COLAB SAN LUIS OBISPO COUNTY

WEEK OF NOVEMBER 27 - DEC. 3, 2016

THIS WEEK

NO BOS MEETING

2nd WARNING:
IS THE PROPERTY ASSESSED CLEAN ENERGY PROGRAM A GOVERNMENT ENDORSED RACKET?

LAST WEEK

BOARD SALARY RAISE HEARING
(SET FOR DECEMBER 6, 2016 MEETING)

BOARD APPROVES $4.5 MILLION ADDITIONS FOR NEW TERMINAL BUILDING AT AIRPORT
(INCLUDES $2 MILLION ADDITION TO CONTINGENCY)

WORKFORCE HOUSING ORDINANCE APPROVED 3/2

SOME FEES RAISED

SLO COLAB IN DEPTH

(SEE PAGE 11)

CAN PROPOSITION 13 SURVIVE CALIFORNIA'S NEW APPETITE FOR TAXES?

By Joel Fox

CAN CALIFORNIA'S TAXPAYERS BE THANKFUL FOR 2016?

By Jon Coupal

THIS WEEK'S HIGHLIGHTS

No Board of Supervisors Meeting Scheduled on Tuesday, November 29, 2016.

No Board Meeting. There will be no meeting as Tuesday, November 29, 2016 is a fifth Tuesday of the month as well as the first day of the California State Association of Counties (CSAC) annual meeting.

Item 1 - California State Association of Counties Annual Meeting – Palm Springs. Some Board members and staffers will be attending the meeting, which includes presentations by motivational speakers and workshops on various current county issues, including water, marijuana, and the housing shortage. There are also presentations on successful programs and awards for both programs and individuals. Much of the focus is on State mandates and funding.

Since the program was of necessity created earlier in the year, there do not seem to be any presentations on what impact a Donald Trump administration may have on major programs such as Obama Care (Affordable Care Act and Medi-Cal), environmental mandates, fossil fuels, immigration, and regulatory mandates, among others. They may need to reformat fast. In fact if they were really nimble, they could have invited Trump to come and give them a preview. He might have really enjoyed an opportunity to address statewide leaders from aberrant California.

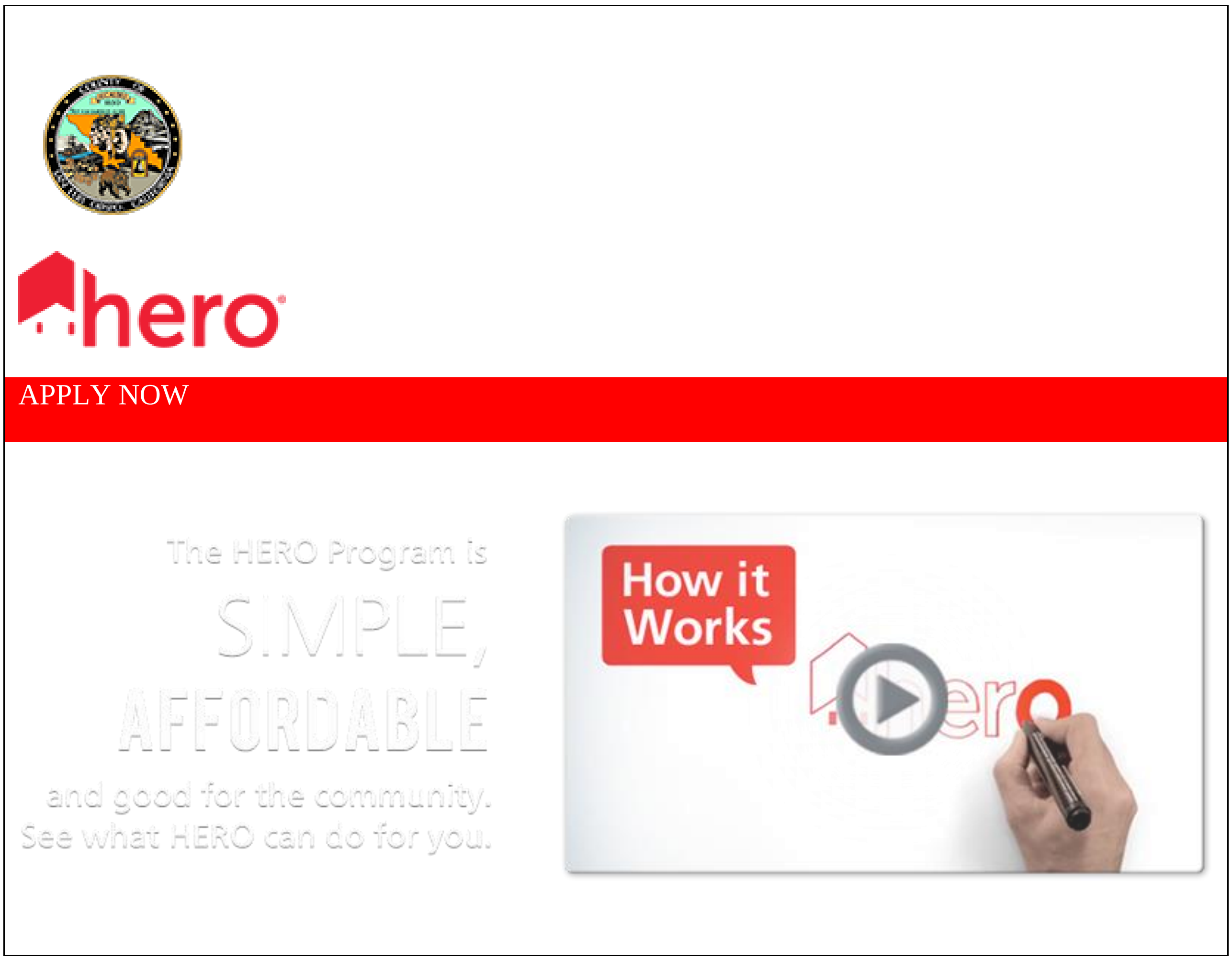
As a conference environment, Palm Springs runs the gamut from 1950's seedy decayed modernism to ostentatious Upper Class Luxe.

You can pick this beauty up (the car) for $255,000 at one of the world's largest Bentley dealers. Does the disquieting Leopardess, below, evoke nostalgia for more innocent past times or is she a harbinger of a new and more intriguing desert resort? Note the "historic" décor. It's surprising that the State hasn't landmarked all the kitsch.

In any case, most of the county supervisors and high-end staffers should return refreshed and inspired to embrace the new "millennium" so to speak.

Item 2 - More Warning Signals with Property Assessed Clean Energy Program (PACE) – A Government Backed Racket. Back in November of 2015 the Board of Supervisors granted franchises to 3 PACE "administrators" to provide home improvement energy loans. Financing is provided by what are termed PACE "administrators" or legally termed "market place members." These are private sector firms (bolstered by government joint powers authorities in some cases) that raise capital through large bond financings and then make the loans, which are secured by your property (and property taxes). These firms also select and manage panels of local contractors who perform the work. In effect and by selecting three firms, the Board of Supervisors is granted what could be very lucrative franchises. We warned at the time that granting these government sanctioned monopolies had all the earmarks of a government endorsed racket.

One of the entities is called Renovate America (DBA as HERO – Home Energy Renovation Opportunity), which is tied into the Western Riverside County Council of Governments. HERO is marketing loans for solar panels, windows, insulation, HVAC improvement, new roofs, and even artificial lawns in SLO County with the official backing of the County government and, as illustrated by the partial screen shot of its SLO County marketing homepage, actually uses the official County seal. (Note: the County recently made a big fuss about upgrading the seal and forbidding its use for commercial purposes.)



Now it turns out that HERO is facing a class action law suit in San Bernardino County, which alleges that HERO has violated just about every ethical and legal aspect of the lending business possible.

Check out the article below and some of the comments that follow:

LA Resident Files Class Action over HERO Home Improvement Loans

HERO/PACE Lender and County Association Sued in Class Action for Deceptive Loans with "Predatory Characteristics" - Lawsuit highlights unfairness, abuse and expense of certain energy improvement financing programs.

A class action lawsuit against Renovate America, Inc., and the San Bernardino Associated Governments (SANBAG) was filed on November 1st, alleging "predatory characteristics" and a "pervasive pattern of false, deceptive and otherwise unlawful practices" regarding Home Energy Renovation Opportunity Loans (HERO Loans). Renovate America, Inc., originates loans for energy efficiency improvements, such as solar panels, under the HERO program. SANBAG is an association of San Bernardino county districts, cities, and other local agencies, which hired Renovate America to market, originate and administer the HERO Loan program in San Bernardino County. Under state law, HERO loans are given a super-priority status as a Property Assessed Clean Energy (PACE) lien. These types of liens typically have priority even over existing first mortgage deeds of trust. Often, the property owner may not be able to refinance or sell without paying off a HERO loan.

Previously, C.A.R. has described HERO loans as unfairly expensive, with interest rates that border on predatory, where even basic lending guidelines for consumers are ignored, and which are often sold by high pressure door-to-door sales people. The lawsuit is specific to those homeowners who were charged administrative fees in excess of 5.7% on HERO loans. It paints a grim picture of loans being made with predatory characteristics, excessive fees and abusive terms, including secretly double-counting accrued interest and administration fees; a secretly charged administration fee on capitalized interest; payments on a HERO Loan which were not applied when made; interest being charged after the loan was paid in full; an inaccurate amortization schedule presented to the borrower; loan payments made directly to contractors; HERO loans approved based almost solely on a borrower's collateral; and an unlawful waiver of claims against the lender; and the plaintiff was first approached by a door-to-door salesman. Importantly, the lawsuit affirms that HERO loans may be subject to federal consumer protections under both TILA and HOEPA.

The lawsuit alleges:

- *Secret double-counting of accrued interest, with an APR of 10.59%*
- *Secret double-counting of administration fees which ranged from 4.99% to 6.95%*
- *Failure to credit payments when made which thereby secretly increase the total amount of interest*

- *Overcharging of recording fees*
- *Understatement of estimated APR. When calculated properly, the APR for the plaintiff's HERO loan was in excess of 12%.*
- *Violations of TILA's High Cost Mortgage Rules*
- *Violations of TILA's Ability to Repay Rules*
- *Violations of HOEPA 1) by failing to provide various consumer protection disclosures 2) by charging prepayment fees 3) by imposing excessive late fees and 4) by failing to receive a certification from a counselor approved by HUD that the consumer has received counseling about the advisability of a high-cost mortgage*
- *Conspiracy to violate TILA and HOEPA*
- *And as against Renovate America only, violations of the California's Covered Loan Law and the Unfair Competition Law*

Recently CAR successfully sponsored a law (AB 2693) which may help to curb the abuses of HERO loans. This consumer protection law requires delivery of a detailed financial disclosure document to a property owner participating in a Property Assessed Clean Energy (PACE) lien program. (HERO loans rely upon the PACE lien program to ensure priority status). The disclosure document contains a variety of notices and warnings including a notice that the property owner may not be able to refinance or sell without paying off the PACE obligation. The property owner also retains a 3-day rescission right detailed in a statutory form. Statements as to increased value of the property cannot be made unless based on an appraisal, a broker price opinion or an "automated valuation model."

Comments

Posted by
Laurie Dame
on November 22, 2016

I was also given a horrible interest rate of about 10% on my HERO/Pace improvements for Solar, plus loan fees that were added to the lien. I did not get a TNL disclosure, they said they are exempt. I was not told that the lien would take priority over my existing mortgage liens on my property and that my lender could even call my mortgage loan due! They did accept a principal payment I made without any problem. I just think the costs were ridiculous (& predatory) for a government, nonprofit program. I do not know if I am being charged "double counting interest" but my $33K lien quickly became a $38K lien and has a 20 year pay off of about $70K. These loans should be made closer to the rare for 2nd liens. I will try to refi but not sure I have enough equity as those loans usually won't lend over 70% LTV.

Posted by
I live in Orange County also a victim can I join the law suit
on November 19, 2016

I live in Orange County and a victim on this program. I just refinanced my mortgage to pay off this loan. The fees and the interest rate were crazy. In order to refinance I paid almost 70000.00! On a $50000.00 loan for services Every time I got a payoff the price added 3 to 5. Thousands of dollars. I know I was ripped off and I cannot believe the county would partnership with such a program that preys on hard working homeowners

Posted by
Carol Burton
on November 18, 2016
I live in Orange County and was also misled by the HERO program who stated in the payment contract that the contractor is required to submit permits, invoices, receipts and other pertinent documentation. When I asked about this I was told that they stopped requiring this several years ago. Also, HERO states that they require all contractors in their program to show proof of license. bond and insurance. HERO told me that they only started requiring proof of insurance a few months ago so my contractor did not have to provide proof of insurance because my job started before this requirement was enforced.

Posted by
Hamlin Tallent
on November 18, 2016
I live in San Diego county and am also a victim of this program. Is it possible to join the suit?

This article first appeared in Class Action News on November 3, 2016 and has been widely distributed in real estate and related industry publications. A November 17, 2016 *San Diego Tribune* article reporting on the same subject quotes Renovate America spokeswoman Ellen Qualls that there is no “merit to the complaint.” Renovate America claims to have provided 50,000 loans.

a. Is anyone in SLO County monitoring this program? The program has been running for over a year. What are the results?

b. Are there any complaints?

c. How many loans have been made?

d. Which County official is responsible for monitoring the program, if any?

e. Is anyone in the County aware of the allegations in San Bernardino County?

f. Which contractors have been selected by HERO and the other designated lenders?

Background: In November 2015 a Board of Supervisors agenda contained the item approving the agreements between the County and 3 PACE administrators, including Hero/Renovate America. A portion of our write-up that week is reproduced below.

Request to enter into three individual agreements with Property Assessed Clean Energy (PACE) administrators to allow properties within unincorporated County to participate in PACE programs, and to amend an existing Joint Powers Agreement. This is the program whereby property owners (both residential and commercial) can install better windows, insulation, heating and cooling equipment, solar panels, and now even synthetic lawns. Financing is provided by what are termed PACE “administrators” or legally termed “market place members.” These are private sector firms and government joint powers authorities that raise capital through large bond financings and then make the loans, which are secured by your property. These firms also select and manage panels of local contractors who perform the work. In effect and by selecting three firms, the Board of Supervisors is granting what could be very lucrative franchises. The program was originated in 2007 by the City of Berkeley, which has since abandoned it.

There are numerous “administrator” firms operating in California and the nation. Cities and counties that choose to use the program have control over which firms are selected as administrators because they can use their control of the property tax system to determine who is selected. The County staff solicited information from a number of firms (the Board letter does not say how many responded) and picked three. These include HERO (Renovate America), CalFirst (Renewable Funding of California), and YGrene Energy Fund of California. Their websites demonstrate the variety of services and the sales and marketing emphasis of these companies. These companies then in turn choose which local contractors are made available to the customers to actually carry out the work. The Riverside County District Attorney is currently conducting an investigation of HERO as a result of customer complaints. The DA referred to his investigation as “having gone down a rabbit hole.”

In its contracts with these companies the County states its public purpose in blatantly paternalistic phraseology:

> **WHEREAS,** the County seeks to minimize customer confusion, provide access to education and information to property owners and assist with making informed decisions on rebates and incentives, tools and testing equipment, contractor programs, and financing options; and

Concerns include:

 The loans are recorded against the property as a tax lien.

 The tax lien is in the first position, meaning that if a homeowner goes into default, the “administrator” gets paid before any other creditors, including the lenders that hold the mortgage.

 That first position is so important that the Federal Housing Finance Agency prohibits Fannie Mae and Freddie Mac from purchasing mortgages or notes with PACE liens. Weeks ago, an FHFA statement pointed out the risk this first-lien status poses to taxpayers, real estate agents, banks and homeowners about the marketability of a house

 Unlike taxes due to a municipal agency which cannot initiate a tax sale until taxes have not been paid for five years, the bondholders of the PACE loans are able to initiate foreclosure proceedings after missing one payment and no provisions are available for making a repayment plan.

 Realtors have pointed out that there are complications when properties turn over related to the loans. Many closings are falling out over these loans.

LAST WEEK'S HIGHLIGHTS

Board of Supervisors Meeting of Tuesday, November 22, 2016 (Completed)

Item 1 - Introduction of an ordinance amending Section 2.48.095 of the County Ordinance Code regarding compensation increases for the Board of Supervisors. Hearing date set for December 6, 2016. The Board set the hearing for December 6th. This may not be a slam-dunk. There was some public comment and some of the Board members, while not predetermining the item, seemed less than enthusiastic.

Item 4 - First Quarter FY 2016-17 Financial Report. The report was received without much discussion and no real examination. The report indicated that there are no problems on either the revenue or expenditure sides of the ledger other than the continued death spiral of the Dairy Creek Golf Course. The Airport is projected to have a smaller operating deficit than projected because airlines have added flights, which increases landing fees, fuel sales, and parking revenue. The staff expects that the County will end the year with its nearly $600 million dollar annual operating budget in balance.

Item 5 - Airport Terminal Building Construction Budget Will Require An Additional $4.5 Million Over the Original $ 35 Million. The Board authorized the additional funding without question or comment. The write-up indicated that the need for additional project management and engineering consulting time, change orders for the approach street lighting, terminal operations features, and potential contractor disputes are all contributors. In addition, $2 million is added to "contingency."

Consultant Contracts Amendments		$1,600,000
Construction Contingency Amendment		$2,000,000
Soft Costs		$ 450,000
	Total	**$4,050,000**

Staff believes that about 75% of these costs are eligible to be reimbursed by the Federal Aviation Administration. The remainder will have to be absorbed by the County. This one is being slid through on the consent calendar.

Item 14 - Employee Pension Share Increases Along With County Share. The Board approved charging employees for their share of increased pension costs in accordance with previously negotiated formulae. There was no discussion of this item, which went through on the consent calendar.

The County retirement system is experiencing ever increasing unfunded liability. This is due to a variety of factors, the main one being low investment returns. The system's actuaries have advised its board to reduce the interest assumption rate from 7.25% to 7.125%, which means that more money has to be contributed to the system by the County and the employees (contribution rate increases). During the recession the County was able to negotiate a sharing formula for future rate increases.

Item 24 - Fiscal Year 2017 Fee Increases. The Board approved the fee increases on a vote of 3/2, with Arnold and Compton dissenting. There was some discussion and Hill interrupted Arnold at one point. Compton told him to wait his turn.

Background: Each year the County staff reviews the 2000 fees charged by the County to offset costs of various services, permits, and regulatory processes in an effort not to subsidize these client-specific activities with general revenues. Thus a round of golf, a restaurant inspection certificate, purchase of a cat from the pound, or processing of a land use development permit are all priced according to the staff's analysis of the related costs. Local governments in California are not permitted to charge more than the cost and thus may not make a "profit." COLAB is concerned with fees which impact business and agriculture, fund unnecessary and overbearing regulations, add to housing prices, and which don't seem to have a real nexus with the tasks necessary to analyze a permit application.

Item 25 - San Miguel Community Plan. The Board approved the Plan as recommended by the Planning Commission.

Item 27 - Workforce Housing Ordinance. The Board approved the pilot program on a 3/2 vote that will allow up to 200 total workforce-housing units as part of subdivisions in the inland portion of the County. Gibson and Hill objected vigorously, stating that the program did not create permanently affordable housing and that it is really a gift to developers and a windfall to the buyers. There was considerable debate about imposing the housing-in-lieu tax on the units. Hill and Gibson wish to impose the in-lieu tax (a wealth transfer program which taxes market rate housing units to help fund low income units).

Background: The idea is to encourage development of housing affordable to *"working professionals within the County, such as teachers, firefighters, and other public employees, as well as much of the working private sector"* by permitting flexibility, including smaller lots, mixed uses (commercial and residential in the same project), design flexibility, and partial relaxation of some affordable housing requirements. The workforce housing provision is designed as a tool and is not mandatory. The tool is restricted to areas inside Urban Reserve and Village Reserve lines, essentially San Miguel, Templeton, Shandon, Santa Margarita, and Nipomo Village. The tool may be used in the Residential Single-Family, Residential Multi-Family, Office Professional, and Commercial Retail zones. On the broader strategic level the ordinance is in line with the County's overarching so-called "smart growth" stack-and-pack plan.

SLO COLAB IN DEPTH

In fighting the troublesome, local day-to-day assaults on our freedom and property, it is also important to keep in mind the larger underlying ideological, political, and economic causes and forces.

CAN PROPOSITION 13 SURVIVE CALIFORNIA'S NEW APPETITE FOR TAXES?

By Joel Fox

California's reputation as an anti-tax mecca took a beating at the polls with the passage of three statewide taxes and hundreds of local taxes. Here's betting that a battle over the Holy Grail of the tax revolt, Proposition 13, is on the horizon.

Because of changing demographics and attitudes in left-leaning California, a once-centrist state is seeing altered stances on a number of issues, from gay marriage to immigration to marijuana legalization. The tax issue is no different. Voters embraced tax limitations and spending limits over the past four decades, but they overwhelmingly supported tax increases this election.

While the three statewide taxes — continuing an income tax, increasing a tobacco tax and establishing a marijuana tax — saw a majority of voters support levies on narrow groups of taxpayers, local tax increases on sales and property taxes through bonds and assessments were more widely applied. Of the 430 such measures on the ballot Tuesday eight out of ten passed, according to the California Local Government Finance Almanac.

Given that success, tax advocates may try to use ballot measures to tackle two looming state issues: massive unfunded public pension liabilities and healthcare costs.

According to the Stanford Institute for Economic Policy Research Pension Tracker, California's pension debt is almost $300 billion, based on the state's expectation of 7.5% investment returns. Using more realistic investment estimates, the debt is close to $1 trillion. The state must either curb pension costs or increase taxes to cover them.

In addition, California has embraced the Affordable Care Act more fully than any other state. If the Trump administration in Washington makes changes to the act that cut back on those who rely on the health insurance plan, the state could try to step in to cover expenditures and seek new taxes to pay the costs.

Further, if Democrats control a two-thirds vote majority in the Legislature — possible, but votes are still being counted — the election results might embolden a push for even more tax increases. There is already talk of the need for new transportation dollars plus chatter about raising taxes on candy, snack food and soda, now bolstered by three soda taxes voters approved in the Bay Area.

For many years now, those who think the state programs should grow have expressed a desire to take on Proposition 13 and its tax cap provisions. Most of the discussion has been about raising taxes on commercial property. However there also have been whispers about undoing all of Proposition 13, including removing protections on residential property over time.

Surveys show that Proposition 13 still enjoys strong support from voters, but fewer and fewer residents remember the revolt against spiraling property taxes in the late 1970s that put the proposition on the books in the first place. Altering Proposition 13 to raise more taxes would be the ultimate test of the voters' attitude toward the anti-tax spirit that has imbued California for more than a generation. Those defending Proposition 13 and the tax revolt are preparing to fight to keep it in place. Millions have been pledged by business interests to defend Proposition 13 if a measure to raise commercial property taxes makes the ballot.

The 2018 ballot may not see such a measure since that is a gubernatorial election year and it is unlikely that Democrats would want to see a divisive tax measure on the same ballot. However, 2020, a presidential election year promising a larger voter turnout, is another story.

Voters' willingness to tax themselves last week may signal that the state's famous tax cutting measure could be undone. Or the spate of tax increases may serve as a red flag warning to voters, and moves to pile on more tax increases could well re-energize allegiance to Proposition 13.

Joel Fox, former president of the Howard Jarvis Taxpayers Assn., heads the Small Business Action Committee, co-publishes the website FoxandHoundsDaily.com and teaches at Pepperdine University's School of Public Policy. This article first appeared as an Op Ed in the November 21, 2016 Los Angeles Times.

CAN CALIFORNIA'S TAXPAYERS BE THANKFUL FOR 2016?

By Jon Coupal

If taxpayers focus on the results of the recent election, there may not seem to be much to celebrate. While the rest of America took a big step toward fiscal sanity, the same cannot be said of California. At the state level, all 3 taxes, one on marijuana users, one on smokers and another on higher income taxpayers, passed. Fueled by massive special interest campaign spending, tax hike proponents convinced voters that they were simply raising taxes on "other people" which made them more palatable.

The bright spot among the 17 statewide measures was the approval of Proposition 54, which will provide much needed transparency over the California Legislature. For years taxpayers have wanted legislative bills to be available for public review prior to being voted on. Prop 54 makes that happen.

At the local level, it looks like 80 percent of the local taxes and bonds were approved. The good news is that, largely due to the requirements of Jarvis initiatives Proposition 13 and Proposition 218, the Right to Vote on Taxes Act, these measures were decided by voters rather than being imposed by out of touch public officials.

However, what encourages and inspires taxpayers greatly, is the ongoing efforts of tenacious individuals around the state who continue, against long odds, to challenge the powerful political class to advance the cause of average citizens.

Howard Jarvis used to say the reason for the success of the campaign to pass Proposition 13 could be encapsulated in three words, “and then some.” Those working to pass tax reform did what was required, “and then some.”

Here are just three examples of those who personify the Jarvis ideal.

Dino Cortopassi is a successful farmer and businessman. He and his wife Joan now focus on responsible philanthropy, using the family foundation to fund a wide array of programs for the benefit of the disadvantaged and the environment. Dino is also deeply concerned about California’s runaway debt that is placing an ever-growing burden on our children and grandchildren.

This is why they funded the qualification of Proposition 53, the Stop Blank Checks initiative that would have required voter approval of state construction bonds of $2 billion or more.

Of course, those who benefit from unrestricted debt, the deep pocketed “Sacramento gang,” outspent the Yes campaign by 20 to one, focusing their money on a dishonest television campaign. Although Proposition 53 fell just short, Dino and Joan provided a major public service by exposing how government funds its programs, often out of sight and without the approval of the taxpayers.

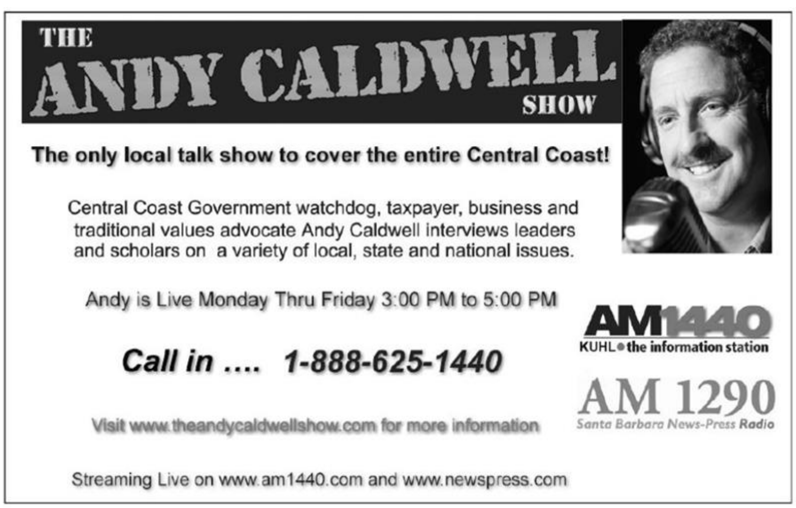
Knowing this effort fell just short, Howard Jarvis would likely have smiled and offered encouragement. He would point out that before the success of Proposition 13, he had mounted 3 failed ballot campaigns over a period of 15 years.

Another bright light for taxpayers is Andrea Seastrand, who serves as President of the Central Coast Taxpayers Association (CCTA). The organization works to inform and educate voters on important tax issues at all levels of government. Andrea is constantly advocating for the protection of Proposition 13 and fighting for the forgotten taxpayer. Although Andrea is a former member of the Assembly and House of Representatives, she never voted for a tax increase and always focused on the interests of those who are compelled to pay government’s bills. In the 20 years since leaving office, Andrea has been a tireless taxpayer advocate.

A third example is Richard Rider, Chairman of the San Diego Tax Fighters. With a sharp wit and willingness to do his homework, he has been the outspoken bane of San Diego area politicians who attempt to misuse taxpayer dollars or impose unnecessary taxes. Rider is a former client of HJTA's legal team who has been unrelenting in his efforts to protect Propositions 13 and 218, the Right to Vote on Taxes Act. Rider, like Andrea Seastrand, is a former recipient of HJTA's Taxfighter of the Year Award.

There are so many more that deserve mention, and we are grateful for each. With thousands of folks willing to make sacrifices to defend the interests of average taxpayers, if we work together, there is still hope for a brighter future for California.

Jon Coupal is president of the Howard Jarvis Taxpayers Association — California's largest grass-roots taxpayer organization dedicated to the protection of Proposition 13 and the advancement of taxpayers' rights. This article first appeared in Flashreport of November 21, 2016.t



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General members will receive all COLAB updates and newsletters. Voting privileges are limited to Voting Members and Sustainable Members with one vote per membership.

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Donations/Contributions do not require membership though it is encouraged in order to provide updates and information.
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All applications are subject to review and approval by the COLAB Membership Committee and Board of Directors.
Applications that are not accepted will have the dues or donations promptly refunded.

(Revised 9/2016)