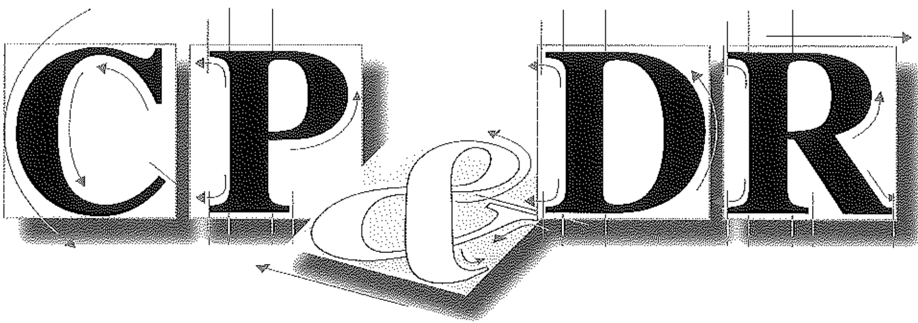

CALIFORNIA PLANNING & DEVELOPMENT REPORT VOL. 24, NO.3 – MARCH 2009

in brief

The state's system for regulating water quality is failing, according to the Little Hoover Commission. In a recent report, the investigative panel concluded the current system managed by the State Water Resources Control Board and nine Regional Water Quality Control Boards lacks transparency, consistency and accountability, and that the system does not demonstrably improve water quality.

Stormwater runoff, a subject that has become particularly controversial during recent years (see *CP&DR*, April 2008), received a great deal of attention. The commission found that the water boards are ill-equipped to deal with the issue, even though more than 30,000 stormwater discharges are subject to permits.

"Regional boards issue many of the permits, and boards have differing philosophies and policies toward stormwater regulation in the absence of statewide policies and scientific consensus on causes and solutions. As a result, stormwater discharges are subject to significantly different levels of regulation depending upon the region. The costs of cleaning up stormwater are enormous, fueling the debate about who should pay. The costs of stormwater pollution, however, are far greater, as beach closures impact the state's economy and environmental damage threatens to impair wildlife," the commission reported.

Because the state board and regional boards operate mostly autonomously, "there is little focus on clean-water outcomes or accountability," the commission reported. The panel found the boards lack data, scientific research and even an adequate information technology system. Most basin plans, which are supposed to provide the underpinning for all regulatory activity, are decades out of date and not a priority. Regional boards spend most of their time issuing permits, not making broad policy, the commission found.

The Little Hoover Commission made four broad recommendations:

• Reform the state board and regional boards. Restructure the state board as a full-time, nine-member panel. Five members would be appointed by the governor and confirmed by the Senate. The other four members would be regional board chairs serving staggered two-year terms. Reduce regional boards from nine to seven members, with the chair serv- – CONTINUED ON PAGE 2

Cities Try To Stir Local Economy

Local Governments Offer Up Loans, Fee Cuts, Redevelopment Projects

BY PAUL SHIGLEY

Faced with rapidly declining revenues and extremely difficult budget choices, local governments are starting to invent their own economic stimulus programs. Cities have begun loaning money to car dealerships, cutting development fees, promoting buy-local programs and undertaking new redevelopment projects, among other things.

Although many cities and counties have engaged in economic development activities for a long time, the newest efforts are more creative than ever and are mostly aimed at getting an immediate payback.

As consumer spending has dried up and housing values have dropped like an anvil in Lake Tahoe, local governments have seen revenues fall dramatically. The revenue reductions are so severe that cities and counties have started slicing law enforcement, fire protection and other public safety services, which are typically the last areas to be cut.

With a state unemployment rate in January of 9.3% – the fourth highest in the country – building activity at its lowest postwar level and an ongoing drought threatening California's gigantic agriculture industry, there is little reason to believe local government revenues will not continue sliding. One bright spot may be the 17-month state budget approved in February. Unlike state budgets passed during previous crises, this spending plan does not – CONTINUED ON PAGE 15

The Other State Budget Breakthrough: Environmental Review Exemptions

insight WILLIAM FULTON

It was a little-noticed aspect of the final California budget deal, but Gov. Arnold Schwarzenegger made California Environmental Quality Act history when he signed the long-delayed 2008-09 budget in February.

Schwarzenegger asked for and got something no governor had ever gotten through the budget process before: an exemption under the California Environmental Quality Act for certain state construction projects based on economic hardship, rather than on natural disaster. The governor also got a CEQA exemption for as-is sale of state surplus property, which is possibly not something of much value in a down economy but a significant concession nevertheless.

It's not uncommon for CEQA – CONTINUED ON PAGE 16

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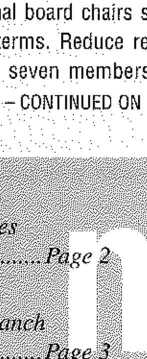

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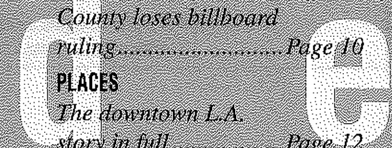

inbrief

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ing as a full-time employee. Empower executive officers to issue permits to let the boards focus on quasi-legislative matters.

• Improve and increase use of data, scientific research and planning. Create an independent Water Data Institute to serve as a state library. Develop report cards for major water bodies much like the group Heal the Bay does for beaches. Update basin plans.

• Increase focus on clean-water outcomes and emphasize collaboration, creativity and problem-solving. Work with other government agencies on land uses and air emissions that affect water quality.

• Develop a standard cost-benefit analysis to help set priorities.

The full report is available on the Little Hoover Commission website: www.lhc.ca.gov.

The City of Riverside has sued the City of Los Angeles regarding a Port of Los Angeles expansion that Riverside officials say will add to existing inland railroad congestion. The lawsuit contends the Board of Harbor Commissioners did not adequately address or mitigate rail impacts on Riverside that would result from port expansion.

Los Angeles officials said the environmental impact report for the China Shipping terminal expansion is legally adequate and they would defend it in court.

Frustration with train traffic from ports in Los Angeles and Long Beach has been growing in inland cities for years. Riverside has 26 at-grade railroad crossings, and as many as 128 trains a day roll through town. According to the city's lawsuit, those crossings are tied up by trains for three to six hours per day. The result, according to the city, is air pollution, traffic congestion, dangerous driving conditions and emergency responses that are delayed by three to 21 minutes.

Riverside argues that the terminal expansion approved in December 2008 would add at least six trains per day, providing a significant and cumulative impact for which the port offers no mitigation. During the port's consideration of the EIR, Riverside asked for fair-share contributions to grade separation projects. – CONTINUED ON PAGE 4

from www.cp-dr.com

Public policy could not be more mixed right now. The state has made reduction of greenhouse gas emissions from automobiles a major priority, but the new state budget provides virtually no money at all for transit. New Energy Secretary Steven Chu warns of an approaching climate change disaster, but the federal economic stimulus plan contains far more money for building highways and roads than for light rail systems and subways.

Yet, as Publisher Bill Fulton points out in a recent blog post at www.cp-dr.com/blog, nothing beats transit for moving a lot of people to and from a large special event. For especially big events, such as Barack Obama's inauguration, cars and buses can't begin to match the efficiency of a good transit system such as Washington's Metro, writes Fulton. But, continuing the mixed messages thesis, Fulton wonders why California's public transit system operators ignore gathering places like the Hollywood Bowl, and why Southern California's next football stadium is likely be in a transit-less suburb.

Transit is not the only subject we've been blogging about lately.

• **More on SB 375**. Love it or hate it, SB 375 shifted the ground underneath planners' feet, and the true slipping and sliding is only now beginning. We're going to be writing about it for a very long time. Our latest pieces include a big-picture look from a national perspective and analysis of the gritty details of AB 32 and SB 375.

• **California's Valley of Misery**. *Forbes* magazine recently ranked Stockton as the most miserable place in the United States. Modesto ranked fifth. We don't necessarily agree with the rankings, but the San Joaquin Valley does indeed have some miserable traits. Crime and unemployment are high. Educational attainment is low. Foreclosures are devastating neighborhoods. And then there's the dreaded tule fog. At least, as the Stockton *Record* points out, valley residents don't have to shovel snow.

• **Enough Suburbia.** Some pundits seized on a recent Pew Center poll as proof that people love the suburbs and hate planners' emphasis on city living. That's not how we read the poll numbers at all. We see a public desire to create better cities than we have now, and we see a large majority of people who would rather live anywhere but a suburb.

• **Building Depression.** The California Building Industry Association has started using the term "depression," rather than recession. A mere glance at the number of housing starts explains why. In Santa Cruz, Merced, Madera, Napa, Solano, Yuba and Sutter counties combined, builders pulled permits for precisely 15 housing units in January. ■

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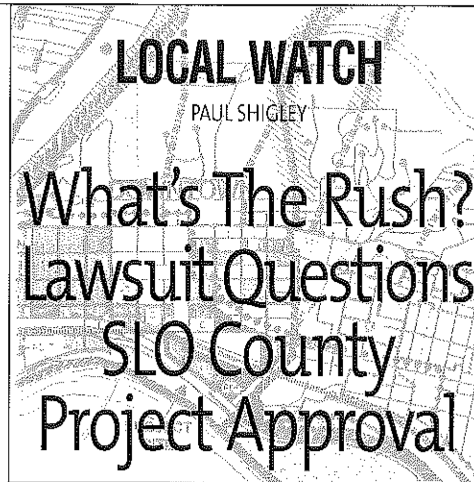


When the San Luis Obispo County Board of Supervisors approved the first of what could be several phases of development at Santa Margarita Ranch, located 10 miles northeast of San Luis Obispo, they did so on a 3-2 vote – at a special meeting two days before Christmas with two lame-duck supervisors providing the deciding votes.

The five-hour meeting on December 23 was not full of holiday cheer. Project opponents complained bitterly to the Board of Supervisors about what they saw as a rush to approve a questionable project. County staff members were obviously uncomfortable with being told to comply with the developer's wishes. Supervisors jabbed each other with pointed statements. Representatives of landowners Rob Rossi, Doug Filipponi and Karl Wittstrom contended the project had been delayed unnecessarily.

After the vote, Supervisor Katcho Achadjian, a project supporter, told the San Luis Obispo *Tribune* it was "a lose-lose situation." If the board failed to approve the project, the landowners would sue. If the board approved the project, opponents would sue.

He was right. Opponents filed a lawsuit in late January, arguing the Board of Supervisors violated the California Environmental Quality Act, state planning and zoning law, the Subdivision Map Act, and the county's general plan and land use ordinance. The local opponents were joined by a potentially formidable ally – the Endangered Habitats League, an advocacy group with a long track record of battling over and negotiating development and conservation in metropolitan Southern California. The league has never taken its advocacy this far up the coast, but it decided to participate in here because the proposed development "would set a precedent for other ranch and farmlands in the iconic Central Coast," according to a written statement by EHL attorney Michael Fitts.

A former Mexican land grant, Santa Margarita Ranch covers 13,800 acres of the Salinas River Valley near Santa Margarita, an unincorporated community of about 1,100 people just east of Highway 101. Cattle have grazed on the ranch since the 18th Century, but large-scale development has been under consideration since at least the 1980s. For a brief period, Stanford University owned the property, which is now under the control of Santa Margarita Ranch LLC.

In the 1990s, the landowners sued the county in a dispute over the number of legal parcels on the ranch. The county settled the litigation in 1997 with a development agreement that outlined overall uses for the property: 1,800 acres for 550 housing units, a golf course, a lodge and other visitor facilities; 8,400 acres protected as permanent open space, and 3,600 acres of agricultural land. Local residents sued over the settlement, arguing the county had unconstitutionally given away its police power. In a precedent-setting decision, the Court of Appeal in 2000 upheld the development agreement as "a legitimate exercise of governmental police power in the public interest." (*SMART v. County of San Luis Obispo*, 84 Cal.App.4th 221; see *CP&DR Legal Digest*, December 2000.)

In 2004, the landowners submitted an application for a tentative tract map and a conditional use permit for a "major agricultural cluster subdivision" on the south edge of Santa Margarita. The proposal sought to create 111 single-family lots of 1 to 2.5 acres apiece, five open space lots of 190 to 1,000 acres apiece, and a 2,400-acre remainder lot. The landowners also laid out their vision for the property's full development with an additional 400 houses, a golf course, various ranches, retreats and lodges, nine wineries, space for galleries, shops and restaurants, and a livestock auction yard.

The proposal underwent a lengthy environmental review process. Local, state and federal agencies raised questions about the project's impact on protected plant and animal species such as the San Luis Obispo Mariposa lily, the California tiger salamander and the red-legged frog, as well as impacts on oak woodlands, water quality, air quality, traffic and archaeological sites. County planners urged consideration of alternative project layouts.

The project made it to the county Planning Commission in July 2008. The Commission conducted several contentious meetings at which county planners and the Commission recommended a smaller, tightly clustered residential subdivision closer to the existing town. The landowners refused to modify the project and insisted the Commission vote on the proposal as-is. In October 2008, the Commission denied the tract map and conditional use permit because of conflicts with the county's land use policies. The Commission also refused to certify the environmental impact report.

The landowners appealed to the Board of Supervisors, which was about to undergo a change. In June 2008, voters replaced Supervisors Jerry Lenthall and Harry Ovitt with Adam Hill and Frank Mecham, respectively. Hill and Mecham were expected to bring a more environmentally sensitive perspective to the board, but they were not scheduled to take office until the first meeting in January 2009. Project opponents asked the board to postpone the appeal until the new supervisors were seated, but Achadjian and the lame ducks insisted the project had languished in the county's bureaucracy long enough.

The board conducted five sessions on the appeal and ultimately approved the proposed project at the December 23 special session. At that meeting, county Planning Director Vic Holanda made clear his dissatisfaction with board majority's handling of the project.

"I'm really concerned that you are putting our department, our professional staff, in a very tenuous situation," Holanda bluntly told the board. "In over 30 years of my career, I have never been subjected to this type of proceeding. I'm not saying it's illegal. It's highly unusual to have the applicant … dictate to the staff how to write conditions and findings for a very important project."

"For the record," Holanda continued, "I'm objecting to this type of proceeding. I believe we should have a continuance to work with the applicant so that we can develop a reasonable projec, not only for the community of Santa Margarita, but for this county."

Nonetheless, three supervisors voted to approve the project and an EIR that contained overriding considerations because of numerous unmitigated impacts, including a finding that the project does not have an assured long-term water supply.

Susan Harvey, president of North County Watch, which filed the suit over the project's approval, said she would like to see a fresh planning process for Santa Margarita Ranch that includes all stakeholders. A better project would place development close to the town, while protecting prime agricultural soils, the headwaters of the Salinas River, endangered species and archaeological sites, she said.

■ Resources:

San Luis Obispo County staff reports: http://slocounty.granicus.com/MetaViewer.php?view_id=2&clip_id=601&meta_id=122055
http://slocounty.granicus.com/MetaViewer.php?view_id=2&clip_id=574&meta_id=116335
North County Watch: www.northcountywatch.org

inbrief

– CONTINUED FROM PAGE 2

The EIR does not require those contributions. Riverside is currently implementing a $300 million program to provide a series of eight underpasses and overpasses.

This is not the first lawsuit over the China Shipping terminal project. In 2001, environmentalists and San Pedro homeowners sued the city for approving the project based on two earlier environmental documents. An appellate court found the city had violated CEQA and halted the project. (*Natural Resources Defense Council v. City of Los Angeles*, (2002) 103 Cal.App.4th 268; see *CP&DR Legal Digest*, December 2002.) Los Angeles settled that litigation in 2003 when it agreed to spend $60 million on air pollution control and aesthetic improvements.

The latest case is *City of Riverside v. City of Los Angeles*, Los Angeles County Superior Court case No. BS119161.

The Public Policy Institute of California (PPIC) has released a new report in which it urges less reliance on state general obligation (GO) bonds to fund infrastructure improvements. The report, "Paying For Infrastructure: California's Choices," recommends reducing the voter requirement for local bonds from two-thirds to 55%, more user fees and expanded experimentation with public-private partnerships.

The Schwarzenegger administration has estimated the state needs to spend $500 billion over the next 20 years to update and expand transportation systems, schools, water facilities and other public infrastructure. California relies more than most states on local and regional agencies to build and manage infrastructure, according to the PPIC report. However, Proposition 13 requires two-thirds voter approval for passage of local general obligation bonds, and Proposition 218 requires two-thirds voter approval of any "property related" fees and limits those fees to the proportional cost of providing service.

State bonds require only majority voter approval, which makes them an appealing alternative, the PPIC report says. Voters have approved $54 billion worth of state bonds in recent years; however, each new bond places a new obligation on state general fund revenues, the PPIC noted. Moreover, agencies might not spend bond funds in the most efficient fashion, the report said.

The PPIC pointed to voters' decision in 2000 to reduce the approval threshold for local school bonds from two-thirds to 55%, which has dramatically increased funding for K-12 school construction and community college facilities. "[L]owering the supermajority threshold for all local GO bonds and special taxes would maintain the safeguards of a supermajority vote for new fiscal obligations while improving Californians' ability to fund essential local infrastructure," wrote Ellen Hanak, the report's primary author.

The PPIC urged more user fees for things such as transportation infrastructure and water supply, which increasingly are funded with GO bonds even though the projects have specific beneficiaries. PPIC also suggested raising the 18-cent-per-gallon gas tax – a proposal that was part of the recently approved state budget plan until the very last minute.

Researchers found California lags other states and countries in the use of public-private partnerships, or P3s. These could include private sector contracts to run public facilities, design-build contracts for project construction and possibly operation, and private equity participation in project financing. "Although P3s are not a panacea, California would benefit from expanding its opportunities with these tools," the report concluded.

The report is available on the PPIC website: http://www.ppic.org/main/publication.asp?i=863.

Beaumont is the second city in the San Gorgonio Pass area to lose a California Environmental Quality Act case because of an inadequate water study.

Riverside County Superior Court Judge Mac Fisher in late February ruled that the EIR for the 2,868-unit Legacy Highlands project lacks sufficient proof of water availability. Fisher's ruling came in a suit filed by Cherry Valley Acres and Neighbors, and the Cherry Valley Environmental Planning Group, which have continually challenged local growth decisions. The EIR's water analysis was based largely on a promise of water service by the Beaumont Cherry Valley Water District, which relies heavily on imports from the State Water Project.

Concerns about water availability and the economic downturn have dramatically slowed housing development in the San Gorgonio Pass area between San Bernardino and Palm Springs (see *CP&DR Local Watch*, April 2008). Last year, a different judge rejected the City of Banning's water analysis for the 1,500-unit Black Bench project.

Development of Fanita Ranch in the San Diego suburb of Santee received a minor setback in February, when a San Diego County Superior Court judge gave Santee six months to revise a fire safety plan for the 1,380-home project. However, Judge Linda Quinn did not reject the environmental impact report, as requested by three environmental groups opposed to the development.

The site of numerous proposals over the last 30 years, Fanita Ranch remains undeveloped, and environmental groups say it should remain that way because it provides habitat for three rare species (see *CP&DR In Brief*, February 2008; *Local Watch*, September 1999). The project approved by the city in late 2007 calls for houses on half-acre lots, a small commercial center and leaving half the site as open space. Developer Barratt American filed for bankruptcy in 2008, but the Fanita Ranch project was not included in the reorganization.

Santa Barbara County supervisors have approved a wind farm on 3,000 acres of agricultural land southwest of Lompoc. Acciona Energy proposes erecting 65 400-foot-tall turbines that will generate more than 1 megawatt of energy apiece.

Concerned about noise and aesthetic impacts, neighboring property owners appealed the county Planning Commission's approval of the project. Meanwhile, the California Department of Fish and Game (DFG) appealed because of the turbines' potential to kill birds and bats. But DFG dropped its appeal when Acciona agreed either to provide a 164-acre conservation easement and a $50,000 endowment for management, or to provide $450,000 to the California Wildlife Foundation for bird and bat habitat programs.

Supervisors rejected the appeal of the neighbors, who own a 425-acre parcel that would be bordered on three sides by the wind farm. The neighbors, George and Cheryl Bedford, indicated they might sue.

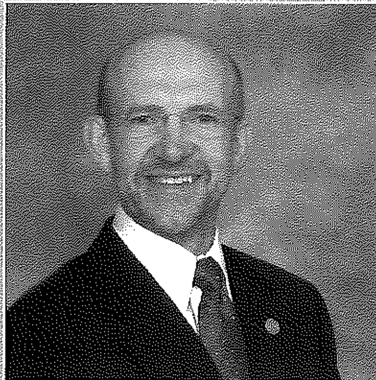
The wind farm would be the first of its kind in Santa Barbara County.

East Bay Regional Park District and Citizens for East Shore Parks have sued the City of Richmond, a developer and an Indian tribe for allegedly violating a 2006 settlement that allows the Navy to expedite the transfer of land at the former Point Molate Naval Fuel Depot to the city.

Richmond, Upstream Investments and the Rumsey Band of Wintun Indians propose a large casino, hotels, entertainment and convention facilities and waterfront housing on 85 acres at the base of the Richmond-San Rafael Bridge (see *CP&DR Local Watch*, February 2005). Harrah's was part of the project but has apparently dropped out. Environmentalists sued over the project, but that suit was settled when the city and other parties agreed to complete an environmental impact report before the city makes any decision to approve the project or hand over the land to Upstream. Although the Navy's land transfer is nearly complete, the EIR has been delayed.

Last year, Citizens for East Shore Parks won a trial court ruling against Richmond over its 20-year deal permitting the Scotts Valley Band of Pomo Indians to develop a casino elsewhere in town. That decision is on appeal. ■

GREG DEVEREAUX



GREG DEVEREAUX *is city manager for Ontario, a city of 175,000 people in western San Bernardino County. Prior to coming to Ontario in 1997, Devereaux served as city manager of Fontana, and as director of community development and of housing and neighborhood development in Garden Grove. The immediate past president of the California Redevelopment Association, Devereaux is an advisor to the Keston Institute for Public Finance and Infrastructure at the University of Southern California, and to the Department of Public Administration at California State University, San Bernardino.*

In January, the California Air Resources Board (CARB) appointed Devereaux to a Regional Targets Advisory Committee, which is tasked with recommending methodologies for establishing greenhouse gas reduction targets. Those targets will be used to implement SB 375, the 2008 legislation that ties together regional planning, transportation funding, affordable housing planning and greenhouse gas emissions reductions (see CP&DR, *January 2009, November 2008, September 2008). Devereaux spoke with* CP&DR *Editor Paul Shigley in mid-February.*

CP&DR What does Ontario's fiscal picture look like these days?
DEVEREAUX We're fortunate in Ontario in that we have a pretty broad revenue base. Sales tax is our single largest revenue sources in the general fund. It too is diverse. About 40% of it comes from point-of-source sales in warehouses and business-to-business. Our largest sales tax categories are automobile sales and building materials, and those have been hit.

Our one bright spot this current fiscal year is property tax. It went up significantly, but we don't think that will hold. We are projecting decreases across the board.

CP&DR Why did property tax revenue increase?
DEVEREAUX Because we were experiencing some commercial growth, and it was prior to the commercial market starting to soften, it went up.

CP&DR What has been the city's response to the fiscal situation?
DEVEREAUX We cut 25 positions at the beginning of the year, reduced our operating expenses by $4.3 million. We do not have a further problem this year as you are seeing in a number of cities.

What we are projecting is the need for further cost reductions in the coming year and, indeed, years. If we trend it out, we think it gets worse for a couple more years because of a combination of rising costs and decreasing revenues. In getting ready for next year, we have put an overall plan in place and have made another $4 million worth of reductions. In addition to that, we have approached our labor unions, and our firefighters' union and management have come forward and are foregoing a 4% increase they were due next year.

Over the next several years, we'll be ratcheting down. The whole focus of the organization will not be on the next cut, and all of the employees wondering if they are on the bubble. We don't want to do that. We have focused on putting a plan in place, getting to where we need to be. As soon as you can do that, the whole energy of the organization is, How can we operate more efficiently or how can we make more money? How can we get out faster?

CP&DR Are you expecting much development during the next few years?
DEVEREAUX Not much, but some. In part because we are working with our development partners. We think this is an opportunity to differentiate ourselves with them. Some of them will develop. Brookfield will continue to develop out in Eden Glen. JH Snyder is going to complete its Ontario Town Square project in downtown. Oliver McMillan continues to prep the Guasti site for development. Same with Panattoni and Piemonte. Certainly, this is in large part because of our partnership and our participating.

CP&DR Have you cut the planning or building staffs?
DEVEREAUX Yes, but logically so. We were just getting ready in the New Model Colony for the first 13,000 units [see *CP&DR Local Watch*, June 2003]. A lot of those positions we had added but hadn't filled because we could see it slowing. Out of 55 positions we have reduced, we only had one person go out the door, except for a couple retirements.

CP&DR You are on the new Regional Targets Advisory Committee, so you understand the state's interest in greenhouse gas emissions. At the same time these economic problems are hitting, the state is mandating local governments take steps to reduce greenhouse gas emissions. Do the state government mandates compound local fiscal problems?
DEVEREAUX That is initially not a mandate – those are targets and that is how they will be used. When you look at the intent behind it, it is certainly the reduction of greenhouse gases, but it is [also] to encourage regional planning. Therein lies my interest. Really, what this all goes toward is trying to get the region working together to see how land use can help meet those targets.

CP&DR What would you like to get across during the committee process?
DEVEREAUX I and several other members were strong voices [during the first meeting] to urge that job creation where people live needs to be heavily considered as a strategy to reduce vehicle miles traveled. I certainly have long believed that creating jobs where people live is a very cost effective way of getting people off the freeway. So I argue for JODs – jobs-oriented developments – in addition to TODs.

CP&DR That's a different way of looking at it.
DEVEREAUX Ontario is already a jobs hub. Our ratio is slightly over two to one jobs to housing units. In our upcoming general plan, we will move to over three jobs per household. When you look at where those people are coming from, they are coming from much further east. A job created here may save a 45-mile commute. They commute here instead of another 35 or 40 miles into Los Angeles or Orange County.

CP&DR How do you quantify the greenhouse gas reductions from this?
DEVEREAUX You can figure out where your employees are coming from and you can find our where they are currently driving. I and this city are certainly very big advocates for getting the right jobs and housing balance. We certainly want to create the kind of housing that is appropriate to the jobs we are creating. We are on our way to being a complete community, where people can live, work and recreate.

CP&DR So you don't think there has to be a tension between the greenhouse gas reduction goals and economic growth?
DEVEREAUX I don't think there has to be if we broaden our perspective on ways of reaching it. It doesn't have to all be – CONTINUED ON PAGE 11

legal digest

County's Attempt To Withhold GIS Base Map Fails

Court Rules Map Not Protected By Terrorism Law Or Copyright

BY PAUL SHIGLEY

A local government may not use the Homeland Security Act, copyright law or cost concerns to shield its geographic information system (GIS) base map from public disclosure, the Sixth District Court of Appeal has ruled.

Although the court ruled squarely for the California First Amendment Coalition in its litigation with Santa Clara County, the court did not decide whether the county could charge extraordinary fees for providing the GIS information. Instead, the appellate panel referred that issue back to Santa Clara County Superior Court.

The First Amendment Coalition (CFAC), which filed suit after the county twice denied requests for release of its GIS base map, called the ruling an important precedent.

"The Santa Clara decision has potentially far-reaching implications," CFAC Executive Director Peter Scheer wrote. "As governments at all levels increasingly maintain records in digital form, legal issues concerning proprietary rights in, and control over, government databases are front and center in freedom of information disputes. Moreover, the Court of Appeal's reasoning on the county's Homeland Security and copyright claims is not necessarily limited to the Santa Clara County parcel base map. It could also apply to virtually any government-created databases, at the local level and statewide, in California and other states."

Deputy County Counsel Robert Nakamae said the county may ask the Sixth District to depublish the decision so that it cannot be cited as precedent. The county may also seek a state Supreme Court review.

"The Court of Appeal's decision forces the county to disregard the United States Department of Homeland Security's validation of the base map as 'protected critical infrastructure information,'" Nakamae said. "The state court decision also creates a gaping loophole in federal laws because anyone can obtain this type of information from the party submitting it to DHS."

Sande George, California Chapter American Planning Association executive director, said that the issues raised in the litigation need to be discussed by the organization and public sector planners who respond to public requests for information and maintain GIS databases. At this point, though, CCAPA has no official position, she said.

According to the First Amendment Coalition, 37 of California's 58 counties provide GIS base map data to the public for free or for a nominal reproduction cost. Santa Clara County is not one of those 37. Twice in 2006, CFAC submitted a request under the California Public Records Act for the county's GIS base map. Both times, the county denied the request, citing statutory exemptions and copyright protection. The coalition then went to court to compel the county to produce the desired information.

Santa Clara County Superior Court Judge James Kleinberg ruled for CFAC, noting that the county had entered into agreements with 18 different entities, including 15 government agencies, to provide the base map. He ruled that there was no exemption for the requested material under the California Public Records Act (CPRA) and ordered the county to provide the information at its direct cost. Judge Kleinberg, however, stayed his ruling to permit the county to appeal. The Sixth District has ordered the stay to remain in place until the lower court resolves the fee question.

The county made two arguments for not releasing the requested information: The Critical Infrastructure Information Act, part of the Homeland Security Act of 2002, preempts the state's public records law, and the CPRA's catchall exemption applies to the GIS base map. The county also argued that if neither of those preemptions stands, it could demand end user agreements and payment of more than direct cost of reproduction because the GIS base map is protected by copyright. A unanimous three-judge panel of the Sixth District was unconvinced.

On the issue of federal preemption, the court found that the federal law and its accompanying regulations draw a distinction between a state or local government's submission of critical infrastructure information, and protected infrastructure information provided by the federal government to other levels of government.

"[T]he federal statute's prohibition of disclosure of protected confidential infrastructure information applies only when it has been 'provided to a state or local government or government agency,'" Justice Richard McAdams wrote for the court, citing 6 U.S.C. § 133(a)(1)(E)(i). Because in this case the county is a submitter of information, not a recipient, federal preemption of the state public records law does not apply, the court held.

In support of using CPRA's catchall exemption, the county argued the public interest in obtaining the GIS base map was "minimal and hypothetical," while the county's purpose for withholding was supported by public finance and security concerns. The First Amendment Coalition disagreed, and so did the court.

The public has a legitimate interest in understanding government activities, the court found. And the fact that the public records act request might pose a burden on the county is not a valid reason to block disclosure, the court ruled.

On the issue of security, the county argued that terrorists could use the GIS base map to locate the Hetch Hetchy system water pipes, which serve much of the Bay Area. The coalition countered with a GIS expert, Bruce Joffe, a member of the Department of Homeland Security's Geospatial Working Group, who testified that the base map would only identify the Hetch Hetchy right-of-way, which may be identified through other records. Even if right-of-way identification were a concern, the county could remove that information from the base map before providing it to CFAC, Joffe said.

The trial court and the Sixth District concluded security must not have been an over-

riding county concern if the county were willing to sell the base map to 18 purchasers. "In the trial court's view," McAdams wrote, "'If the security issues were of greater importance, one would think there would be no dissemination of the GIS base map whatsoever.' We see no reasoned basis for overturning that inference."

The issues raised regarding copyright and end user restrictions had never before been addressed in a published opinion in California. Essentially, the county argued its GIS base map is protected by copyright and that the county could limit how the base map is used. The coalition argued public records in California are not copyrighted, an argument the court accepted.

"The CPRA contains no provisions either for copyrighting the GIS base map or for conditioning its release on an end user or licensing agreement by the requester," McAdams concluded.

The only issue the court left unresolved is the amount the county may charge for the GIS base map.

County attorney Nakamae maintained the decision regarding a public agency's ability to create copyrighted material is improper. That decision could cost the county its ability to sustain the base map, he said. ■

■ The Case:
County of Santa Clara v. The Superior Court of Santa Clara County, No. H031658, 09 C.D.O.S. 1526, 2009 DJDAR 1802. Filed February 5, 2009.

■ The Lawyers:
For the county: Robert Nakamae, county counsel's office, (408) 299-5960.
For the California First Amendment Coalition: Rachel Matteo-Boehm, Holme, Roberts & Owen, (415) 268-2000.

ceqa

Mitigation Fee Program Must Get Environmental Review, Court Decides

A county may not assume that fees paid under a mitigation fee program constitute full environmental mitigation for a project when the program has not undergone California Environmental Quality Act review, the Third District Court of Appeal has ruled.

The court determined that El Dorado County should have completed an environmental impact report for a Cameron Park development on the site of eight rare plant species. The county approved the 20-acre development based on a mitigated negative declaration that required the payment of $135,000 in plant species mitigation fees and the preservation of 5.96 acres as habitat for one of the species. The California Native Plant Society, however, presented a fair argument that the development could have a substantial impact, and, therefore, required an EIR, the unanimous three-judge appellate panel ruled.

The court made clear that fee-based mitigation programs may provide adequate mitigation under CEQA. However, even though El Dorado County incorporated its ecological preserve fee program in the general plan, which underwent CEQA scrutiny, the program itself was not analyzed under CEQA. Moreover, the general plan EIR states that the program will not mitigate implementation of the general plan, the court noted. And the county never updated the fees after adopting them in 1998, even though the county's own ordinance requires annual updates.

"For such a program to satisfy CEQA, it must at some point pass CEQA muster, either at the programmatic level or the individual project level," Justice Fred Morrison wrote for the court. "Further, the county has violated its own ordinance by not conducting annual review of the fee amounts and efficacy of the program, thereby undermining its view that payment of the fee equates to full mitigation."

The county adopted the ecological preserve fee program in 1998 to address long-standing concern about development's impact on native plants in the foothills. The program established varying fee levels based on a project's size and location. The county did not conduct environmental review of the program.

With the development fees and other funding, the county began acquiring properties in the designated Pine Hill ecological preserve, which covers five separate units of land. In 2001, the county signed a cooperative management agreement for the preserve with the U.S. Fish and Wildlife Service, the Bureau of Land Management, the Bureau of Reclamation, the California Department of Fish and Game, the Department of Forestry and Fire Protection, El Dorado Irrigation District and the American River Conservancy. A BLM employee serves as the preserve manager. In 2004, the county adopted a new general plan, the EIR for which discussed the preserve program.

The project in question here involved development of a 140-unit congregate senior care facility, a 35-room Alzheimer's care unit, 64 duplex cottages and an 8,000-square-foot clubhouse. The 20-acre site is located within the Pine Hill preserve. When the project application was submitted in 2006, the site was zoned for 10-acre residential use. Known as Cameron Park Congregate Care, the project has been largely completed by developers Cameron Park Ventures and Pacific Oak Development.

Throughout hearings at the county Planning Commission and the Board of Supervisors, representatives of the Fish and Wildlife Service and the Department of Fish and Game questioned the county's mitigation of impacts to rare plants, especially the Pine Hill ceanothus and the Stebbins' morning glory, both of which are listed by the federal government as endangered species. A representative of the local Native Plant Society chapter raised similar questions. But the county insisted that payment of the ecological preservation program fee, designation of the 5.96-acre protected area and mitigation measures mandating the transplanting of individual plant species and cuttings was sufficient. The Board of Supervisors adopted the mitigated negative declaration and approved a general plan amendment, rezoning and the project in October 2006.

The Native Plant Society sued, arguing the county had violated CEQA. El Dorado County Superior Court Judge Daniel Proud ruled for the county, largely because project opponents had not attempted to attack the fee program. In overturning Proud, the Third District said the trial court judge framed the question incorrectly by assuming that payment of the fee fully mitigated the project.

The Third District said it must view the fee program through the lens of the general plan. The general plan EIR contains a statement of overriding consideration because the fee program does not cumulatively avoid significant environmental impacts to plant species. At – CONTINUED ON PAGE 8

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the project level, the EIR states that "mitigation shall be defined in the integrated resources management plan." However, no such plan exists, and the applicable general plan policy does not say the fee program will mitigate impacts of discretionary development projects, the court noted.

"The [EIR] study finding that the fee program *will not mitigate* the impact of adopting the general plan cannot be used to conclude that the same fee *will presumptively mitigate* the impact of an individual, discretionary project," Morrison wrote.

"This fee program has never undergone CEQA review," Morrison continued, "and a public entity cannot simply declare that such and such a fee will 'fully' mitigate the environmental effects of all future discretionary projects absent some environmental analysis."

The court said it was "troubled" by the county's failure to review and update the fee program, even though the ordinance requires – and the general plan EIR emphasized – annual reviews. "[I]t is unknown whether the appropriate amount is being collected from developers," Morrison wrote.

The court concluded that substantial evidence supporting a fair argument that the project could result in significant impacts existed. Biologists from state and federal agencies and the plant society all testified that the mandated transplanting and propagating of thousands of ceanothus plants was an unproven technique, and the plant society representative presented evidence that mitigation measures were based on flawed scientific data regarding the plant's lifecycle.

The court ordered the county to complete an EIR for the project, noting that even though development has proceeded, "that does not moot the CEQA issues and does not prevent adoption of additional mitigation measures." ■

■ The Case:
California Native Plant Society v. County El Dorado, No. C057083, 2009 C.D.O.S. 1240, 2009 DJDAR 1411. Filed January 29, 2009.

■ The Lawyers:
For the plant society: Michael Graf, (510) 525-7222.
For the county: Paula Frantz, county counsel's office, (530) 621-5770.
For the developers: Andrea Leisy, Remy, Thomas, Moose & Manley, (916) 443-2745.

eminent domain

Developers' Creative Compensation Argument Fails To Convince Court

An appellate court has declined to allow additional compensation in an eminent domain case to San Francisco landowners who argued that they should be made whole for the expected revenue on an approved but unbuilt mixed-use project on their land.

The developers argued the state law mandating compensation for loss of business goodwill in eminent domain cases required San Francisco to pay for the developers' projected gains, because the developers would be unable to pursue their project. But the First District Court of Appeal ruled that the law did not apply because the developers "had no ongoing business located on the undeveloped parcel taken, a necessary predicate for recovery of lost goodwill."

Martin Coyne and Brian Murphy O'Flynn owned a triangular parcel on Lombard Street in San Francisco's North Beach district that they leased for surface parking. In June 2003, they received Planning Commission approval for a nine-unit residential condominium development with retail space on the ground floor. In early 2004, however, the San Francisco Board of Supervisors approved a "resolution of necessity," which commenced the eminent domain process. San Francisco sought the property for a park. At the time, Coyne and O'Flynn had commissioned architectural and engineering plans, but they had not yet obtained building permits or secured construction financing. They had invested about $150,000 in the project, not including property acquisition and holding costs, and the value of their own time.

The developers responded by requesting compensation for loss of business goodwill under Code of Civil Procedure § 1263.510. A trial court judge rejected the request. On appeal, the First District ruled in an unpublished opinion that there was insufficient evidence for the judge to decide on the request.

The matter returned to Superior Court for a bifurcated trial. The first phase involved whether San Francisco had the right to take the property, and whether the developers could claim entitlement to compensation for lost goodwill. The second phase involved a jury determination of value.

In the first phase, Judge Diane Elan Wick ruled the city could take the property and the landowners had failed to establish a loss of business goodwill. In the second phase, a jury awarded Coyne and O'Flynn about $2.7 million. They then went back to the appellate court to challenge the ruling on business goodwill again.

Coyne and O'Flynn argued that they were actively engaged in developing a residential and commercial complex on the property, and the city's condemnation eliminated their business. Based on the testimony of their expert, they argued they were entitled to an additional $2.1 million to $2.9 million – essentially, the amount they could make from the completed project.

A unanimous three-judge panel of the First District noted the developers had not received a building permit, had not begun construction and had not pre-sold or pre-leased any units. "Section 1263.510 provides for compensation for losses resulting from the forced relocation of an ongoing business conducted on condemned land," Presiding Justice Mark Simons wrote for the court. "There is no evidence of an ongoing business located on the property, aside from the parking lot."

Instead, the court said the developers were trying to find a way to base the fair market value on the "developers approach," also known as the economic analysis approach or residual land value approach. Courts have consistently rejected this approach, Simons noted. Coyne and O'Flynn argued that courts have rejected this approach only for setting the value of the undeveloped land – and not for calculating the value of goodwill. But Simons called this argument "illogical."

"If we adopted the rule proposed by appellants, we would allow developers of raw land to achieve through the back door precisely what California case law has long denied them at the front, a recovery rooted in a specific development plan," Simons wrote. The goodwill statute only contemplates actual goodwill lost, not hypothetical or potential losses, Simons pointed out. ■

- The Case:
  City and County of San Francisco v. Coyne, No. A11822, 08 C.D.O.S. 14825, 2008 DJDAR 17947. Filed December 5, 2008. Modified December 29, 2008, at 2008 DJDAR 18864.
- The Lawyers:
  For San Francisco: Kristen A. Jensen, city attorney's office, (415) 554-4700.
  For Coyne: Jonathan R. Bass, Coblentz, Patch, Duffy & Bass, (415) 391-4800.

ceqa

Responsible Agency's Contract With Developer Invalidated

A San Diego County water district should have completed an environmental study before approving an agreement to provide recycled water to operators of a proposed landfill, the Fourth District Court of Appeal has ruled.

Even though Olivenhain Municipal Water District was not the "lead agency" for review of the landfill itself, the district was a "responsible agency" with obligations under the California Environmental Quality Act. The district did not fulfill those obligations with a contract that placed CEQA compliance in the hands of the landfill operator, the court ruled.

The ruling is the first published opinion to cite extensively the state Supreme Court's most recent CEQA ruling, *Save Tara v. City of West Hollywood*, (2008) 45 Cal.4th 116. In *Save Tara*, the state high court ruled West Hollywood should have completed an environmental impact report before signing a conditional agreement with the developer of an affordable housing project (see *CP&DR Legal Digest*, December 2008).

Like the city in *Save Tara*, the water district here committed itself to the project "'so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project,'" Justice Alex McDonald wrote, citing *Save Tara*.

San Diego County voters in 1994 approved a ballot measure providing for development and operation of a 1,700-acre landfill and recycling collection center at Gregory Canyon in the north part of the county. The Pala Band of Mission Indians – which has a reservation and casino near the landfill site – and some environmentalists have been fighting the project ever since. In 1998, the Fourth District ruled that San Diego County did not have to complete an environmental impact report on a solid waste management plan that identified Gregory Canyon as a potential landfill site (*Pala Band of Mission Indians v. County of San Diego*, 68 Cal.App.4th 556; see *CP&DR Legal Digest*, January 1999). In 2004, the Pala Band sponsored an initiative to overturn the 1994 ballot measure, but voters maintained support for the landfill.

The tribe had more success challenging the EIR for the landfill itself. San Diego County certified a final EIR for the landfill in 2003 and approved the project in 2004. The Pala Band, the City of Oceanside and the group Riverwatch sued over the EIR and won when a trial court judge found the EIR defective because it failed to identify the source of water necessary for constructing and operating the landfill, and did not analyze the impacts of obtaining that water.

The landfill proponent, Gregory Canyon Ltd. (GCL), responded by signing an agreement in early 2006 with Olivenhain Municipal Water District (OMWD). The district agreed to provide up to 244,000 gallons of recycled water per day for 60 years. Gregory Canyon would truck the water from a reservoir to the landfill site. During the meeting at which the district board approved the agreement, a statement from a Gregory Canyon attorney that the trucks would not have significant impact on traffic provided the only discussion of potential environmental impacts.

In July 2006, the county's Department of Environmental Health issued a revised partial draft EIR that addressed the impacts of Gregory Canyon's arrangement with OMWD. Shortly thereafter, the Pala Band and Riverwatch sued the water district for failing to comply with CEQA.

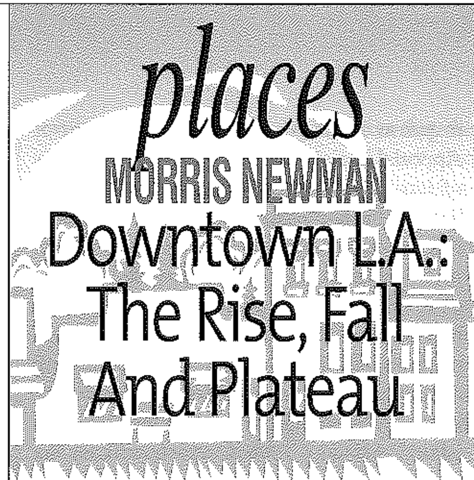
A San Diego County Superior Court judge determined the district's approval of the agreement did not constitute approval of a project for CEQA purposes. On appeal of Riverwatch and the Pala Band, a unanimous three-judge panel of the Fourth District, Division One, overturned that ruling.

"[T]he activity of trucking recycled water from OMWD to the landfill site is *part of the whole action* or operations of the landfill project for purposes of CEQA," Justice McDonald wrote. The activity would include building 1,000 lineal feet of roadway, constructing a concrete pad and six-inch meter, and up to 89 water-hauling truck trips per day, he noted. Although the county was the "lead agency" under CEQA for the landfill project, the water district was "a 'responsible agency,' under CEQA because it proposes to carry out and/or approved part of the landfill project," McDonald wrote.

After deciding the contemplated activity qualified for CEQA review, the court turned to the question of whether contract approval amounted to project approval. The district and Gregory Canyon argued that because the agreement contained conditions and placed on the landfill developer the responsibility for CEQA compliance, approval of the agreement did not trigger CEQA. They cited the landmark case *Stand Tall on Principles v. Shasta Union High Sch. Dist.*, (1991) 235 Cal.App.3d 772, and the more recent *Concerned McCloud Citizens v. McCloud Community Services Dist.*, (2007) 147 Cal.App.4th 181 (see *CP&DR Legal Digest*, March 2007). In *Stand Tall*, the court upheld a school district's conditional purchase of a potential high school site without environmental review. In *McCloud*, the court upheld a special district's approval of an agreement with Nestlé to purchase and bottle water from the district's sources without environmental review.

The Fourth District said those cases did not apply here. *Stand Tall* was based on a specific exception in CEQA Guidelines for land acquisitions conditioned on future CEQA compliance, and *McCloud* was based on the agreement's lack of specificity, or definiteness, regarding the potential water bottling project. The Fourth District instead relied on *Save Tara* to determine OMWD's contract approval equaled project approval.

"Because the agreement set forth the specific details regarding OMWD's 60-year obligation to deliver recycled water to GCL, and the construction required to allow that delivery, – CONTINUED ON PAGE 10



Tom Bradley's dream for downtown Los Angeles was never realized – at least not in the form he originally envisioned. The city's biggest-thinking mayor (1973-1993) of the postwar era, Bradley wanted a great downtown like those in Chicago, Houston and San Francisco. By the 1970s, L.A.'s period of greatness, as distinct from mere bigness, had started: Los Angeles had surpassed Chicago as the nation's second largest metropolis, while the Los Angeles and Long Beach ports, clogged with imports from booming Asian economies, were now busier than the New York-New Jersey ports. Los Angeles was the American gateway to the rising tigers of Asia, just as New York was the American gateway to a declining Europe.

Los Angeles needed a downtown commensurate with its new status as financial hub of the West Coast. This downtown would have soaring towers, silk ties and firm handshakes. This downtown would be an essential location for Corporate America and all the blue stockinged lawyers, accountants and consultants holding its train. Above all, downtown would impose a center on a notoriously uncentered city, as if to rebut H.L. Mencken's notorious snark that Los Angeles was no more than a "group of suburbs in search of a metropolis."

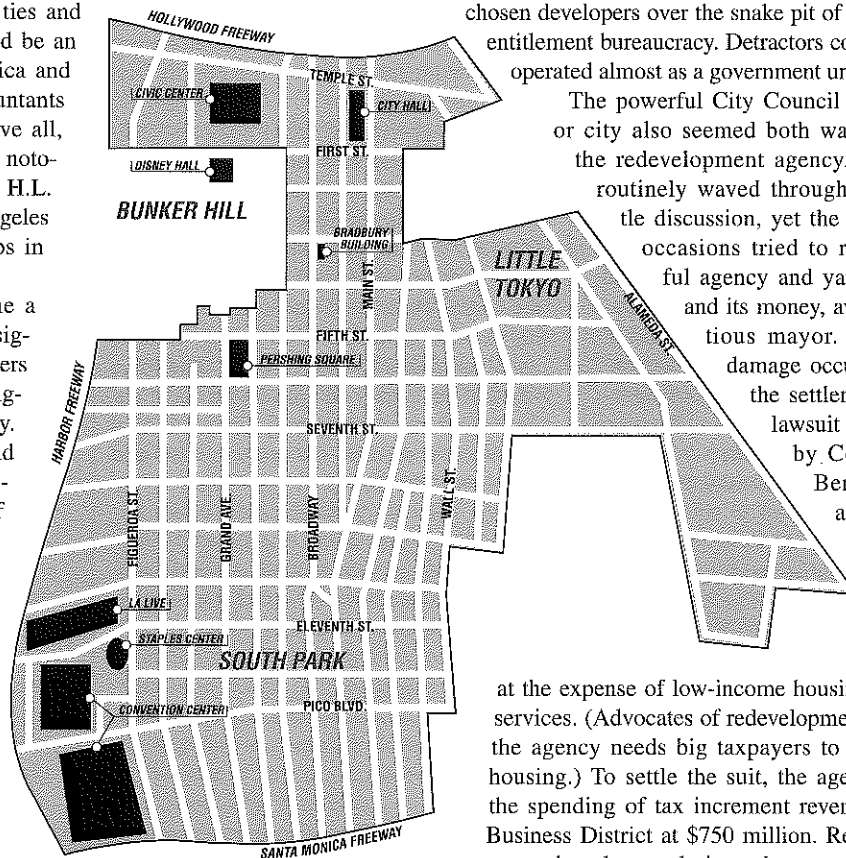
Today, downtown L.A. has become a great residential neighborhood and a significant office market, although developers and market forces ultimately played a bigger role than government or public policy.

Prior to the 1970s, L.A.'s faded and obsolete downtown was fit for a smaller city of an earlier era. The center of downtown was the iconic City Hall on Main Street, a white tower with battened walls and a pyramidal dome that for many years was the tallest building downtown by city ordinance. Completing the symbolic triumvirate of downtown power was St. Vibiana's Cathedral, the seat of the Archdiocese for a heavily Catholic community, and the *Los Angeles Times* building. Industry and warehouses centered on the rail yards on the east side, near the river. The office district stood in the terra cotta covered buildings of Broadway and Spring Street, while Seventh Street's cluster of department stores was the regional shopping destination. The Pacific Electric Red Car made downtown a principal hub of a four-county commuter rail network. The rest of downtown was housing, primarily frame houses, some of which had fallen into slum-like dilapidation. Novelist Christopher Isherwood famously decried Bunker Hill as "the most squalid" neighborhood in the country.

Highway construction during the 1950s and 1960s gave downtown new, *de facto* boundaries, with Interstate 10 to the south, Interstate 110 to the west, and the junction of Highway 101 and Interstate 5 on the north. On the east, the channelized Los Angeles River provided a fourth concrete boundary. The freeways "isolated downtown from the rest of town," according to Carol Schatz, president of the Central City Association, a trade group that promotes relocation and business growth. The former city center had become an island of bureaucracy. While industrially vibrant, downtown was rarely visited by the middle-class residents of the Westside or the San Fernando Valley. Downtown wasn't "nice." Unless you were a bureaucrat, a juror or a builder pulling a permit, there was no reason to go there.

To achieve his downtown vision, Bradley realized the Community Redevelopment Agency (CRA) was his most important ally. Through seven different redevelopment project areas, the agency virtually carpeted the whole of downtown. Other city agencies, however, seemed to resent a redevelopment agency that danced to its own tune, while catapulting its chosen developers over the snake pit of the city's notorious entitlement bureaucracy. Detractors complained the CRA operated almost as a government unto itself.

The powerful City Council in this weak-mayor city also seemed both wary and envious of the redevelopment agency. Councilmembers routinely waved through projects with little discussion, yet the council on several occasions tried to rein in the powerful agency and yank redevelopment, and its money, away from an ambitious mayor. The most lasting damage occurred in 1977 with the settlement of an oddball lawsuit brought personally by Councilman Ernani Bernardi against the agency. His suit charged that the redevelopment agency aided the development of office buildings at the expense of low-income housing and other social services. (Advocates of redevelopment might argue that the agency needs big taxpayers to finance affordable housing.) To settle the suit, the agency agreed to cap the spending of tax increment revenues in the Central Business District at $750 million. Repeated attempts to renegotiate the cap during subsequent decades – Bradley later suggested $5 billion – went nowhere because the settlement precluded any changes without all parties' agreement.



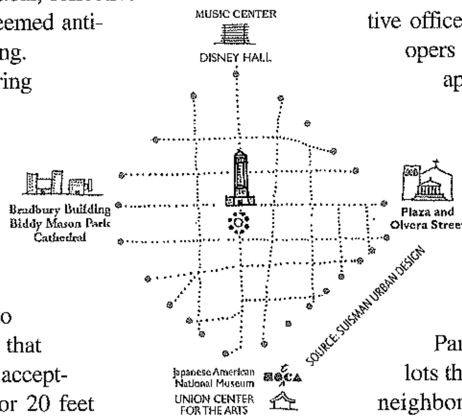
Central Business District

The First Super Project: Bunker Hill

After its formation in 1949, the CRA soon seized upon Bunker Hill as "Redevelopment Project Number One." For the next two decades, the agency commissioned a series of master plans in which large commercial buildings would replace declining residential neighborhoods. Following the scrape-and-rebuild mode of classic urban renewal, the agency demolished all the housing in 1970. In 1979, the agency finally settled on a master plan for an 11.5-acre area that called for an extremely dense project of 11 million square feet of office space, 3,000 apartments and

2,000 hotel rooms. The agency sought out developers, and the two finalists were a Chicago firm affiliated with Metropolitan Life Insurance Company and Rob Maguire II, a then-unknown who had assembled a team of young architects, including Cesar Pelli, Frank Gehry and Barton Myers. The agency chose Metropolitan Structures, perhaps for its financial strength, although its bland design of three identical, reflective glass towers, each 1 million square feet in size, seemed anticlimactic, even sadly ironic, after decades of planning.

The CRA was forward thinking, though, requiring developers to build public amenities in exchange for public subsidies such as land assemblage or the sale of land at below-market rates. The agency, however, often played a weak hand in negotiating the devil's bargain of asking private developers to build public amenities. During the early 1980s, the CRA negotiated with the California Plaza developers to build the new Museum of Contemporary Art on that commercial campus. For some reason, the agency accepted a design that located the museum's front door 20 feet below street level. (My guess is that Metropolitan Structures did not want the cultural building to block the view of a hotel and apartment complex from the street.) The resulting museum building looks as if the ground had slumped beneath it, leaving only the pointed roofs visible from Grand Avenue. Renowned architect Arata Isozaki reportedly quit the job at least twice before its completion in 1984.



Even more questionable was the design of a regional shopping mall in Citicorp Tower. Although the agency had long desired fancy shopping downtown, the CRA allowed the developers of the three-tower complex to sink a new shopping center into a hole 50 feet below street level. Except for a decorative "space frame" above the hole, the shopping center was invisible from the street. The developers apparently did not want the shopping space to block the view of their office towers, and the idea of designing the two together somehow did not occur to them. This bizarre underground mall, made up of three descending rings of retail centered on a shadowy round courtyard, resembled something out of Dante's inferno, except it was cold. The unfortunate center remains open today.

If new public buildings were questionable, office buildings were hot. In 1985, foreign investment punctuated by the $550 million purchase of the Arco Plaza office complex made downtown L.A. arguably the most desirable place for a West Coast developer to buy or build. Even though some suburban office markets commanded higher rents than downtown, overseas investors targeted the center city, perhaps in belief that the center city would contain L.A.'s most valuable office market. By the 1990s, a real estate brokerage could publish a map of downtown office buildings with foreign flags attached to most of them.

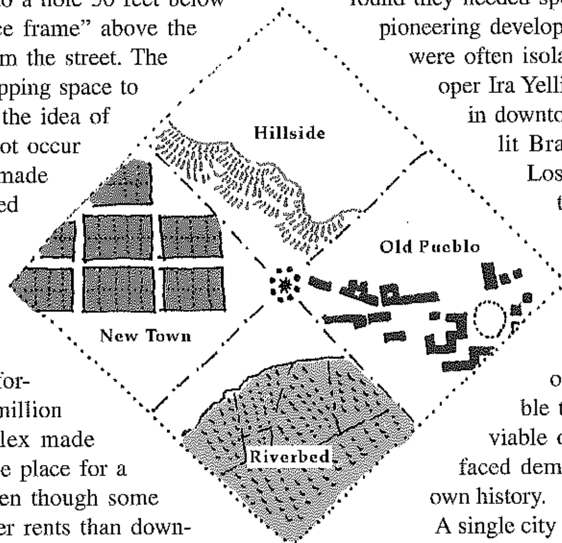
Despite record prices for land and buildings, downtown was not penciling out. Downtown's Fortune 500 companies, never great in number, almost disappeared entirely due largely to the late 1980s' merger-and-acquisition activity. Arco, IBM, Unocal and Security Pacific Bank all departed, leaving acres of empty sublease space that spoiled the market for full-price "landlord space." Downtown office buildings were rarely more than 85% occupied, the break-even point for many landlords.

Macroeconomic troubles followed. The S&L meltdown combined with the Japanese banking crisis halted new office construction. Shuwa Investments, which had been Southern California's leading Japanese investor, was exposed as a naked emperor, having built its real estate empire by borrowing against the paper value of its stock market holdings. When those holdings went poof, the once-mighty investor vaporized like smoke from an incense burner. Since 1992, no speculative office project has been built downtown, although developers continue to propose them and the city has actually approved several.

A New Wave Of Public Investment

During the subsequent lull of the 1990s, the CRA continued to invest heavily in downtown L.A. The agency doubled the size of the convention center, while developing new apartment buildings and residential complexes in Chinatown, Little Tokyo and South Park, an area of aging industrial buildings and parking lots that the agency wanted to transform into a residential neighborhood. The agency built two apartment buildings and a condo complex in South Park, but market-rate housing was a tough sell. Except for people commuting between the U.S. and Asia and downtown business owners, few wanted to live downtown. By the late 1990s, downtown's 2,000 residents remained almost invisible amid the transient population of 500,000 daytime workers.

Downtown also seemed resistant to the idea of loft housing, despite the popularity among artists of converted concrete buildings in the industrial area. Obsolete building codes didn't help; the small number of developers attempting to convert older buildings in the office district found they needed special variances. Even when completed, these pioneering developments sometimes fared poorly, because they were often isolated from other residential buildings. Developer Ira Yellin, who pioneered private sector preservation in downtown L.A. with the refurbishments of the skylit Bradley Building, Grand Central Market and Los Angeles Union Station, lost money during the early 1990s when he converted the upper stories of the Million Dollar Theater, an ornate movie palace, into rental units.



Yet room to grow was limited. Architect Chris Martin told the *Downtown News* during the late 1990s that many aging office buildings were obsolete and impossible to convert to modern office space. Without a viable option for reuse, he warned, many buildings faced demolition. Downtown L.A. was choking on its own history.

A single city law resolved this crisis and changed the urban landscape. In 1999, the City Council approved the adaptive reuse ordinance, a law sponsored by the Central City Association that encouraged developers to convert old buildings to housing by relaxing certain building and safety requirements.

One outspoken developer was Tom Gilmore, who converted three 19th Century office buildings into what he called the Old Bank District. In the great Los Angeles tradition, Gilmore was a tireless promoter who stumped for downtown living from every platform he could scramble onto. His great discovery was rehabilitation of several adjacent buildings at one time, creating a sense of both community and safety. While some renters would complain of alleged shortcomings in his rehab efforts, Gilmore had done the – CONTINUED ON PAGE 14

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impossible: He had popularized downtown loft living in Los Angeles, albeit after other large downtowns had long since hopped on the rehab wagons of SoHo, SoMa and LoDo. Los Angeles, in fact, was "the last major city to embrace downtown loft conversions," said Schatz, of the Central City Association.

Developers and their lenders are herd animals, risk averse and hesitant to explore. With the acceptance of the Old Bank District, however, local and national developers were soon building luxury condos in older buildings, while new residential structures arose on former hamburger stands and parking lots. The one-time Standard Oil headquarters became The Standard, a hip hotel with a marquee stylishly hung upside down. (If you had to ask why, you were too hopeless to stay there.) Formerly feared and shunned by young professionals, downtown soon filled with the fleshpots of the yuppie and dink classes. Adaptive reuse and gentrification had achieved where urban renewal had failed. By the time Bernardi's curse came true in 2000 and the central district ran out of redevelopment money, it seemed a non-event. Downtown's loft scene had the "big mo." By 2008, nearly 47,000 people lived inside the freeway ring, according to the Central City Association. "I don't know exactly which number represents critical mass," said Schatz, "but I think we have achieved it."

The Next Super Projects: Grand Avenue And LA Live

When the Frank Gehry-design Disney Hall opened in 2004 after two decades of management and design changes, cost overruns and fundraising, downtown finally had a swashbuckling masterpiece for what had become an arts corridor. The concert hall, the new Los Angeles Cathedral, The Colburn School of music, the Museum of Contemporary Art and the Los Angeles Music Center, a Lincoln Center knockoff dating from the 1960s, all stood along a three-block stretch of Grand Avenue. The CRA thus shifted into high gear to create the "connective tissue," such as townhouses and single-story retail buildings, to tie all the buildings together. The CRA commissioned urban architect Doug Suisman to develop ideas about public space. He proposed a grassy median running down the center of the boulevard, inspired by Barcelona's ramblas, if much narrower.

The development potential of Grand Avenue lay in four large land parcels on the steep slope directly east of the street; half of those lots were owned by the City of Los Angeles, the other half by Los Angeles County. The city and the county, which typically clashed over downtown development, in this case created a joint venture to develop the lots in a single super project. Part of their motivation was a longstanding ambition to grow rich by selling surplus land for commercial development.

Grand Avenue, however, was an odd design problem. The construction of Bunker Hill's enormous office buildings had required the removal of nearly all the underlying soil to make room for parking structures and access roads. The hill was gone and all that remained was a street, really a bridge, spanning a freeway entrance.

Ironically, the CRA, which had invented Bunker Hill in its modern form, found itself muscled aside in the Grand Avenue design competition. In the wake of the Bernardi lawsuit, the agency had no money to hand out, and, hence, little influence. The agency was forced to stand aside while a "public committee" of city and county officials, led by firebrand Supervisor Gloria Molina, reviewed the proposals. Managing both the "public process" and the expectations of the elected officials were two experienced hands, developer Jim Thomas and insurance magnate Eli Broad. The competition came down to two nationally known developers, both of whom proposed high-rise towers for apartments, condominiums and hotel rooms. Eventually, the officials chose The Related Cos.

The company had just completed the well-regarded Two Columbus Circle in Manhattan, a pair of twin towers designed with three floors of retail immediately above street level. Molina, a champion of low-income housing, signed off when the developers set aside 25% of the units for that purpose. Related's proposal appeared similar, including plentiful retail, to its New York towers. But even with the prestigious Gehry as urban designer, the extremely dense high-rise scheme relegated Grand Avenue to the status of foyer for a 500,000-square-foot shopping experience. The five-tower project serves the investor demand for high-rise "product" to the near-exclusion of all other types of housing, shoehorning an East Coast project onto a Los Angeles site. Because of financing problems, development has fallen more than two years behind schedule.

The third Super Project is LA Live, an entertainment and hotel extravaganza nearing completion on the southern edge of downtown, near the convention center. The city has long wanted a convention center hotel, which it considered the missing ingredient needed to book national meetings. Built around the existing Staples Center sports arena, this 17-acre project includes the Nokia Theater, nightclubs and a 53-story tower containing two separate hotels and 200 high-priced condominiums, stacked atop one another like layers in a parfait dessert. Jumbotron images animate a central courtyard.

In a further show of impotence, the CRA applauded the project while allowing its long-nurtured South Park project to get steamrolled. The attainment of a convention center hotel is the fig leaf that allows the agency to pretend that at least one of its original priorities survives within this $3 billion act of usurpation. Developer Philip Anschutz was able to build this self-contained, inward-looking, anti-urban monument to his sports, theater and ticket-sales empires simply by filing an amendment to the city's general plan. So much for 30 years of planning. A billionaire developer with an alluring project will inevitably have his way with the city, in every sense.

It is hard to mention planning in this context without bitter irony. The cash-poor, politically orphaned redevelopment agency – formerly the downtown agenda-setter – now must rubber stamp whatever the City Council wants. Otherwise, it is hard to imagine how an agency with an avowed mission of "quality urban design" could encourage a giant project that disregards the rest of downtown, to the extent of setting up an opaque wall on Figueroa Boulevard.

The considerable flaws of Grand Avenue and LA Live, however, do nut nullify the larger achievement of downtown Los Angeles. If Tom Bradley's downtown of economic domination was never fully realized, something better arose in its stead: A pedestrian oriented urban neighborhood where the selling points are human-scaled urbanism, plus the regional attractions of a large job market, mass transit, education, culture and entertainment.

Above all, downtown is convenient, especially if you leave the car at home. "We walk everywhere – to the movies, to the supermarket," said a 30-year-old woman of my acquaintance, who shares a child-free apartment with her husband. When you tire of Super Projects, you can take a walk through the restored Union Station, a masterpiece of Art Moderne dating from 1940 and downtown's finest building prior to Disney Hall. Across the street is Philippe's French Dip restaurant, where a cup of coffee costs 10 cents, just as it did 40 years ago. You can explore the produce and flower markets during the early morning, and buy a decent suit for wholesale in the Garment District. As imperfection goes, it's not bad. ■

Cities Try To Encourage Construction Activity

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shift local revenues to state coffers. That's a tremendous relief, said Megan Taylor, a spokeswoman for the League of California Cities.

"The focus at the city level has not been so much on economic stimulus as on dealing with falling revenues. That's the lion starting at cities right now," Taylor said. Because the economy is so uncertain, it is difficult to make economic investment decisions, she added. "Cities are trying to right the ship, but the waters are really troubled."

The Obama administration's "American Recovery and Reinvestment Act" should aid at least some local governments. The $800 billion program contains no money for zoos, aquariums, golf courses, swimming pools or casinos, according to a League of California Cities analysis, but it does provide money for myriad other things ranging from affordable housing to transit and highway projects to clean water programs. The League has compiled a guidebook for cities wanting to access the federal monies.

Some jurisdictions, however, are not waiting for a federal bailout and have taken immediate steps to help stabilize revenues. At least two cities – Norco and Victorville – have made loans to automobile dealerships, which always rank among the largest sales tax producers. In January, Victorville made a $200,000 line of credit available to Victorville Motors, a 40-year-old, family-owned business that has long been a community booster. The loan carries a 5% interest rate and is due in five years. Meanwhile, Norco has provided $500,000 lines of credit to two car dealerships, Norco Mazda and Frahm Dodge. Frahm has already drawn the full amount, and the Mazda dealership has tapped about $350,000, according to Norco City Manager Jeff Allred. The loans, which are coming from redevelopment funds, carry a 5.15% interest rate and are due in seven years. Norco has two other dealerships, but the city has not had formal talks with them, Allred said.

The city offered the loans "to let the dealerships remain in business," Allred explained. "We did a lot of due diligence, and we believed them. They were going to close their doors. They had no capital. They couldn't get new inventory."

Norco receives approximately 40% of its sales tax revenue from the car dealerships, which Allred concedes is out-of-balance. But the city needs to preserve what it has, he said, noting the city has already eliminated 24 of 105 positions during the last few years. The fee-supported planning and building departments have shrunk by about two-thirds.

The City of Redlands has offered to defer the business license fees for automobile dealerships in town – worth $127,000 this year – but the dealerships have not accepted the offer yet, according to Daniel Hobbs, Redlands redevelopment director. The city has not been willing to make the sort of loans provided by Victorville and Norco, Hobbs said. Instead, the city is placing in utility bills "Buy Redlands" flyers that promote local car-buying by explaining how much the sales tax from a car purchases in city road maintenance, law enforcement and other services. The city is also starting a new program on its cable television channel that will feature local businesses, and the first installment will focus on car dealers, Hobbs said.

While the automobile promotions are relatively inexpensive, Redlands is beginning a $3.25 million redevelopment program that will not only help improve the north part of town but provide jobs. The redevelopment agency is offering qualifying households in owner-occupied single-family residences $10,000 grants to repair their properties. The city is starting with a 16-block area and intends to expand the program outward until the agency awards 300 grants, according to Hobbs.

"We are going to restrict the list of contractors to Redlands-only contractors, and we are going to require they use Redlands suppliers and subcontractors," said Hobbs, who maintained the city has the authority to impose such restrictions. "This is sort of a mini local stimulus program. It's a way to keep the money in the community." Because of the restrictions, Hobbs said, the $3.25 million investment should have a local economic multiplier of at least 5 and possibly as high as 9.

Redlands will also invest redevelopment and Community Development Block Grant funds in neighborhood improvements such as sidewalks and drainage facilities in the targeted neighborhoods, Hobbs said.

The City of Beaumont has taken a different approach, but one also focused on construction. In February, the city cut development impact fees by about 30%, or about $5,000 per unit. No one believes that amount is going to turn around the moribund homebuilding industry, admitted Beaumont Economic Development Director David Dillon, but the fee reduction should affect the residual value of raw land and boost builder confidence.

"It's a temporary reduction. We'll monitor the situation. We think the market will normalize by about 2012, so we'll ratchet up the fees as needed," said Dillon, who noted housing Beaumont's housing starts dropped from 2,400 units in 2005 to 350 units in 2008.

"Beaumont has never relied on impact fees for revenue, per se," Dillon added. Rather, the city has a comprehensive public infrastructure finance program that provides bond revenue for up-front improvements. A community facilities district tax assessment on new homeowners retires the bonds.

If the fee reduction applies to 2,000 housing units, the city would see a reduction of $10 million in revenue. "What we're really talking about here is deferring construction of some of the facilities," Dillon said. "We think ultimately it will pay for itself. By increasing jobs and employment and spurring retail sales activity, all of these things will be a positive impact on the city."

Beaumont is also expanding a neighborhood improvement program in which the redevelopment agency will cover 80% of the cost of improvements associated with existing uses, such as sidewalks, curb and gutter projects and alleyway upgrades. Previously, the agency paid 50% of costs. The property owner is responsible for the remaining 20% under the expanded program, which covers about 1,700 acres in a redevelopment project area.

Beaumont's redevelopment agency also is subsidizing half the cost of building, grading and other permits taken out by property owners anywhere in town, Dillon said.

Beaumont is one of dozens of cities and counties that are now allowing builders to defer payment of impact fees until just before project occupancy – a concession sought by the California Building Industry Association to aid builders' cash flow. ■

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League of California Cities federal economic stimulus analysis: http://www.cacities.org/index.jsp?displaytype=11&zone=locc§ion=&sub_sec=&tert=&story=27633

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to be the fall guy in a recession, especially one where real estate development has taken a nosedive. But the charge – often unsuccessful – is usually led by homebuilders and developers, who typically argue that CEQA is one of the causes of the slowdown.

It's not uncommon for the governor to ask for a CEQA exemption when natural disaster strikes – floods, fires, mudslides, earthquakes, the usual range of California nightmares.

But a governor asking for and getting a CEQA exemption because the economy is slow? That's never happened before. It's a reminder of just how tough times are, and also a reminder that even after nearly 40 years and endless court rulings, CEQA is merely a law that can be changed or even repealed if the governor and the Legislature want to do so.

Meanwhile, the builders – perhaps mired in the endless stalemate with local governments and environmentalists in Sacramento – haven't pushed the "blame CEQA" idea the way they usually do. Instead of pursuing aggressive CEQA streamlining in response to the economic climate, the builders focused most of their effort in the last legislative session on getting a minor and complicated CEQA exemption put into SB 375.

> "We'll see whether California's homebuilders catch on to the idea that CEQA might be a bigger target in the current slowdown than they thought."

Schwarzenegger's CEQA exemptions are contained in AB 8x2 (or AB 8xx), a bill carried by Republican Assemblyman Brian Nestande of Palm Desert, whose father, Bruce Nestande, was Mr. Transportation in Orange County for many years as a county supervisor, a legislator, and a state transportation commissioner.

The most highly publicized part of the bill was the provision that delayed implementation of a new state air pollution rule requiring retrofitting of off-road diesel construction equipment. That provision was openly criticized by Schwarzenegger's own top air quality regulator, Mary Nichols, who told the *Los Angeles Times*, "There are people who will die because of this delay."

But the CEQA provisions are also important. They include both CEQA exemptions and a streamlined environmental review process for an overlapping set of transportation projects. The eight projects listed in the bill for CEQA exemptions are:

(1) A Highway 101 interchange modification, adding a southbound auxiliary lane and a southbound mixed-flow lane, from Interstate 280 to Yerba Buena Road, in Santa Clara County.

(2) Northbound and southbound high-occupancy vehicle lanes on I-805 from I-5 to Carroll Canyon Road, including construction of north-facing direct access ramps, in San Diego County.

(3) Rehabilitation and traffic calming on State Route 99 through Los Molinas, from Orange Street to Tehama Vina Road, in Tehama County.

(4) A State Route 99 Island Park widening project that adds one mixed-flow lane in each direction, from Ashlan Avenue to Grantlund Avenue, in Fresno County.

(5) State Route 99 median widening and the addition of one mixed-flow lane in each direction, from State Route 120 west to 0.4 miles north of Arch Road, in Manteca in San Joaquin County.

(6) State Route 12 pavement rehabilitation and shoulder widening in San Joaquin County on Bouldin Island.

(7) State Route 91 widening, adding one mixed-flow lane in each direction, from State Route 55 to Weir Canyon Road, in Orange County.

(8) U.S. Highway 101 pavement rehabilitation and shoulder widening in San Luis Obispo County.

The list of projects that qualify for streamlined CEQA review – essentially an internal Caltrans environmental review process that is not done under CEQA – included some of these same projects but also four others, including three in Orange County. These are:

(1) Palm Avenue grade separation in San Bernardino County.

(2) State Route 57 northbound widening, from Katella Avenue to Lincoln Avenue, in Orange County.

(3) The addition of an auxiliary westbound lane to State Route 91, from Interstate 5 to State Route 57, in Orange County.

(4) State Route 91 widening that adds one mixed-flow lane in each direction, from State Route 55 to Weir Canyon Road, in Orange County.

A Highway 50 carpool lane project had already been in CEQA litigation, which was settled in January. In exchange for dropping the lawsuit, environmentalists got Caltrans to promise to pay Sacramento Regional Transit $8 million toward a second light-rail track from Sacramento to Folsom along the Highway 50 corridor.

It remains to be seen whether the budget-deal exemptions will actually move projects along faster. Schwarzenegger may be trying to make these projects "shovel-ready" to qualify for the Obama stimulus money, though nobody has yet asked the question of whether projects funded with stimulus money must go through the environmental review process at the federal level under CEQA's equivalent, the National Environmental Policy Act.

Perhaps most important, we'll see whether California's homebuilders catch on to the idea that CEQA might be a bigger target in the current slowdown than they thought. Inside the Sacramento beltway, it's easy to get caught up in the idea that only incremental changes are possible – and that builders have limited leverage on CEQA against the environmentalists. But Schwarzenegger may have proven that the combination of the economic downturn and ongoing budget problems make it possible to think about weakening CEQA in a much broader way over the next couple of years. ■