CP&DR

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CALIFORNIA PLANNING & DEVELOPMENT REPORT

With Decline of Williamson Act, SALC Represents New Hope for Ag Preservation

BY MARTHA BRIDEGAM

The new Sustainable Agricultural Lands Conservation (SALC) program only has $5 million so far, but land preservation and farm groups greeted approval of its opening guidelines with enthusiasm – especially given the fact that the Williamson Act was defunded in 2009.

The California Climate and Agriculture Network (CalCAN) gushed: "Applause erupted yesterday in response to the unanimous vote of the Strategic Growth Council..." Then it quoted Natural Resources Secretary and SGC member John Laird: "All speakers essentially said yes to the program, only sooner and bigger."

Ag preservation optimists are looking past that opening $5 million at the strong possibility that SALC has permanent dibs on 1% of the Greenhouse Gas Reduction Fund, which is expected to swell from new cap-and-trade auction proceeds.

.SALC is also one of the few fresh moves available to a state government that in recent years has run short of ways to either buy or mandate agricultural land preservation.

Traditionally, the Williamson Act was the state's major ag preservation program. Created in 1965, the Williamson Act program fosters agreements in which landowners agree to continue agricultural uses for fixed periods in

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insight

WILLIAM FULTON

Oil Drilling Measures Rise to the Surface Again

A couple of weeks ago, *CP&DR* reported on two land use measures on local ballots in California related to oil drilling – one in Hermosa Beach that would have allowed it, and one in La Habra Heights that would have restricted it. Both failed.

We dutifully recorded the results as a split decision, but I think the biggest news isn't how these ballot measures turned out. The biggest news is that oil drilling is back on the ballot in California at all.

The Santa Barbara oil spill of 1969 was the event that birthed the modern environmental movement. But it's been 30 years since we've seen much ballot activity related to oil.

Now that the fracking boom has hit California, local anti-oil activists are

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inside

Draft of California Transportation Plan Released

Caltrans released its long-range draft plan for the next 25 years of transportation projects in California. The plan, called the California Transportation Plan 2040, presents a wide range of strategies to reduce the transportation sector's greenhouse gas emissions, as required by the A.B. 32 Global Warming Solutions Act. The plan says that the state will not meet its reduction goals unless it implements every one of the plans most aggressive recommendations — including road pricing, increasing carpool trips, building bike lanes, and changing most of the cars and trucks on the road to zero-emission vehicles. However, there's some concern that the plan won't come with any "teeth," and that Caltrans won't be able to enforce its directives.

Denver Official to Head L.A. Metro

Los Angeles County transportation officials chose the former leader of the Denver Regional Transportation District to lead the Metropolitan Transportation Authority. Anticipating a new phase of multibillion-dollar expansion of its rail system amid coming years of projected budget shortfalls, officials chose Phillip Washington to replace outgoing CEO Art Leahy. Metro is simultaneously building five rail lines and is in the early stages of drafting another tax that could fund a dozen more projects. However, the agency faces a projected deficit of $83 million in 2018 and $248 million in 2013 due to rising pension costs and operations of new rail lines. Washington managed Denver's transportation authority during a similar time, securing more that $1 billion for the city in the midst of a multibillion-dollar expansion. Leahy will become CEO of southern California commuter rail network Metrolink.

Study: Short-Term Rentals Exacerbate Housing Shortage in L.A.

A new report shows that Airbnb is an important contributor to the housing shortage in Los Angeles, as more than 7,000 housing units have been taken off the market for short-term rentals through the online platform. The report estimates that in tourist-friendly neighborhoods like Venice and Hollywood, the listings can account for 4% of all housing units in the region, decreasing the supply available and increasing prices. While many participants are just homeowners renting out a spare room to tourists, there are signs of growing professionalization of the service, with some property-manager middlemen listing dozens of properties on the site. "In places where vacancy is already limited and rents are already squeezing people out, this is exacerbating the problem," Roy Samaan, who wrote the report, told the L.A. Times.

Carson Stadium May Go to a Vote; Downtown L.A. Farmers Field Dead

Proponents of a stadium that would jointly host the relocated Oakland Raiders and San Diego Chargers in Carson put together a ballot initiative to seek local approval for the project. The measure would approve the creation of a public authority in Carson, akin to the arrangement the 49ers used to build their new stadium that would own the stadium and lease it back to the teams. Public approval would nullify many potential objections that might otherwise arise during environmental review and delay the project. This tactic was cleared with last year's Tuolumne court decision. The stadium has the backing of an investment group led by Goldman Sachs that lent $850 million to the public authority to finance construction, to be paid back by stadium revenue. In a major divergence in this plan from a concurrent plan for a stadium in Inglewood, presumably for the relocated St. Louis Rams, proponents say that the stadium will be publicly owned, but that no tax money would be spent on its construction. "Period. End of discussion. Not one penny [of city money] will go into the project," said an attorney representing the project.

In other stadium news, Farmers Field, proposed on the site of the Los Angeles Convention Center by

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CP&DR

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sports and entertainment giant AEG, is officially defunct. The company will not seek an extension to its development deal with the city, and it is no longer in talks with the NFL. Proposed in 2010, Farmers Field had been the frontrunner among all L.A.-area stadium proposals. Los Angeles Mayor Eric Garcetti reportedly still supports the proposal, but AEG has indicated that it is turning its attention to other projects.

Oakland Invites S.F. to Export Affordable Housing

With San Francisco's housing pressures getting worse by the day, the City of Oakland may encourage its Bay Area neighbor to consider outsourcing its rental housing. Oakland Mayor Libby Schaaf wants to allow San Francisco developers to fulfill their requirements by building some affordable housing in Oakland. Such an arrangement could take the form of a regional housing partnership, though details now are skimpy. A spokeswoman for San Francisco's Mayor Ed Lee said that they are committed to making one-third of a planned 30,000 new housing units affordable in the next five years. The definition of "affordable" varies by city, with an affordable housing unit in San Francisco translating into about $500,000 for a two- or three-bedroom house in Hunters Point. Oakland has, historically, been considerably less expensive. Miriam Chion, ABAG's director of planning and research, told the *San Francisco Chronicle*, "I think Oakland and San Francisco have taken the current economic growth and development pressure as an opportunity to collaborate and address some of the pressing housing needs and needs for planning for regional job growth."

VA to Develop Permanent Housing for Homeless Vets

Following a lawsuit, the US Department of Veterans Affairs has pledged to open its West Los Angeles campus to permanent and temporary housing for the area's homeless veterans. It will also place returning service members in subsidized apartments in the city. "The challenge for L.A. even if we end veteran homelessness is we're going to have to maintain sufficient resources so we're not just creating housing but maintaining housing," said the executive director of the National Coalition for Homeless Veterans. The secretary of the VA said that he will be sending $50 million and 400 workers to the region to improve veterans' conditions. The plan also calls for the VA to hire an urban planning firm to draw up a new master plan for the West Los Angeles property.

Officials Want a Plan for Redevelopment of Kings Stadium

Officials in the North Natomas area of Sacramento are becoming anxious as the owners of the Sacramento Kings still have not announced plans for how to redevelop its current home when the team moves downtown. City Council Member Angelique Ashby recently requested that the team announce a timeline for redevelopment. A team representative told the City Council that the team planned to step up its efforts to find a use for the 200 acres surrounding the Sleep Train Amphitheater. "I don't want to wait until 2016 and the team is gone and that engine is gone for Natomas before we have a plan for how we're moving forward," Ashby told the Sacramento Bee. The Kings will move into their new $477 million arena downtown next fall. Many locals have advocated for a new hospital on the premises.

Final EIR Approved in Redlands Rail Project

The Redlands Passenger Rail Project received final approval of its EIR, clearing the way for final design and construction later this year. The $242-million, nine-mile project will connect the cities of Redlands and San Bernardino via an existing right of way. Projecting population growth and increased congestion, and factoring in the physical barriers of the Santa Ana River and Interstate 10, in 2004 the San Bernardino County Association of Governments to look at cost-effective travel options for communities along the Redlands Corridor. SANBAG is expecting to have the service in operation in 2018.

Odds of Earthquake Danger Revised Upwards

Based on newly analyzed data, geologists have raised the chances of California being struck by a magnitude 8.0 earthquake in the next three decades to 7 percent from 4.7 percent. Part of the reason for the increased risk is a growing knowledge base of California's faults. "It has become increasingly apparent that we are not dealing with a few well-separate faults, but with a vast interconnected fault system," seismologist Ned Field told the *Los Angeles Times*.

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Scientists now expect a magnitude 8.0 or greater quake — which would be devastating to a populated area — to come once every 500 years, as opposed to previous estimates of once every 600 years. Cities across the state, most notably Los Angeles, are embarking on programs to encourage seismic retrofitting of older buildings. In other earthquake news, a USGS analysis of the damage wrought by last year's earthquake in Napa reveals that the vast majority of damaged buildings were built before 1950.

LAO Report: Housing Costs Hurt State Economy

A report issued by the Legislative Analyst's Office shows that California's high housing costs are stifling the state's economy and making it difficult to create affordable housing. The report says that the state "probably would have to build as many as 100,000 additional units annually... to seriously mitigate its problems with housing affordability." But housing construction has fallen behind population and job growth, with builders only getting authorization to start 37,000 single-family homes and 49,000 multifamily units statewide last year. The inadequate increase in housing supply leads to rising costs and makes it more difficult for companies to hire and retain qualified employees, the study said. A main issue involves state funding for affordable housing, which has fallen about $1.5 billion per year since 2012 because of depletion of state bond funds and the dismantling of local redevelopment agencies. Couple that with an increase in available jobs in the state, and rent on housing units across the state has skyrocketed.

Caltrans Details Options for Extending, Expanding 710 Freeway

Los Angeles County Transportation officials are considering multi-billion dollar plans to close the notorious 710 freeway gap and increase capacity along the entire freeway. The freeway, a vital trade arterial connecting the ports of Los Angeles and Long Beach, abruptly ends in South Pasadena without connecting to the 210 Freeway, four miles to the north of the 710 terminus. This gap has been blamed for causing traffic throughout the Los Angeles freeway grid, especially because of traffic from trucks traveling between the port and the warehouses of the Inland Empire. A draft environmental impact report by Caltrans estimates that a tunnel under South Pasadena — which is preferred by residents, who vehemently oppose the taking of homes for a surface right of way — would cost between $3.1 and $5.6 billion. It would take five years to build. The EIR presents two plans for separating cars and trucks along the 18-mile stretch of freeway. The first plan is an $8-billion freight corridor that includes for elevated truck-only lanes to parallel the 710 along the Los Angeles River. The alternative is a far cheaper option estimated at around $3-4 billion, would add one travel lane in each direction and create a truck bypass around the 405 interchange. "There is no way we can accommodate the traffic without adding capacity. This region handles more than 40% of all port traffic in the United States," Hasan Ikhrata, executive director of the Southern California Association of Governments, told the Los Angeles Times. ■

Bay Area Big Winner as SGC Greenlights 54 Projects for Full Proposals

BY CP&DR STAFF

The Strategic Growth Council has given the green light to 54 potential projects to prepare full applications for funding under the newly created Affordable Housing and Sustainable Communities program. The 54 projects are seeking $301 million in funding — about 2 1/2 times as much as the $120 million program has to dole out.

Final applications must be completed by April 20 and SGC plans to select the winners by July. Only the 54 applicants on the finalists' list will be given access to the online application.

Of the 54 applications going forward, 44 (worth $235 million) have affordable housing setasides and 37 (worth $229 million) are located in disadvantaged Census tracts — the definition of which was the subject of considerable debate last year. The finalists represent a diverse array of communities in 22 counties.

Geographically, the biggest winner in the finalists' round was the Bay Area, which got the green light to apply for about 40% of the statewide pie (21 of 54 projects and $138 million out of $301 million). By contrast, the SCAG (Southern California Association of Governments) region, with more than twice the population as the Bay Area, got the green light to apply for about 20% of the pie (12 projects and $52 million).

On the face of it, the county-level winner was Los Angeles County, with 10 projects worth $38 million moving forward. (Outlying SCAG counties did poorly in comparison.) But maybe the biggest county-level winner was Alameda County. With 15% of L.A. County's population, Alameda got the green light for eight projects worth $42 million.

The biggest winner among developers was Meta Housing of Los Angeles, which got the green light to move forward with eight projects worth $22 million — four in L.A., three in the Bay Area, and one in Yolo County. No other developer got the green light for more than two projects. BRIDGE Housing, SANDAG, and Chelsea each got the green light on two applications, with a total value of between $13 million and $15 million in each case. There is a $15 million limit on awards to individual developers.

SGC received 147 concept proposals by last month's deadline. Those proposals requested a total of $760 million in funding. Fifty-four of those projects have been selected to submit full proposals. They are collectively requesting $301 million, meaning that rough 40 percent of projects stand to be funded once grants are awarded. Many of these projects are competing for subsets of funds set aside for disadvantaged communities and for affordable housing.

The AHSC application process was discussed at a series of workshops in February. See *CP&DR* coverage. ■

Split Decision on Oil Measures, Redondo Beach Development Plan Loses

BY CP&DR STAFF

Local voters in California gave oil a split decision in early March. Voters in La Habra Heights shot down an anti-fracking ballot measure, while voters in Hermosa Beach rejected a ballot measure that would have permitted E&B Natural Resources to construct 34 onshore wells in the city. Meanwhile, Redondo Beach voters rejected a development plan that would have included razing the power plant that has long occupied a critical spot near the beach.

In La Habra Heights, voters rejected Measure A, the anti-fracking initiative by 60%-40%. The initiative would have prohibited new oil drilling, halted reactivation of old wells, and specifically prohibited fracking. It was placed on the ballot in large part to block Matrix Oil's plan to drill on an 18-acre site owned by the Southern California Gas Co. Californians for Energy Independence, a pro-oil PAC spent $400,000 to defeat the measure in the city of 5,300 residents

Meanwhile, in Hermosa Beach, E&B had proposed amending the general plan and approving a development agreement to approve the drilling of 34 wells. But the measure went down 79%-21%. Almost 5,000 voters turned out — a large number for a spring election run by the city, not the county elections office, in a city of 19,000 people.

Meanwhile, the defeat of AES's development plan in Redondo Beach is the latest in a long series of battles over new development and the future of the power plant in Redondo Beach. As an incentive to voters to support the development, AES promised to tear down the power plant. The project would have included 800 units of residential, a hotel, and a park. However, residents voted the development down by 52%-48%.

Less than two years ago, voters went the other way, rejecting a plan to phase out the AES plant. ■

legal digest

Cal Supremes Strengthen CEQA Categorical Exemptions in Ruling on Large Berkeley House

BY MARTHA BRIDEGAM

By a 5-2 vote, the California Supreme Court has ruled for the city and would-be homebuilders in the important California Environmental Quality Act case, *Berkeley Hillside Preservation v. City of Berkeley (Logan)*.

Monday's opinion is largely favorable to computer industry pioneer Mitch Kapor, founder of the Lotus software company, and Freada Kapor-Klein, who have been trying since 2009 to build a large house in the Berkeley hills. Their proposed single-family house and garage together would measure nearly 10,000 square feet, on a lot that is itself much larger, but that is situated on a steep slope reached by a small road. Berkeley applied two categorical exemptions from CEQA to the project: single-family and infill. Project opponents argued that the house was so big that it presented "unusual circumstances" that it should be denied the safe harbor of a categorical exemption. Among other things, the issuance of the ruling will permit another CEQA "unusual circumstances" case to move forward.

Writing for the majority, Justice Ming Chin endorsed a "two-step" approach the "unusual circumstances" question. Chin wrote that when a lead agency decides a project is eligible for a categorical exemption from CEQA review, it must review the record for "unusual circumstances." It held that when the agency decides if such circumstances exist, it acts as "finder of fact", so any court reviewing that determination must let it stand if there is "substantial evidence" for its validity.

However, the majority held that once the lead agency takes the first step of finding "unusual circumstances", it must take a second step calling for an analysis more receptive to environmental and neighborhood challengers. For projects that have already been found to present "unusual circumstances", the court found the categorical exemption can be defeated by a "fair argument" that supports a reasonable possibility that significant environmental effects will result from the "unusual circumstances." It held the agency decision "is reviewed to determine whether the agency, in applying the fair argument standard, 'proceeded in [the] manner required by law."

Justice Goodwin Liu filed a lengthy concurrence, joined by Justice Kathryn Werdegar. Liu disputed the majority's procedural view of "unusual circumstances" and complained of "the court's novel and unnecessarily complicated approach to the standard of review." Liu's 18-page concurrence, taking positions sympathetic to appellants, debated the majority opinion point by point on what qualifies as "unusual" and why it matters.

The majority opinion remanded the case back to the First District Court of Appeal for further consideration. In doing so it cautioned the appellate court to show appropriate deference to the city's discretion, so that it should "order preparation of an EIR only if, under the circumstances, the City would lack discretion to apply another exemption or to issue a negative declaration, mitigated or otherwise."

The court wrote: "to establish the unusual circumstances exception, it is not enough for a challenger merely

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to provide substantial evidence that the project may have a significant effect on the environment, because that is the inquiry CEQA requires absent an exemption... Such a showing is inadequate to overcome the Secretary's determination that the typical effects of a project within an exempt class are not significant for CEQA purposes. On the other hand, evidence that the project will have a significant effect does tend to prove that some circumstance of the project is unusual."

The project, planned for Rose Street in Berkeley, would place a 6,478-square-foot house on a 3,394-square-foot ten-car garage, on a steeply sloped 29,714-square-foot lot. The Berkeley Zoning Adjustment Board approved the project based on the infill and single-family categorical exemptions. On appeal by objecting neighbors, the City Council approved the project in April 2010 — over arguments that an exception existed to the categorical exemption, including analyses by an expert critic, geotechnical engineer Lawrence Karp. The trial court sided with the City Council, supporting the project. An appeal followed. In 2011 the First District Court of Appeal refused requests that it block the demolition of an existing cottage and the start of construction.

The First District Court of Appeal gave petitioners their first victory in February 2012 (the opinion has since been modified). The opinion followed one of the earliest CEQA court rulings, *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, to find that "where there is substantial evidence that proposed activity may have an effect on the environment, an agency is precluded from applying a categorical exemption" (emphasis in original). It found that the rule without the need for an independent finding that an "unusual circumstance" existed because "the fact that proposed activity may have an effect on the environment is itself an unusual circumstance." The appellate court then said challengers, must only show "substantial evidence of a fair argument of a significant environmental impact".

Justice Ming Chin wrote that when a lead agency decides a project is eligible for a categorical exemption from CEQA review, it must review the record for "unusual circumstances."

In contrast to the appellate court ruling, Justice Chin's opinion refused to rely on Wildlife Alive, saying that case was decided before the "unusual circumstances" rule was written, the discussion cited by appellants was "hypothetical" and "summary", and its holdings were constrained by a 1993 statute, Sec. 21083.1, instructing courts not to interpret CEQA laws or guidelines to require new requirements beyond those "explicitly stated".

After a detailed history of the "fair argument" standard, the court majority wrote that its use for the second step of the analysis was supported by *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, which requires an EIR when a project "may have a significant effect on the environment."

Both the majority and concurrence agreed in doubting the part of appellants' case based on predictions by an expert critic, geotechnical engineer Lawrence Karp. But the majority rejected Karp's vivid insistence on "the probability of seismic lurching of the over-steepened side-hill fills." This was in part because the court viewed the

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>>> Cal Supremes Strengthen CEQA Categorical Exemptions in Ruling on Large Berkeley House

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record as showing no "side-hill fill" would be involved in the project as approved. But more fundamentally the court rejected Karp's opinion because he was predicting a consequence too many moves ahead of the current proposal.

In a phrase that Liu also quoted and accepted in his concurrence, the majority wrote: "a finding of environmental impacts must be based on the proposed project as actually approved and may not be based on unapproved activities that opponents assert will be necessary because the project, as approved, cannot be built." The majority reasoned that if further earthworks turn out to be needed, they will require further approvals whose affects can be addressed as of the new application.

Attorney Susan Brandt-Hawley, who argued the case for the plaintiffs and appellants, wrote in response to queries on this week's opinion: "On remand under the direction of the opinion we are optimistic that we will prevail on our record. In light of the concurring opinion we plan to seek rehearing since the case will set statewide precedent. Yes, we are glad the Court rejected the City's request to abandon the fair argument standard."

She wrote: "the rehearing petition will focus on the categorical exemption exception in Guideline section 15300.2(c)," referring to the core unusual-circumstances regulation: "A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."

The court majority included two justices who are no longer on the California Supreme Court: Justice Marvin Baxter, who was authorized by a special order to remain on the case past his January retirement, and Presiding Justice Roger W. Boren of the Second District Court of Appeal, who sat as assigned justice pro tempore. Justices Mariano-Florentino Cuéllar and Leondra Kruger had not yet taken office as of the oral argument and their names do not appear on the opinions.

The high court had deferred briefing on a second "unusual circumstances" case until after its own Berkeley Hillside decision. With that ruling completed, briefing can commence on

Citizens for Environmental Responsibility v. State of California ex rel. 14th District Agricultural Association. That case concerns an environmental review petition brought by opponents of resuming rodeo events at the Santa Cruz County fairgrounds. The petitioners appear to oppose rodeos in part on moral and animal-welfare grounds, but their challenge highlights an alleged risk of manure contamination to nearby Salsipuedes Creek, and to what the Third District state appellate court summarized as "proximity to residential and agricultural land, or a public safety risk of bull riding."

The Third District's opinion, issued last March, upheld a Class 23 categorical exemption for "normal operations of existing facilities for public gatherings." The opinion adopted the "two-step" approach of considering first whether unusual circumstances exist, and only then whether they result in environmental effects. It reasoned that although a rodeo had not been held at that fairground for many years, other equestrian and livestock events were held there regularly, with similar likely environmental effects. It rejected a contention that the rodeo proponents' adoption of a Manure Management Plan as "in effect acknowledging potential environmental effects" sufficiently to justify full environmental review. ■

Matt Dixon assisted with this report.

Cal Supremes Accept SANDAG Case

BY CP&DR STAFF

The California Supreme Court has accepted *Cleveland National Forest Association v. SANDAG*, the controversial case that raises the question of whether a governor's executive order must be taken into consideration in CEQA analysis.

Meanwhile, the Supreme Court let stand an appellate court ruling striking down San Diego County's climate action plan, meaning the county will now have to set strict greenhouse gas emission reduction targets for itself as it had promised to do in its General Plan.

In taking the SANDAG case, the Supreme Court limited its review to that one narrow — but extremely important and controversial — issue: Whether the environmental impact report for SANDAG's regional transportation plan must include an analysis of consistency with Executive Order S-3-05, which calls for an 80% reduction in greenhouse gas emissions by 2050.

In a split ruling in November, the Fourth District Court of Appeal concluded that the executive order must be taken into consideration in the EIR.

SANDAG has argued that it complied with state law because the RTP (which also serves as the sustainable communities strategy under SB 375) met the 2020 GHG emissions reduction target contained in AB 32, the state's climate change law, even though the RTP showed an increase in emissions after that. The environmentalist plaintiffs in the case argued that Schwarzenegger's executive order constitutes the state's climate change policy and therefore must be taken into consideration in the EIR. By a 2-1 vote, the Fourth District agreed with the environmentalists.

The Fourth District also covered a number of other issues, but the Supreme Court did not include them in its review.

In a commentary, *CP&DR* Publisher Bill Fulton has argued that the Fourth District's ruling gives the governor too much power by permitting him to create state policy unilaterally through executive orders. ■

Appellate Court Hands Successor Agencies Second Straight Win

BY CP&DR STAFF

The Third District Court of Appeal has ruled that two "re-entry agreements" between Sonoma County and its former redevelopment agency are valid under the redevelopment wind-down law. The case marks the second time this year that the Third District has upheld re-entry agreements, suggesting that local governments are beginning to get the upper hand against the state Department of Finance in post-redevelopment litigation.

The case involves the county's desire to retain $14 million in tax-increment funds for two projects: street and sidewalk upgrades on Highway 12 north of Sonoma, and a mixed-use project on the site of an abandoned shopping center in the Roseland neighborhood of Santa Rosa.

As with the other recent case from Emeryville, the case turned in part on whether AB 1484, a 2012 law which eliminated re-entry agreements, should somehow be used to invalidate reentry agreements made before the law took effect. In addition, DOF made a series of narrow legal arguments that the Third District did not buy.

Acting as successor agency, Sonoma County received permission in March 2012 from its oversight board to move forward with the two projects via "re-entry" agreements. The county then included the two projects in the successor agency's Recognized Obligation Payment Schedule, or ROPS, for the periods of March-June 2012, July-December 2012, and January-June 2013. After DOF disallowed the two projects for the third time, Sonoma County sued.

In disallowing the two projects from the January-June 2013 ROPS, DOF argued that, although oversights could approve a reentry agreement, a particular interpretation of the AB 1x 26 – referred to by the appellate court as the "Great Dissolution" law – did not permit reentry agreements between a successor agency and its equivalent former redevelopment agency.

On appeal, DOF argued that the express prohibition on reentry agreements contained in AB 1484 (which took effect in June 2012) suggested that such agreements were contrary to the legislative intent of AB 1x 26 (which took effect in February 2012) and therefore the agreements should be invalidated.

Writing for the Third District panel, Justice M. Kathleen Butz wrote: "This type of 'legislative spirit' interpretation is not well taken."

He added: "The 2011 version of (Health & Safety Code) sections 34178, subdivision (a) and 34180, subdivision (h) … unambiguously authorized a successor agency to request approval of a reentry agreement, and an oversight board to grant the request. Under the well-established interpretive principle just cited, this express grant of authority cannot simply be negated through resort to the spirit of the Great Dissolution law."

The Third District also rejected a series of narrower issues, including:

- DOF's argument that the oversight board could not approve Sonoma County actions that were not authorized for oversight boards.
- The fact that Health & Safety Code Section 34171 as amended by AB 1x 26 did not include reentry agreements in the definition of enforceable obligations or that Sections 34178 and 34180 did not include language saying that they be used "notwithstanding" the language in 34171. One deals with oversight boards; the others with successor agencies.
- As in the Emeryville case, DOF's argument that AB 1484 should be applied retroactively.

In concurring and dissenting opinion, Justice Louis Mauro made a technical distinction about the nature of the obligations upheld in both cases. He wrote: "To the extent the majority opinion in this case and the opinion in *City of Emeryville* suggest that reentered agreements must be continuing obligations rather than new obligations, I disagree. The reentered agreements in this case are new obligations because the original agreements between the redevelopment agency and the County of Sonoma were invalidated by law." ■

The Case:

County of Sonoma v. Cohen, No. C075120.

The Lawyers:

For State of California (Michael Cohen, DOF Director), defendant-appellant: Deputy Attorneys General Mark Beckington

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Sacramento Did Not Commit to Downtown Arena Ahead of EIR, Appellate Court Rules

BY CP&DR STAFF

In a ruling critical to moving forward Sacramento's downtown basketball arena, the Third District Court of Appeal has given the City of Sacramento a clean win in a wide-ranging CEQA challenge brought by a group of individual environmentalists.

Most significantly, the appellate court found that the city did not violate the California Environmental Quality Act by committing itself to a downtown arena site prior to the completion of the environmental impact report and did not have to consider the site of the existing Sleep Train Arena in Natomas in its alternatives analysis.

One amusing sidelight to the case is that the lead plaintiff was Adriana Gianturco Saltonstall, who was Democratic Gov. Jerry Brown's controversial Caltrans chief in the 1970s, while one of the judges on the panel, Acting Presiding Justice George Nicholson, was deputy director of the Governor's Office of Planning and Research under Brown's Republican successor, George Deukmejian.

Since the court ruling in late February, the city has moved forward with the arena project, most recently commissioning an $8 million piece of public art by artist Jeff Koons.

The environmental review process for the arena was truncated by the passage of SB 743 in 2013, a law that has received a lot of attention around the state primarily for the fact that it calls for replacement of traffic levels of service as a measurement under the California Environmental Quality Act. But as Justice Andrea Hoch, who wrote the Third District ruling, pointed out, all of CEQA's other provisions still applied to the project.

In a previous appellate ruling, the Third District rejected a wide variety of the plaintiffs' claims, including a challenge to the provision of SB 743 that limited the grounds on which a preliminary injunction could be issued. *Saltonstall v. City of Sacramento (2014) 231 Cal.App.4th 837 (Saltonstall I)*. Meanwhile, Sacramento CountySuperior Court Judge Timothy M. Frawley ruled in favor of the city and Saltonstall appealed on six issues.

Perhaps the most important issue was the question of whether the city had committed itself prematurely to the downtown arena. On appeal, Saltonstall argued "that the EIR was fatally corrupted because the City had already entered into an agreement with the NBA to build the arena." She pointed to a variety of documents substantiating her claim, including a term sheet between the city and Sacramento Basketball Holdings (the team's owner) and acquisition of property for the downtown arena and rights to parking lots from the Crocker Museum before the EIR was completed.

But the Third District rejected this argument. Relying on a two-pronged

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>>> Sacramento Did Not Commit to Downtown Arena Ahead of EIR, Appellate Court Rules

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test laid out in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 129 (*Save Tara*), the Court said the questions to be addressed were (1) whether the city's commitments have circumscribed or limited its discretion in the environmental review; and (2) whether the city had committed significant resources to sharping the programs.

The court ruled that the city had not boxed itself in to the downtown arena site by the documents Saltonstall cited. For example, the court noted, the term sheet with the Kings was non-binding, specified that the city might need to make changes based on the CEQA analysis, and gave the city the right to choose not to proceed with the arena at all.

"In essence," Justice Hoch wrote, "the preliminary nonbinding term sheet was an agreement to negotiate. … The term sheet noted the location of the arena remained to be determined, the parties could consider locations other than at the site of the Downtown Plaza, the ownership structure for the location remained to be negotiated, and efforts to timely complete the project would be made collaboratively. Based on the express reservation by the City of the right to disapprove of the project based on its environmental review, Sacramento Basketball Holdings would not have had a breach of contract claim if the City had decided to reject the project."

On the eminent domain question, the Third District quoted CEQA Guidelines section 15004, subdivision (b)(2)(A), which contains an exemption to the prohibition on commitment to projects for property acquisition and also SB 743, which specifies that the city can proceed with eminent domain.

As for the agreement on the Crocker parking lots, the court noted that the agreement doesn't even mention the arena project.

"In sum," Hoch wrote, "Saltonstall has not shown the record contains any evidence of premature commitment by the City to the downtown arena project in violation of CEQA."

The court also rejected Saltonstall's argument that the EIR was deficient because it did not take the existing Sleep Train Arena into account as an alternative site. The court noted that the city's objectives for the arena project specifically called for revitalization of the downtown and the waterfront, while the Sleep Train Arena is located in suburban Natomas. The EIR did consider a "no project" alternative of continuing to operate Sleep Train as-is and also rejected the alternative of building a new arena next to Sleep Train as infeasible because Sleep Train is located in a floodplain.

"Additional study of a remodeled Sleep Train Arena alternative," Hoch wrote," would not have provided any additional information required by CEQA for purposes of environmental review. A

The Third District also rejected four other arguments on appeal, including the following:

1. The EIR did not properly study the effects of the project on interstate traffic traveling on the nearby section of Interstate Highway 5 (I-5);

2. The City did not account for large outdoor crowds expected to congregate outside the downtown arena during events;

3. The trial court erred in denying her Public Records Act request to the City to produce 62,000 e-mail communications with the NBA; and

4. The trial court erred in denying her motion to augment the administrative record with an email between Assistant City Manager John Dangberg and a principal of Sacramento Basketball Holdings, Mark Friedman (the Dangberg-Friedman e-mail) and a 24-page report regarding forgiveness of a $7.5 million loan by the City to the Crocker Art Museum. ■

The Case: Saltonstall v. City of Sacramento , No. C07772

Bias Councilmember Should Not Have Been Permitted to Appeal Permit Decision, Court Rules

BY CP&DR STAFF

The City of Newport Beach improperly permitted a councilmember who was openly opposed to a bar's permit to appeal the planning commission's decision granting the permit and to vote on the permit appeal, the Fourth District Court of Appeal has ruled. The appellate court also ruled that the trial court should not have granted the city a preliminary injunction to block the bar from operating under the permit approved by the planning commission.

On the question of whether the councilmember should have been permitted to appeal the permit, the appellate court wrote sharply: "The city council violated the rules laid down in the city's own municipal code, then purported to exempt itself from that code by invoking some previously undocumented custom of ignoring those rules when it comes to council members themselves."

Regarding the preliminary injunction, the court wrote: "It is hard to maintain the city's actions were likely to be upheld when it had no authority to act in the first place."

The case underscores a growing issue in California land-use planning: When elected officials express an opinion in advance on a quasi-judicial matter, they cannot participate in that matter when it comes before the elected body. The Fourth District also called Newport Beach on having an unwritten policy permitting councilmembers to appeal planning commission decisions when adopted municipal code would seem to prohibit such appeals.

The case involved Woody's Wharf, a bar and restaurant overlooking the harbor on Lido Isle. In 2013, the city planning commission granted Woody's a conditional use permit and a variance allowing the bar to build a patio cover, allow dancing inside the restaurant, and stay open until 2 a.m. The patio cover was intended to help block noise from the bar if it stayed open after 11 p.m.

Four days after the planning commission's action, Councilmember Mike Henn made, via email, "an official request" to appeal the planning commission's decision because he "because he "*strongly believ[ed]*" (italics added) the operational characteristics requested in the application and the Planning Commsion's decision are inconsistent with the existing and expected residential character of the area and the relevant policies of the voter approved 2006 General Plan." Henn's request for an appeal was granted, even though the city acknowledged that he was not an "interested party," did not use the city clerk's appeal form, and did not pay a fee for filing the appeal, all of which are required under Newport Beach's municipal code.

When the appeal came to the city council, Woody's lawyer claimed that Henn should not have been permitted to file the appeal and should not be able to participate in the decision because of bias. The city attorney responded from the dais: "Well, the Code does provide that the city council member can basically call it up for review."

One councilmember abstained and a second recused himself, but Henn participated in the decision. In fact, according to the appellate ruling, he gave "an extraordinarily well-organized, thoughtful and well-researched presentation" that ran 13 transcript pages, whereas all the other councilmembers' comments ran two or three paragraphs.

Rather than referring to a municipal code section, the resolution overturning the planning commission's decision stated: "Councilmembers are exempt from paying the filing fee provided by NBMC Section 20.64.030(B)(2) under the City's long-standing policy and practice of not requiring Councilmembers to pay a filing fee because their appeals are taken for the benefit of the City's residents. Since 2008, there have been eleven (11) appeals of Planning Commission decisions initiated by City Council

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>>> Bias Councilmember Should Not Have Been Permitted to Appeal Permit Decision, Court Rules

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Members and the City Clerk has not required the payment of an appeal fee under the City's long-standing policy and practice."

Woody's filed a lawsuit the next day, seeking administrative mandamus to overturn the action and also claiming the action violated the property owner's civil rights under Section 1983 of the U.S. Code. (Woody's lawyer was Roger Jon Diamond, who often represents adult businesses and asserts violation of their civil and constitutional rights in his cases.)

The appellate court ruled that Henn exhibited enough probability of bias that he should not have participated in the appeal, even though his email to the city clerk claimed he had no bias. "Henn's "notice of appeal" – our term to describe his email – showed he was strongly opposed to the planning commission's decision on Woody's application," wrote Acting Presiding Justice William Bedsworth for the three-judge panel.

Bedsworth relied on the well-known case of *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, in which an appellate court ruled that a member of the Los Angeles Planning Commission should not have participated in a quasi-judicial decision because he had previously published an article attacking the project in question in the newsletter of a homeowners association of which he was president. Among other things, Bedsworth noted that Henn had prepared his presentation carefully in advance, suggesting he did not have an open mind during the quasi-judicial proceeding in front of the council.

Bedsworth rejected the city's argument that *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, should apply to the situation. In *BreakZone*, Bedsworth wrote, the question was "whether the *mere fact* the council member had filed an appeal was itself enough to show an unacceptable probability of actual bias".

Bedsworth also had strong words about the city's custom of permitting councilmembers to pull planning commission decisions up on appeal without a formal process. As his ruling noted, the city never even tried to argue that Henn was an interested party as required of appellants in the municipal code. In a lengthy section of the ruling, he interpreted the municipal code's lack of specific language permitting councilmembers to appeal as meaning they cannot do so.

However, he added: "Our remarks here on the question of authorization may in fact be overkill, since Newport Beach does not even purport to assert that its own municipal code allowed Henn's appeal. Rather, it points to a policy – custom would be a better word – of the city council letting its members appeal planning commission decisions. The only written authority for this custom, interestingly enough, is the very document embodying the city's council's decision." ■

The Case:

Woody's Group Inc. v. City of Newport Beach, G050155

The Lawyers:

For Woody's Group: Roger Jon Diamond, (310) 399-3259

For City of Newport Beach: Best Best & Krieger, Jeffrey V. Dunn, jvdunn@bbklaw.com

CEQA Baseline May Include Previously Exempted Emergency Work, Court Rules

BY CP&DR STAFF

The City of San Diego did not violate the California Environmental Quality Act when it used as a baseline situation conditions that existed after emergency repairs were made under a CEQA exemption, the Fourth District Court of Appeal. The plaintiffs had argued that the city used the post-emergency baseline as a way to avoid CEQA review of a larger project.

The ruling overturned a trial court's ruling, and was a defeat for perpetual plaintiffs' attorney Cory Briggs, who frequently files CEQA lawsuits against the City of San Diego. The only victory Briggs got on appeal was a refund of his client's $100 appeal fee charged by the city.

The case began in 2009 when a storm drain in La Jolla failed, causing significant erosion along nearby steep slopes. At the time of the failure, the city had been in the engage in CEQA review of potential improvements to the storm drain. After the failure, the city undertook emergency repairs (the installation of a new storm pipe) under CEQA Guidelines 15269, the statutory exemption for emergency projects.

Relying on previously prepared biological stuies, the emergency permit required the city's Public Works Department to use hand tools rather than mechanized equipment in order to minimize the disruption to sensitive resources. The emergency permit also required Public Works obtain a permanent permit from the city's Development Services Department within 150 days or else the temporary repairs would have to be repaired.

When Development Services issued the permanent permit in 2010, the city concluded that the additional work being undertaken – implementation of a revegetation plan – was exempt from CEQA under Guidelines 15061(b)(3) because the revegetation plan would improve the environment and did not hold the potential for significant impact. The Notice of Exemption defined the project as including the work done under the emergency permit that was covered by the previous exemption.

The community group CREED-21 – the name stands for "Citizens for Responsible Equitable Environmental Development" – appealed the CEQA determination to the San Diego City Council, which denied it. Subsequently the city's hearing officer approved the permanent permit. CREED-21 appealed that decision to the San Diego Planning Commission, which upheld it.

CREED-21 then sued and won in the trial court. San Diego Superior Court Judge Ronald S. Prager bought CREED-21's argument that the baseline to be considered in the CEQA analysis should have been existing conditions prior to the emergency repairs, and he even enjoined the city from moving forward on the revegetation plan.

In his ruling, Prager wrote: : "[I]f the City's logic is accepted, it would undermine the purpose of CEQA, as an applicant who is granted an emergency permit would be able to avoid more stringent scrutiny of its project during the regular permitting process due to the fact that it was previously able to obtain this type of permit."

A three-judge panel of the Fourt District Court of Appeal overturned Prager on almost all points, however. In his opinion for the court, Justice Alex McDonald wrote: "Although the court correctly noted environmental review for the storm drain repair work and related revegetation plan began in 2007 when City filed its initial application, we conclude the court misapplied the CEQA statutes and regulations regarding exemptions. … [T[he storm drain repair work completed in 2010 pursuant to the emergency exemption was, in effect, an intervening and superseding event that changed the physical environment without any requirement for CEQA review of that work for a significant effect on the environment."

McDonald added: "Because CEQA 'applies only to 'discretionary *projects proposed to be carried out* or approved by public agencies" ' (*San Lorenzo*, *supra*, 139 Cal.App.4th at p. 1376, some italics added) and

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the revegetation plan was the only 'project' under CEQA proposed to be carried out at the site after completion of the 2010 emergency work, CEQA applies only to the revegetation plan and not to the work done as part of the 2010 emergency storm drain repair. Therefore, in conducting a preliminary review of the revegetation project under CEQA, City was charged with making a comparison between the existing physical conditions after the 2010 emergency work was completed without the revegetation project and the conditions expected to be produced by the revegetation project."

The court also overturned Prager's ruling on CREED-21's standing, saying that the group did not have standing to challenge the city's determination that the emergency repair work was exempt from CEQA. CREED-21 had argued that it had standing even though it did not challenge the emergency permit's CEQA determination in a timely fashion because that exemption had, in essence, been rolled into the project description for the permanent permit. But McDonald rejected that argument: "To the extent City thereafter found its completed storm drain repair work was exempt from CEQA, it was merely confirming its prior emergency exemption determination."

The appellate court did affirm the trial court's ruling that a $100 appeal fee was unauthorized, in part because it did not provide the trial court with the relevant ordinance in a timely fashion. ■

The Case:

CREED-21 v. City of San Diego, No. D064186, decided January 29, published February 18

The Lawyers:

For CREED-21: Cory Briggs, 619-497-0021

For City of San Diego: Deputy City Attorneys Andrea M. Contreras (now with Sunroad Enterprises, acontreras@sunroadenterprises.com) and Jana Mickova, jwill@sandiego.gov

Groundwater Pump Charges Not Subject To Propositions 13 and 26, Court Rules

BY CP&DR STAFF

United Water Conservation District may charge urban water users higher groundwater pumping fees than agricultural users, the Second District Court of Appeal has ruled. The court concluded that the fees are not property-based and therefore not subject to Proposition 13. In addition, the court concluded that the pumping fees fall under one of Proposition 26's exceptions, saying that the pump fees represent "payor-specific benefits" not subject to Prop. 26's requirements.

The City of Ventura sued United over the fact that the district charges the city fees that are three to five times that of agricultural users, as permitted in the state Water Code. United manages groundwater in a large area in western Ventura County. Historically, United relied on property tax revenue water delivery charges. But after the passage of Proposition 13 in 1978, United began charging customers for pumping the groundwater. Pump charges are governed by Water Code Section 75522, which permits United to charge different rates for agricultural and non-agricultural users and also permits United to separate its service area into different zones.

Some 30 years ago, United built the "Freeman Diversion," which permanently diverted water from the Santa Clara River to recharge water in the Oxnard Plain, which was suffering from both subsidence and salt water intrusion. To pay for the Freeman Diversion, United imposed pump charges in a large area near the Santa Clara River, including the Mound Basin in Ventura. In 1987, the city and United reached an agreement to exclude the Mound Basin from the Freeman Diversion pump charge zone while United was paying off the Freeman Diversion debt. When the debt was paid off in 2010, United merged two pump-charge zones, effectively bringing the Mound Basin into a different zone that included the Freeman pump charge. This greatly increased the pump charge the city paid.

"Perren concluded that the the United pump charges, unlike the Pajaro pump charges, did not appear to serve a regulatory purpose, which undercut the argument that the pump charges were property-related."

Ventura sued and won most arguments in the trial court. Ventura County Superior Court Thomas Anderlee ruled that the pump charges were subject to Proposition 13 because they were property-related fees and that the mandatory 3:1 differential in pump charges to different users – contained in Water Code Section 75594 – was legal under Proposition 218.

However, Division Six of the Second District – the panel based in Ventura – reversed on appeal.

The city's Proposition 13 argument revolved in large part around the precedent of *Pajaro Valley Water Management Agency v. Amrhein* (2007) 150 Cal.App.4th 1364. In that situation, the water management agency created a plan to augment local water supplies by piping water in from a neighboring county and paid for the plan in part by charging existing groundwater extractors with a "groundwater augmentation fee" based on the number of acre-feet extracted. The Court of Appeal ruled that the fee was not a fee for service but rather a fee associated

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>>> Groundwater Pump Charges Not Subject To Propositions 13 and 26, Court Rules

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with property ownership, and Pajaro had not followed Proposition 218 in passing the fee.

In rejecting *Pajaro Valley* as precedential in this case, Justice Steven Z. Perren engaged in an extended discussion of three California Supreme Court rulings that sered as the foundation for the *Pajaro Valley* case. He concluded that the fact situation in the United case is vastly different. First, he noted, in the *Pajaro Valley* case, virtually all users relied on groundwater and had no alternative sources, whereas most Mound Basin property owners had other sources. Second, he noted that the United pump charges, unlike the Pajaro pump charges, did not appear to serve a regulatory purpose, which undercut the argument that the pump charges were property-related.

Relying on *Orange County Water Dist. v. Farnsworth* (1956) 138 Cal. App.2d 518, he concluded: "[A] pump fee is better characterized as a charge on the activity of pumping than a charge imposed by reason of property ownership."

In addition Perren found that the pump charges fall under the first exception listed under Proposition 26 – an exception for "a specific benefit conferred or privilege granted." The city argued that groundwater pumpers in the Mound Basin are simply exercising their property rights, but Perren wrote: "Pumpers receive an obvious benefit—they may extract groundwater from a managed basin." He even referenced the state's recently adopted groundwater management act as further proof of his argument, though the law was adopted long after the United lawsuit was filed.

The Case:

City of San Buenaventura v. United Water Conservation District, B251810.

The Lawyers:

For City of Ventura:

Michael G. Colantuono, Colantuono, Highsmith & Whatley

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For United Water: Anthony H. Trembley, Musick, Peeler & Garrett, a.trembley@mpglaw.com

For California Farm Bureau Federation (real party in interest): Nancy McDonough, nmcdonough@cfbf.com

a specific benefit conferred or privilege granted ■

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exchange for reduced property taxes. In turn, the state backfilled lost property taxes to the counties.

But the program was already losing effectiveness when it lost state funding in 2009. As Napa County Planning Director David Morrison noted, rising land prices, and the advantage of low Prop 13 assessments for long-term owners, have outgrown the modest tax breaks the Williamson Act can offer.

From 1972 until 2009, the state payments to counties averaged $23.3 million per year and for some rural counties became an important source of unrestricted funds. Without subvention payments, counties have to decide again each year whether to keep up the program while carrying the cost of carrying the whole tax expenditure themselves. The program is still popular in agricultural areas, so most counties have stayed with it, but it is doing little in the urban peripheries where conversion to urban use is most likely.

SALC is also one of the few fresh moves available to a state government that in recent years has run short of ways to either buy or mandate agricultural land preservation.

Last year, Assemblymenber Susan Eggman, D-Stockton, got little traction for two bills that would have used regulatory mandates to slow agricultural land conversion. AB 823 would have required local lead agencies to require mitigation easements or in-lieu payments from developers proposing to convert ag land. It hit resistance from the building industry, business groups, water and utility districts, and the California State Association of Counties (CSAC). AB 1961, which also failed, would have required the Governor's Office of Planning and Research (OPR) to add agricultural land preservation rules to its general plan guidelines.

CSAC opposed AB 823 on local control grounds and opposed AB 1961 as an unreimbursed mandate. CSAC lobbyist Karen Keene said, "The policy we typically voice at hearings is supporting policies that preserve ag land but when the state is considering new policies affecting ag land preservation that they really should consider the individual plans of the counties."

Where the money is

To see the trouble with ag preservation, Ed Thompson said to look at the empty circles around the cities. Thompson, who is the American Farmland Trust's director for California, meant the detailed maps that the state Department of Conservation (DOC) prepares to show lands contracted under the Williamson Act.

Contracted areas are thick in the Central Valley agribusiness heartland: prime agricultural lands under 9- to 10-year contracts marked in green, and "Farmland Security Zone" properties under 18-to-20-year contracts, marked in yellow. "Non-prime" protected rangelands appear in brown along the hot dry slopes of inland foothills.

But in much of California's core farming country, when there's a pink spot of "Urban and Built-Up Land," it's surrounded by a thinned-out welt of bare space. (Zoom in on this mid-density statewide map to see the effect.) Contracts are likewise patchy in coastal farming areas near urban development. The Salinas Valley is an urgently cited example.

John Lowrie, the DOC Assistant Director who heads the Division of Land Use Protection administering the Williamson Act program, knew that Thompson tells people to look at the circles: "Ed likes to do that. I have no reason to disagree with his analysis." The closer you get to metro areas in the Central Valley, "the less prevalent you will find Williamson Act contracted land on the periphery."

The reason is opportunity cost where development potential raises land prices. Further, Morrison said a lot of land on urban peripheries is optioned or owned by developers thinking 30 to 50 years ahead.

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Meanwhile, California continues to lose agricultural land every year. Thompson put the figure at 38,000 acres a year. Some estimates pick 30,000. Either way, a lot.

Counties trudging on

This is what Natural Resources Secretary John Laird has meant by saying, repeatedly, that the Williamson Act is "hanging by a thread." While it may not be about to drop all at once, it's fraying.

Lowrie said counties and landowners have not dropped out of the program as quickly as some feared at first. Only Imperial County has withdrawn from the program fully. Several counties stopped entering new contracts but former Sonoma County Planning Director Pete Parkinson wrote that some of those "have started up again" and "home-grown support will likely sustain the program." (Both Parkinson and Morrison commented at the suggestion of CSAC's Keene.)

A lot of land on urban peripheries is optioned or owned by developers thinking 30 to 50 years ahead.

The Department of Conservation's 2012 status report on Williamson Act said local governments claimed $71.71 million in unpaid subvention payments during 2010 and 2011. (A March 3, 2010 legislative hearing documented the state of the program then.) Because some counties have not reported to DOC, it's unclear how much contracted acreage is gone. Between 2008 and 2011, counties that continued to report lost 24,479 acres.

The Legislature has made a few adjustments to keep landowners interested.

In 2011 counties got the option to set contract durations at nine and 18 years instead of 10 years for standard contracts and 20 for Farmland Security Zones. Last year SB 1353 extended this option past 2016. By then 11 counties had taken the 9/18 choice.

Last year the Legislature also passed Eggman's AB 2241, which allows owners of lower-quality agricultural land to convert Williamson Act contracts to solar-use easements for photovoltaic panels. AB 551, by Assemblyman Phil Ting, D-San Francisco, added "urban agriculture incentive zones" to the Act's possibilities.

'Hanging by a thread' and what comes next

Secretary Laird's most recent "hanging by a thread" speeches about the Williamson Act were comments at the SGC meetings in the context of the new SALC program's design. He came back to the phrase on June 3 and July 10 and again on October 6. (He said it before that elsewhere too.)

He hinted at looking for ways to connect the old program to the new one. In July he said: "The Williamson Act that we have, as I keep saying, is hanging by a thread, and we have to figure out what is coming next in terms of it morphing, it continuing, a new thing being put in its place." He said it served the cap-and-trade goal of GHG emissions reduction to prevent conversion of prime agricultural land to urban use, "And because counties are making their decisions about continuing to participate, time is really important."

It was also last July he said, "I also don't want to sit at any budget hearings next spring without having done something significant on this."

SALC prospects

The focus for now is on SALC, and the $5 million in its 2014-15 budget. Of that, $1 million goes to grants for local public-private planning, and the rest to buy easements on "strategically located, highly productive, and critically threatened agricultural land."

Morrison said good farmland in Yolo County a year ago cost $15,000 an acre, while a high-quality Napa vineyard acre could cost $400,000. "So, four million dollars may get you 200 acres? It's an eyedrop."

Except, that eyedrop could become a significant funding stream.

SALC's funding flows from last summer's SB 862 budget bill allocating cap-and-trade auction proceeds to the SGC-administered Affordable Housing and Sustainable

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Communities (AHSC) program. AHSC received $130 million for 2014-15 but SB 862 promised it 20% of the Greenhouse Gas Reduction Fund in each subsequent year. The 2015-16 state budget proposal presumes AHSC's 20% in the coming year will be $202 million. Lowrie said the $5 million was an artifact of early discussions in which the total AHSC budget was to have been $100 million, of which SALC would receive 5%. For the coming year, he said $10 million was being discussed as SALC's share — again about 5% of AHSC's total. That works out to dibs on 1% of the growing cap-and-trade fund.

SALC builds on the Department of Conservation's existing California Farmland Conservancy Program (DOC-CFCP). That program already uses Proposition 84 bond money to help nonprofits buy agricultural easements and is working to mitigate ag land effects of the High-Speed Rail line. Lowrie said frequent references to DOC-CFCP in an early draft of the SALC guidelines were dropped to avoid "confusion" but so much has in fact been borrowed from existing practices that "sometimes it's confusing for us too."

To Lowrie the major differences between the two programs are SALC's primary statutory goal of reducing greenhouse gas emissions and its effort to choose the most urgent needs. He said SALC emphasized local control but he named some areas of focus: "There's a great deal of effort and thought" going into balancing farming and urban needs in the Salinas, Santa Maria and Pajaro Valleys, he said. Likewise, he said, the San Joaquin Valley, Sonoma and Mendocino.

Other directions

Without major state spending, and with state mandates limited, other ag land preservation approaches involve mitigation requirements, economic agreements among local players or outright land use restrictions.

Lowrie said the Department of Conservation had become "really curious" about data on local ag land conservation measures such as mitigation requirements and growth ordinances. He said: "We're starting to see some real progress in thoughtfully defining growth boundaries for cities," including in Tulare County and the San Joaquin Valley. He said the efforts were to "start to shape those growth boundaries accurately" where some boundaries "were larger than they needed to be to accommodate the anticipated growth" over the next 40-50 years.

Unlike the Williamson Act, SALC's primary statutory goal of reducing greenhouse gas emissions.

Thompson said local agency formation commissions (LAFCOs) contributed to sprawl if they approved unnecessarily large spheres of influence – though Parkinson suggested that "these bloated spheres were approved because they were consistent with… sprawl-based general plans," a situation which might not recur.

While Thompson focused on the value of land that mitigation easements could protect, Morrison said with one acre's mitigation for one acre of development, "you by definition lose 50% of your farmland."

Discussing relatively prosperous Napa, Sonoma and Yolo Counties, Morrison said outright voter-controlled growth restrictions and sharp growth boundaries work where they are supported by local political wil. In Yolo County, where his work included the county Climate Action Plan, he described a mixed approach: development boundaries under the general plan, strategic purchases of conservation easements to guide growth, and urban limit lines fixed by popular vote. He said Solano County uses urban growth buffers and "very aggressive city-county agreements" limiting development to cities but sharing tax revenue with counties.

Other recent recommendations on ag land preservation include a project involving Thompson, the "Greenprint: State of the Valley" report by the San Joaquin Valley Greenprint Steering Committee, and a "call to action" issued in July 2014 by the California Roundtable on Agriculture and the Environment. ■

insight WILLIAM FULTON

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increasingly pushing to get fracking bans passed – and place broader oil-related measures on local ballots. And it's clear that the oil industry is willing to spend enormous sums of money to try to influence these local elections.

The oil industry spent $400,000 on the La Habra Heights measure in an election that drew 1,800 voters. Last fall, the oil industry spent $7 million to successfully defeat a fracking ban in Santa Barbara County. (Bans in San Benito and Mendocino Counties passed.) In Hermosa Beach, pro-oil groups spent 10 times as much as anti-oil groups, even though the anti-oil side won.

It's sometimes easy to forget that much of California's early wealth was based on oil. The state was the No. 1 oil-producing state in the nation, off and on, between 1900 and 1930. The state pumped 30% of the nation's oil in the 1920, setting up a speculation boom documented entertainingly in *The Great Los Angeles Oil Swindle*, written by San Francisco State historian Julies Tygiel. Los Angeles in particular was dotted with oil wells throughout the entire first half of the 20th Century. California oil fortunes have served as the basis for any number of books and movies. The Doheny oil fortune was fictionalized, for example, in both Raymond Chandler's novel *The Big Sleep* (Chandler worked in the oil industry during the "oil swindle" days depicted by Tygiel) and Paul Thomas Anderson's movie *There Will Be Blood.*

"In the 1980s, several coastal jurisdictions passed initiatives that banned the construction of onshore oil facilities along the coast, including San Francisco and Morro Bay."

Offshore oil production in the Santa Barbara Channel didn't begin until the 1950s, and only 15 years later the Santa Barbara oil spill triggered the modern environmental movement. No single event was more instrumental in the stimulating passage of CEQA.

And it wasn't long before CEQA began to affect oil production in California. One of the earliest and most important CEQA cases – cited in an appellate ruling I read today – was *No Oil Inc v. City of Los Angeles,* 13 Cal.3d 68, decided in 1974. In a California Supreme Court ruling written by legendary Justice Matthew Tobriner, the *No Oil* case established two important, enduring principles under CEQA:

First, a lead agency must make a determination under CEQA about a project's environmental impact before the agency can approve the project. This facet of the *No Oil*'s was invoked as recently as February, when the Third District Court of Appeal ruled that the City of Sacramento did not violate this rule in approving a new downtown basketball arena.

And second, it lowered the bar for when an environmental impact report should be prepared. Specifically, it established that an EIR should be prepared when there is "some substantial evidence that the project *may* have a significant effect". The court rejected the trial court's conclusion that an EIR should be prepared only when "there is a reasonable possibility that the project will have a momentous or important effect of a permanent or long enduring nature".

No Oil also helped launch the careers of a number of important environmental lawyers in California who worked on the case, including Mary Nichols (currently the chair of the Air Resources Board), Carlyle Hall, and Jan Chatten

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(now Jan Chatten-Brown). On the other side of the case, representing Occidental Petroleum, the team included Bela Lugosi Jr.

California oil protection peaked in 1983 and declined steadily until last year, when it was up for the first time in 30 years. Subsequently, public support for oil drilling in the state waned and environmental laws made it more expensive. Drilling continued apace in Kern County and, while tough regulation made it more expensive to build new oil facilities, the oil companies nevertheless found it worthwhile to expand and update the rigs and support facilities in the Santa Barbara Channel.

This increased interest in Channel drilling – and the increased shipment of oil into California from other locations — led to the next set of land-use ballot measures dealing with oil. In the 1980s, several coastal jurisdictions passed initiatives that banned the construction of onshore oil facilities in certain places along the coast, including San Francisco and Morro Bay. These measures were widely reported as part of the boom in ballot-box zoning at the time – I'd provide a link to *CP&DR*'s coverage back then but none of it is online – and the courts blocked attempts by local jurisdictions to ban drilling in the neighboring waters. But the oil ballot measures died after about 1986 – until last year.

The price of oil has dropped from $100 to $40 since last summer, so it's not clear whether California's latest oil boom will continue much longer. But given the fact that – because of fracking and other reasons – the United States is again the world's leading energy producer, it's likely that oil companies will continue to ramp up drilling in California. But over the past 30 years, California's environmental laws have ramped up even more. And given the fact that the state's policies are strongly anti-fossil fuel – witness both the push to reduce greenhouse gas emissions and increase the use of alternative energy — it's likely that localities around the state will continue to resist. ■

CEQA: The Cause of All Problems in California

This week brought yet another critique from the right of the California Environmental Quality Act. Unlike most, this one isn't confined to concerns over land use, unnecessary regulation, and high housing cost. Rather, CEQA's ills have grown so vast that, apparently, it now deserves blame for California's low educational attainment, lousy job growth, extreme wealth inequality, and significant domestic out-migration.

Jennifer Hernandez and David Friedman are attorneys with the firm of Holland & Knight, which has been an astute observer of, and enthusiastic participant in, the evolution of CEQA caselaw. (See for example the firm's analysis of CEQA lawsuits over infill projects. They are the authors of "California's Social Priorities," a new report published by Chapman University's Center for Demographics and Policy, whose director is that well-known free-market critic of regulation, Joel Kotkin.

Somehow, among all the laws, regulations, micro-, macro-, and global economic trends that impact on and emanate from our state, the overriding cause of California's malaise is — wait for it — CEQA.

The report (and it is a report, not a study) offers some compelling—dare I say original—claims about California's decline and its misplaced "social priorities."

The body of the report — a full 11 pages, with plenty of pretty graphics – accurately chronicles California's recent problems. Job growth has dropped from 5.6 million from 1970 to 1990 to 2.6 million from 1991 to 2013. The number of Californians without a high school diploma has risen since 1970 (never mind international immigration). Income inequality ranks 45th nationally, down from 25th in 1970. Everyone is moving to Texas. Woe is us.

And yet, somehow, among all the laws, regulations, micro-, macro-, and global economic trends that impact on and emanate from our state, the overriding cause of California's malaise is — wait for it — CEQA.

Hernandez and Friedman don't even mention CEQA in the body of the report. But it makes a grand entrance in the first paragraph of the report's conclusion. After carefully documenting the state's ills, the authors boldly say that "there is little doubt that California's high costs and weak economic performance is related to the state's regulatory requirements." They literally just say it. They don't explain it. They don't prove it with anything resembling facts, scholarship, or original research. The report's 20 footnotes include, as far as I can tell, not a single mainstream scholarly study leading them to this idea.

For the rest of the conclusion, the only "regulatory requirement" they talk about is CEQA. And the only "evidence" they present between runaway jobs and the evils of CEQA is Tesla's recent decision to locate its new "gigafactory" in Reno, Nevada. While it is undeniable that "CEQA lawsuit risks and other regulatory burdens have emerged as well-publicized major roadblocks to completing even the most popular entertainment or sports projects, long overdue infrastructure improvements, and manufacturing plants," no one at Tesla says that CEQA was the only deal-killer – or even *a* deal-killer. Meanwhile, the authors don't cite the sweetheart deal that Tesla got from the State of Nevada. Nevada coughed up the money partly because it was competing with several states other states that were also throwing economic development incentives at Tesla. Would CEQA reform have magically counteracted the $1.56 billion incentives package that Nevada offered?

If Californians end up moving to Reno in order to work for Tesla, they'll join legions of Californians who have already abandoned the state because of the tyranny of CEQA between 1990 and 2010. Indeed, the report implies that 3.8 million autonomous, freedom-loving Americans

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would have stayed in California were it not for the invisible scourge of CEQA – a fact which is bad for climate change and the environment, they argue, because when people move to other states their carbon footprint doubles.

Californians emit 11.4 metric tons of greenhouse gases per capita per year, or about half what the average American does. So, when people abandon a relatively efficient state, they do the biosphere that much more harm (assuming, of course, that they instantly change their lifestyles upon breaching California's borders).

Never mind that, CEQA – along with California's other regulatory requirements, such as the state's tough air pollution laws – is one of the reasons why Californians live more efficiently in the first place.

What's most amazing is that — despite their seeming passion for reform — the authors offer no practical suggestions for how to actually reform California's laws. They offer no plan for funding education or taking on teachers unions (if that's your thing, which is probably is if you're a right-leaning scholar). They offer no prescriptions for tax reform or other business incentives. They don't begin to wonder how to solve for inequality. They dare not mention Proposition 13. For that matter, they don't even make any suggestions on how to reform CEQA.

Indeed, even Kotkin himself doesn't seem to quite buy the argument that CEQA is the cause of all evil. In his *OC Register* column flogging the report, he goes on at great length about California's economic and social ills – but even *he* doesn't mention CEQA. With that said, things are getting better even if CEQA is still a mess. Recent data indicate that the state added a half-million jobs in 2014. That's 30% more than Texas added. This growth really shouldn't surprise anyone, since California's employment patterns have had both downs and ups over the decades. Remember the 5.6 million jobs added from 1970 to 1990? Those were all added under CEQA – which, after all, was passed in 1970. And signed by Gov. Ronald Reagan.

Why does all this alleged scholarship seem so tortured? To a great extent, the Kotkin crew's complaint reflects the changing nature of CEQA. No longer can conservatives rail proudly against CEQA for impeding development. That's because many liberals — particularly planners who support infill and the public officials who support SB 375 and SB 743 — are levying many of the same criticisms of CEQA (if for different reasons). Conservatives now have to hate on CEQA in much more vague ways. Nowadays, if an endangered butterfly flaps its wings in Lassen County, a scholar in Irvine has to work harder to find something to bloviate about.

– JOSH STEPHENS | MAR 23, 2015 ■