CP&DR

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CALIFORNIA PLANNING & DEVELOPMENT REPORT

Land Trusts Seek Deals During Recession, Prepare for End of Bond Funds

BY JOSH STEPHENS

The past few years have been great for not building things. The Great Recession has particularly devastated developers building on the urban fringe, who found themselves saddled with entitlements for homes that no one would ever buy.

But for a distinct group of non-developers, the so-called Great Recession has been great for business.

The state's 150 land trusts are a diverse lot. But many have escaped the fate of their for-profit counterparts due to a fortunate coincidence. At the very moment when land prices have dropped, state, federal, and even philanthropic funding has generally remained robust.

"For the most part, the speculative values have gone down, so it's actually a better time to be buying than during the craziness of a few years ago," said Brian Leahy, assistant director at the Division of Land Resources at the California Department of Conservation.

"Overall, it's been favorable as long as you have dry powder," said George Yandell, director of real estate for the California chapter of the Nature Conservancy. By that he means, of course, money.

So far, money has flowed smoothly enough during the recession for land trusts large and small around the state to make major acquisitions. For example:

- The Nature Conservancy has, according to Yandell, recently been adding roughly 10,000 to 15,000 acres annual in easements and outright purchases to its statewide total roughly 400,000 acres.
- The Eastern Sierra Land Trust has acquired roughly 4,000 acres since 2008, more than doubling its total holdings.
- The Sonoma Land Trust recently made one of its biggest acquisitions ever, a 6,000-acre assemblage along the Jenner Headlands, at the

– CONTINUED ON PAGE 7

insight

WILLIAM FULTON

Real CEQA Reform May Have Arrived, At Least for Infill Development

For a lot of planners, the idea of an "infill exemption" to the California Environmental Quality Act has been a kind of holy grail over the past few years. CEQA is a fact of life in California and unlikely to go away. But having to run though the entire CEQA process for a project a quarter-acre infill site – just as you might for a project on 5,000 acres of raw land – has been more than a little frustrating for developers and planners alike. Sure, an infill project has an impact. But if getting environmental clearance is a hassle, then what's the point?

CEQA's previous infill exemption was narrow and carried a lot of conditions with it – so it wasn't easy to use. But now the holy grail appears to be within grasp. SB 226 – promoted heavily by Gov. Jerry Brown and signed by him earlier this fall – creates the first comprehensive CEQA infill exemption. So, will this exemption do the trick? Or will CEQA continue to be used to hang up even worthwhile infill projects?

SB 226 – carried by Sen. Joe Simitian, D-Palo Alto – sure looks like the realization of a longtime dream.

– CONTINUED ON PAGE 8

inside

COMPILED BY LAUREN DEITZ

CALIFORNIA'S PROPOSED high-speed rail system has endured multiple hits in recent weeks. First, the California High-Speed Rail Authority released a revised business plan that projects total, inflation-adjusted capital costs for the 600-mile statewide system to be $98.5 billion if the project is completed by 2033. That figure is more than double the projected cost in the original business plan. The revised plan claims that the system will be financially sustainable even if actual ridership is on the low end of the plan's projections; with 7.4 million annual riders the system would net over $300 million annually. The federal government had committed $13 billion to the project – funds which now appear to be in jeopardy following a Congressional vote to eliminate funding for all high-speed rail this year – but funds have not yet been identified to cover the entire $98.5 billion cost estimate. A technical report released by CHSRA also suggests that an underground tunnel through San Jose will not be feasible, thus making the line less politically palatable to stakeholders in that city. Meanwhile, Superior Court Judge Michael Kenny ruled Nov. 10 that an environmental impact report concerning the line's segment through the San Francisco Peninsula did not adequately address impacts to local communities. In accordance with the California Environmental Quality Act, CHSRA is expected to revise the EIR.

THE METROPOLITAN TRANSPORTATION Commission has pledged to seek permission from the state to construct more carpool lanes and toll roads in the Bay Area. MTA already has authority granted from the state to build 270 miles of toll road on top of its current 14 miles in an attempt to relieve traffic congestion. The commission is planning to seek permission to create 290 more miles in the next ten years, a project that will cost more than $6 billion and will be collected by charging individual drivers for using lanes and roads free to carpools.

THE LEAGUE TO SAVE LAKE TAHOE, an environmental group, has filed an appeal against a recent decision that gave a green light to a subdivision off the South Shore. The 18-acre, 50-unit housing development, proposed to be located off Lake Village Drive, has been approved by the Tahoe Regional Planning Agency since 2009. The development, called the Sierra Colina Village project, will include both single and multi-family homes. The League insists the project will harm the quality and clarity of the Lake with increased runoff from a road running through the subdivision. In August, U.S. District Court Judge Robert Jones disagreed, deciding that the agency had not acted irresponsibly or inappropriately by approving the development.

THE SACRAMENTO COUNTY Board of Supervisors unanimously approved an update to the general plan that will guide the county's development until 2030. Last year, the board had agreed to most requirements and provisions in the plan, but had not officially voted and approved it. Complications confronting the general plan for the county included economic fallout from the recession, transportation legislation, and environmental challenges from AB32.

THE BAY MEADOWS PROJECT, taking the place of the 75-year old racetrack, is ready to build. Three years ago, the racetrack was demolished, and a multi-use development on the Hillsdale Caltrain station is on its way. The developer is seeking someone to build 156 townhouses on the northern end of the 83-acre property, and would like construction to break ground by the end of summer 2012. As of now, the outlines of the street grid are emerging, and the water and drainage lines are set. Bay Meadows will also incorporate several parks, including temporary improvements to a 12-acre park at the northern end. There will also be three more acres of smaller parks designed by the developer. Upcoming challenges could include delays on expanding and improving the Hillsdale Caltrain station. The Bay Meadows project approval was contingent upon two grade separations to remove road-level rail crossings, in order to alleviate the project's affect on traffic. Though Caltrain has plans for the new station, a lack of funding may postpone or cancel the project.

DUE TO A NEW FEDERAL floodplain map from the Federal Emergency Management Agency, 37 property owners in Canyon Acres could be obligated to purchase flood insurance policies. Laguna Beach city officials are protesting the map, insisting it was drawn based on old information. FEMA based its map on aerial photographs of areas that produce too much runoff, but Laguna Beach installed a new drainage system in 2008 that city officials believe changed the hydrology of the 100-year floodplain. They have submitted a $26,000 hydrology study, authorized last March, to challenge FEMA's policy.

FOR THE SECOND YEAR, ten American communities have been designated exemplary by Walk Friendly Communities, a recognition program that awards success in walkability. The three levels – gold, silver, and bronze – graded efforts to improve community walking conditions such as safety, mobility, access, and comfort. Cities looking to be recognized must demonstrate best practices in their applications to the program, which WFC then shares with all communities who apply for assistance. Two California cities were held up as noteworthy: San Francisco was recognized at the gold level and Santa Monica at the silver.

PUBLIC HEARINGS have begun on a new plan to confront the myriad environmental and health problems along the U.S-Mexico border. The Border 2020 plan – to expand and improve upon the Border 2012 plan – will look at improving access to sanitary drinking water and sewage systems. Since Calexico has the highest number of uninsured children in poverty and an abnormally high rate of death due to hepatitis and diabetes, the plan pushes the priorities of children's and environmental health. The New River, considered to be the most polluted river in the country, is also granted high-priority status in the Border 2020 plan. Flowing from Baja into Calexico and through to the Salton Sea, at least ten percent of the river's initial flow from Mexico consists of untreated or partially treated sewage. With approximately 300 homes less than one quarter of a mile away from the bank of the river, the health effects may be devastating, and community advocates and elected officials are concerned that the Border 2020 plan does not go far enough in cleaning up the river.

THE U.S. SUPREME COURT has decided not to hear a lawsuit contesting the "indirect source rule", a San Joaquin Valley regulation requiring developers to pay fees for smog caused by new housing developments.

– CONTINUED ON PAGE 3

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The rule states that builders and developers can be charged for air pollution emitted from the construction vehicles and equipment, as well as traffic congestion occurring during the project. Developers are predictably unhappy with the result. Reverberations from this case are expected to be felt across the state; Bay Area regulators, who had been watching the case carefully, will probably implement a comparable rule soon, and other cities may follow.

THE RULE ENACTED by the San Joaquin Valley Air Pollution Control District is estimated to add about $500 to the price of a home. Fees collected from this rule will pay for policies such as assisting farmers in buying equipment that will emit less soot and air pollution. The Bay Area Air Quality Management District anticipates that their equivalent may bring in as much as $1.4 million a year, funding programs to install bike lanes, electric car charging stations, carpool programs, and the Spare-the-Air project.

AT THE BEGINNING OF OCTOBER, Governor Jerry Brown signed a bill that reestablished the authority of South Pasadena to negotiate with the California Department of Transportation. In 1982, that authority was taken away by legislation. Given the long-standing opposition of South Pasadena to a surface extension of the 710 Freeway, the current plan to expand the 710 between Pasadena and Alhambra may need to be reconsidered. The bill also requires Caltrans to consent to a street closure agreement with South Pasadena if a freeway is built. Previous to this bill, if a project was within the jurisdiction of Los Angeles Metropolitan Transportation Authority and negotiations went for over ten years, construction could take place without permission from the 25,000-resident city. South Pasadena officials have indicated that they are open to the possibility of a tunnel expansion, rather than a surface route. They maintain that a surface route would negatively impact traffic congestion and cause dangerous health effects.

THE STATE FISH OF CALIFORNIA, the California golden trout, has not been found to qualify for endangered species protection. The U.S. Fish and Wildlife Service conducted a ten-year long study of conservation measures and scientific data, concluding that conservation efforts had already done much to protect the fish. Golden trout can be found in just 15 miles of streams in the Sierra Nevada region. In 2001, the conservation organization, Trout Unlimited, filed a petition requesting the government list the trout as endangered, but now says that the collaborative efforts to protect the fish are encouraging. Still controversial are four grazing allotments in Golden Trout Wilderness, which activists contend threaten the existence of the fish from livestock grazing. Two have been cow-free since 2001 when federal land managers enacted a ten-year "rest" to rehabilitate the trout. When those provisions expire and the cows return, some believe trout will need more protection.

THE PLACER COUNTY Local Agency Formation Commission unanimously authorized the city of Roseville to annex 3,800 acres west, into the Sierra Vista and Reasons Farms neighborhoods. The city is expected to develop those areas over the next 30 years to include retail space, housing units, and room for an anticipated 30,000 new residents. Roseville has been expanding rapidly, and analysts expect the built capacity to be reached in seven years. Most of the land in the annexation package has long been in Roseville's sphere of influence, and had been expected to be absorbed by the city. Negotiations for such an annexation have been in the works for many years, but stalled. This year, the city of Roseville and Placer County agreed how to split the tax revenue from the developments, and that breakthrough has sped up the annexation proposal considerably. According to the tax agreement, Placer County will receive 18.25 percent of property taxes and at least 11.5 percent of sales taxes from the future revenue in the annexed areas.

THE RIVERSIDE COUNTY Board of Supervisors has voted to extend a moratorium on building residential units in the Santa Rosa Plateau. This is the third temporary ban on residential construction in the area, intended as a stop-gap measure until the county planning commissioners are able to outline formal zoning laws. The board first approved a ban in November 2010, and then renewed it for ten months last December. Property owners in the area – west of Murrieta and Temecula – have opposed the ban, vocalizing anger at their uncertainty of what they are allowed to do to their land and when. The county lacks any zoning laws for the area, though has proposed codes on lots of ten acres or more. As they approved the new ban, county supervisors urged the planning commission to formalize the proposed regulations by January.

A POPULAR LOS ANGELES EVENT that shuts down ten miles of streets to cars and vehicles to encourage walking and bicycling is looking to expand to other cities. With obesity on the rise and financially-strapped households unable to budget for gym memberships, CicLAvia looks to provide better accessibility to free and safe exercise. Los Angeles County's Department of Health is facilitating meetings between CicLAvia organizers and officials from six other cities in the county, including South Gate and Huntington Park, to help hold CicLAvias in those places. CicLAvia, which is inspired by the weekly Ciclovia in Colombia, has been held three times in Los Angeles since October 2010. Before the first event, many doubted the draw of CicLAvia in such a car-centric city as Los Angeles, but the city invested in it anyway. The last CicLAvia had more than 100,000 participants, both pedestrian and cyclists, causing city officials to renew their support to the tune of $200,000 more. ■

legal digest

Failure to Disclose Assessment Basis Dooms Special District Vote

Presence of city-owned parcels unfairly skewed vote for assessment district

BY WILLIAM W. ABBOTT

Recent polls suggest that Proposition 13 remains as popular today as when it was enacted. Yet, at the same time, residents demand a high level of services which exceed the ability of local officials to fund absent innovation in developing new funding strategies. This innovation in turn has generated a series of voter-enacted limitations designed to further restrict new revenue measures, absent voter approval. Part of this voter legacy is Proposition 218, enacted in 1996 (California Constitution Art XIIID).

The most recent 218 decision involves an assessment levied by the City of San Diego, a charter city. The purpose of the assessment was to provide revenue for additional services provided by the city in the Golden Hill area, located within the San Diego city limits. In 2006, the Greater Golden Hill Community Development Corporation undertook a survey of local property owners for the purpose of forming a maintenance assessment district. Based upon the survey results, the city retained an engineering company for purposes of preparing an engineer's report. The report is required under the Streets and Highways code as well as Proposition 218.

The engineer's report allocated special benefits based upon a formula which was weighted 75% towards land use intensity (using single-family use). In July 2007, the City Council conducted a public hearing on the formation of the district for the purposes of considering the weighted voting, conducted by ballot. Of the 1,182 ballots received, 635 were in favor and 547 were opposed. When factored for weighted voting, the votes were $123,266.56 in favor and $105,236.16 opposed. Based upon this tabulation, the City Council ordered the district formed and confirmed the assessments, totaling $488,890 for 2007-2008. The services to be provided by the district included debris and litter removal, enhanced litter containers, sidewalk sweeping, sidewalk power washing, trash removal, landscaping services, graffiti removal and trail and canyon beautification.

The Golden Hills Neighborhood Association, as well as an individual, then filed suit to challenge both the district formation and the assessment levy. This suit was combined with a subsequent suit filed to challenge the assessments in the following year. The trial court granted relief for the opponents on one theory.

On appeal, the appellate court addressed three issues of importance: 1) must the assessing agency disclose the basis by which public properties are assessed (in the event that assessments against public properties are potentially over assessed, materially influencing the tabulation of assessments)?; 2) is exclusion of the challenged public assessments appropriate?; and 3) what is the burden of the agency to demonstrate segregation of general from special benefits?

In this case, the city owned 95 parcels, and included assessments for all of these parcels. The majority of these parcels were open space. The engineer's report did not provide any substantiation as to how assessments were spread to the public agency parcels, and how these parcels received special benefits. The court noted that paying the assessments was an insufficient justification as to the basis for the assessments.

In circumstances in which the numbers of votes cast by the agency was critical to the formation of the district, such information had to be disclosed. The mathematics of the vote was such that the risk existed that the agency may be tempted to use nondisclosure as an indirect means of influencing the assessment formation vote. Such practices would not comport with the recognized purposes behind Proposition 218. As the engineering study lacked sufficient justification, the appellate court concluded that it was appropriate to zero out the value of the agency votes. This resulted in an insufficient number of votes cast in favor of the assessment district formation, and as a remedy, dissolving the district was an appropriate remedy.

The court also went on to address the burden to establish the segregation of general from special benefits. On these facts, the appellate court found that there engineer's report concluded that the general benefits were minimal, and were assigned a zero value. This as error in the opinion of the appellate court as 218 still required that minimal general benefits be valued and excluded. In addition, the appellate court concurred in the analysis found in *Buetz v. County of Riverside* (2010) 184 Cal.App 4th 1516, which sets forth a detailed critique of the disciplined steps to be followed in separating general and special benefits for parks. Such justification was also found lacking in the engineer's study for Golden Hills. ■

William W. Abbott is a partner in the firm of Abbott & Kindermann, LLP, of Sacramento.

➤ **The Case:**
Golden Hills Neighborhood Association, Inc. v. City of San Diego No.D057004 _____, 2011 DJDAR. Filed September 22, 2011. Ordered published September 22, 2011.

The Attorneys:
Charles R. Khoury, Jr., and Gloria Sharkey for Plaintiffs and Appellants.

Jan I. Goldsmith, City Attorney, and Carmen A. Brock, Deputy City Attorney, for Defendant and Appellant.

Ninth Circuit Upholds Legality of Timber Harvesting Project

State, environmental groups sue over 2004 forest plan

BY GLEN C. HANSEN

The United States Forest Service established management guidelines under the 2004 Sierra Nevada Forest Plan Amendment that govern 11.5 million acres of federal land in the Sierra Nevada region. A coalition of environmental groups and the State of California filed separate actions challenging the 2004 Framework under the National Environmental Policy Act (NEPA), and the environmental groups – including the Center for Biological Diversity, the Sierra Club, and Sierra Forest Legacy – also challenged the 2004 Framework under the National Forest Management Act (NFMA). The parties cross-moved for summary judgment.

The U.S. District Court (a) issued a summary judgment that was largely unfavorable to the plaintiffs; (b) issued a limited remedial order in favor of plaintiffs that required the Forest Service to prepare a supplemental environmental impact statement to remedy a NEPA error; and (c) denied plaintiffs' request to enjoin implementation of the 2004 Framework in the interim.

In a variety of separate opinions, a three-judge panel of the United States Court of Appeals for the Ninth Circuit issued the following four holdings on plaintiffs' claims:

First, the U.S. District Court correctly found that the supplemental environmental impact statement (SEIS) conducted by the Forest Service for the 2004 Framework complied with NEPA. The SEIS adequately addressed short-term impacts of the 2004 Framework to old forest wildlife and adequately disclosed and rebutted expert opposition regarding those impacts.

Second, the District Court correctly found that that the Basin Project – a timber harvesting project approved under the 2004 Framework – complied with NEPA because the Forest Service adequately addressed the cumulative impacts of the Basin Project to sensitive species.

> The District Court correctly found that the Basin Project...complied with NEPA because the Forest Service adequately addressed the cumulative impacts of the Basin Project to sensitive species.

Third, the District Court properly found that the Forest Service violated NEPA by failing to update the alternatives from the supplemental environmental impact statement under the 2001 Sierra Nevada Forest Plan Amendment to reflect the new modeling techniques used in the final SEIS for the 2004 Framework. However, the court held that the District Court erred in granting a limited remedy that gave undue deference to government experts. The Court of Appeal remanded for reconsideration of the equities of the substantive injunction without giving undue deference to government experts.

Fourth, the District Court erred in granting summary judgment for the Forest Service on the plaintiffs' two claims under NFMA. As to the first claim under NFMA, the District Court improperly applied a 2007 amendment, retroactively, to the 2004 Framework's management indicator species monitoring requirements, where Congress did not expressly provide for such retroactive application.

As to the second claim under NFMA, which facially challenged the 2004 Framework's maintenance of species viability, the Court held that the claim was not ripe for review until after the District Court decided whether the Basin Project's approval complied with the 2004 Framework' population monitoring requirements, as those requirements existed at the time the Basin Project was approved, which was prior to the 2007 Amendment. Thus, the Court remanded the NFMA claims for further consideration. ■

Glen C. Hansen is an attorney in the firm of Abbott & Kindermann, LLP, of Sacramento.

➤ **The Case:**
Sierra Forest Legacy v. Sherman (9th Cir. 2011) 646 F.3d 1161

Redevelopment Agencies' Worst Nightmare Discussed before Supreme Court

BY BILL FULTON & JOSH STEPHENS

After the Nov. 10 California Supreme Court oral argument in *California Redevelopment Association vs. Matosantos* – the lawsuit challenging the state's new pay-ransom-or-die redevelopment system – it's still hard to tell where the court will go. But the biggest question that emerged was: What happens it the court upholds AB 1x 26, which abolishes redevelopment, but strikes down AB 1x 27, which permits redevelopment agencies to continue to exist if they pay a "remittance" to the state?

Apparently it's a plausible scenario given the nature of Proposition 22, the successful 2010 initiative that sought to protect redevelopment funds from being raided by the state. AB 1x 26 might survive a constitutional challenge on the theory that, while Prop. 22 amended the constitution to prohibit raids, it didn't explicitly protect redevelopment itself, meaning redevelopment agencies can be killed by statute. However, because AB 1x 27 calls for "remittances" to the state, that could be interpreted violating Prop. 22.

The net effect of upholding AB 1x 26 and striking down AB 1x 27, of course, would be to kill redevelopment completely – a worse outcome than the redevelopment agencies got from the Legislature and the governor.

The state's lawyer, Deputy Attorney General Ross Moody, obviously would prefer that both laws be upheld. Steven Mayer of San Francisco's Howard, Rice law firm – representing the California Redevelopment Association and the League of California Cities – said AB 1x 26 "is the whole ballgame to my clients". Meanwhile, James Williams of the Santa Clara County Counsel's office argued passionately to uphold AB 1x 26 and strike down AB 1x 27.

All three lawyers were pepped with questions during the 70-minute oral argument. Much of the questioning had to do with whether or not the remittances were truly voluntary and whether cities had any options for paying the remittance other than using tax-increment funding. AB 1x 27 could fall if the court found that the remittances are not voluntary and/or that the cities must use tax-increment funding to pay them – which would appear to be a violation of Proposition 22.

Moody argued that, in a facial challenge, the court had no choice but to accept the "voluntary" contribution idea at face value.

"It's hard to argue it's a voluntary payment," Justice Carol Corrigan said.

"Everybody gets paid," Moody responded. "Is that so bad?"

"It is if you want to keep doing redevelopment," Corrigan said. "That's a facile argument – they get to continue to exist just as long as they are wrapping things up."

Moody called the remittance program not a ransom but, rather, "a legislative offer to participate in a program." Not even all of the justices appeared to take that one seriously. "We're from the government and we're here to help you?" Justice Kathryn Werdegar gently mocked.

And a lot of the questioning focused on whether cities would any alternative in paying the remittances other than using tax-increment funding. Moody, of course, argued that it was entirely possible – and, in fact, heartily agreed with Chief Justice Cantil-Sakauye asked whether cities could pass a tax increase to pay the remittances.

Mayer, on the other hand, basically argued that most cities have no other source of funds, so the practical reality is that they will have to use tax-increment financing to pay the remittances, possibly in violation of Prop. 22.

Williams from Santa Clara County made a passionate pitch that AB 1x 27 is unconstitutional. That's not surprising considering the pickle the county is in. The San Jose Redevelopment Agency – once of the richest and most powerful agencies in the state – does not appear to have the money to pay the remittance; but if San Jose can figure out how to do so, the county will be out an enormous amount of money.

Mayer spent his final presentation responding to Williams and making what appeared to be circuitous arguments about why the two laws could not be severed – even though there is a severability clause in the language. Mayer noted at one point that, regardless of the statute, "The Legislature designed 27 because they wanted agencies to op-in....the Legislature did not intend to end redevelopment."

The court is expected to rule by mid-January, when the first installment of the remittance payments is due. ■

>>> Developers' Losses Can Be Land Trusts' Gains

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mouth of the Russian River.

Others have suffered decreases in donations and bureaucratic impediments.

In the Bay Area, where land prices have scarcely dropped, the economic situation has "drastically reduced (the) ability to secure land," according to Craige Edgerton, executive director of the Silicon Valley Land Conservancy. Edgerton said that his organization missed out on the chance to purchase 500 acres for $1.9 million when the state, amid its own budget troubles, put a temporary freeze on the disbursement of bond funds that had already been granted to the organization.

Though they are independent organizations, many land trusts effectively act as conduits for state-sponsored conservation activities. Trusts identify properties with significant ecological resources and willing sellers but often fund the purchase of title or easements with state funds that are earmarked for conservation.

The most robust source of funding in recent years have been bonds issued under Proposition 84, the 2006 voter initiative that approved the sale of $5.8 billion in bonds for a variety of purposes related to drinking water, flood control, and conservation. Just under $1 billion in uncommitted funds remain.

The most robust source of funding in recent years have been bonds issued under Proposition 84, the 2006 voter initiative that approved the sale of $5.8 billion in bonds for a variety of purposes. Just under $1 billion in uncommitted funds remain.

The continued availability of those funds has, in some ways, put land trusts in their own economic time warp. "Because of the number of bond acts that were passed over the last 5-10 years, there's been a carryover of funding," said Hardy.

Though land trusts are well aware that this pool of money will dry up when the final round of funding is disbursed, many have tried to take advantage of the funds and the deals that have come available over the past few years.

Karen Ferrell-Ingram, executive director of the Eastern Sierra Land Trust said that the "vast majority" of funding for the 4,000 acres her group acquired has come from either Prop. 84 or Prop. 50 funds, much of it disbursed through the newly created Sierra Nevada Conservancy. Prop. 50 is the $3.4 billion clean water bond passed in 2002. Nonetheless, Ferrell-Ingram said that 5,000-15,000 acres of "high-value resources" remain to be preserved in her region, which is centered on the town of Bishop.

Some of land trusts' most fortuitous acquisitions have come at the expense of would-be developers on the urban fringe. Investors who bought land before the real estate bubble burst have had to unload it at a discount. Those discounts have been 10-15% off peak prices, according to Paul Hardy, executive director of the Feather River Land Trust. That's compared to 60% drops in residential and commercial prices in his area in Plumas County, Hardy said.

"There was a combination of developers and holding companies and real estate investors buying these large ranch properties, many of them rapidly proceeding with entitlements and zoning and subdivision permits," said Hardy. "When the bubble burst there wasn't a market for those kinds of subdivisions."

"We've picked up ranches that were slated for development into everything from suburban-type housing, or the large trophy, second-home hobby ranch types of opportunities," said Yandell.

Hardy even said that some investors have approached him trying to unload their properties. "It's kind of created this super-demand and super-level of interest in working with us," said Hardy. "We used to do a lot of landowner outreach – and now we're doing donor discouragement."

Across the state, however, opposing forces are acting, on the one hand, to create a buyers market for land trusts but, on the other hand, to limit the availability of properties.

Would-be developers who bought rural land, and are carrying debt on it, likely have neither desire nor expertise to put it to agricultural use and therefore may be willing to unload it on to land trusts for a relative bargain.

By contrast, the prospect of building exurban mini-mansions may not be nearly as enticing as that of using rural land for old-fashioned agriculture. Many working farms and ranches show no signs of coming on to the market because, in this economic climate, those activities have remained profitable. And owners who have been in business for years have nearly zero incentive to get out, particularly because grain and beef are currently fetching relatively high prices.

"Many of the ranchers are not overburdened with debt, so they don't have the liquidity needs," said George Yandell. "They're not in a rush to sell….they're making good money."

Those landowners are, in essence, unfazed by market conditions and are likely to sell land only according to their personal inclinations or family situation.

"Probably the main thing that has changed is that there's not as many potential parties that are interested in selling," said Darla Guenzler, executive director of the California Council of Land Trusts.

Land prices would likely be lower except that trusts purchase land according to appraised development value, and those values still persist even if no one actually intends to develop the land.

When those properties do come up, however, they often lead to a scramble. When trusts have funding on-hand, they can jump at those opportunities – or be sorely disappointed.

"It's not just where you can pick and say, let's get this in 2012, 2013," said Ralph Benson, executive director of the Sonoma Land Trust. "It's all of a sudden there's a death in a family and a really critical property comes on the market….and you either respond or you're really not in the game."

The game, however, is set to change drastically for everyone.

When Prop. 84 funds run out in 2013 – without any indication of another bond measure on the horizon – it will be the first time in recent memory that land trusts have not been able to draw from a dedicated pot of state funds. Guenzler said that state capital has been available consistently since 2000.

"California has such a history of having periodically renewed sources of capital so up

– CONTINUED ON PAGE 8

>>> Proposition 84 Funds Will Run Out in 2013

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until now it's been fairly constant," said Benson. "We'll miss opportunities. It's hard to say what they are, but I'm sure it'll be a setback and there will be some things that are just irreversible."

Land trust administrators say that a combination of strategic planning for acquisitions and diversified funding sources will be essential for them to ensure that they minimize those irreversible losses. Many trusts say they will rely more heavily on donations, which have remained consistent for many of them.

"It seems like there are people recently fed up with government," said Hardy. "My own perception is there could be a broader trend and that people are feeling like taking direct action. One way the can take direct action is voting with the dollars for things they care about."

In order to stretch those dollars as far as possible, land trusts may become increasingly picky about the properties that they try to acquire.

It has to have some value to our mission: biodiversity, threatened, and of a critical size or adjacent to something making it meaningful," said Yandell. "We have to find those critical projects that are going to make a difference in those large environmental problems that we're facing in California."

Though Guenzler noted that donations have been down at many land trusts, overall she said that Californians are likely to continue supporting the work of land trusts.

"Californians love land," said Guenzler. "They love parks and open spaces… there may be changes and the change in pace in the coming years, but Californians are pretty dedicated to seeing land protected."

Notwithstanding that rosy prediction, Leahy, of the Division of Land Resources, said that the organizations that are facing this future – however uncertain it may be – are far more stable and mature than they were before the current 11-year wave of state funding began.

"Fifteen years ago there were land trusts, but they were more like coffee klatches," said Leahy. "Now we have some very professional land trusts throughout the state and they have become part of the planning process in many areas."

In the absence of state funding, Leahy said that local jurisdictions must make conservation a formal part of their planning and permitting process.

"These farmland easements are valuable planning tools for lots of reasons: open space, food, buffers," said Leahy. Leahy suggested that all counties should consider programs, such as one in Stanislaus County, by which developers who build on farmland are required to pay for the preservation of farmland elsewhere in the jurisdiction.

He also said that the implementation of Senate Bill 375, the regional planning law that requires the creation of Sustainable Communities Strategies, may have implications even for rural land conservation.

"SB 375 is basically trying to get to a land ethic," said Leahy. "And that's what we're about. We're trying to figure out how we instill in the local planners and supervisors an understanding that some land is more valuable as developed land and some land is more valuable as working land." ■

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>>> SB 226 Provides Welcome Relief to Infill Developers

– CONTINUED FROM PAGE 1

Brown, though an ardent defender of the environment, has always promoted a slightly different view of CEQA than other environmentalists. As mayor of Oakland, he pushed through a strong infill exemption that applied only to certain locations in Oakland. And even before taking office, he placed a high priority on CEQA reform for infill projects and small-scale rooftop solar. SB 226 moves the ball forward on infill and rooftop solar both.

On the infill front, SB 226 contains two important provisions.

First, it greatly limits CEQA review of infill projects under certain circumstances – and those circumstances are much broader than under the previous infill exemption.

Second, it prohibits a finding of significance on greenhouse-gas emissions from overriding any categorical exemption under CEQA. Dealing with GHG emissions are part-and-parcel of CEQA analysis these days – thanks in large part to the actions of Jerry Brown when he was attorney general – so this is no small matter.

SB 226 also creates a statutory exemption for rooftop solar facilities on industrial and commercial facilities and, under some circumstances, parking lots and parking garages as well.

The absence of a strong alternative CEQA process for infill development has been frustrating to planners and developers for many reasons – but the main one has simply been that neighbors and other project opponents can use CEQA's many procedures to slow down

– CONTINUED ON PAGE 9

>>> SB 226 Needs Clear Guidelines

– CONTINUED FROM PAGE 8

or even stop a worthy infill project. NIMBYs have used the greenhouse gas issue extensively to slow projects down. Traffic is almost always an issue under CEQA, and of course an infill project is likely to have localized traffic impacts. And project alternatives may well include either sites or densities that would kill the project.

All of these stall tactics, of course, depend on the idea that even a worthy infill project must be judged on its own merits. There is no mechanism in CEQA for determining whether the environmental impact of an infill project would be less than a project of equivalent size in some greenfield location – an analysis that would almost always make the infill project look good rather than bad.

The new infill rules – contained in a new Section 21094.5 of CEQA – contain several provisions that should help infill projects in the CEQA process.

First, the new law says that if an infill project was covered by a programmatic environmental impact report – for a General Plan Update or a Specific Plan, for example, subsequent CEQA review is limited only to (a) effects specific to the project of its site; or to (b) "substantial new information" that suggests the project's effects will be more significant than the prior EIR suggested.

Second, CEQA review would not be required at all if (a) the previous EIR did not consider the project's likely effect to be significant; or (b) the lead agency finds that development policies and standards previously adopted – which apply uniformly to this project and others – will substantially mitigate the impacts identified in the previous EIR.

And third, even if an EIR is required for an infill project, that EIR would not need to consider growth-inducing impacts and would not require the alternatives analysis to deal with alternative locations, densities, and building intensities.

When you add it all up, these are pretty significant changes. If you did a plan-level EIR and incorporated mitigation measures into the development standards that implement the plan, your infill project is exempt. If analysis is needed, it's limited to new information or the project's site only. And even if you have to do an EIR, you're freed up from doing two significant back-of-the-book analyses that have the potential to shoot down a project – growth inducement and lower densities.

Now that the bill has been signed, the action moves to the Governor's Office of Planning & Research, which is charged in the law with revising the CEQA Guidelines to implement the infill exemption. (CEQA Guidelines are ultimately issued by the Natural Resources Agency, but OPR must write the actual Guidelines amendments.)

More than in most administrations, OPR is heavily loaded with lawyers these days – partly because Brown bought over an assistant from the Attorney General's Office, Ken Alex, to run OPR and partly because legalistic CEQA reform was a high priority. So it will be interesting to see whether OPR's new Guidelines actually help simplify environmental review of infill projects or whether the involvement of so many lawyers makes the infill exemption/streamlining more complicated. (Another question is how much effort OPR will put into the infill reform as opposed to the rooftop solar exemption, considering that streamlining permitting processes for renewable energy is Alex's top priority.)

And, of course, it remains to be seen whether cities and counties will actually use the truncated review in a meaningful way. As is so often the case with CEQA, that will depend on the jurisdiction's underlying philosophy toward growth. If a jurisdiction is pro-infill, this will help; if a jurisdiction is anti-growth, they'll likely find a way around this.

One thing is for sure, however: SB 226 is a lot more powerful than the previous CEQA exemption – and more powerful than the exemption contained in SB 375, which exempts projects compliant with Sustainable Communities Strategies – but which also must meet a laundry list of other requirements. The history of CEQA reform is more like 375 than 226 – with environmental lobbyists in Sacramento circumscribing exemptions and streamlining very carefully so that they usually don't make much difference. With Jerry Brown, however, CEQA has reached its Nixon-goes-to-China moment, and the broad and simple nature of SB 226 may be far more important than the exemptions that have come before. ■

What the Public Is Thinking

The outreach process that developers and planners often undergo has always struck me as less a negotiation and more like a perverse game of Marco Polo. Planners and stakeholders chase each other blindly, never quite knowing where each other are and rarely knowing what to do if one actually catches up with the other. It goes something like this:

"Setbacks?" "10 feet!"

"FAR?" "2.5!"

"Height limit?" "40 feet!"

"Parking...?" Don't get me started.

This process often devolves into the lamest sort of entrenchment, where even if the stakes are trifling, neither side is willing to admit that they have common ground and common interest. Wouldn't it be nice if planners understood what stakeholders wanted before they tried to go to bat for their projects? The first thing they need to know is that everyone hates their project. Once they know that, everything else gets a little easier.

At last month's Urban Last Institute Fall Meeting in Los Angeles, I attended a panel ostensibly about how developers can contribute to urban design. It was really about how developers and planners can tame the beast known as the public.

The panel was framed around some compelling survey data collected by Saint Consulting and presented by Saint VP Jay Vincent, who delicately referred to American cities as "opposition-rich environments." According to Vincent, the 2010 "Saint Index" found the following:

➤ In recent years, opposition to all types of development is down. However, 74% of respondents still said that they would not support any new development in their own communities and only 24% said that their community needs new development.

➤ The most strongly opposed types of development include, not suprisingly, landfills, casinos, quarrys, power plants, and large malls.

➤ The most favored are single-family homes and groceries, with 87% and 74% support, respectively.

➤ The demographic group most likely to oppose new development is older, college-educated liberals who earn more than $100,000 per year.

➤ Supporters of new development are more likely to be ages 21-35, educated, and less wealthy – and therefore less likely to spend time or money opposing a poject.

➤ The group most likely to support new development is the Tea Party: 77% of self-identified Tea Party members leaned towards support of new projects.

➤ Key reasons for opposition to a project are protecting community character (23%), protecting the environment (22%) and protecting the value of a home or real estate (16%). Other reasons for opposition include fear of too much new traffic (13%) and that the project is too close to the person's home (13%).

The good news for planners, however, is that the survey showed that when stakeholders are educated about the positive impacts of a project, they are more likely to support the project. This seems like the biggest no-brainer of all time, but I doubt that planners abide by this advice as often as they should. Planners can get so bogged down in the minutiae of a project that they neglect to remind stakeholders that a project – new stories, more jobs, more attractive environment, more neighborhood amenities, and all the rest – is not merely a money-making engine for developers.

> ... The public is very suspicious of the relationship between planners and developers.

If developers think about the benefits that they can confer on stakeholders, then American cities might get fewer timid projects and watered-down compromises. To that end, Vincent recommends that developers and planners not hang back and wait for community opposition to boil over, as it inevitably will. Instead, he recommends that developers present their projects early and often. Once angry neighbors show up, then developers have "lost first-mover status and are on defense," said Vincent.

So, what do public sector planners do with all of this information? In some cases, they may have to lay low, because the public is very suspicious of the relationship between planners and developers. 51% believe that the "planning environment" is fair to poor and assume that there is an "unfair relationship" between the public sector and developers. Here, too, Vincent recommends that planners be proactive. "The days when a (public official) can just show up for a ribbon cutting are gone," he said. Instead, they need to get out into the community and participate in charettes and other collaborative planning activities.

Then maybe we'll get something that resembles less a zero-sum game – be it Maro Polo, chess, or Risk – and looks more like democracy.

– JOSH STEPHENS | NOVEMBER 19, 2011

Lodi Tea Party Activists Hate Smart Growth, Money

Probably too much has been written about the Tea Party movement already – which may be emerging as a distinctive voice in land use politics (see *CP&DR* Vol. 26, No. 15 August 2011 [ ]) – but sometimes the urge to comment is irresistible.

In a few short years the Tea Party movement has already proven itself as much a celebration of negativity as it is a political movement, no more so than when it dabbles in land use policy. The latest comes from Lodi, where Tea Party activists last month convinced the city council to delay the acceptance of a $120,000 federal grant to help it implement SB 375. That's right: the Tea Party hates Washington so much that it won't accept its money, even when that money is free.

Why would they do such a thing? Because they do not want Lodi to come under the sway of nefarious undemocratic powers.

Somehow the ghosts of Hamilton, Adams, Franklin, and Hancock have convinced Tea Party activists that SB 375 – and seemingly all other manifestations of smart growth – is a tentacle of the United Nations' "Agenda 21." I have to hand it to the Tea Party for a moment. "Agenda 21" does sounds menacing. What it really should be called is "Some nice things that countries and cities can do to ensure that they don't starve to death, exhaust their energy supplies, or fall into the ocean – but only if they want to."

Be that as it may, the Tea Party seems to be confusing "conspiracy" with "something that's just a good idea." There are lot of good ideas floating around out there. If the U.N. were to say, promote nutrition, women's rights, education, and democracy, should we reject those things too? Oh yeah, it does.

I'd say that this kerfuffle about smart growth is the opposite of a conspiracy. The last time I checked, the road to global domination did not being in Lodi. Crying about the UN is like praying that you'll sink the next putt. Jesus doesn't care about your golf score, and, well, I think it's safe to say that the UN cares even less about Lodi.

If the creation of compact cities is really a conspiracy, then we can find its influence in slightly less obscure places. Maybe, New York, Tokyo, and London, for starters.

We can certainly debate the merits of smart growth. In fact, we can debate the merits of SB 375. In fact, it would be a lousy piece of conspiracy mainly because many people think that it's not strong enough. Rather than force residents into urban high rises, it calls for 8% reductions in per capita greenhouse gas emissions. Eight percent means carpooling to the stock car races instead of driving in a caravan.

Back to that $120,000. These funds aren't just for Lodi to conduct a grand experiment on an unwitting population. It's to fulfill a state mandate to implement SB 375, which assumes that managed growth is probably better than haphazard growth. That means that it's going to have to spend the money one way or another – and if Lodi is like the rest of the cities in California, then it doesn't have the money.

The California Tea Party's website at www.calteaparty.com.

The reason it has to spend it is that a few years ago something called the democratic process wrapped its icy fingers around the State of California and caused the passage of SB 375. That process included open debates and votes by legislators (of both parties) and approval of the dude who was then the state's Republican governor.

But it's no wonder that none of this fazes the Tea Party. The website of the California Tea Party Patriots still features that same governor on its website. It even urges citizens to "tea bag" him. I hate to break it to the Patriots, but Arnold is no longer in office. And has almost certainly been tea-bagged already.

And if they don't know what that means, well, they probably can't figure out what smart growth is either.

– JOSH STEPHENS | NOVEMBER 11, 2011