October 2019

Vote "No" on Prop. "E," Public Land Re-Zoning!

"Local Control" Excludes Neighborhood Input

by Patrick Monette-Shaw

Illustration: Patrick Monette-Shaw

Monopoly® Anyone? Prop. "E" Is a Land Grab: It involves privatization of public lands to enrich developer's hands. Keep our public lands in public hands!

California cities have long been in a protracted war with the State over who should control housing decisions. Local control over housing and land-use policies were at risk, which the State sought to usurp.

Why would San Francisco seek to usurp hyperlocal (at the neighborhood level) input from local land-use policies? That's essentially what Prop. "E" — to re-zone public land (except parks) citywide in San Francisco — on the November ballot seeks to do. Prop. "E" makes things worse, stripping out neighborhood input from local processes. It screams: *"We don't want neighborhood input*."

As the *Westside Observer* reported in July 2019, news surfaced June 19 that the Elections Department had received two dueling ballot measures to re-zone San Francisco's public lands: One submitted by Mayor Breed, and the second submitted by four Supervisors (Supervisors Peskin, Fewer, Walton, and Haney).

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Both proposed measures reeked of State Senator Scott Wiener's various legislation designed to strip and override local planning rules by fiat, eliminating local control, like Wiener's misguided SB-50 attempt to rezone the entire state. Indeed, two bills — AB-1487 (Assemblyman David Chiu) and AB-1486 (Assemblyman Phil Ting) — both contain provisions to allow privatization and appropriation of regional public lands. Both bills are sitting on Governor Gavin Newsom's desk awaiting his signature.

> **"Two bills — AB-1487 (Assemblyman David Chiu) and AB-1486 (Assemblyman Phil Ting) — both contain provisions to allow privatization and appropriation of regional public lands."**

Developers covet acquiring public land because it provides the private affordable housing industry opportunities for massive financial gain.

No public hearings were held prior to submitting either of the two dueling re-zoning measures to San Francisco's Department of Elections on June 18. After the Board of Supervisors blocked Breed's separate Charter change ballot measure on July 11, she was forced to negotiate with the Board. Breed eventually backed down and withdrew her re-zoning Ordinance, leaving the re-zoning Ordinance proposed by four Supervisors on the ballot — now designated as "Prop. E" — but without enough time to work out a compromise to the final ballot language before going to voters.

> **"No public hearings were held prior to submitting either of the dueling re-zoning measures to San Francisco's Department of Elections on June 18, 2019."**

Clearly, San Francisco neighborhoods need better means for controlling land use, not just adding more housing, and each neighborhood should have input in controlling land-use decisions regarding public land in their respective neighborhoods!

> **"San Francisco neighborhoods deserve input in controlling land-use decisions regarding public land in their respective neighborhoods!"**

Prop. "E's" Origins

Breed initially wildly claimed to rationalize and justify placing her citywide re-zoning measure on the ballot, that it was *only* because it had taken over two years to re-zone the Francis Scott Key Annex on public property to allow building a teacher housing project. Breed ignored the project was delayed principally because design wasn't yet completed and wasn't awarded City funding before July 30, 2019. Breed's pretext was laughable.

We debunked Breed's baseless and untruthful claim in the *Westside Observer*. In July we reported that re-zoning — even if zoning changes take 6 to 12 months — occurs during Environmental Review while the developer works *simultaneously* on detailed design, permitting, and financing that can take up to 24 months. Eliminating re-zoning will ***not*** shorten the 24-month concurrent processes.

> **"Breed's pretext was laughable. Eliminating re-zoning will *not* shorten the 24-month concurrent processes."**

In our September article, even Supervisor Shamann Walton (D-10) noted on July 11, 2019 that the Annex should have been re-zoned "*a couple of years ago*." Walton added, "*We should not be giving away publicly owned land for market rate developments calling it affordable teacher housing*." The developer waited until May 1, 2019 before submitting a *Special Use District* rezoning application to the Planning Department.

The Board promised trailing legislation would be written to reconcile differences between the two dueling measures. Now at the end of September, no trailing legislation has been presented during Board of Supervisors hearings. Adding to the insult that no public hearings were held beforehand, voters will also likely not see the trailing legislation before voting on Prop. "E."

Still unclear is whether developers will be given public land at no cost, whether they'll purchase land outright at market-rates (income to the City), or if they'll get long-term leases of the land. Prop. "E" contains no discussion about whether developers will acquire public lands at no cost, or through fee simple sale, long-term ground lease, or prices below market-rate appraisal value. That issue wasn't even included in the ballot measure, and a City Hall source thinks the issue won't be clarified in the trailing legislation, either.

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Take for example the Balboa Reservoir project, a mixed-use joint venture between BRIDGE Housing and AvalonBay Communities on land owned by San Francisco's Public Utilities Commission. Of 1,100 planned units, 50% (550 units) will be for market-rate housing and 50% will be affordable housing units. The joint venture plans to sell the "*entitled*" parcels to up to six other developers. (Note: "*Entitlements*" are approvals for the right to develop property for a desired purpose.) How much the joint venture will profit from selling the parcels isn't known.

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It's also unclear if the re-zoning measure will eliminate full CEQA review on each project, or whether the CEQA reviews will remain on a case-by-case basis. That likely also won't be addressed in the trailing legislation, which may focus only on a peripheral issue involving 50% pass-through to tenants.

> **"It's unknown how widespread it is for one developer to obtain entitlements from the Planning Department, and then turn around and sell the entitled parcels to other developers."**

Prop. "E" will eliminate your ability and rights to appeal projects through local jurisdiction process hearings and may eliminate the Planning Commission's discretionary review process to alter, change, or disapprove re-zoning of each parcel zoned "P Public."

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Alphanumeric State Soup

Seven recent State legislative bills aim at eliminating local control over land-use and housing decisions:

- SB-827, *Planning and Zoning: Transit-Rich Housing Bonus*, introduced by State Senator Scott Wiener, Senate District 11. SB-827 would have required cities to build multifamily housing near transit- and job-rich areas, easing developer restrictions on height and density, among other things. The bill would have impacted about 96% of San Francisco.

Only Democrats Wiener, and his ally, State Senator Nancy Skinner, voted for his bill in the Housing and Transportation Committee. But it wasn't enough, and it failed on a four-to-six-against vote. He couldn't even get the bill out of his own Committee. Wiener was named chairperson of the State Senate's Committee on Housing in 2018. DB-827 was DOA.

SB-827 failed to pass, prompting Wiener to resurrect it as SB-50.

- SB-50, *Planning and Zoning: Housing Development Streamlined Approval and Incentives*, sponsored by Wiener.

SB-50 was amended four times. Stupidly, Wiener tried to compromise with an amendment to exclude any county in California that had less than 600,000 residents. Bad move!, as any blockhead, or State Senator, should know: You can't have a statewide bill that exempts half the counties in the state.

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SB-50 was so onerous and so odorous — which details I won't wade into repeating here — that over 35 California cities opposed Wiener's proposal, including San Francisco. On April 9, 2019 San Francisco's Board of Supervisors passed a Resolution opposing SB-50 on a 9–to–2 vote, with Supervisors Vallie Brown (D–5) and Ahsha Safai (D-11) dissenting.

Facing such stiff statewide opposition, SB-50 was suspended in the Senate Appropriations Committee in May 2019 in a legislation "*suspense*" file where bills are set aside for a subsequent hearing, which is a kiss of death where unpopular legislation is sent hoping to get rid of it without having to take a formal vote for or against — essentially a veto.

"SB-50 was suspended in the Senate Appropriations Committee in May 2019. Wiener can't resurrect it before January 2020."

Eventually, the Appropriations Committee decided not to leave SB-50 in *suspense* forever, and agreed to let it come up for a vote sometime after January 2020. Wiener can't resurrect it before then.

- SB-167, *Housing Accountability Act (HAA)*, by State Senator Nancy Skinner, Senate District 9 (D-Berkeley, representing Contra Costa and Alameda counties). SB-167, initially passed in 1982, was strengthened in 2017. Skinner introduced amendments to SB-167, which was designed to promote infill and make it harder for local governments to block housing projects. It prohibits local agencies from disapproving, or conditioning approval in a manner than renders infeasible any housing development project for very low-, low-, or moderate-income households or an emergency shelter unless the local agency makes specified written findings based upon *substantial evidence* in the record; the bill requires instead that local agency findings be based on a *preponderance of the evidence* in the record.

"SB-167 was designed to promote infill and make it harder for local governments to block housing projects. It granted the State power to fine cities found in violation of the HAA."

SB-167 also forbids cities from proposing modifications to a housing development application after it is submitted that would result in reducing the number of units to be developed, or passing zoning rules that would retroactively make the application non-compliant.

SB-167 granted the State power to fine cities found in violation of the HAA. SB 167 was signed into law by Governor Jerry Brown on September 29, 2017.

- SB-330, *Housing Crisis Act*, State Senator Nancy Skinner. SB-330 places a five-year moratorium on local policies and will make it harder to build by placing caps on permits, adding fees, and streamlining the approval process for housing projects. It prohibits local governments from downzoning by either placing a moratorium on development or lowering the number of housing units permitted. It speeds up the permitting process for development. It also places restrictions on certain types of development standards, amends the HAA (SB-167), and prohibits an affected city or county from enacting policies that might impose a moratorium on housing developments. The bill doesn't provide exemptions for affordable housing projects.

It would deprive your ability and rights to improve projects through local jurisdiction appeals processes. It essentially eliminates the Discretionary Review (DR) process, by limiting the Planning Commission's ability to take DR's and alter, change, or disapprove projects. Although it was "*enrolled*" (final language passed by both the Assembly and the California Senate) and sent to Governor Gavin Newsom on September 11, it's not yet known whether Newsom will sign it into law before the October 13 deadline, although he publicly endorsed it.

- SB-592, *Housing Accountability Act: Permit Streamlining*, Senator Wiener. SB-592 initially addressed licensure for barbers and cosmetologists. Stung by his own failure to move SB-50 out of the Senate Appropriations Committee in May, on June 12 Wiener completely gutted SB-592 and totally replaced the initial barber licensure language with much of the same provisions in SB-50, an unethical, sneaky-Pete *gut-and-amend* ploy to get around having to wait until January 2020 to resurrect portions of SB-50, as George Wooding reported last July in the *Westside Observer*.

> **"SB-330 places a five-year moratorium on local policies and will make it harder to build housing projects. It would deprive your rights to improve projects through local jurisdiction appeals processes. It essentially eliminates the Planning Commission's *discretionary review* process."**

Among other things, the bill prohibits a local agency from disapproving or conditioning approval in a manner that renders infeasible a housing development project that complies with applicable, objective general plan, zoning, and subdivision standards and criteria in effect at the time an application for a housing project is deemed complete.

But SB-592 was much more than amending SB-167, the Housing Accountability Act (HAA), in a number of ways, than it is about SB-50. SB-167 allowed the State to *fine* cities. SB-592 appears to go much further, allowing developers — excuse my using the vernacular — to ***sue*** or penalize the crap out of cities.

> **"SB-592 was more than amending SB-167, the Housing Accountability Act. SB-167 allowed the State to *fine* cities. SB-592 appears to go much further, allowing developers to *sue* or penalize the crap out of cities."**

SB-592 was re-referred to the Senate Rules Committee on September 11, where it has essentially died until 2020, because both legislative houses faced a deadline of September 13 to pass and submit bills to the Governor for signature. SB-592 didn't re-advance from Rules between September 11 and 13, so it probably didn't reach Newsom's desk.

- AB-1487, *San Francisco Bay Area Housing Development Financing*, Assemblymember David Chiu, Assembly District 17, co-authored by Senator Wiener. Chiu introduced AB-1487 on February 22, 2019 — supported, in part, by the Chan Zuckerberg Initiative funded via Facebook money — that would allow for Bay Area regional ballot measures to raise money for affordable housing. The executive board of the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) would decide what form potential revenue-raising ballot measures would take.

> **"Assemblymember David Chiu's AB-1487, co-authored by State Senator Scott Wiener, would allow for Bay Area regional ballot measures to raise money for affordable housing."**

Zelda Bronstein published a terrific article — "*Facebook money pushes Chiu housing bill*" — on *48Hills.org* August 17, 2019 exploring in detail Chiu's AB-1487. I highly recommend reading her in-depth article. She noted — among many other things — that pro-growth advocates view the bill as an opportunity to "*facilitate the private appropriation and exploitation of the region's public lands*."

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Bronstein uncovered documents for *48Hills* that show in early December 2018 the MTC and San Francisco Foundation helped fund a secret 42-person delegate, three-day junket to New York City, including Assemblyman Chiu and Chiu's then-Chief of Staff, Judson True. The trip claimed to be "*a learning session on New York's housing funding and finance system*." Chiu and True were the only members of the legislature who attended the boondoggle.

Bronstein reported that shortly after True returned from the New York jaunt, Mayor Breed announced on December 18 that she was appointing him as her *Director of Housing Delivery*. [True earned $108,084 in 2018 as Chiu's Chief of staff; his salary working for Breed starting January 2019 jumped to $188,000 annually. By contrast, Kate Hartley, director of the Mayor's Office of Housing and Community Development earned $182,625 during Fiscal Year 2018–2019 ending June 30, 2019 before she was forced to step down.] Why Breed needed to create a golden parachute for True — when she already has a large staff in the Mayor's Office of Housing and Community Development — wasn't explained.

"Bronstein uncovered a secret December 2018, 42-person delegate, three-day junket to New York City, including Assemblyman Chiu and Chiu's then-Chief of Staff, Judson True. She reported that shortly after True returned from the secret New York jaunt, Mayor Breed announced on December 18 she was appointing True as her *Director of Housing Delivery*."

True's job for Breed mainly involves streamlining the City's permitting process, which explains, in part, why Breed placed her competing measure on the ballot on June 18, 2019 to re-zone public lands citywide in one fell swoop to allow development of housing on public parcels.

After all, True helped craft the AB-1487 provision to allow privatization, appropriation, and exploitation of the region's public lands, which he brought along in his kit bag for his new job working for Breed.

Bronstein noted that acquiring public land presents key opportunities for developers to defer land acquisition costs, provides a possibility of receiving deeply discounted land prices, and a chance to leverage the public land contribution or discount as a "local match" for competitive funding programs — all for financial gain — by acquiring land through fee simple sale, long-term ground lease, or prices below market-rate appraisal value. AB-1487, also known as the *San Francisco Bay Regional Housing Finance Act*, establishes a regional entity authorized to raise money for affordable housing from Bay Area voters, perhaps through a parcel tax, gross receipts tax, employee head tax, commercial linkage fees, and bonds, or a combination of the sources.

"True helped craft the AB-1487 provision to allow privatization, appropriation, and exploitation of the region's public lands. He did so because acquiring public land presents key opportunities for developers to defer land acquisition costs, providing a possibility of receiving deeply discounted land prices."

It will create a shared governance body named as the *Bay Area Housing Finance Authority* (BAHFA) comprised of Association of Bay Area Governments (ABAG) Executive Board members and the Metropolitan Transportation Commission (MTC), with ABAG serving as the lead agency. Bronstein rightly questions why the MTA — tasked with overseeing regional transportation issues — has expanded its mission by venturing into formulating regional housing policies.

Bronstein reported that the choice of which regional revenue options to pursue and which projects to fund would be subject to the approval of both boards, with ABAG acting first. BAHFA could raise new revenue by authorizing placing revenue measures on the ballot in all, or a subset of, the nine counties in the San Francisco Bay area.

Creation of a regional taxing "authority" nobody knows about and probably can't control is worrisome. This may not involve a parcel tax or a gross revenue tax, because they are too transparent. Instead, it may utilize less-transparent Transportation Revenue Bonds. Silent but deadly.

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AB-1487 was rammed through the Assembly and Senate in order to set the stage for placing two revenue measures on the November 2020 ballot: One for housing and a companion measure for transportation. Mayor Breed reportedly supported AB-1487. It passed both houses of the legislature and was submitted to Governor Newsom for signature, which he will likely sign into law.

- AB-1486, *Surplus Land*, Assemblymember Phil Ting, Assembly District 19, co-authored by Senator Skinner. Ting introduced AB-1486 — wait for it — on the same date (February 22)

that Chiu introduced AB-1487. In that regard, it's clear they were designed as companion bills. AB-1486 is designed to ease privatization of public land, mirroring AB-1487's goal of facilitating the private-sector appropriation of regional public land.

AB-1486 will require public agencies to offer their "surplus" land for development before leasing their property. It requires local agencies to offer the *right of first refusal* to affordable housing developers, schools, and parks before selling, leasing, or otherwise conveying their public land. This would clearly make it more difficult to protect local jurisdiction's land for future governmental use.

> **"AB-1486 is designed to ease privatization of public land, mirroring AB-1487's goal of facilitating the private-sector appropriation of regional public land. AB-1486 will require public agencies to offer their 'surplus' land for development before leasing their property."**

It passed both houses of the legislature on September 12 and was submitted to the Legislature's Engrossing and Enrolling Department. It was probably submitted to the Governor for signature the next day, which he likely may sign.

Prop. "E" Ain't Necessary

Planning Department staffer Ann Murray Rogers has noted that public land must be rezoned for residential uses, re-zoning to a density zone of RH-2 or greater. But Prop. "E" doesn't actually re-zone the Public land from "P – Public" to RH-2 or above; it simply expands Planning Code Section 211.1 by adding a new subparagraph "(i)" to expand principally-permitted uses in "P Zones" to include residential uses for 100% Affordable Housing or Educator Housing projects. "P Zones" currently prohibit residential housing of any type.

> **"Prop. 'E' effectively 're-zones' public parcels by adding a new subparagraph '(i)' to expand principally-permitted uses in 'P Zones' to include residential uses for 100% Affordable Housing or Educator Housing projects."**

Proponents assert Prop. "E" "*unlocks*" and "*repurposes*" public "*underutilized*" lands to build affordable housing, a principle they claim voters affirmed November 3, 2015 passing Prop. "K" — *Surplus Public Lands* — requiring identifying surplus City property. City departments identified just 35 surplus parcels; three were referred to the Mayor's Office of Housing. MOHCD rejected all three as unsuitable.

City Supervisors already allow housing on parcels zoned "Public" via case-by-case variances or creating *Public Use Districts*. They already have: DataSF shows housing Assessor Use Types on 70 parcels zoned "Public." Prop. "E" ain't necessary!

San Francisco's 2006 voter guide included former City Attorney Louise Renne's paid argument against Prop. "D" to rezone Laguna Honda Hospital, arguing it would permit private facilities on public lands. Calvin Welch's argument against "D" worried it might allow private developers to build for-profit facilities on public land in public use districts.

> **"City Supervisors already allow housing on parcels zoned 'Public' via case-by-case variances or creating *Public Use Districts*. Prop. 'E' ain't necessary!"**

Awarding public land so private developers can enhance profits is against the interests of the people.

Keep public lands in neighborhood's — people's — hands. Vote "**No**" on Prop. "E"!

> **"Awarding public lands to private developers is against the interests of the people. Keep public lands in public hands. Vote 'No' on Prop. 'E'!"**

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