the Wine Train. The Napa County Transportation and Planning Agency found, in 2003, that the estimated cost of building a passenger rail system in Napa Valley would be \$216 million. That price tag would mean a connected system between Napa, Fairfield, and Vallejo, with service every hour to the Vallejo ferry and the Capitol Corridor train terminals.

THE LEADERS OF PALM DESERT have voted to update a study about the costs of annexing Sun City Palm Desert. This study was last completed in 2008, and annexation was unsuccessful. To do a new study would cost \$20,000, and the costs of renewing the old study are undetermined as of yet. Some believe that acquiring Sun City Palm Desert could be a good move, considering that the city already pays for most of its own services and generates sales tax from businesses along I-10. However, Mayor Jean Benson and Councilwoman Cindy Finerty shot down the idea, concerned about both the cost of the study itself and the probability of Riverside County Local Area Formation allowing annexation of Sun City Palm Desert without also annexing Bermuda Dunes. Bermuda Dunes, a 200-foot wide strip, runs along the northeastern border of Palm Desert, and lacks a few of the standard features of most cities, like full sidewalks. Palm Desert could be required to add those, as well as other amenities, and the cost of doing so might prohibit the annexation altogether.

LAST MONTH, THE OLDEST SALT FLAT in the Bay Area was destroyed in order to return the area to wetlands, as part of the 15,000-acre South Bay Salt Pond Restoration Project. Since the Gold Rush, levees have been in place to create ponds from which to harvest salt, used by Ohlone Indians and then by commercial organizations. Now, most of the salt flats are owned by the state and federal governments and will also be knocked down for wetlands restoration. Once the levees are breached, though, experts believe the natural tides will restore land to the way it was within ten years. Buying the salt flats cost \$100 million, plus the planning necessary for breaching levees and the cost of actually doing it means more millions of dollars. However, the environmental and economic impacts will both be positive, say wetlands advocates. Envi-

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ronmentally, the natural landscape will offer protection from rising sea levels, better control sediment in water, and improve the water quality overall. Economically, the beautiful scenery will attract tourists and locals alike to visit the coast.

THE LEAGUE OF CALIFORNIA CITIES has elected and sworn in its new leadership. Mountain View Vice Mayor is now the president of the League, replacing Modesto Mayor Jim Ridenour. Bill Bogaard, the mayor of Pasadena, is now first vice president of the League, and Jose Cisneros, the treasurer of San Francisco, is second vice president.

U.S. DEPARTMENT OF THE INTERIOR Deputy Secretary Kevin Hayes is visiting the Beauty Mountain Wilderness Area to look into the potential of officially designating land as wilderness area. For an area to qualify as federal wilderness area, it must be already owned by the federal government and controlled by the Forest Service and other federal agencies. Being officially designated as wilderness area would then prohibit any development, including resorts, off-road-trail trails, and logging. Hayes is scouting in California and New Mexico for land that could be part of a "bipartisan wilderness agenda." The Beauty Mountain and Agua Tibia Act of 2011, sponsored by Rep. Darrell Issa (R), expands the public acreage of Beauty Mountain Wilderness Area, which includes intriguing rock formations and extensive oak woodlands, by over 13,000 acres.

THE U.S. SUPREME COURT has refused to hear a lawsuit from the National Association of Building Developers against smog fees for pollution from building subdivisions and other developments. The San Joaquin Valley Air Pollution Control District, in an effort to curb air pollution in one of the most smog-heavy areas of the country, enacted the indirect source rule in 2005, which charged developers for the air pollution caused by construction equipment and

the project's impact on traffic. This rule applies to housing developments of 50 units or more, office space of over 39,000 square feet, and the majority of industrial and retail buildings. Developers consequently sued, complaining that the rule was an illegal state regulation of motor vehicles and violated the Clean Air Act, which leaves regulation of motor vehicles to the federal government. At both the district and circuit court levels, they lost. When the Supreme Court declined to hear it, the rule stayed in place. Developers are now arguing that house prices will rise on average by \$500 to cover the new development costs. The fees will go to air district programs that help small businesses and local farmers purchase newer equipment to emit less smog or soot.

THE BUSINESS PLAN for the California high speed rail project will be released two weeks after its intended release date. Two new members of the California High Speed Rail Authority are questioning the construction plans for the bullet train, and asked for its delayed release. With funding for high speed rail slashed in Congress, anger from property owners in the Central Valley, and congressional deadlines fast approaching, the project is once again under fire. In order to begin construction as promptly as possible, the plan is to begin construction in the Central Valley, which is presumed to be the least politically complicated stretch of tracks. As of now, the bullet train's planned route runs through a farm owned by Boswell, the cotton giant. The company is pushing for an extension of the environmental review comment period, complaining that the train would disable irrigation canals, a cotton gin complex, a seed oil plant, and a private airport.

THE AMERICAN PLANNING ASSOCIATION has announced the winners of its "Great Places in America" program, including a California location in each of its three categories. The APA selects and evaluates streets, neighborhoods, and cities by a set of princi-

ples about form and composition, character and personality, and environmental and sustainable practices, as well as geography, population, demographics, and setting. Northbrae, in Berkeley, achieved distinction for being a Great Neighborhood. In Los Angeles, West Hollywood's section of Santa Monica was designated as a Great Street, and in Riverside, Fairmount Park was recognized as Great Public Space.

THOUGH THE GROUND has been broken already, the 1.7-mile subway which would run from Chinatown to South of Market in San Francisco is running into more obstacles which might prohibit construction. Three mayoral candidates – City Attorney Dennis Herrera, Public Defender Jeff Adachi and former City Supervisor Tony Hall – have come out against the Central Subway, citing ballooning costs and advocating to stop the project altogether. The new line, which is projected to open in 2019, will cost \$1.6 billion, with \$41 million already awarded from Congress. Over the summer, the San Francisco civil grand jury recommended that the subway be aborted, given the additional costs could affect the upkeep of other subway lines due to the Central Subway's impact on the Municipal Transportation Agency's operating deficit. Proponents of the subway say the line will provide better access to public transportation in a low-income area that relies heavily upon two crowded bus routes. The 1989 earthquake destroyed the main off-ramp into Chinatown, so access in and out of the district is difficult, and residents have been asking for increased transportation for 20 years. ■

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legal digest

Malibu Developer Gets Reduced Setback for Beachside Development

Appellate court defers to Coastal Commission in dispute over Malibu beachside development

BY WILLIAM W. ABBOTT

MALIBU BAY COMPANY (MBC) owns the last undeveloped beach front parcel in Malibu, a 2.08-acre, 200-foot-wide parcel. In order to accommodate its proposed division into four parcels, MDC proposed an amendment to the Local Implementation Plan of Malibu's local coastal plan in order to create a new zoning district which would allow for lot widths of 45 feet, a decrease from the, then existing, standard of 80 feet. Despite opposition from neighbor Deane Ross, MBC's request to subdivide the property was ultimately successful following the ruling of the Second District Court of Appeals in *Ross v. California Coastal Commission*.

As the application advanced to the City Council, council staff ultimately recommended that the required width for all parcels in same district as MBC's property was located in, be reduced to the 45-foot standard. Altogether, this change would impact 733 parcels, although as staff noted, a majority of the existing parcels were already substandard to the 80-foot width standard. Staff further determined that only five parcels (including MBC's) were capable of further division under the proposed 45-foot standard. Two of the five were subject to additional legal limitations precluding further re-division, leaving only two parcels in addition to MBC's. Staff concluded that any further re-division of those parcels would require a coastal development permit and CEQA review.

Concluding that there would be negligible direct and cumulative effects on aesthetics, biological resources and land use and planning,

staff recommended acceptance of a negative declaration. Due to the presence of an environmentally fragile sand dune area, and based further upon a dune study submitted by the applicant's biologist, mitigation for dune species was required. The City Council eventually approved a revised mitigated declaration, and conditionally granted the approvals, subject to Coastal Commission approval. Neighbors opposed the approval of the entitlements, and submitted a biologist study indicating potential impacts to sensitive species.

Further review at the Commission resulted in conflicting recommendations from applicant, city and commission staff biologists as to the desired setback from the sensitive area, which is a habitat for the Globose dune beetle, which is considered a "species of concern" by the federal government. Commission staff eventually recommended a less aggressive setback than that proposed by its own consultant, based, in part, on a restoration requirement. The Commission staff also recommended a change to the view corridors as well. Neighbors continued to oppose the project at the Commission level. Immediately prior to the Commission hearing, Commission staff issued an addendum staff report, and recommended a further change to the LCP plan amendment. The Commission approved the amendment on a 10-1 vote in June of 2008. The matter was remanded to the Town of Malibu who adopted concurring revisions, and Commission staff ultimately certified compliance with the Commission's approvals, and the approvals took effect.

The neighbors filed suit. The trial court granted partial relief.

On appeal, the appellate court reversed, ruling in favor of the town and the Coastal Commission. In the published portion of the deci-

sion, the appellate court addressed a number of procedural and substantive issues.

The first substantive issue dealt with the setback for the dunes, an environmentally sensitive area. The town's general plan specified a 100-foot setback, whereas the local implementation plan of the local coastal plan allowed for a reduced setback. As there were reports in the record from the applicant's and town biologists on this subject, the court found substantial evidence in the record to support the Commission's imposition of a 5-foot setback. As to the application of these two different standards, the court held that the Commission's interpretation was entitled to deference.

The court then addressed the CEQA claims, in the context of a certified equivalent CEQA process as authorized by CEQA and the Coastal Act. The first matter for consideration was whether or not CEQA's review period for EIRs (30 days; Public Resources Code section 21091) applied, or in the alternative, the 13-day review period utilized by the Commission was sufficient. The appellate court held that the Commission's certified regulatory program was exempt on the basis that the Secretary of the Resources Agency had certified the Coastal Commission's regulations which included the shorter, seven-day time period. It was too late to challenge the validity of the shorter review periods under the Coastal Act.

The Commission also successfully argued to the appellate court that under CEQA procedures, it acted as a responsible agency, and therefore the many requirements and steps necessary for preparation of the appropriate CEQA document did not apply. The appellate court also upheld the sufficiency to the responses to the general public comments by the

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County Not Responsible for Flood Damage Due to Poorly Maintained Road

Court applies 'reasonableness test,' sides with San Bernardino County

BY CORI BADGLEY

THIS CASE INVOLVED the perfect storm of events resulting in the flooding of the plaintiffs' properties and an ensuing legal tempest. Plaintiffs sued the county in court claiming that the flooding was a result of county's failure to maintain a county road, from which the runoff spilled. Plaintiff claimed that the county's neglect of the road constituted a taking and inverse condemnation. In *Gutierrez v. County of San Bernardino*, the Fourth District Court of Appeals grappled with the application of the "reasonableness" takings test that applies to flood control projects. The court concluded that the county acted reasonably, and therefore, there was no taking.

Background

In October 2003, a wildfire eliminated all of the trees on a section of the mountains north of the unincorporated community of Devore, where plaintiff Michael T. Gutierrez and other plaintiffs resided. In December 2003, it rained, causing water to flow down the mountain trapping debris and sediment in its wake. The water flowed across Greenwood Avenue and brought the debris and sediment to plaintiffs' properties. In an attempt to protect the proper-

ties from further flooding, the county placed concrete K-rails along the sides of the paved portion of the street on which plaintiffs' live. Unfortunately, another large rain storm passed through and the K-rails failed to contain all of the debris and settlement.

Plaintiffs brought this action against the county on the grounds that the county's actions in maintaining the street in 2003 and 2004 caused the flooding, and thereby, constituted a taking. The trial court found in favor of the county, and plaintiffs appealed.

Appeal

On appeal, the appellate court divided the case into two separate issues: was there a taking in 2003, and was there a taking in 2004 by implementation of the K-rails? The court quickly dismissed the issue of the 2003 taking because the road that brought the debris and settlement was still in its natural state and never maintained by the county, and therefore it was not a "public improvement" for purposes of inverse condemnation. As to the part of the road that was paved, plaintiffs failed to present any evidence as to how this road caused the damage to their properties.

The court spent more time discussing the issue of the 2004 flooding. All parties and the court agreed that the K-rails installed in 2004 constituted a public improvement, and the court accepted the trial court's conclusion that the K-rails caused damage to plaintiffs' prop-

erties. Thus the only remaining issue, the one that took up most of the court's opinion, is whether strict liability or the "reasonableness test" applied. As stated in *Belair v. Riverside County Flood Control District* (1988) 47 Cal.3d 550, 565, "a public agency that undertakes to construct or operate a flood control project clearly must not be made the absolute insurer of those lands provided protection." For this reason, courts apply the reasonableness test to flood control improvements, which requires the court to evaluate whether "the design, construction or maintenance of the flood control project...posed an unreasonable risk of harm to the plaintiffs."

The appellate court found that the K-rails constituted the type of flood control project to which the reasonableness test applied, and strict liability was not proper. After reviewing the record of evidence, the court found that "substantial evidence supports the trial court's conclusion that the county acted reasonably relative to its installation of the K-rails," and the trial court's decision was upheld in its entirety. ■

Cori Badgely is an attorney with Abbott & Kindermann, LLP, of Sacramento.

► The Case:

Gutierrez v. County of San Bernardino (2011) 198 Cal.App.4th 831. Filed August 24, 2011.

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>>> Malibu Developer Wins Right to Subdivide Property

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Commission.

The opponents also challenged the trial court's decision regarding the underlying analysis to the cumulative impact analysis, which analysis concluded that only two other lots were capable of additional division. In the face of the argument that owners of other lots may in the future combine them and seek re-division, the court, as had the court in *Save Round Valley Alliance v. County of Inyo* (2007) (see *CP&DR* Legal Digest Vol. 23, No. 2, Jan. 2008 [A]), concluded that the agency was not required to speculate as to what might happen in the future and, in any event, such development would be subject to regulation under the local coastal plan.

The final CEQA issue pertained to the trial

court's decision requiring that CEQA required a concurrent examination of the two existing lots which were capable of further division. Reversing, the appellate court observed "It is unreasonable to require the commission, city or developer to conduct a biological assessment on developed property they do not own and for which there is no reason to expect will be subdivided. Should these two developed lots be subdivided in the future, their owners will need to obtain a coastal development permit..." ■

William W. Abbott is a partner in the firm of Abbott & Kindermann, LLP, of Sacramento.

► The Case:

Ross v. California Coastal Commission B225796, 2011 DJDAR No. B225796. Filed and ordered published, September 9, 2011.

The Attorneys:

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Christi Hogin, City Attorney, Jenkins & Hogin and John C. Cotti for Defendant and Appellant City of Malibu.

Case Clarifies Definition of 'Day' for CEQA Statutes of Limitations

CEQA applies a shortened statute of limitations to project

BY LESLIE WALKER

IN A FEAT OF chronological gymnastics regarding a proposed development in the City of Napa, the Court of Appeal for the First Appellate District held that a Notice of Determination posted over the course of 31 calendar days was not posted long enough to satisfy the California Environmental Quality Act's requirement that it be posted for 30 days.

CEQA provides for shortened statutes of limitations to challenge project approvals if the local agency files and posts a Notice of Deter-

mination (NOD) according to Public Resources Code section 21152. The shortened statute of limitations means that a project opponent has 30 days, rather than 180 days to challenge the project approval. Public Resources Code section 21152 requires the local agency to file a notice of determination within five days of the project approval. The notice then must be posted within 24 hours of the receipt and shall remain posted for 30 days. In *Latinos Unidos de Napa v. City of Napa*, *supra*, (196 Cal.App.4th 1154), the Court of Appeal held that for the shortened 30-day statute of limitations to apply the notice must be both filed and posted, and the notice must

be posted for 30 days, excluding the first day, and must be posted for the entire 30th day.

On June 16, 2009, the City of Napa approved revisions to the housing element of its general plan, and related general plan and zoning amendments (Project), concluding the Project would have no environmental effects beyond those identified and mitigated in the 1998 general plan. On June 17, 2009, the city filed an NOD with the county clerk. The cash register receipt shows the document was received at 9:05 on June 17. According to the Clerk, the NOD was posted from 10 a.m. on June 17, 2009 until at least 10 a.m. on July 17, 2009.

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>>> CEQA cntd.

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Petitioners Latinos Unidos, a group that advocates for affordable housing in the region, visited the clerk's office at 11:29 a.m. on July 17, 2009 and found no NOD posted. On September 17, 2009, Petitioner filed a petition for writ of mandate challenging the project approval, claiming the longer 180-day statute of limitations applied, rather than the shorter 30-day statute of limitations, because the NOD had not been posted for the full 30-days required by Public Resources Code section 21152 subdivision (c). The trial court granted the city's motion for a judgment on the grounds that the petition was barred by the 30-day statute of limitations. Petitioner's appealed.

Petitioners based their claim that the longer statute of limitations applied on an interpretation of the posting period in CEQA on Code of Civil Procedure section 12 which excludes the first day of posing and includes the last. Petitioner further argued that the NOD must be posted for the entire 30th day to satisfy the 30-day requirement.

The city argued the notice was posted over the course of 31 days – from 10 a.m. on June 17 to 10 a.m. on July 17. The City further argued that even if the first day is excluded from the calculation, the NOD was posted for part of the 30th day, and thus, was adequate. Petitioners argued, that when calculated according to Code of Civil Procedure section 12, which excludes the first day and includes the last, the 30th day of posting was July 17. Further, Petitioners argued that the notice should have been posted for the full day on July 17, pointing to *Scoville v. Anderson* (1901) 131 Cal. 590 and other case law holding that the effect of fractions of days are disregarded when time is computed.

The court agreed with the petitioners.

The court rejected the city's argument that *Committee for Green Foothills v. Santa Clara County Board of Supervisors* (2010) (see *CP&DR* Legal Digest Vol. 25, No. 4, Feb. 2010 [1]) stood for the proposition that the 30-day statute is triggered when the NOD is filed, not when it is posted. The court also rejected the City's argument that it had substantially complied with the 30-day posting requirement, stating that "any assessment of substantial compliance would introduce an element of subjective line-drawing into an area where clarity and precision are vital."

The court held that because the NOD had not been posted for the full 30 days as calculated according to Code of Civil Procedure

section 12, the 180-day statute of limitations applied and the dismissal was reversed.

The practical effect of this case is that the 30-day posting period in 21152(c) is actually 32 days. However, the effect will be limited, given that a potential project opponent risks missing his filing deadline if he or she actually waits to see if the NOD was posted for the full statutory 30 days. ■

Leslie Walker is an attorney with Abbott & Kindermann, LLP, Sacramento.

> The Case:

Latinos Unidos de Napa v. City of Napa (2011) 196 Cal. App. 4th 1154, No. A129584.

The Attorneys:

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For Defendants and Respondents: Jarvis, Fay, Doporto & Gibson, Andrea J. Saltzman, Rick W. Jarvis and Julie M. Randolph

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>>> Brown Signs Land Use Legislation

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clarity to the question of which parties must be named in CEQA lawsuits and litigation.

AB 900 (Buchanan) will allow the governor to choose as many projects as he deems appropriate for the expedited judicial review process, primarily by skipping Superior Court review and expediting the timeline for the litigation process at Appellate Court.

SB 226 (Simitian) seeks to streamline CEQA processes to facilitate projects (including rooftop solar, renewables on disturbed lands, and infill) that are generally considered “green.”

SB 292 (Padilla) establishes specified administrative and judicial review procedures for the administrative and judicial review of the EIR and approvals granted for a project related to the development of a football stadium in the City of Los Angeles.

LAND USE

AB 147 (Dickinson) is an amendment of the Subdivision Map Act that allows municipalities to include fees to developers for constructing bicycle, transit, pedestrian or traffic calming measures.

AB 208 (Fuentes) extends by 24 months the expiration date of any approved tentative map or vesting tentative map that has not expired as of the effective date of this act and will expire prior to January 1, 2014.

AB 516 (M. Pérez) establishes a specified public participation process for the establishment of Safe Routes to Schools programs.

REDEVELOPMENT

AB 936 (Hueso) requires redevelopment agencies and other public bodies to report debt forgiveness.

AB 1338 (Hernández) requires redevelopment agencies to get appraisals before acquiring real property.

HOUSING

AB 221 (Carter) — The Housing and Emergency Shelter Trust Fund Acts of 2002 and 2006: supportive housing.

AB 1103 (Huffman) allows localities to count foreclosed homes and second units converted into deed-restricted homes toward their regional housing needs assessment requirement. Allows cities and counties to plan to meet up to 25 percent of their Regional Housing Needs Allocation targets by converting foreclosed homes into homes affordable to low- and very low-income households.

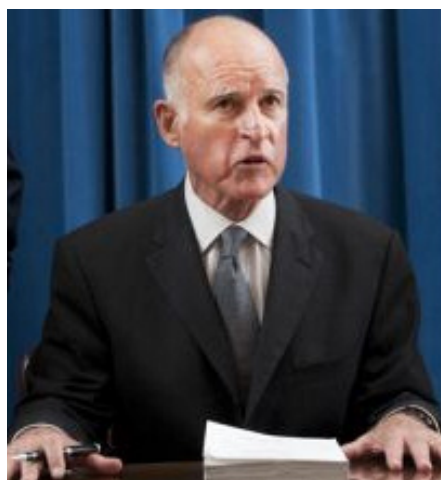
SB 562 (Committee on Transportation and

Housing) Housing omnibus bill.

WATER & WASTE

AB 54 (Solorio) establishes new requirements for organizing and operating mutual water companies.

AB 359 (Huffman) would encourage the sustainable management of groundwater resources by requiring, as a condition of receiving a state grant or loan, local agencies to in-



In total, Governor Jerry Brown received 870 bills this legislative session, the lowest number in decades. He vetoed 14 percent of them.

cluding a map of prime recharge areas in their groundwater management plans. It would then require these maps to be shared with the planning agencies, interested parties and organizations.

AB 938 (M. Pérez). Public water systems. This bill would add environmental documentation to the costs of a single project that the department is required to determine by an assessment of affordability

AB 964 (Huffman) authorizes any person to obtain a right to appropriate water for a small irrigation use.

AB 1221 (Alejo) — State Water Quality Control Fund: State Water Pollution Cleanup and Abatement Account.

SB 267 (Rubio) — Water supply planning: renewable energy plants.

SB 607 (Walters) — State Water Resources Control Board: water quality: brackish groundwater treatment.

ENVIRONMENT, PARKS & OPEN SPACE

AB 42 (Huffman) allows the state to ex-

plore partnerships with non-profit organizations that can help support state park system.

AB 566 (Galgiani) amends the Surface Mining Act (1975) to include additional legislative findings, including, among other things, that the state's mineral resources are vital, finite, and important natural resources and the responsible protection and development of these mineral resources is vital to a sustainable California.

AB 703 (Gordon) — Property taxation: welfare exemption: nature resources and open-space lands.

AB 1036 by Assemblymember Michael Allen (D-Santa Rosa) — Parks: regional park, park and open-space, and open-space districts: employee relations.

AB 1077 by Assemblymember Wilmer Amina Carter (D-Rialto) — State parks: Colonel Allensworth State Historic Park.

AB 1112 (Huffman) Oil spill prevention and administration fee: State Lands Commission.

AB 1414 (Committee on Natural Resources) Forestry: timber harvesting.

SB 152 (Pavley). Public lands: general leasing law: littoral landowners. Requires the State Lands Commission to charge rent for a private recreational pier, as defined, constructed on state lands and would require the rent to be based on local conditions and local fair annual rental values

SB 328 (Kehoe) revises the Eminent Domain Law to establish requirements for acquisition of property subject to a conservation easement.

SB 436 (Kehoe) — Land use: mitigation lands: nonprofit organizations. Revises these provisions and would additionally authorize a state or local public agency to authorize a nonprofit organization, a special district, a for-profit entity, a person, or another entity to hold title to and manage an interest in property held for mitigation purposes, subject to certain requirements.

SB 551 (DeSaulnier) — State property: tide-lands transfer: City of Pittsburg.

SB 618 (Wolk) allows landowners and local officials to simultaneously rescind Williamson Act contracts and enter into easements allowing photovoltaic solar facilities on the same land.

SB 668 (Evans) — Local government: Williamson Act. Authorizes a nonprofit land-trust organization, a nonprofit entity, or a public

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agency to enter into a contract with a landowner who has also entered into a Williamson Act contract to keep that landowner's land in contract under the Williamson Act, for a period of up to 10 years in exchange for the open-space district's, land-trust organization's, or nonprofit entity's payment of all or a portion of the foregone property tax revenue.

SB 792 (Steinberg) – Surface mining: mineral resource management policies.

SB 860 by Committee on Natural Resources and Water – Tidelands and submerged lands: public trust lands: mineral rights.

INFRASTRUCTURE & TRANSPORTATION

AB 529 Gatto (D-Burbank) – Vehicles: speed limits: downward speed zoning.

AB 615 (Lowenthal) supplements Budget Act appropriations by appropriating \$4,000,000 from the High-Speed Passenger Train Bond Fund to the authority for the Los Angeles to San Diego segment.

AB 628 (Conway) – Vehicles: off-highway vehicle recreation: County of Inyo.

AB 664 (Ammiano) allows San Francisco to form special waterfront Infrastructure Financing Districts for the Port America's Cup and Treasure Island areas.

AB 706 (Torres) – Metro Gold Line Foothill Extension Construction Authority.

AB 716 (Dickinson) – Transit districts: prohibition orders: Sacramento Regional Transit District: Fresno Area Express: San Francisco Bay Area Rapid Transit District.

AB 751 (Cedillo) concerns a freeway segment to be constructed without an agreement within the jurisdiction of the Los Angeles County Metropolitan Transportation Authority.

AB 957 (Committee on Transportation) –

Transportation omnibus bill.

AB 892 (Carter) Department of Transportation: Environmental Review Process. Allows CalTrans to continue its participation in the National Environmental Policy Act delegation pilot program in SAFETEA-Lu or any successor federal transportation reauthorization legislation.

AB 1027 (Buchanan) requires local publicly owned utilities to provide space on their utility poles for use by communication service providers.

AB 1097 (Skinner) authorizes a state or a local agency, relative to the use of federal funds for transit purposes, to provide a bidding preference to a bidder if the bidder exceeds Buy America requirements applicable to federally funded transit projects.

AB 1143 (Dickinson) – Sacramento Regional Transit District: bonds.

AB 1164 (Gordon) – Federal transportation funds.

AB 1298 (Blumenfield) – Vehicles: parking: mobile billboard advertising displays.

SB 310 (Hancock) allows cities and counties to adapt Infrastructure Financing Districts and other incentives for transit priority projects.

SB 325 (Rubio) enacts the Central California Railroad Authority Act to create the Central California Railroad Authority as an alternative for ensuring short-line railroad service in the Counties of Kern, Kings, Tulare, Fresno, and Merced.

SB 468 (Kehoe) Department of Transportation: north coast corridor project: high-occupancy toll lanes.

SB 771 (Kehoe). In regards to programs of the California Alternative Energy and Ad-

vanced Transportation Financing Authority, expands the definition of "renewable energy" to include energy generation based on thermal energy systems such as landfill gas turbines, engines, and microturbines; and digester gas turbines, engines, and microturbines.

LOCAL FINANCE, GOVERNANCE & AGENCY FORMATION

AB 307 (Nestande) includes a federally recognized Indian tribe as a public agency that may enter into a joint powers agreement.

AB 506 (Wieckowski) – Local government: bankruptcy: neutral evaluation. A signing message can be found here.

AB 912 (Gordon) expedites the dissolution of special districts.

AB 1344 (Feuer) alters the statutory requirements regarding how cities and counties can put a proposed charter before the voters. Increases the noticing period from the regular 72-hour noticing requirement to a 10-week process.

AB 1430 (Committee on Local Government) – The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 omnibus bill.

SB 244 (Wolk) General Plan: Disadvantaged Unincorporated Communities.. Mandates General Plans be updated to address disadvantaged unincorporated communities. Cities required to submit dual annexation requests.

SB 555 (Hancock) allows Mello-Roos community facilities districts to finance renewable energy, energy efficiency, and water efficiency improvements on private property. ■

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>>> Sacto County Update Sets 'Criteria' for Development

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more of the same kind of sprawl that we've been getting for the last 15-20 years," said Ron Burness, a member of the Executive Board of the Environmental Council of Sacramento.

Last month the Board of Supervisors tentatively approved, by a unanimous vote, the plan's growth management strategy and will soon consider the land use element. Final votes on both are expected by the end of the year. Supervisors say they have supported the plan because it responds to a host of environmental and economic concerns.

Though disputes and discussions have drawn out the planning process to an absurd duration, stakeholders say that its glacial pace may have averted a planning catastrophe. Had the plan been based on conditions before the real estate market crash, the results could have been disastrous.

"When we started out, demand was a lot higher," said Storelli. "As the market tanked, we realized that we needed to scale [our projections] back because demand wasn't that high. Our board of supervisors still wanted an opportunity to consider new growth areas so we had to come up with some criteria that weren't based off supply and demand."

Torrid growth swept over the region in the beginning and middle of the last decade, pushing development into greenfields and creating what critics consider to be economically inefficient and environmentally unfriendly low-density communities. Planners say a general plan update based on these premises would have been useless for a host of changes that have taken place since 2008, most notably the near-death of new development that corresponded with the recession and mortgage crisis.

Contemplating a relatively slow-growth future, county planners turned to a more conservative but flexible scenario that, they say, is designed to limit growth at the urban fringes and encourage development within existing unincorporated communities. A significant portion of Sacramento County's population — roughly 550,000 out of 1.4 million county residents — lives in the county's 23 unincorporated areas. County planners say that SACOG estimates that demand could be for anywhere between 50,000 and 100,000 new housing units by 2030.

Attempts to control where and how development occurs have enjoyed mixed success in the past. The county established a pair of planning tools in 1993 meant to limit the growth of urbanized areas. The Urban Policy Area defines territory where the county provides serv-

ices and allows growth; it could be expanded to accommodate projected growth for a 25-year period. The Urban Services Boundary, however, is a rigid boundary extending beyond the UPA designed to mark the absolute extent of all future development in the county. Environmentalists and other critics have lamented that in the boom years of the 2000s, the UPA was expanded almost at whim by the Board of Supervisors.

Disputes have drawn out the planning process greatly, but stakeholders say the glacial pace may have averted a catastrophe. Had the plan been based on conditions before the real estate market crash, the results could have been disastrous.

The new land use element attempts to remove political whims from the shaping of the county's growth. Yet, many stakeholders, including environmental groups, are unnerved by the fact that the element still allows for the potential expansion of the UPA by 20,000 acres. However, planners caution that what the plan allows for and what will actually take place on the ground are likely to be two vastly different things.

"It doesn't actually open up anything," said Storelli. "If you (developers) meet these very stringent criteria you can initiate an application that would expand the USB and only then would the land open."

For the board to consider extending the UPA or approving a master plan beyond UPA boundaries, developments must meet some combination of the following criteria as outlined in the draft growth management plan:

- A "Justification Statement" that shall be a comprehensive explanation of the proposed request and the development it would allow. It must include background information, reasoning, and the goal(s) and benefits of the proposed project.

- "Significant borders" that are adjacent to the existing UPA or a city boundary. As a guideline, "significant borders" generally means that the length of the boundary between the existing UPA or city boundary and the proposed UPA expansion/Master Plan should be 25 percent of the length of the boundary of the UPA expansion area.

- A vision of how the development will connect to other adjacent existing and potential future development areas within the USB, including how roadways, transit, sewer, and water could occur within all adjacent areas.

- A variety of housing types and densities, including single-family homes, duplexes, triplexes, accessory dwelling units, townhomes, condominiums, apartments and similar multi-family units, in a variety of settings including both residential neighborhoods and mixed use nodes.

- Design guidelines, development standards and/or similar assurances that will require high-quality development consistent with the vision set forth in the Master Plan.

These criteria are meant to guide growth to infill areas, with particular attention to older commercial strips that, planners say, are ripe for redevelopment. The plan text includes the goal of "enhancing quality of life in every community, as well as utilizing vacant and underutilized lands to accommodate future economic and population growth." This will take different forms in maturing suburban places such as Arden-Arcade, which is nearly fully built-out, as opposed to more rural communities that are expected to experience significant growth.

"It's a more thoughtful approach than just looking at projected housing and jobs and treating it in a sterile, quantitative fashion only," said Serna. "We're trying to address growth in the context of what is that future growth going to mean not just in terms of its land uses but what is it going to be in terms of its connection between land use, transportation, and air quality."

As long as that list of criteria may be, its certainty and flexibility may actually be appealing to developers who are desperate for some kind of predictability.

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>>> Plan 'Complements' SB 375 Strategy

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"Previously they were looking at more of a supply-and-demand model, and those numbers can swing from very high to very low, which is what the county has experienced over the eight-year cycle of developing their general plan," said John Costa, Senior Legislative Advocate of the North State Building Industry Association. "This provides a better framework for projects moving forward in the planning process and have a better idea of what they are developing for."

While developers may need some time to wrap their minds around this new approach to development, one group that welcomes the county's approach wholeheartedly is the Sacramento Area Council of Governments. SACOG is responsible for preparing the region's Sustainable Communities Strategy as mandated by Senate Bill 375, the 2008 law requiring major metro regions to reduce per capita greenhouse gas emissions by better integrating land use and sustainable transportation policies. Though SACOG's SCS is only in the early planning stages, SACOG and the county planning department collaborated to ensure that the general plan update – and the projects that result – would reflect the same goals and values as the SCS.

"They may end up entitling some projects that meet their smart growth criteria that have more market capacity than will fit inside our SCS in any given planning cycle, but that's fine," said McKeever. "

This collaboration represents a new approach to the interplay between local and regional planning. Defanti noted that the economic climate was not the only thing that changed in the last eight years.

"Throughout this process, the economy has violently fluctuated on us and that the regulatory environment has fluctuated as well," said Defanti. "Central to that has been SB 375."

Serna echoed that sentiment, saying "it is a new day and we do have a responsibility to respond to a different regulatory and different legislative environment."

That regulatory change has, according to McKeever, made metropolitan planning organizations, such as SACOG, ever more relevant to local planning efforts.

"The actions of MPOs are now front-and-center, so even though it's a little bumpy in some regions, everyone is looking in much more detail at how these regional plans are built," said McKeever.

Area developers remain anxious about what

form infill development will actually take in a county that has historically embraced single-family, low-density development.

"The difficulty that we've seen through the process is that the [target] density levels are higher than we're used to in this area," said Costa. "Some members have concerns about whether that's viable to build."

Burness pointed to three developments already in the planning stages that would extend the urban fringe, as well as potential annexations by cities including Folsom and Sacramento.

"All of these efforts on the part of landowners by and large (have pushed) at the edges of the urban area," said Burness.

Costa rejects the contention that the new plan would foreshadow rapid suburban growth.

"You may see projects in the planning stages, but we don't believe that the county is going to open up this area to growth anytime soon," said Costa. He added that many BIA members focus on infill and not just on greenfield development.

As well, county planners contend that the growth management strategy has built-in disincentives to greenfield development.

"Any new development that would be coming forward would have to show how it pays for itself, and hopefully would be a net benefit to the county," said Defanti. ■

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UCLA cityLAB Tries to Lift Westwood's Curse

THE FIRST ARTICLE I EVER WROTE for *CP&DR* concerned the generationally decrepit state of Los Angeles' Westwood Village (see *CP&DR* Vol. 23, No. 6 June 2008). In the three years that have passed since then – despite my blistering expose (of one of the city's most open secrets) – it's only gotten worse. Storefronts are vacant. Bars are sad. Only the Trader Joe's seems to be making any money, and that's because, well, it's Trader Joe's. I saw *Moneyball* the other night at the cavernous, turreted Village Theater with maybe 20 other people in its 1,000 seats.

For the uninitiated, Westwood is no inner-city slum. It's next door to UCLA and, beyond that, Bel Air. Yes, that Bel Air. Of the Fresh Prince, gated estates, and obscene amounts of money fame.

But, for the most part, the city has treated Westwood Village about as well as it has treated its homeless population: with more resignation than hope. It remains grungy and avoided even though it has, arguably, the best, most pedestrian-friendly streetscape in the entire city. No wonder Angelenos think it's cursed.

This Monday UCLA's cityLAB, in conjunction with the Hammer Museum and Westside Urban Forum (disclosure: I am a former board member), will try to exorcise a few demons with "Curse and Vision: the Future of Westwood Village," a charette/competition to imagine what the Village could be a generation hence. CityLAB enlisted two local architecture firms, Neil M. Denari Architects and Roger Sherman and Associates, to imagine what Westwood could be if hair salons, CVS pharmacies, and the Aahs! novelty shop were kicked out and replaced by something that reflects the district's geographic and cultural centrality in West Los Angeles.

Dana Cuff, director of cityLAB, instructed the firms to forget about the gang shootings, economic stagnation, and UCLA football defeats and focus on the streets and the area's inherent virtues.

Earlier this month I attended a preview event at which the two teams have presented concepts that, on face, seem outrageously bold – and breathlessly exciting.

Neil Denari and his team approach their vision by asking what in the blazes an "urban village" even is. I don't think anyone quite knows, though it's an appealing notion to think that it's something more self-contained, defined, and dynamic than a neighborhood, but not merely part of the cityscape. La Jolla and Noe Valley are probably villages; Koreatown and the Tenderloin are not.

Denari envisions the Village as a high-density district of mid-rise towers that would be almost off-limits to automobiles but served generously by Metro's planned subway extension, with a station in the heart of the Village. Denari's plan would partially bury Wilshire Boulevard – an eight-lane torrent that makes approaching the Village on foot an agonizing experience – and deck it over with a pedestrian plaza, the likes of which are

rare in Los Angeles. Skinny towers would pop up like giraffes throughout the Village's irregular streetscape. This vision, which would surely increase the Village's jobs and residential density, acknowledges the Village's geographic centrality on the Westside. It is in the middle of everything and, therefore, should serve as many people as possible.

Roger Sherman & Associates focused less on the physical form of the Village than on its potential cultural significance. The paradox of the Village is that, despite its vacancies, it has two of the remaining great single-screen movie theaters, plus a museum, a second-tier live theater, and all the museums and performance spaces of UCLA. But it's hard to

take in Shakespeare or contemplate Van Gogh when you have to wash them down with Subway and hookah.

Sherman's team therefore proposed an ingenious stroke of urban acupuncture: demolish the public parking structure in the middle of the Village and replace it with a public plaza dedicated to the arts. Sherman's model includes all sorts of creative flourishes, such as video art projected on exterior walls and enormous public sculptures. He proposes that the institutions get involved: specifically that UCLA relocate at least one of its theaters to the village so that it can do what theater does best: enhance public life. Like Denari, Sherman envisions the addition of tufa-tower type residential buildings with lofts, studios, and rooftop patios where artists and other creative-types can live.

Neither of these visions has anything to do with the way that planning takes place today – they are more like architecture school projects that co-opt a place over which they have no dominion over anything except, surely, the passions of neighbors who are going to blanch at the sight of the teams' renderings. And both present such astoundingly novel interpretations of the Village that it's impos-

sible to imagine that they would ever amass political support or that they would survive once enshrined in the bureaucracy of a zoning code. Then again, when most of West Los Angeles was occupied by nothing but scrub brush, the original Westwood Village was itself a radical notion. Both, therefore, rely on the audacity of hope: that after 20 years of malaise, stakeholders can begin to believe that Westwood is not cursed.

The larger lesson for all California cities is that we will someday get out of this recession and will someday get back to making, and realizing, big plans. By the time that happens, traffic will be thicker and Californians will be more numerous – and they might even want great places in which to live, work, and take a stroll. Westwood has always had great bones, with its nearly Medieval tangle of streets. Maybe some day someone will exhume them, break the curse, and create life anew.

– JOSH STEPHENS | OCTOBER 7, 2011 ■

The city has treated Westwood Village about as well as it has treated its homeless population. ... It remains grungy and avoided even though it has, arguably, the best, most pedestrian-friendly streetscape in the entire city.

