COLAB San Luis Obispo County

The Coalition of Labor Agriculture and Business

WEEKLY UPDATE SEPTEMBER 22 - 28, 2019

THIS WEEK

NO BOARD OF SUPERVISORS MEETING

APCD TO INCENT FIREPLACE REMOVALS

PROBABLY A BAN WILL COME NEXT

PLANNING COMMISSION

MORE CANNABIS

IMPROVING THE BACK ROAD TO DIABLO

LAST WEEK

LAFCO APPROVES 33,000 ACRE DETACHMENT FROM SHANDON/SAN JUAN WATER DISTRICT

BIG TIME BAKERSFIELD WATER LAWYER FILES OBJECTIONS ON BEHALF OF DISTRICT BUT NO ONE BITES

FY 2018-19 YEAR END FINANCIAL REPORT

THEY FEEL FLUSH SHORT TERM

BOARD APPROVES PILOT PROGRAM TO END CHRONIC SHERIFF'S POSITION VACANCIES

IT'S WORKED WELL IN OTHER JURISDICTIONS

ASSESSOR RECEIVES FLEXIBILITY IN APPOINTING HIS DEPUTY

GIBSON MUTES OBJECTIONS

SLO COLAB IN DEPTH

SEE PAGE 16

RENT CONTROL: A HISTORY OF FAILURE

BY GREGORY BRESIGER

CALIFORNIA KNIFES THE GIG ECONOMY

BY RICHARD A. EPSTEIN

THIS WEEK'S HIGHLIGHTS

San Luis Obispo County Air Pollution Control District (APCD) Meeting of Wednesday, September 25, 2019 (Scheduled)

Summary: There are no items of major policy concern on this agenda. However there is an item that ultimately bodes ill for the use of wood burning fireplaces in the future. It is also a precursor to more intrusive government penetration into your private home and cherished customs.

HOME IS WHERE THE HEARTH IS – *BUT IT HAD BETTER BE ELECTRIC*

Item B-3-1: Request to Authorize Funding for the 2019-2020 Woodsmoke Reduction Program & Adjustment to the Wood Burning Device Change-out Program in Paso Robles & Nipomo. One of the regulatory fetishes of the State of California and the various APCDs around the State is to ultimately outlaw wood burning fireplaces. The Bay Area Air Pollution Control District is already on this path per the article excerpt from the San Jose Mercury News of October 21, 2015 below.

SAN FRANCISCO — Wood-burning heaters — including modern pollution-fighting wood stoves — will not be permitted in new homes built in the Bay Area starting next fall, as part of a first-in-the-nation ban approved by air quality regulators Wednesday.

The new rules, approved unanimously by the Bay Area Air Quality Management District, will also require every seller of an existing home with a wood-burning fireplace to give buyers a disclosure statement warning of the health risks of wood smoke.

Even wood stoves certified by the federal Environmental Protection Agency as low emission would not be allowed in new homes whose construction begins after Nov. 1, 2016, in the seven Bay Area counties, plus southern parts of Sonoma and Solano counties.

The air board also pledged to eliminate all exemptions to a wood-burning ban on Spare the Air days in five years. For example, people are now exempt if they don't have natural gas lines in the neighborhood.

The SLO County APCD has not yet adopted such a draconian policy, but it is attempting to wean people off wood burning fireplace and other open wood stoves by providing grants to replace them with electric and gas simulators.

The funding is provided to the local air districts form the State carbon tax revenue. Ultimately you can expect to see a total ban as advocates claim that fireplaces generate too much global climate warming CO_2. It is also asserted that the smoke contains micro particles which lead to respiratory problems. The conclusion is then reached that the governments must ban their use.

The initial ban in the Bay Area started several decades ago when the Bay Area APCD declared smoke days when the smoke hung over the bay on very still cold days.

The time will come when more regulations are proposed here, ultimately culminating in a total ban.

Ironically, and in light of the growing movement to ban natural gas in both the Bay APCD and the San Luis Obispo County APCD, conversion to natural gas fireplaces is permitted and will be funded by the Districts. At the same time the City of San Luis Obispo is hell bent on banning all natural gas appliances. Mayor Heidi Harmon is a member of the APCD. Perhaps she will attempt to convince the rest of the Commission to remove the gas version and offer only electric.

The Deeper Problem: This is yet another intrusion into people's private homes. Moreover in many cultures the family gathering at a fireplace has significant and sacred connections which go back thousands of years, transcending and incorporating both ancient and modern religions and customs.

At some point the Christmas tree lights will be banned too, as escalating government destruction of our power systems by the so called progressives create electrical shortages and blackouts.

Planning Commission Meeting of Thursday, September 26, 2019 (Scheduled)

Summary: Cannabis Projects Are Flowing Through the Process More Smoothly.

Item 5 - Hearing to consider a request by 13350 River Road LLC (formerly Helios Dayspring) for a Conditional Use Permit (DRC2018-00036) to establish up to three acres of outdoor (hoop house) cultivation, up to 22,000 square feet of indoor (greenhouse) cultivation, up to 28,210 square feet of commercial cannabis nursery, operation of a non-storefront dispensary, and ancillary processing activities such as curing, drying and trimming. Development would include 180,000 square feet of hoop house structures, 45,000 square feet of greenhouse structures, one 5,000-square foot metal building for drying/processing, a 320-square foot storage container for storage, and installation of ten

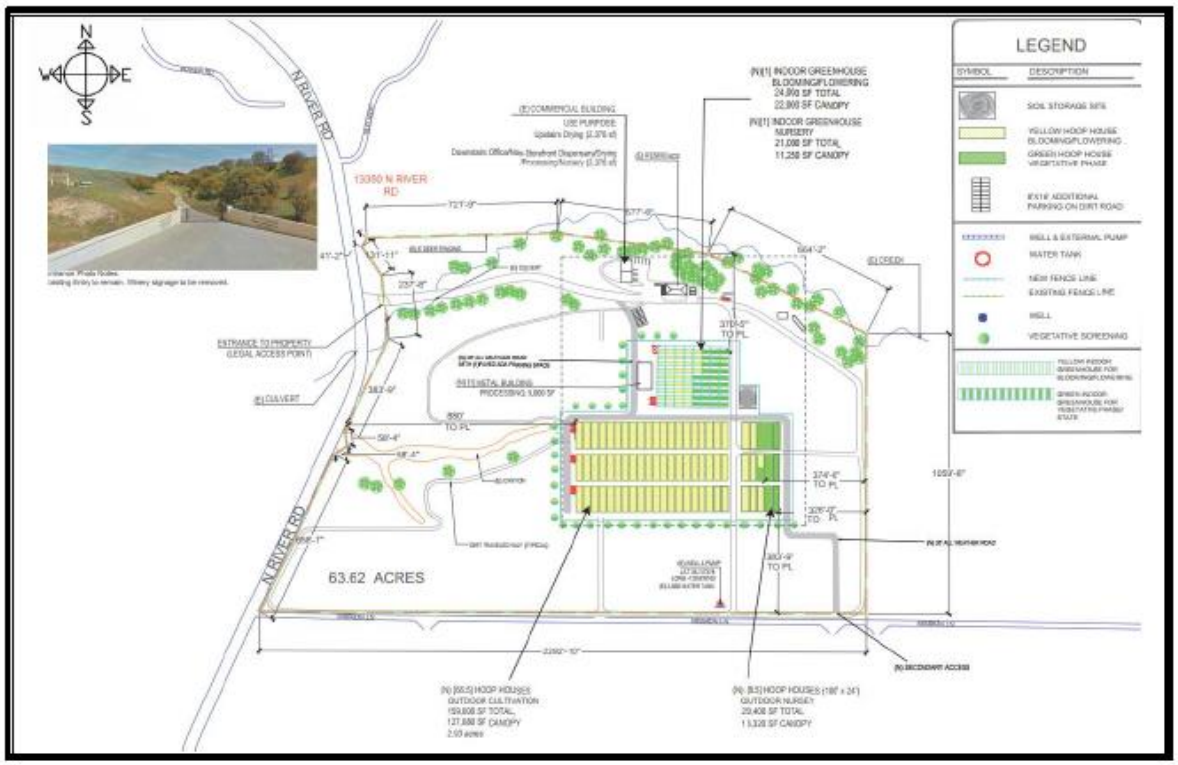
10,000-gallon water storage tanks. Approximately 4,740 square feet of an existing winery building would also be utilized. The operation covers approximately 12.86 acres of the 63-acre property. The project was reviewed and is recommended by the staff. There may be concerns about odor, but there was no opposition recorded in the attachments as of this writing. Details are displayed in the table and maps below.

Table 1 – Project Components

Project Component	Structure Size	Count	Footprint (sf)	Canopy (sf)
Hoop Houses – Mature/Flowering	100' x 24'	66.5	159,600	127,680
Hoop Houses – Nursery	100' x 24'	8.5	20,400	16,320
Total Outdoor Operation			***180,000***	***144,000***
Greenhouse – Mature/Flowering	187.5' x 120' 42.5' x 30'	1	23,775	22,000
Greenhouse – Nursery	187.5' x 90' 145' x 30'	1	21,225	11,250
Processing Building Drying/Curing	100' x 50'	1	5,000	n/a
Seatrain Storage Container	40' x 8'	1	320	n/a
Total New Indoor Operations/Development			***50,320***	***33,250***
Indoor Processing			1,080	n/a
Indoor Drying/Curing/Nursery			640	Up to 640
Indoor Dispensary Operation			440	n/a
Indoor Storage			145	n/a
Indoor Bathroom			65	n/a
Subtotal Indoor Operations (1st Floor of Winery Building)			***2,370***	***640***
Indoor Drying			2,370	n/a
Subtotal Indoor Operations (2nd Floor of Winery Building)			***2,370***	***n/a***
Total Indoor Operations (1st and 2nd Floors of Winery Building)			***4,740***	***640***

Attachment 3

Page 1 of 6



Item 6 - Hearing to consider a request by Henry Mancini/Darren Shetler for a Conditional Use Permit (DRC2019-00142 – formerly DRC2018-00171) to establish 21,600 square feet of indoor mixed-light cannabis cultivation within five greenhouses, 3,643 square feet of indoor nursery within one greenhouse, seven cargo containers for material storage, and related site improvements. The proposed project site is within the Agricultural land use category and is located at 457 Green Gate Road, approximately 2 miles southeast of the City of San Luis Obispo. The site is in the South County Planning Area, San Luis Obispo Sub-Area South.

Components of the project are summarized in Table 1.

Table 1
Proposed Structures & Buildings

Building / Structures	Project Component	Building Floor Area Gross Square Feet (SF)
Greenhouse (5 @ 4,320 sf each)	Mixed-Light Indoor Cultivation	21,600
Greenhouse (1 @ 3,643 sf)	Ancillary Cannabis Nursery	3,643
Cargo Containers (7 @ ~ 320 sf each)	Material Storage	2,240
Total		**27,483**

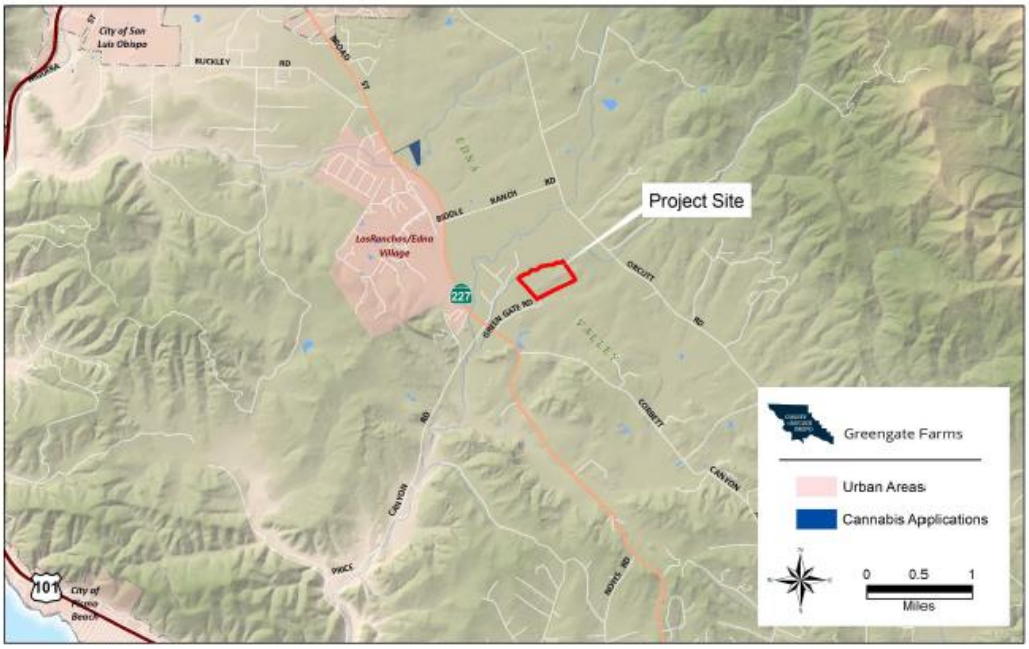


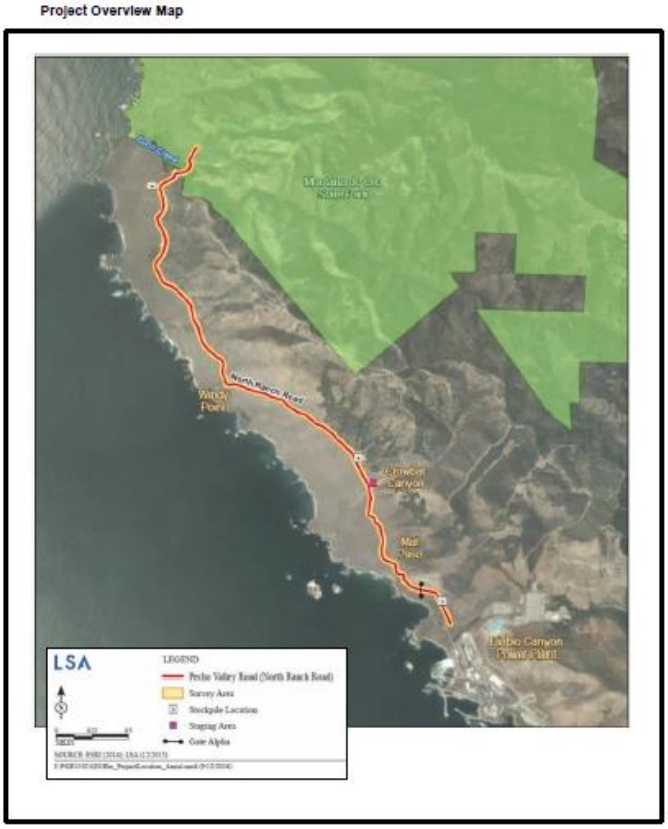
Figure 3 – Aerial of 445 & 457 Green Gate Road

Damned If You Do and Damned if You Don't Department:

Item 7 - Hearing to consider a request by Pacific Gas and Electric for a Development Plan/ Coastal Development Permit (DRC2018-00003) to allow for the North Ranch Road Improvement Project, affecting approximately 4.25 miles of the North Ranch Road, a privately owned continuation of Pecho Valley Road, located on the North Ranch portion of the Diablo Canyon Power Plant (DCPP). The improvements include: turnouts, paving in areas greater than 12-percent, retaining walls, three stockpile locations, three new culverts, and nine replacement culverts. The project would result in a total disturbance of 14.7 acres along North Ranch Road. The project is within the Agriculture and Rural Lands land use categories and is located between the southern parking lot of Montaña de Oro State Park and just north of DCPP, approximately five miles southwest of the community of Los Osos, in the San Luis Bay Coastal Planning Area. PG&E seeks to make some improvements to a secondary access road which goes from Montana de Oro State Park to the Diablo Plant along the coast. It is used to bring in heavy equipment and as a backup access for fire and other emergency vehicles.

PG&E indicates that it will be necessary for decommissioning activities. The improvements are minor. Nevertheless the Coastal Commission has expressed concerns which might turn out to be problematical later. In typical fashion, the Commission never formally commented on the project, which has been under review since 2018 until last week.

Project Overview Map



The road is down there somewhere. Only robust hikers are allowed on a trail in a portion of the area, and then only by permit. The numbers permitted are limited. The public is not allowed on the road.

LAST WEEK'S HIGHLIGHTS

Board of Supervisors Meeting of Tuesday, September 17, 2019 (Completed)

Items 4 and 5 - Requests for the Board of Supervisors to Reappoint Board Members to Water District Boards. The Board approved the Districts' recommendations for appointees unanimously.

Background: The deadline for filing for election for the districts has passed. The districts include the Shandon San Juan Water District, the Estrella-El Pomar Water District, and the Templeton Community Service District in the Paso Basin. Because the number of positions is equal to the number of candidates, no election is required.

Item 18 - FY 2018-19 Year End Financial Report. The Board received the report and approved a number of minor housekeeping actions unanimously.

Background: The County ended the fiscal year with slightly more fund balance than had been projected. A number of departments under ran their approved budgets, contributing to the overall surplus, much of which was used to balance the current budget. Key summary comments from the report are displayed below:

The Auditor-Controller-Treasurer-Tax Collector's Office reported that the actual year-end Fund Balance Available (FBA) for the General Fund was $32.62 million. This was $2.03 million higher than the $30.59 million projected in March 2019 and included as a funding source in the FY 2019-20 budget. The variables that drive FBA are actual revenues and expenditures compared to budgeted amounts, and are comprised of unused contingencies, higher-than-estimated non-departmental revenue, and departmental expenditure savings.

FY 2018-19 non-departmental revenues ended the year $8.8 million over projected levels. The additional non-departmental revenue received represents mostly tax-related revenue sources such as property, sales, transient occupancy, and unitary taxes. All County operating departments except for Emergency Services ended the year at or below their adjusted level of General Fund support. This contributed approximately $11.7 million in savings to the General Fund. Fourteen County departments finished the year $200,000 or more below their budgeted level of General Fund support.

Position Allocation Changes

Summary of FY 2018-19 Changes

FY 2018-2019	Q1	Q2	Q3	Q4
Quarter Start	2,790.75	2,794.00	2,790.25	2,788.50
FTE Additions	20.00	37.75	25.50	8.50
FTE Deletions	16.75	41.50	27.25	8.00
Quarter End	2,794.00	2,790.25	2,788.50	2,789.00
Net Change	+3.25	-3.75	-1.75	0.50
% Change	+.12%	-.13%	-.06%	0.02%

Reclassification requests

- **2 positions**
- **Net impact = 0.00 FTE**

The fact that the County was able to hold the line on positions is primarily due to contracting out jail medical services to an outside for-profit provider. This action eliminated a number of former County positions.

Item 19 - County Annual Report. The Report and a related video were reviewed by the Board.

Background: It is a digital report organized by function and department. The report contains a list of links that allow the user to select the ones they wish to view.

www.slocountyannualreport.com

The report is pretty typical of most jurisdictions and portrays the County as doing a great job. It also seems to be a collection of department reports without any unifying theme or analytical effort.

A Real Report:

Aside from anecdotal stories about various programs and projects, how is the County statistically doing on key outcomes, such as promoting housing (especially affordable rental apartments for families), reducing homelessness, reducing economic dependency, reducing crime, reducing alcohol and drug use, reducing illegal marijuana cultivation and sales (a benefit asserted for legalizing the use of recreational marijuana), attracting and growing businesses (which provide a family wage, medical insurance, and retirement), reducing automobile collisions (and injuries and deaths), promoting formation and stability of families, promoting the number and percentage of students who graduate from high school on schedule (out of the total who entered 9^{th} grade 4 years earlier), reducing greenhouse gases, extending longevity, reducing suicides, reducing tobacco usage, reducing illiteracy in English, and instilling civic values which increase the number of residents entering the armed forces, etc.

The data should be presented in 10 or 20 year longitudinal tables which include both nominal and percentage figures. Where the County undertakes activities to reduce negative outcomes or promote positive outcomes the unit costs should be presented as well. In other words if the County is spending $12 million on homeless programs per year in Federal, State, and local funds, how many homeless people were placed in permanent housing, at what unit cost? How much CO_2 has the County reduced, if any, and at what unit cost per metric tonne?

In the end the County could be operating programs which are run wonderfully by dedicated staffs. But do they do any good?

A Case in Point

A key feature of the Behavioral Health Department section of the Report is the opening of a new crisis center. The presentation states in part:

Officials Open the New Crisis Unit.

***Crisis Stabilization Unit**. In its first year, the Crisis Stabilization Unit served 271 individual residents with 307 total stays. At any given time, the Crisis Stabilization Unit allows medical professionals to stabilize up to four community members who are experiencing serious mental health issues. The primary goal of crisis stabilization is to prevent the need for individuals to be admitted to an inpatient psychiatric hospital setting. Other potential outcomes include:*

- *reduction in depression and other symptoms*
- *reduced risk of self-harm*
- *prevention of criminal justice involvement*
- *improved school and work success*
- *increased engagement in supportive mental health treatment*

After opening the Crisis Stabilization Unit, which is operated by Sierra Mental Wellness Group, law enforcement requests for admitting individuals to the County's inpatient Psychiatric Health Facility reduced by nearly 48%.

All this work is good, but did the program in concert with other programs in the department reduce the number of mentally ill people, reduce suicides or attempted suicides, or otherwise change the landscape? After a year of operation, did any of the metrics listed above actually decline?

Maybe/Maybe Not

3. Performance Measure: Percentage of readmission to the Psychiatric Health Facility within 30 days of discharge.

The percentage of clients who are readmitted to the Psychiatric Health Facility (PHF) within 30 days from their prior discharge.

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Target	11.00%	10.00%	8.00%	8.00%	10.00%
Actuals	7.20%	7.20%	10.70%	11.90%	

Notes: While the overall number of clients who were readmitted to the Psychiatric Health Facility (PHF) within 30 days was lower in FY 2018-19, the readmission rate was higher as a percentage due to an even greater decrease in the total PHF census population. The overall decrease in numbers is directly related to a full year of services at the Crisis Stabilization Unit, implementation of Community Action Teams, and a decrease in census based on acuity, primarily due to an increase in the number of acute clients transferred from the Jail.

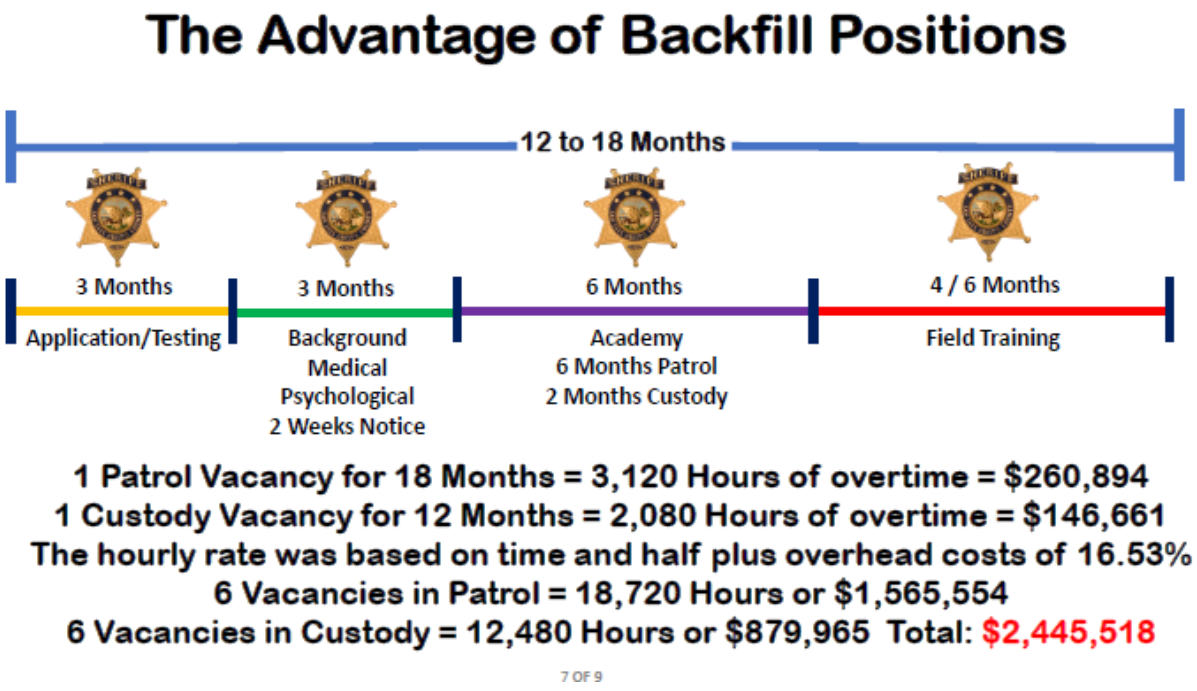
It is also hard to tell without inclusion of the ordinate numbers. Also what is the unit cost for this program?

The Board, Public, general County management, stakeholder groups, and the interested general public could benefit from consistent and rigorous presentations. The County's Budget Analysts should rip into this stuff like raw meat.

Item 20 - Sheriff's staffing. The Board unanimously approved a pilot program to forestall vacancies in the Sheriff's office.

Background: Staff vacancies continue to plague the Sheriff's Office in both policing and jail functions. This results in mandatory overtime at premium pay costs. The Sheriff proposed front ending the overfilling of vacancies and projected vacancies to reduce the problem.

This a smart plan and which as, noted above, was approved by the Board of Supervisors. Many larger cities use it in 2- or 3-year cycles. Vacancies are estimated, recruitment and training time is projected (including class attrition), and a group overfill is hired. The idea is to reach an optimum point at which most positions stay filled rather than waiting until they are vacant to start filling them. Waiting to fill them until they become vacant results in critical unfilled slots for months or years on end.



See the great PowerPoint at the link for the details and calculations:

https://agenda.slocounty.ca.gov/iip/sanluisobispo/agendaitem/details/10875

Item 21 - Deputy Assessor Position Reclassification. The Board unanimously approved a request by the Assessor to reclassify his Deputy Position from the civil service to an at-will exempt position. We are a little surprised that it went so well, because during the previous Board meeting Supervisor Gibson had expressed strong opposition. This week he seemed somewhat mollified when it was explained to him that there would still be a legal job description with requirements that applicants would be required to meet. Additionally, the Supervisor probably

did not wish to experience a protracted discussion about the Supervisor's Legislative Aides being exempt.

Background: This is a good idea, as there are already too many high-ranking executive and management positions in the civil service. Back when civil service was first created at the beginning of the 20th Century, it was a great reform. At that time cities, counties, states, and the Federal government were filled with political patronage appointments based on party affiliation and their efforts to get their appointer elected.

Gradually, over the past 60 years the system has been turned on its head and has fostered a culture (in most agencies – not just SLO County) of complacency, empire building, compensation and benefit building, and lack of urgency.

As the upper level technical experts and managers in another county said, "CEO's and Elected Supervisors come and go but we are still here – the County Family."

The Assessor should at least have a deputy who is his person.

San Luis Obispo County Local Agency Formation Commission (LAFCO) Meeting of Thursday, September 19, 2019 (Completed)

Item B-1: Detachment #1 And Sphere Of Influence Revision From The Shandon San Juan Water District (Morrison/Kuhnle). The Commission voted unanimously to authorize detachment of 33,000 acres from the District.

Background: The Shandon/San Juan Water District will lose 24% (33,000) acres of its current total area of 135,000 acres. Two large landowners requested that LAFCO detach their properties from the district. The reason given is that they have determined to have the County provide their water management under the State Groundwater Management Act (SGMA). The LAFCO Board letter states in part:

Purpose: *The application is to detach approximately 33,000 acres from the Shandon/San Juan Water District. The District was formed as an opt-in water district and the landowners would now prefer to obtain their Sustainable Groundwater Management Act compliance services from the County. This boundary change would allow the detachment area to be under the jurisdiction of the County for SGMA services, instead of the District. The Sphere of Influence revision maintains a coterminous boundary for the District service area after the detachment is complete.*

There were objections but they were not pressed too hard: There was concern by the District that since a discontinuity of the boundaries will be created, the entire viability of the District might be legally in jeopardy. When the neighboring El Pomar Water District was created, there was concern that gaps between properties that are members of the District violated the Cortese Knox Act rules. LAFCO determined that the District could form because none of the gaps were more than 2 miles of separation.

In this case and per the map below on page16, the gap of more than 2 miles is created when the properties to the east become an island.

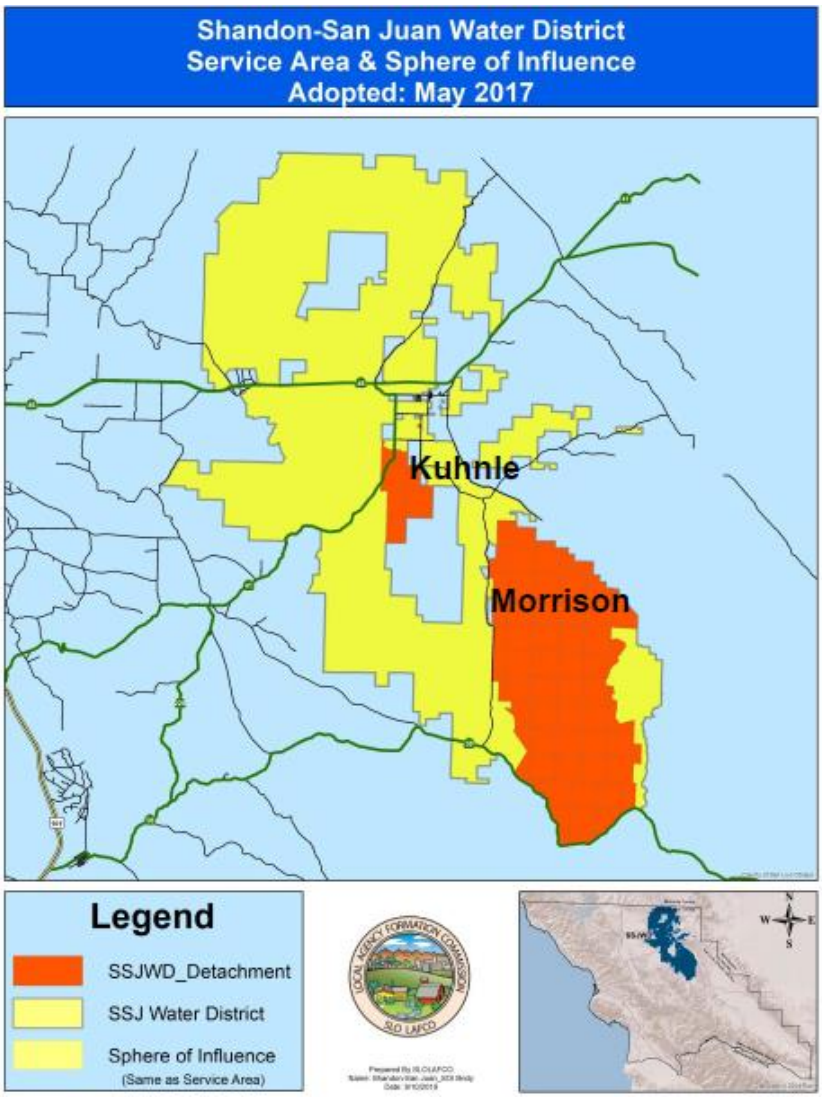
To this end, the San Juan District's attorney, Alfred Doud of Bakersfield Law Firm, Young and Woodbridge wrote to LAFCO on September 9, 2019 requesting special language to attempt to avoid the problem:

> In short, we think the two-mile reference is a limiting factor and that LAFCo should give the statutory terms further consideration. If, notwithstanding the history we have provided in this letter, LAFCo maintains its interpretation that section 34153(b) pertains only to formation, we request that LAFCo include in its order for detachment and any future detachments of similar effect an express finding as follows:
>
> > This detachment is made on the condition that the detachment does not invalidate the order approving formation of the Shandon-San Juan Water District dated May 22, 2017, and further that any lands remaining within the District that are greater than two miles of the boundary of another portion of the approved district are confirmed to be included within the District boundaries.

Additionally, the San Juan District sought delays in processing the detachment application for some of the following reasons: LAFCO never timely and properly notified the District of the request.

- The San Juan District found out about the request from a memo submitted by the applicants which did not contain the requisite information required by law.
- LAFCO began processing the request prior to proper notification being given to the District. Also certain time requirements were not met.
- The detachment will create boundary changes that (because of SGMA) will require approval by the state.
- The detachment will require changes to the PASO Basin SGMA Plan, which is almost finished and is due no later than January 31, 2020.

For whatever reason the objections did not get traction during the meeting.



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

RENT CONTROL: A HISTORY OF FAILURE

BY GREGORY BRESIGER

Governments can and do try to fix prices, but history tells us it never works.

From the price-control dikats of the Roman Empire's Diocletian, to the wage and price controls of President Richard Nixon, governments have tried and failed.

The historian Edward Gibbon said the Roman Empire imploded owing to economic disasters and less to barbarians at the gate. More recently, President Nixon imposed wage and price controls before the 1972 elections. He was re-elected when they seemed to be working. However, owing to the Watergate scandal, he wasn't around when his price control scheme failed and dragged down millions of Americans in the disastrous decade-long horror show called stagflation.

New York's Economic Madness

Yet governments continue to try various kinds of price controls, even though most people with even the barest acquaintance with economic history or basic economics understand they're the equivalent of economic crack. However, most New York pols, for instance, are economic illiterates.

They support continued rent controls because they are politically popular, at least in the short run. In the case of rent controls, the New York political classes recently extended them. They believe, almost uniformly, that they provide better housing at decent prices. But history and many economists say otherwise.

I believe some pols are privately convinced that they are witchcraft but they are not going to say so because they might then no longer be on the public payroll.

The politics are why New York's state and city lawmakers have consistently backed rent control laws. That's even though most economists, both left and right, agree they lead to housing shortages; that they're a good deal for the minority of people who get coverage while the rest of New Yorker pay excessive rents.

Why Don't They Work?

Supply dries up. Builders spooked by controls won't build new units. The minority of those who get cheap rents won't leave their units no matter what. Turnover rates decline. Most New Yorkers paying free market rents pay through the nose.

If you have a rent-controlled apartment: stay forever. You have cheap rent. If not, be prepared to pay very high housing prices as the housing stock can't keep pace with demand. The quality of life in the city declines as more and more people pay a high percentage of their income for housing.

"In many cases, rent control appears to be the most efficient technique presently known to destroy a city — except for bombing," wrote Swedish economist Assar Lindbeck, a Social Democrat.

This comment is part of a historical arsenal of rent control/stabilization critiques. They're a piece of a federal lawsuit challenging the recent extension of New York rent controls, which are supported by most elected officials.

"The passage of these historic bills is a victory for housing justice and for hardworking tenants across New York," New York City Comptroller Scott Stringer wrote in a press release. Stringer declined repeated requests for comment on a story I recently did for the *New York Post* Business section about the economic aspects of controls.

The extension immortalizes rent control rules for some one million New York City units. And yet no one disagrees with that, after generations of rent controls in New York, that the average New Yorkers pay huge housing bills, despite these laws.

They come at a time many New Yorkers "pay half or more of their income for housing," says State Comptroller DiNapoli. There are about 3.2 million units in New York City.

A Helping Hand for the Big Apple's Rich

Rent control critics warn these new laws will raise rents on most people except those New Yorkers living in rent-controlled apartments, who are sometimes well heeled.

"In 2017 upper-income households occupied 12 percent of pre-1974 rent stabilized units, or 98,780 units," according to a report by the Citizens Budget Commission (CBC) report "Reconsidering Rent Regulation Reforms."

CBC wrote that "Of these upper income stabilized households, 28,377 earn more than $200,000 a year." The CBC report also finds that rent-controlled/rent stabilized tenants have a greater chance of having apartment problems than unregulated units.

This rent stabilization law (RSL) often helping the rich theme is cited in the lawsuit.

"The RSL does not in any way target its relief to low income populations. There is no financial qualification or standard at all for retaining or obtaining a rent stabilized unit," the complaint says.

Due Process of Law

The lawsuit charges rent regulations violate the property and Fourteenth Amendment due-process rights of property owners forced to rent at below market prices. The laws, the suit continues, are a violation of the United States Constitution's Takings Clause. That bars "forcing some people alone to bear public burdens."

About 45 percent of rental units in New York City are rent regulated, according to a New York University Furman Center report.

Rent control applies only to buildings built before February 1947 and to units occupied by a tenant who has lived in the unit continuously since before July 1, 1971, Furman said. Rent stabilization generally applies to buildings of six or more units built between February 1, 1947 and December 31, 1973.

Despite the popularity of rent control laws with politicians, the majority of people who have studied the issue are critics.

Economists Do Agree

Blair Jenkins, the editor of a compilation of rent research entitled, "Rent Controls: Do Economists Agree?" says most economists condemn them.

In the book, economist Peter Navarro wrote "the economics profession has reached a rare consensus: Rent control creates more problems than it solves."

Pace University professor Joseph Salerno argues New York's laws have made housing problems worse.

"If rent controls are imposed that are lower than rents dictated by market forces, an excess demand for apartments almost immediately appears," he says "Over time, if the demand for apartments increases, the shortage grows worse leading to long waiting lists."

"In the long run, as taxes, utilities, maintenance and other costs of operating an apartment building continue to rise, the supply of apartments actually decreases, as landlords convert their apartments into co-ops or condos or abandon them altogether," Salerno adds, noting higher costs lead to reduced maintenance.

The Left and Right in Accord

Salerno is a libertarian economist. He is an opponent of the liberal Keynesian school. However, economist Paul Samuelson, who was a prominent Keynesian and Nobel Prize winner, agreed.

"New York City rent controls," Samuelson wrote in his economics textbook, "do favor those lucky enough to find a cheap apartment; but they inhibit new private building of low-cost housing."

Gregory Bresiger (GregoryBresiger.com) is an independent business journalist who lives in Kew Gardens, Queens, New York. He is the author of MoneySense*, a forthcoming book of basic of money management with a libertarian point of view.*

CALIFORNIA KNIFES THE GIG ECONOMY

BY RICHARD A. EPSTEIN

California state legislators embarked last week on the single most important regulatory misadventure this country has seen in many decades, seeking to redefine the obscure but critical legal distinction between an employee and an independent contractor. The employment relationship today is subject to massive regulation that is inapplicable to the independent contractor, who pretty much works on his or her own.

Like it or not, the employee receives many statutory protections, including the right to receive minimum wages and overtime, to join a union, to receive worker's compensation benefits and unemployment insurance, and to receive paid family and sick leave. None of that mandated protection comes without significant costs. It has been estimated that reclassification of Uber and Lyft drivers as employees in California alone will cost the two companies an average of $3,625 per driver per year for a combined annual bill of nearly $800 million per year. Nonetheless, in 2018, the California Supreme Court in *Dynamex Operations West, Inc. v. Superior Court* forged ahead with such a reform by unanimously holding that drivers who worked for a firm that supplied nationwide courier and delivery services should be classified by law as employees and not as independent contractors.

Dynamex teed up a rough-and-tumble debate in the California legislature, which one-upped their state Supreme Court by recently passing Assembly Bill 5 (AB5), a political crusade designed to rescue workers who are "currently exploited by being misclassified as independent contractors instead of employees." The scope of the legislation goes far beyond drivers, however, raising the pressing question of who counts as an employee and who does not. The bill offers up the general coverage formula articulated in *Dynamex* requiring that all workers be classified as employees rather than independent contractors unless:

> (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
>
> (B) The person performs work that is outside the usual course of the hiring entity's business.
>
> (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Next, AB5 exempts a laundry list of occupations from the general rule, including physicians, lawyers, and accountants. But this two-step approach leaves lingering uncertainties. Which other occupations—from tech workers to translators to cleaners—will be caught in AB5's net?

For many companies, the independent contractor classification is a matter of economic survival. Although AB5's language of exploitation has a Marxist ring that excites the progressives who dominate the California legislature, these political powerbrokers act as though AB5 targets only

well-heeled employers with ample resources to pay whatever freight the legislature charges. But many of these firms operate on shoestring budgets in competitive industries. They therefore have neither the extra cash to meet this new burden nor the freedom to raise prices without losing their customers. By imposing its brand of worker protectionism, AB5 ignores the obvious response. Private firms facing economic ruin will take strong countermeasures to blunt the force of this legislation. Yet the only way they can minimize their losses is to either force workers into deals that neither side would prefer to have or to shed these new "employees" in droves.

Think about the predicament of Uber and Lyft, both of which are losing billions of dollars, in part because of the huge regulatory battles sapping their coffers and trashing their business models. What can they do to beat the rap? One move is legal resistance. Right now Uber insists that its "business" is "technology" and that, therefore, all drivers perform work outside its usual course of business. Don't hold your breath. It is highly unlikely that the California Supreme Court that handed down *Dynamex* would adopt that sensible line.

Neither is it likely that Uber and Lyft will be able to show that their drivers are "free from the control and direction of the hiring entity." Some control from the center is an absolute imperative for running these businesses. Both companies must supply their customers with strong brand protection to get potential customers to order a car, sight unseen. These companies must, therefore, set detailed rules about who can become a driver, what kinds of cars they can drive, what rides they can accept or turn down, what kind of insurance they must carry, and what fares they can charge. These rules are as much for the benefit of good and conscientious drivers as they are for Uber and Lyft. Without them, good drivers will suffer as the average quality of performance starts to decline when opportunistic drivers try to free ride on the brand name.

It should come as no surprise that prior law outside California on this topic was muddled, as courts in individual cases have refused to treat these necessary system controls as dispositive on the question of driver status. Instead, they have concluded that these drivers are independent contractors by looking at the vaunted flexibility of the arrangement, which gives drivers the right to determine when to drive, which rides to take, and when to do outside work. These choices are never given to employees, which is why so many drivers gravitate to these positions for part-time work.

The difficulty with these judicial decisions, however, is that they lack the courage of their convictions. They are only willing to make ad hoc determinations of independent contractor status in individual cases while noting that the balance could be tipped in the other direction in the next case if certain key factors are changed. Here is yet another instance of the need for simple rules in a complex world. At this point, no one has any confidence as to how the next Uber or Lyft case will come out, given that small differences in contract terms or practices could entirely change the analysis.

In light of the high stakes, this ad hoc approach is the road to perdition. No matter how their workers are classified, companies at a minimum must have uniform policies for their workers to manage their businesses and to avoid endless regulatory nightmares. AB5 ends that uncertainty, albeit in the wrong way. At this point, however, the most likely consequence is that Uber and Lyft, if they are able to stay in business at all in California, will have to abandon their current

business models. The Fair Labor Standards Act of 1938 supplied minimum wage and overtime guarantees, but only to statutory "employees." Yet the FLSA leaves that key term "employee" as a largely undefined term that "means any individual employed by an employer." Not too helpful.

At this point, the writing is on the wall. Lyft has already emailed a message to its drivers that they "may soon be required to drive specific shifts, stick to specific areas, and drive for only a single platform."

Why? Because it turns out the FLSA, which was never a good idea to begin with, makes even less sense today. Back in 1938, virtually all workers were paid by the hour, so it was relatively easy for firms to comply with the statutory commands without having to redesign their business models. Today, modern monitoring techniques make it far easier to pay by the ride rather than by the hour. This shift to a more efficient form of compensation benefits both sides. But by the same token, unions, who are fierce backers of AB5, know that they cannot organize a ragtag army of part-time drivers. So they are quite happy to create potential union members out of these newly minted employees. But it is clear that even if Lyft and Uber survive in California, they will employ fewer drivers and offer inferior services to customers at higher rates, all while suffering enormous capital losses from shifting to an inferior business model.

True to form, labor leaders have accused Uber and Lyft of running an "anti-labor misinformation campaign" because "such a change is not written in the law. It would be Lyft's choice to implement those changes on their own." Yet that is precisely the point. No company can be in compliance if does not know whether and when given drivers are on the clock or not. No company can comply with AB5 if it is not sure whether it will be charged for driver downtime or charged for some other activity. AB5 may not explicitly order firms to abandon their business models, but it sets up an economic dynamic that forces them to do so.

Ideally, the best way to deal with this unhappy situation is to scrap the FLSA by recognizing that a driver and a technology company are better able to set the terms of their mutual engagement than any government agency. That won't happen in the short run but, at the very least, a clear FLSA regulation that treats all drivers as independent contractors under the FLSA would go a long way to fix the situation. Californians will come to quickly rue the interventionist court and meddlesome legislature whose misguided mandates will wreck the gig economy.

This article first appeared in the Stanford University Hoover Institution Defining Ideas of September 17, 2019. Richard A. Epstein, the Peter and Kirsten Bedford Senior Fellow at the Hoover Institution, is the Laurence A. Tisch Professor of Law, New York University Law School, and a senior lecturer at the University of Chicago.In 2011, Epstein was a recipient of the Bradley Prize for outstanding achievement. In 2005, the College of William & Mary School of Law awarded him the Brigham-Kanner Property Rights Prize.

Epstein researches and writes in a broad range of constitutional, economic, historical, and philosophical subjects. He has taught administrative law, antitrust law, communications law, constitutional law, corporation criminal law, employment discrimination law, environmental law, food and drug law, health law, labor law, Roman law, real estate development and finance,

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