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CALIFORNIA PLANNING & DEVELOPMENT REPORT



# Supreme Court Ruling Sends Redevelopment Community into Frenzy

BY JOSH STEPHENS

**FOURTEEN MONTHS AGO**, California’s redevelopment agencies scored what seemed then like a victory for the ages: the passage of Proposition 22, which guaranteed seemingly permanent protection of tax increment funding. Since then, nearly everything that could have gone wrong for the state’s redevelopment agencies, has gone wrong. A year-long battle against Gov. Jerry Brown’s plan to dissolve agencies and liberate their collective tax increment ended Dec. 29 with a Supreme Court ruling – upholding Assembly Bill X1 26 and striking down AB X1 27 – that gives the governor everything he sought.

Unless the Legislature intervenes, the court ruling calls for the process of dissolving the state’s nearly 400 redevelopment agencies to begin Feb. 1.

Redevelopment agencies had hoped for a victory or at least the chance to make voluntary remittances. Instead the ruling is like a pre-emptive, statewide earthquake, pulverizing projects that were supposed to revital-

ize blighted areas for decades to come. Of course, the value of local redevelopment has long been disputed, with critics contending that agencies often squander their tax increments on unworthy, and even absurd, projects. For his part, Gov. Jerry Brown hailed the ruling as a “validation” of his strategy to try to balance the state budget. But he said nothing about the efficacy of the institution, which has been a part of California’s urban landscape since 1954.

Cities across the state are now in clean-up mode. They are not sifting through rubble but rather combing through their books, to prepare for their dissolution, the liquidation of their assets, and for the complex job of validating and funding outstanding obligations. As successor agencies take over RDAs’ assets, they will be inheriting portfolios and obligations worth billions of dollars. Meanwhile, though the state coffers will be an

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## Redevelopment Will Be Back – But at What Price?

*insight*  
WILLIAM FULTON

**THE CALIFORNIA SUPREME COURT** killed redevelopment Dec. 29, but that doesn’t mean it’s dead.

At first glance it would seem as though redevelopment agencies have no bargaining power at all. After all, it’s hard to imagine a weaker position than a state Supreme Court ruling saying you don’t exist.

But don’t forget the most important point about the redevelopment battle: It’s not about redevelopment. It’s about money. And if all sides in Sacramento can resolve the money issue, the legal status of redevelopment will be practically irrelevant. There is every reason to believe a deal will be struck. It’s just not the

deal that the California Redevelopment Association and League of Cities were hoping for when they filed suit four months ago.

So the court’s ruling is likely only an interim step. Both sides will likely be back in the Legislature within a matter of days to try to work out a deal that keeps redevelopment in some form, but transfers a couple of billion dollars of property tax revenue to the state.

In the meantime, however, California’s \$6 billion redevelopment system has been thrown into uncertainty. Technically, at least, no redevelopment agencies exist

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COMPILED BY CP&DR STAFF

**SEVEN PRIVATE PARCELS OF LAND** have been purchased in Sierra County for a total of almost \$7 million. The acquisitions, which have taken place over the course of several years, are the result of a partnership between the Sierra County Land Trust and The Trust for Public Land to save the land from private development. The two land trusts raised grants from the Sierra Nevada Conservancy and others to acquire the Sierra Buttes and the surrounding land. \$5.6 million came from the Sierra Nevada Cascade Conservation Grant Program through the State of California Natural Resources Agency, the largest single grant the agency has ever given out. The Sierra Land Trust will now manage the land, and will leave it open to public recreation.

**THE PACIFIC FOREST** and Watershed Lands Stewardship Council has approved a 4,584-acre donation of mixed-conifer forestland to the University of California. The donation will more than double the university's capacity, and researchers will use the forestland to study how forests react to invasive species, increased fires, and climate change. With the donation coming in two parcels – 3,100 acres near the Pit River in Shasta County and 1,484 acres in the Lake Spaulding area of Nevada County – university researchers say they will be able to examine differences in forest areas across the state. Public and student access to the land will also be encouraged. Prior to this gift, the university owned 5,131 acres of forestland in various areas around the state.

**HEARST CORP. AND THE DEVELOPER FOREST CITY** have filed preliminary project plans to redevelop the San Francisco city block that houses both The Chronicle newspaper building and the former Examiner building. The Chronicle building, which is considered historic, would remain the same, but the Examiner building would be demolished. In total, four buildings on a four-acre site would be replaced by two high-rises and six smaller buildings containing a mixture of offices, housing, retail, and public plazas. Public review of the plan is expected to last two to three years, and construction to take ten. According to Forest City estimates, the process will employ 700 people each year of construction and create 5,000 permanent jobs once construction is complete. The 5M

plan, as it is being called, is already facing some criticism for its potential gentrifying effect. The city block borders a low-income section of the South of Market neighborhood. Though the demolished properties do not currently have housing units, the new ones will – and those are planned to be sold, rented, or leased at market value. Forest City stated that the fees incurred by building up the property will give the city more money to create affordable housing.

**IN NOVEMBER, SANTA MONICA** opened the largest bicycle parking facility in the United States. The space holds 350 bicycles and takes up 5,300 square feet. Only two other cities in the country have bicycle stations that come close to this capacity – Washington, D.C. and Chicago – and those cities are far behind. The nation's capital city has a facility with spaces for over 100 bikes, and the Windy City's McDonald's bicycle station holds 300 bikes. Santa Monica's station cost \$2 million to build, \$1.5 million of which came from the Los Angeles County Metropolitan Transportation Authority.

**THE FRESNO COUNTY BOARD OF SUPERVISORS** approved a small solar plant that could set a major precedent. The 20-acre, 2.5 megawatt plant was approved, on a 5-0 vote, for land that is currently zoned as prime farmland. The board previously had been hesitant to approve the change of use but reversed its course, voting to remove the land from Williamson Act protection. Supervisor Henry Perea said that the move represents the county's foray into the potentially lucrative solar business.

**THE CITY OF LOMITA** is undergoing a federal investigation into its decision to deny an application to expand the Islamic Center of the Bay. The U.S. Department of Justice opened this investigation to examine whether anti-Muslim sentiments influenced the city council's unanimous 4-0 decision from March 2010. At the time, the Lomita City Council cited increased traffic and neighbors' concerns as reasons for the rejection, despite a study conducted by city staff indicating that traffic would remain at the same level. The Lomita Muslim community bought a parcel of land for a reserved for a worship center on Walnut Street. Since that time, the community also pur-

chased several pieces of the surrounding land, and nine separate structures have been built on the property for prayer and services. With the current set-up, worshipers at the center must walk up to 500 yards to access the different structures. The expansion plan would consolidate all of the buildings into a single, two-story building.

**AN ENVIRONMENTAL GROUP IN SAN FRANCISCO** has filed a second appeal against the America's Cup, effectively freezing all construction on that project and the James R. Herman Cruise Terminal. The appeal states that the environmental impact report did not adequately address concerns about water pollution, air pollution, and diesel fuel that the project might leak into Aquatic Park. A first appeal was filed by a team of four environmental groups: the Telegraph Hill Dwellers, the Golden Gate Audubon Society, Waterfront Watch and San Francisco Tomorrow. The most recent appeal was filed by the San Francisco chapter of the Sierra Club, and has pushed the hearing before the Board of Supervisors to January 24.

**THE CITY OF LAGUNA NIGUEL** has approved the Gateway Specific Plan, a transit-oriented plan that allows the development of up to 2,994 housing units on what was a light industrial site. The plan is geared towards the city's Metrolink station and is considered by city officials to be a crucial gesture towards urban vibrancy in a city dominated by single-family homes. Previous versions of the plan update included less housing.

**LANKFORD & ASSOCIATES** has been hand-picked to develop what is being termed the "Upper East Village" of downtown San Diego. The \$1-billion project, which the developers hopes will attract small start-up design firms, could potentially produce 2.9 million square feet of new residences, retail space, hotels, and offices on five city blocks. Buildings on this property currently belong to Jerry Navarra, and are leased to over 20 wholesalers and warehouses on short-term leases. Mr. Navarra is the chairman of Jerome's Furniture, which had a retail outlet on the property for over 50 years. The site stretches 254,121 square feet on the city blocks south of City College, but an advisor

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of the project indicated that several adjacent property owners had expressed interest in joining in the project. Complications could arise due to a proposed \$950-million stadium for the Chargers to be built only a few blocks to the south, but that plan would need voter approval and redevelopment funding, which is threatened by the redevelopment shutdown.

**THE ORANGE COUNTY TRANSPORTATION** Corridor Agency has voted to conduct a feasibility study for a proposed extension of the 241 Toll Road. The road currently terminates in Rancho Santa Margarita but does not extend all the way to its originally intended intersection with Interstate 5 near Camp Pendleton. The agency had previously proposed closing that 16-mile gap with an extension that would have disrupted a state park and San Onofre State Beach. The Coastal Commission refused to approve that alignment. The new, \$3.9 million study will cover a shorter proposed segment that would terminate at Ortega Highway. The study will take approximately one year and, if it results in an alignment that gets approved, construction could begin as early as 2013, according to an agency spokesperson.

**THE WILDERNESS LAND TRUST** recently completed a complex corporate merger resulting in the donation of a 2,450-acre property in the Death Valley Wilderness Study Area to the Bureau of Land Management. The donation was made possible through a grant from the Resources Legacy Fund Foundation's Preserving Wild California Program and will help clear the way for the designation of the Death Valley Wilderness Area with the proposed passage of Senator Dianne Feinstein's sponsored Desert Protection Act. "This is one more step to protect California's pristine desert, another private donation to our great public lands. I want to thank the Kerckhoff family, the Resources Legacy Fund Foundation and the Wilderness Land Trust for their generosity. This donation falls within the boundaries of land to be permanently preserved by my California Desert Protection Act, which is currently pending before the Energy and Natural Resources Committee," Sen. Feinstein said in a statement.

**AFTER YEARS OF DISCUSSING** the possible removal of four dams along the Klamath River and restoration of segments of the river, Sen. Jeff Merkley (D-OR) and Congressman Mike Thomson (D-St. Helena) have introduced federal legislation that, for the first time, could move the project forward. The Klamath Basin Economic Restoration Act authorizes the implementation of the Klamath Basin Restoration Agreement (KBRA) and the Klamath Hydroelectric Settlement Agreement (KHSA), an agreement among a variety of agencies and Native American tribes that provides a framework for river restoration. The \$750 million

measure would restore salmon habitat and guarantee that river water would be available to local farmers. It would not pay for or authorize dam removal, but supporters see it as a crucial first step towards removal, which is expected to be a far more expensive project.

**LOS ANGELES WORLD AIRPORTS**, the public entity that runs LAX, has unveiled a proposal to develop land along the airport's northern edge. The Northside Plan Update envisions a mix of uses, including hotels, offices, open space, and retail, for a thin, 358-acre strip of land that straddles Westchester Parkway and abuts the airport's northern boundary. Development could total 1.5 million square feet and include 127 acres of open space. A previous plan, adopted in 1984, envisioned nearly three times as much development for the same property. The plan requires approval of LAWA commissioners, the Los Angeles City Council, and the FAA.

**A REPORT RECENTLY RELEASED** by PBR0 Conservation Science contends that if climate change proceeds as predicted, the San Francisco Bay will lose 93 percent of its saltwater marshes and tidal wetlands within 50-100 years. Scientists say that a predicted 5.4-foot rise in sea level will overwhelm the marshes, which serve as critical habitat for birds and provides a buffer against storm surges. Mud and sediment cannot accumulate quickly enough to keep up with such a dramatic rise in sea level. The report says that the marshes of the East Bay are most vulnerable and identifies low-lying areas where marshes could expand in advance of sea level rise.

**THE NOTORIOUSLY PARK-POOR** City of Los Angeles will be getting as many as 50 new parks over the next two years if a new program spearheaded by Mayor Antonio Villaraigosa goes forward according to plan. Villaraigosa envisions the creation of small pocket parks on vacant lots or lots on which derelict homes now sit. The city has already acquired ten sites for pilot projects, which are expected to cost between \$200,000 and \$700,000, excluding land costs. Funding is expected to come from a variety of sources, ranging from Prop. 84 funds to donations from foundations. Though Los Angeles has access to large wilderness areas and has over 15,000 acres of public parkland within city limits, critics have long contended that it lacks small, neighborhood-serving parks.

**CALIFORNIA'S HIGH-SPEED RAIL AUTHORITY** should not consider a proposed route for the high-speed train along I-5 in southern California and instead should study a proposed route through Palmdale, according to the recommendations of a study recently released by the Authority. The I-5 Conceptual Study concludes that the Antelope Valley corridor has fewer potential environmental impacts and greater connec-

tivity than the I-5 corridor. The Antelope Valley alignments were found to offer greater connectivity and accessibility to the fastest growing area of Los Angeles County. The alignments also provide greater opportunities for alignment variations through the mountains to avoid impacts to environmental resources. The high-speed train's impact on urbanized land and farmland conversion due to growth would also be less than those on the I-5 corridor.

**IN A MOVE** that may prove unnecessary when redevelopment agencies are disbanded statewide in February, Ventura County last month filed a lawsuit against the Simi Valley Redevelopment Agency. The county contends that the merger of three redevelopment project areas would cost the roughly \$60 million in lost property tax revenue over the expected 40-year lifespan of the merged project area. The county claims that the agency did not have sufficient findings of blight to warrant the merger. The city contends otherwise.

**AFTER RE-EVALUATING ROUTE OPTIONS** for the Central Valley to Los Angeles Basin segment of California's high speed rail system, the California's High-Speed Rail Authority's Board decided to continue to move forward with a proposed route through Palmdale. "After reviewing the study results and listening to comments from the communities, it's very clear that keeping the route in the Antelope Valley is the right decision," said Board Chair Thomas J. Umberg in a statement. "The excitement we have seen out of Palmdale and their commitment to promote a strong system is exactly the kind of partnership we appreciate as we work to develop this critical statewide project." The Authority recently re-examined the Central Valley to Los Angeles Basin segment, including a route along I-5 in Southern California that extends over the Grapevine. The Grapevine alignment was originally studied in the 2003-2005 Statewide Programmatic Environmental Review and did not advance because preliminary information suggested it could cost more than the Antelope Valley route. The announcement came at nearly the same time that CEO Roelof van Ark announced that he would step down from the embattled agency within too months; Umberg is stepping down as well and plans to leave in February.

**THE SUPERVISORS** of the City and County of San Francisco have given the green light to a \$550 million expansion of the San Francisco Museum of Modern Art, located near the city's financial district. The Planning Commission had approved the 230,000 square foot expansion in November, but the nearby W Hotel had filed an appeal on the grounds that the expansion's EIR did not sufficiently account for traffic impacts. Supervisors rejected the appeal, 10-0. ■

# legal digest

## County Officials Required to Adopt Added Findings to Deny Residential Project

### *Stanislaus County project's bid for code exemption was improperly rejected*

BY WILLIAM W. ABBOTT

**GOVERNMENT CODE** Section 65589.5(j) which, among other provisions, requires a city or county to adopt findings justifying the denial or density reduction in circumstances in which the project complies with “applicable, objective general plan and zoning standards and criteria, including design review standards.” This code section was added in an effort to tighten down the discretion exercised by local officials when acting on a housing project application. It is codified as part of the Housing Accountability Act. A companion code section places the burden of proof on the city or county (Government Code Section 65589.6.).

The facts of *Honchariw v. County of Stanislaus* decision are relatively simple. Nicholas Honchariw applied for a tentative map approval for an eight-lot subdivision in unincorporated Stanislaus County. The local water district agreed to provide service to one lot where it already had a service connection, but issued a “will not serve” letter with respect to the balance of the proposed project, which was located within its service boundaries. The developer proposed drilling individual wells to serve the remaining seven parcels.

The county code, however, provided that all lots had to connect to a public system, “when available.” Staff recommended that the applicant apply for an exception from this code provision, which he did. The planning commission denied the request, and on appeal, the Board of Supervisors denied the map request and the exception request. The board denied the map pursuant to the findings set forth in the Subdivision Map Act, that the site was not physically suitable as it would cause split zon-

ing, and that the septic tanks were close to an existing pond and canal.

Having found the project to be noncompliant, the supervisors declined to adopt the findings under Section 65589.5. Honchariw filed a writ. The Superior Court denied the writ, concluding that the Section 65589.5 findings were not required as project did not meet applicable development standards. Honchariw appealed.

On appeal, the county first argued that Section 65589.5 had no applicability as the project was not an affordable project. After reviewing the legislative history, the appellate court concluded that while affordability or other qualifications apply to other provisions of Section 65589, that is not an element of paragraph (j). Turning next to the substantive argument, the appellate court then ruled for the appellant, Honchariw. The appellate court rejected the county’s characterization that the tentative map was noncompliant with the county regulations pertaining to a public water connection.

In so ruling, the court sidestepped the question of whether or not the connection policy qualified as “design review standard,” but instead concluded it was a requirement which applied at the home building stage, not the subdivision stage, and therefore was not an “applicable” standard. The appellate court then determined that the denial of the exception did not mean a lack of compliance with the ordinance. The appellate court noted that the burden of proof fell on the county (Government Code section 65589.6), and as the record lacked the requisite findings, the appellate court remanded the matter back to the Board of Supervisors for further proceedings.

This does not mean that Honchariw will be able to proceed with the project. That will turn on the subsequent findings adopted by the county.

### COMMENTARY

This case turns largely on the court’s interpretation of the county’s development policy as to when the connection requirement is applicable (tentative map, final map or building permit). Local officials, when drafting general plan policy and development regulations would serve themselves well by making clear what the timing triggers are for various policies. The next domino likely to fall under this code section will be what happens to a housing project application which complies with “objective” standards, but is otherwise inconsistent with broader statements of policies found in the general plan which in the case of a non residential project, could be readily disapproved. The question of what policies and development requirements are “objective” and potentially require Section 65589.5 findings is a factually specific inquiry, unique to each city and county, with an added variable dependent upon the particular application then pending before the decision makers. ■

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

#### ► The Case:

*Honchariw v. County of Stanislaus* (Nov. 14, 2011, F060788) \_\_\_ Cal.App. 4th \_\_\_. Filed Nov. 14, 2011. Ordered published Nov. 14, 2011.

#### The Attorneys:

Nicholas Honchariw, for Plaintiff and Appellant.

Porter Scott, Carl L. Fessenden, Kristina M. Hall and Ashley M. Wisniewski, for Defendants and Respondents.

# Installation of Solar Panels Subject to Homeowners Association Restrictions

## *Court upholds HOA's rejection of shoddy application for installation of solar panels*

BY GLEN C. HANSEN

**THE COURT OF APPEAL** for the Second Appellate District affirmed a judgment following a jury verdict that found that a homeowners association complied with the California Solar Rights Act (Civ. Code, § 714) when it denied the application of property owners to install solar panels on a slope adjacent to their residence.

In *Tesoro del Valle Master Homeowners Assn. v. Griffin*, defendants Martin and Carolyn Griffin were owners of property who sought to install a solar energy system at their residence in a development that is subject to conditions, covenants and restrictions. The CC&Rs provided that “[t]here shall be no construction, alteration, or removal of any Improvement in the Project (other than repairs or rebuilding done by the Association pursuant hereto) without the approval of the Architectural Control Committee (ACC).” The Design Guidelines adopted by the HOA expressly provided the following architectural standards for solar energy systems, in relevant part: “As provided for in Section 714 of the California Civil Code, reasonable restrictions on the installation of solar energy systems that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or which allow for an alternative system of comparable costs, efficiency, and energy conservation benefits may be imposed by the Committee.”

The CC&Rs and Design Guidelines listed the requirements for an application to the ACC, which included the submission of a plot plan drawn to scale, a detailed description of the proposed materials, a landscape plan and a drainage plan. The Griffins’ application to the ACC for the solar system in this case did not meet those requirements. Their application contained only a handwritten drawing with a rectangle signifying the approximate location of the proposed solar panels; it did not contain information concerning the panels’ dimensions, number or color; the setback; the proposed alterations to the landscaping; or the amount of electricity proposed to be generated.

After receiving preliminary information from the HOA that the ACC would probably not approve their application, defendants received another bid proposal to install additional solar panels on the roof of their residence. However, defendants did not amend their application to include that rooftop installation.

The ACC did not approve the defendants’ application, but instead provided comments on the application noting that the roof of the casita adjacent to defendants’ residence should be considered as a location for the panels; that the project’s dimensions and minimum setbacks needed to be provided on the site plan; that defendants needed to indicate how the slope beneath the solar panels would be maintained; and that defendants needed to submit photographs of the existing landscape and superimpose the proposed panel elevation. The ACC was concerned about the proposed slope-mounted system because it was at the entry to the neighborhood, adjacent homes had a direct line of sight, the CC&Rs prohibited slope alteration and any alteration or landscape removal could impact drainage. The ACC expected that defendants would address those concerns and submit a revised application.

However, defendants went ahead and installed the solar panels on the roof, and then, after discussions between all of the parties, submitted a revised application for the entire project. The ACC approved the roof installation but again denied the slope installation. Defendants installed the solar panels on the slope anyway, and the HOA filed this action against defendants. Defendants filed a cross-complaint that generally alleged that the HOA failed to comply with both Section 714 and the CC&Rs in denying the defendants’ solar energy system application.

At trial, the jury found, among other things, that the HOA did nothing prohibited by the CC&Rs or governing law. It also found that the HOA did not fail to do anything required by the CC&Rs and governing law with respect to its consideration of Defendant’s solar energy system; that the HOA did not breach the implied covenant of good faith and fair dealing; and that the HOA did not violate section 714; that Defendants failed to follow the CC&Rs and governing law in connection with their solar energy system; and that Defendants were

required to remove the 22 solar panels from their hillside slope.

Defendants appealed the judgment based on the jury verdict. The Court of Appeal affirmed.

The *Tesoro* court heavily relied upon a similar Second Appellate District decision in *Palos Verdes Homes Association v. Rodman* (1986) 182 Cal.App.3d 324. The *Tesoro* court held that substantial evidence supported the jury’s conclusion that the CC&Rs imposed reasonable restrictions that were in compliance with Section 714. Not only did the Design Guidelines mirror Section 714, but an expert testified for the HOA at trial that, as an alternative to defendants’ installation of 22 panels on their slope, defendants could install 16 to 20 panels in an area above the casita that would yield the same performance efficiency but have a 14 percent reduction in output, and it would be less expensive to install than the slope panels.

The court also held that the ACC could properly consider the aesthetic impact of a solar energy system in its determination whether to approve Defendants’ proposed solar panel installation. The court further held that the HOA did not have the burden to propose a comparable alternative system at the time it denied Defendants’ application. Instead, under the CC&Rs, the burden was on the homeowner to submit an application that is complete and sufficient to generate approval of a solar energy system utilizing an application that both satisfied the procedural requirements in the CC&Rs, as well as addressed the ACC’s concerns about location, safety and aesthetics. ■

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

### ► The Case:

*Tesoro del Valle Master Homeowners Assn. v. Griffin* (October 3, 2011, B222531) \_\_\_ Cal.App. \_\_\_. Ordered published Nov. 1, 2011.

### The Attorneys:

Law Offices of Michael L. McQueen and Michael L. McQueen for Defendants and Appellants.

Greenberg Glusker Fields Claman & Machtinger and Ricardo P. Cestero for Plaintiff and Respondent.

# HUD Grants Promotes Marriage of Economic, Land Use Planning In Bay Area

BY JOSH STEPHENS

**JUDGING BY THE LIKES** of Apple, Google, and Chez Panisse – to say nothing of the relative stability of housing prices – the San Francisco Bay Area might not seem like the most likely recipient of an economic planning grant. But the federal Department of Housing and Community Development thinks otherwise.

Following a hotly competitive application process, HUD awarded the Metropolitan Transportation Commission, in partnership with the Association of Bay Area Governments, one of 22 Sustainable Communities Grants in late November. MTC's award of \$4,991,336 is, by less than \$10,000, the second-largest such grant that HUD awarded nationwide; the 22 grants totaled nearly \$96 million. MTC will focus on a "prosperity plan" for the region.

According to a statement supplied by HUD's San Francisco office, MTC received the grant because its "plan incorporates a broad region made of numerous communities with a real need to connect housing to jobs, provide transportation options for families, and generate the economic growth they need to win the future." HUD also cited the plan's ability to create middle-income jobs.

The Sustainable Communities grants are the brainchild of the Obama Administration – designed to help communities and regions improve their economic competitiveness while also connecting housing with jobs, schools and transportation. On that count, say Bay Area planners, the region needs all the help it can get.

"The Bay Area has the same number of jobs in 2010 as it did in 1990 and we are the second-most expensive region in the country," said Doug Johnson, senior transportation planner with MTC. "We're seeing potentially astronomical costs for our low-income residents."

Those costs have risen, say some, because the benefits of the boom in Silicon Valley and in certain urban centers, such as the City of San Francisco, have not necessarily extended to the region as a whole. And there is no formal mechanism to ensure that all parts of the region share equally in its success.

"We lack any sort of comprehensive regional economic development strategy," said Jeremy Madsen, Executive Director of the Greenbelt Alliance, one of several nonprofit organizations that is partnering with MTC and ABAG

on the grant. "That has kind of taken care of itself, which is both a blessing and a curse. We have not thought comprehensively about where jobs should be going."

MTC and ABAG's approach to its Sustainable Communities Grant is to interpret "sustainability" in the broadest sense to include not only the widely ecological benefits of, for instance, compact, transit-oriented development,

"The Bay Area has the same number of jobs in 2010 as it did in 1990, and we are the second-most expensive region in the country. We're seeing potentially astronomical costs for our low-income residents."

—Doug Johnson,  
senior transportation planner, MTC

but also the benefits of promoting economic development in concert with land use and transportation planning. The grant recipients say that this sort of planning is crucial in a region that is expected to grow by two million people by 2040.

MTC and ABAG will use the funding, to be spent over three years, to develop and implement a Regional Prosperity Plan in conjunction with local partners. The two major, interconnected areas of work are what the agencies describe as "a community-rooted process" to develop and implement a regional Economic Opportunity Strategy to expand economic opportunities for low- and moderate-income residents; and the implementation of a Housing the Workforce strategy that would create and preserve hous-

ing affordable to low-income workers.

"This plan is about implementing a long-term vision for a region to be more environmentally, economically, and socially stable and prosperous," said Johnson.

These programs encompass pilot projects spread among 30 participating Bay Area jurisdictions and nonprofit partners. The pilot projects include workforce training or job placement program for low- and moderate-income workers in a particular industry of opportunity; the development of small business clusters in new industries; and creation of a database that would match up low-income residents with affordable transportation and housing options.

To curb housing costs, Bay Area Planners will be using the grant money to implement housing that is not only affordable for low-income residents but is also in close proximity to job centers – thus reducing housing costs without imposing onerous transportation costs on those residents who can least afford them and without perpetuating what many planners consider inefficient growth patterns.

"It's...intending to make a better economy by moving away from the old model of 'live where you want and drive an hour to work,'" said Kevin Riley, director of Planning & Inspection for the City of Santa Clara.

One of the great frustrations about land use planning – especially long-range regional planning exercises, such as the Sustainable Communities Strategies that are under consideration in the state's major metro areas – is that planners must abide by population projections and activity patterns over which they have no control. Indeed, the use of land is, in many ways, predicated on the economic conditions that compel people to live and work in certain places.

"This particular economic development strategy is really looking at how do we associate jobs and transit better," said Jeremy Madsen, executive director of environmental group Greenbelt Alliance. "How do we get beyond the old-style auto-oriented business park and into something that is a little more sustainable and meeting the new paradigms around planning."

Allen Fernandez Smith, executive director of housing advocacy group Urban Habitat, said

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## >>> Bay Area Seeks to Use Grant to Promote Social Justice

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that the grant participants will try to answer a number of questions in the course of implementing the pilot projects:

“Where do we need to build new housing stock? How can we have an early warning system where there are cities that are losing their affordable housing and turning over to market-rate, thus displacing people? What are anti-displacement strategies that cities and counties can take on?” said Smith.

Smith emphasized that the answers to each of these questions must be grounded in concern for social equity, “insuring that there is inclusion and access for all people throughout the region, especially those that are most marginalized or that have been left historically behind by policies that have been crafted to keep people out.”

For many, the displacement of low-income residents is one of the unfortunate components of a regional economy that is skewed toward high-income jobs and toward younger residents who are willing to pay a premium for urban living.

The notion of a region-wide effort to coordinate housing and transportation may sound familiar, since it is nearly identical to the mission of the Sustainable Communities Strategies mandated by Senate Bill 375. But whereas that law compels the state’s metro regions to coordinate land use and transportation planning for the sake of reducing greenhouse gas emissions, the HUD grant does so for the purpose of economic vitality and social equity.

“‘Housing the Workforce’ is about making sure we are setting up affordable housing so that this workforce that we’re trying to cultivate...throughout the Bay have places to live that were close to work and close to transit,” said Smith.

Planners hope that the work funded by the HUD grant will offer models for the realization of the Bay Area’s SCS. Johnson noted that the Regional Housing Needs Assessment, which determines how many units of housing the SCS must take into account, is primarily a “technical exercise.” The RHNA does not, how-

that this approach may be too ambitious.

“The challenge is simply that you have a lot of pieces moving at the same time,” said Riley, of Santa Clara. “It’s a good thing but it takes a lot of time.”

Nevertheless, Riley said that the grant, plus the SCS planning process, represents a step in

The grant represents a step in the right direction. “I would say up until the last decade it has been very parochial, that cities care only about what happens inside their borders.”

—Kevin Riley,  
director of Planning & Inspection, City of Santa Clara

ever, tell jurisdictions where housing should be developed and how housing should relate to transportation networks. That is, say planners, where the HUD Sustainable Communities grant will complement the SB 375-mandated SCS.

“We’ve always had the RHNA allocation, but it’s not really been a comprehensive regional strategy for how we achieve our housing goals and housing needs,” said Madsen. “With the Regional Transportation Plan process and SCS process we have a lot to deal with the general land use and transportation component of good regional planning, and this grant brings in more of the specific housing and economic development piece.”

While the notion of marrying land use planning with economic development may sound like a powerful notion, some are concerned

the right direction for a region that was, not long ago, considered fragmented.

“It means we are all becoming more regionally adept,” said Riley. “I would say up until the last decade it has been very parochial, that cities care only about what happens inside their borders.” ■

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# Brown Separates Transportation and Housing in State Reorganization

BY JOSH STEPHENS

**IN RELEASING HIS** proposed 2012-13 budget last Thursday, Gov. Jerry Brown also proposed a major reorganization of state government that would separate transportation and housing at the same time Brown's policy thrust is intended to link the two closer together.

In particular, Brown has proposed a major restructuring of the Business, Transportation, and Housing (BTH) Agency that would have here parts:

- All housing functions, as well as business regulation functions, would be merged with the current State and Consumer Services Agency to create a new Business and Consumer Services Agency. Within this new agency, the California Housing Finance Agency would be merged into the Department of Housing & Community Development.

- Economic development functions within BTH, such as the California Infrastructure Bank, would be moved to the Governor's Office of Economic Development.

- These changes would leave only transportation functions within BTH, which would be renamed the Transportation Agency. These functions include Caltrans, the California Transportation Commission, and the California High-Speed Rail Authority.

The separation of transportation and housing comes at a time when the Brown administration – as well as regional and local officials around the state – are trying to bring housing and transportation into closer alignment. In particular, SB 375 brought Regional Transportation Plans into close alignment with the Regional Housing Needs Assessment process, which is overseen by HCD.

“With the reorganization, it separates the

disciplines of transportation, housing, and economic development,” said Mike McKeever, executive director of the Sacramento Area Council of Governments. “Those are disciplines that are important to be more and more integrated.”

For McKeever and the other metropolitan planning organizations -- which are charged with implementing SB 375 -- the reshuffle means they have more places than ever to go to in the state government. They have to interact with Transportation on transportation funding issues; with the California Air Resources Board (part of the California Environmental Protection Agency) on greenhouse gas emissions targets; and now with the revamped HCD, under Consumer and Business Services, on RHNA even though SB 375 calls for MPOs to address all three of these in concert.

But Anna Caballero, the former Salinas mayor and assemblymember who is Brown's State and Consumer Services secretary, said she is optimistic about the restructuring's impact on SB 375 planning and the role of the state's Strategic Growth Council.

“I don't see it being a problem,” said Caballero. “I really think the SGC is the place where you link the two.” Presumably Caballero will be the secretary of the combined agency containing the housing functions. She was actually mentioned as a possible HCD director before being selected as consumer secretary.

McKeever did not disagree with Caballero. “What I think this means is that it's going to be even more important than before that the SGC be an important, meaningful, component of the state government,” said McKeever. “And I hope that the governor would make it clear to the council that it's a high priority of

his that they use their statutory authority to integrate the various silos of state government.”

Gary Gallegos, McKeever's counterpart at the San Diego Association of Governments, welcomes the reorganization wholeheartedly. In fact, he has long spoken out in favor of a separate transportation agency.

Working with Sacramento, “is always complicated,” said Gallegos. “I'm not sure that it will be any more or less complicated.”

Gallegos noted that, for instance, MPOs have to work closely with the Air Resources Board on SB 375 issues and that BTH is not necessarily very integrated because a BTH secretary may tend to favor one function over the others. Therefore, he said that the reorganization, and especially the consolidation of transportation functions, will do more good than harm. Moreover, he noted that SANDAG considers SCS planning to be a “bottom-up” process involving member cities, so working with the state is a lesser concern.

However, the reshuffle may still create a problem at the SGC. The SGC has six members – including four Cabinet secretaries and the head of the Governor's Office of Planning & Research – and is charged with coordinating all state actions to support the goal of sustainable development. However, while the BTH secretary is on the council, Caballero is not. A statutory change would be required to add her.

Although he has been in office for a year, Brown has never appointed a BTH secretary – the only Cabinet position he has not filled. Caltrans had not had a director since last spring, and veteran civil servant Cathy Creswell has been acting as the interim HCD director. The directorship of the Governor's Office of Economic Development is also vacant. ■

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## >>> Cities Prepare for Feb. 1 RDA Disollution

— CONTINUED FROM PAGE 1

estimated \$1.9 billion richer this year, nearly every city across the state has tales of locally important projects — from landmarks like a new football stadium in San Diego all the way down to countless affordable housing developments — that are in jeopardy. The dissolution could literally stop projects in their tracks, such

as the Gold Line light rail extension in eastern Los Angeles County, which was counting on redevelopment to facilitate the development of a maintenance yard.

To tell every story, or even a representative sample of stories, illustrating how this crisis is unfolding across the state would be nearly im-

possible. *CP&DR* has been covering this story's broad strokes since it broke, and here-with presents a compilation of our coverage, including analysis of the court ruling, future prospects for the institution of redevelopment, and legislative measures that may, or may not, be in the offing.



# HOW AB X1 26 WILL PICK THE RDA CARCASS

**THE SUPREME COURT'S** redevelopment ruling yesterday didn't just kill redevelopment agencies. By upholding AB X1 26 — the kill-redevelopment bill — the court ruling also triggered an entire funeral procession that will shut the agencies down and transition their debt and their assets to other agencies.

That process is sure to trigger more controversy — and probably lots more litigation — as cities try to protect assets they transferred away from RDAs last year and other agencies — the state, counties, and school districts — try to grab hold of them. It also puts each county's auditor-controller in the middle of this process. But AB X1 26 essentially represents a state takeover of tax-increment funds that are not required to pay debt by giving enormous power in the process to the Department of Finance.

AB X1 26 assigns different responsibilities to five different players in the funeral procession. These are:

**1. "Successor Agencies,"** which will usually be the underlying entity that created the RDA in the first place (usually a city but sometimes a county)

**2. "Oversight Boards"** for each RDA, which will mostly be controlled by counties and schools.

**3. Each county's auditor-controller,** who is responsible for collecting and dispersing property

taxes.

**4. The state Department of Finance.**

**5. The State Controller.**

Here's what AB X1 26 calls on these entities to do:

Upon dissolution of the RDA, all assets and liabilities of the RDA revert to the "**Successor Agency,**" usually a city. At first the city would still be required to pay debt and other "legally enforceable obligations." But the city can't continue to operate as the RDA would. The auditor-controller and especially the Oversight Board has most of the power in determining what to do.

By March 1, **each county's auditor-controller** is supposed to do an audit of each RDA's assets and required payments and provide those audits to the State Controller by March 15. This schedule was originally created based on the assumption that the RDAs would vanish on October 1, not December 29, so it's unlikely that the auditor-controllers can stick to this schedule. But this step is really important, because the auditor-controllers in each county have to create a "Redevelopment Obligation Trust Fund," where the funds required to meet RDA obligations will be placed.

In other words, the city will not get the tax-increment money. The tax-increment funds required to pay RDA debt and other obligations will be placed in a trust fund and the rest will be distrib-

uted to taxing agencies as regular property tax is — which is typically something like 50% to schools, 33% to school districts, and 15% to cities, and a sprinkling to special districts. (This varies throughout the state.)

Meanwhile, an **Oversight Board** must be created for every RDA. Each Oversight Board will have seven members: two by the mayor, two by the county board of supervisors, one by the special districts in the former RDA, one by the county school superintendent, and one by the local community college chancellor. Obviously, in every county — and even in large cities — there will be many Oversight Boards with overlapping memberships. This is supposed to be representative of all the agencies that share property tax, but it should be obvious that counties and schools will run this show.

And run the show they do — up to a point. The city prepares a debt and obligation schedule, which is reviewed by an auditor selected by the auditor-controller, as well as an administrative budget. The Oversight Board approves both. The Oversight Board is also charged with disposing of RDA assets. Government buildings get turned over to the appropriate government agency. The proceeds of other asset sales are divided among the taxing agencies proportionally. And they decide whether RDA affordable housing money will go back to the cities

or go to the housing authorities instead.

But the Oversight Committee is not the final word — and this is a really important point in seeing how the state is truly taking control of RDA funds. Both the **State Controller** and the **Department of Finance** play an important role in overseeing the Oversight Committees, as follows:

➤ The "Redevelopment Obligation Repayment Schedule" prepared by every city must be approved not only by the Oversight Committee but also by *both* the Department of Finance and the State Controller.

➤ The Department of Finance has the power to overturn any action by any Oversight Committee.

You can see all the different messy situations that could arise:

➤ Cities could start paying off obligations they see as binding, only to be *overturned* by somebody else when the repayment schedule is reviewed by the Oversight Committee or by the state, which means the cities would have to get the money back or cover the cost.

➤ No matter where the cities land on the repayment obligations, the three review entities — the Oversight Committee, the Department of Finance, and the State Controller — could get into big fights over which repayments should be made. The State Controller will be more independent of short-term revenue

— CONTINUED ON PAGE 10

# RDA WIND-DOWN COULD LEAD TO SUITS, 'FIRE SALES'

— CONTINUED FROM PAGE 9

concerns than the other two entities. And if this holds up decisions on who get repaid, this could cause concern about California in the bond market.

- The other taxing entities could start suing the cities on some of the asset transfers they

made away from RDAs (this is almost certain to happen).

- Naïve oversight committees could go into “fire sale” mode on former RDA assets, which could have a significant impact on urban property values in the whole state.

- The Oversight Committees and the Department of Finance

could get into protracted, ugly battles – even litigation – over the question of whether and how to dispose of assets.

And in case you’re wondering, this whole process starts ... now. Yes, the redevelopment establishment will be back in Sacramento on Tuesday trying to get a new bill

passed. But in the meantime, surely the Department of Finance and the counties – the two big financial losers in redevelopment – will start pushing to create the Oversight Committees immediately, and they’re start leaning on county auditor-controllers to start the RDA audits right away. ■

## RDAs TRY TO PUSH STAY OF EXECUTION PAST FEB. 1, BUT DON'T KNOW WHICH PROJECTS WILL BE KILLED

CITIES AND REDEVELOPMENT AGENCIES are pushing for legislation that give them a stay of execution past the February 1 deadline contained in last week’s Supreme Court ruling.

In last week’s ruling, the court pushed the date for dissolution of redevelopment agencies back from October 1, 2011 – the date originally set by the legislature – to February 1, 2012. The redevelopment establishment is planning to push for compromise legislation to allow agencies to stay in existence – but first they have to push the February 1 date back.

Meanwhile, agencies around the state are assessing the prospective damage. City officials up and down the state have been wringing their hands over the death of redevelopment projects. The highest-profile projects are sports stadiums. The new Chargers stadium in San Diego would appear to be dead for now. The ruling also places a cloud over stadium plans in Santa Clara and San Jose for the 49ers and the A’s. Ironically, the ruling might actually help Los Angeles’s efforts to lure an NFL team, because the deal between the city and AEG doesn’t include a traditional redevelopment component. All these moving parts might actually encourage the Chargers to move from San Diego to Los Angeles sooner rather than later.

The biggest issue, as Ryan Lillis pointed out in the Sacramento Bee this morning, is which projects will be permitted to go forward and which ones won’t. Dozens of cities – maybe hundreds – devoted last summer to earmarked future tax-increment funds to projects in hopes of protecting the money. For example, last summer Santa Monica committed \$267 million in future tax-increment funds to city projects, mostly affordable housing, Civic Center improvements, and the “Palisades Garden Walk” park across the street from City Hall.

Lillis uses the specific example of the K Street Mall in Downtown Sacramento. Redevelopment planning of the 700 block is far along and the city is hopeful that the project will stick. But the plan for the 800 block is more questionable. The city committed \$20 million last summer to a deal with developer David Taylor – but it remains to be seen whether that’s a legal obligation.

That’s a good example of how it’s not clear yet what types of legal obligations will be honored under the post-redevelopment system. Clearly, tax-increment money will be used to pay off all outstanding debt. But what about contractual agreements between RDAs and developers that commit future tax-increment flow? Those decisions, as we reported on Friday, will be up to some combination of the county auditors, the Oversight Committees, and the state Department of Finance. ■

## RDA RULING JUST IN TIME FOR GOV. BROWN'S BUDGET

AMID ALL THE DEBATING and litigating around redevelopment’s demise, it’s sometimes easy to forget what, exactly, Californians are fighting over. But this week’s premature release of Gov. Jerry Brown’s 2102 budget offers a handy reminder: it’s money.

Even after the Supreme Court ruling, the Brown Administration is assuming that the state will reap \$1.7 billion in 2011-12 from the end of redevelopment – and \$1.8 billion in 2012-13, said H.D. Palmer, spokesman for the Department of Finance. Had the Supreme Court decided the other way, striking down both AB X1 26 and AB X1 27, then the governor would have been in a roughly \$11 billion pickle rather than merely a \$9.2 billion one.

The Department of Finance estimates that the total tax increment that will be liberated by the demise of redevelopment amounts to roughly \$5 billion, but roughly \$2 billion of that will immediately go back to successor agencies so that they can fulfill RDAs’ debt obligations. The governor’s budget estimates that of the \$1.7 billion that will be recovered from RDA’s this year, \$1.05 billion will go to K-14 schools, thus offsetting the state’s Prop. 98 General Fund obligation. That leaves nearly \$600 million for “pass-through” payments to counties (\$340 million), cities (\$220 million), and special districts (\$170 million).

What’s surprising about these numbers is that they are nearly the same as those that the governor presented in his 2011-12 budget.

Many supporters of redevelopment have claimed that the actual amount of money that will become available is far lower than \$1.7 billion, and in the past year agencies have been scrambling to enter into new contracts and to shield assets. The Department of Finance is, however, confident in the numbers that it is using.

“We update our numbers based on the data we get from the Controller’s office,” said Finance spokesperson H.D. Palmer. “Those are our best estimates based upon the actual data we have and the modeling we have for property tax revenue.”

If those numbers turn out to be off-base, the governor will revise the budget accordingly. “As with anything, if there are any changes to those projections based on data we get after we’ve locked in the budget we use those accordingly when we get to the May revision,” said Palmer. Palmer said, however, that the department is not worried about all those deals that took place in 2011. The Department of Finance is prepared to undo any such deals that it considers illegitimate. A provision in AB X1 26 enables the department to review all transactions that took place after Jan. 1, 2011.

“If there are any that don’t represent a true contractual obligations, that would be unwound and the proceeds would be divided up among the jurisdictions,” said Palmer.

Now the governor just has to come up with the rest of the \$9.2 billion. ■

# CITY, COUNTY, STATE PLAY HOT POTATO WITH L.A. RDA

WHILE CITIES AROUND the state have been, reluctantly, agreeing to serve as undertakers for their respective redevelopment agencies, the Los Angeles City Council indicated this week that the city will not do so.

The 9-3 vote against serving as the “successor agency” that would liquidate the Los Angeles Community Redevelopment Agency’s assets and oversee its existing contracts means that some other governmental entity will have to take over. The City Council vote took place after City Administrative Officer Miguel Santana released a report estimating that serving as successor agency could have cost the city up to \$109 million. Some council members disputed this figure, saying that it was likely to be a high estimate.

CRA/LA, the largest redevelopment agency in the state, is distinctive among the state’s redevelopment agencies for being an entirely separate entity from the city itself. It has its own, separate board of commissioners and, im-

portantly, has its own labor agreements with its employees. CRA/LA employees are paid, on average, \$109,000 annually – more than city employees are on average – and their contracts call for a 120-day notice of termination. This requirement conflicts with the Feb. 1 dissolution deadline imposed by Assembly Bill X1 26. Therefore, a successor agency would have to pay CRA/LA employees even after the entity has been disbanded and its funds disbursed elsewhere.

The County of Los Angeles could step in, but it seems highly unlikely that county supervisors will want to assume those costs or the burden of overseeing hundreds of millions of dollars worth of obligations.

Gerry Hertzberg, policy and political director for Sup. Gloria Molina, said that no vote is planned and that if there was one, the supervisors would likely not be inclined to accept the burden.

“They don’t have to take a formal vote, and I can’t imagine that

they would,” said Hertzberg. “I don’t know of anybody that’s proposed it.”

Hertzberg said that the relationship between the county and municipal redevelopment agencies was, as elsewhere throughout the state, a complex one. On the one hand, redevelopment agencies are accused of diverting property tax revenue that could go into county coffers. On the other hand, Hertzberg noted that CRA/LA was involved with major projects under Molina’s purview, such as the Grand Avenue Project, a collection of high rises in downtown Los Angeles.

The county’s demurral is would not necessarily a statement about redevelopment itself. “The county just has other priorities,” said Hertzberg.

This means that responsibility for CRA/LA now falls to the state. However, the entity or department in state government that would take over has yet to be named. Critics of the dismantling of redevelopment say that it is

taking place too quickly.

“What Los Angeles did is simply and indicator of the mass chaos and the problem that’s associated with the dissolution date of Feb 1,” said Jim Kennedy, interim executive director of the California Redevelopment Association. “Without really any ability to orderly plan for the implementation of a dissolution action and, frankly, an opportunity clean up some of the ambiguities and misstates that are in AB X1 26.”

If hundreds of cities statewide similarly passed off their former redevelopment agencies on to the state, the administrative burden could be enormous. However, signs indicate that few, if any, other cities have followed Los Angeles’ lead.

“The circumstances associated with CRA/LA appear to be fairly unique,” said Kennedy. Kennedy said he was aware of “only a handful of cities” that are opting not to serve as successor agencies. ■

## CRA CLAIMS SIGNIFICANT FLAWS IN LEGISLATION TO DISSOLVE RDAS

SEN. ALEX PADILLA (D-Los Angeles) has introduced legislation that could give California’s redevelopment agencies if not a reprieve then at least a stay of execution. Senate Bill 659 would push the dissolution date from Feb. 1 to April 15 in order to allow cities and agencies time to put their affairs in order -- and, presumably, to allow the Legislature to deliberate on a replacement for redevelopment before the agencies are dismantled and their employees laid off. Despite fervent support from the California Redevelopment Association and many cities and advocacy groups, the success of SB 659 is far from assured.

A recent report broadcast by the CRA indicates that SB 659 will not move forward unless it

addresses a host of logistical problems that have been identified in AB X1 26, the budget bill that authorized the dissolution of redevelopment. The CRA contends that AB X1 26 and the dissolution process that is prescribes will lead to litigation, bond defaults, and other complications stemming from the liquidation of redevelopment agencies’ assets.

CRA and its members have identified the following areas of concern:

- Many redevelopment agencies have outstanding contracts for design work on infrastructure projects, but the projects themselves have not yet been funded. Therefore, successor agencies would have to pay the design firms for designs that will, presumably, never be implemented.

- AB X1 26 fails to respect the schedule by which property tax revenues are collected, in December and April. The Supreme Court’s decision, however, calls for successor agencies to be funded May 16, meaning that, according to CRA’s analysis, there may be no funds with which to honor outstanding debts. This discrepancy could lead to defaults and insurance policy claims on many payments that are due prior to May 16.

- Many bond payments are not paid off in equal, regular payments throughout the year. Section 34183(a)(2) of AB X1 26, however, calls for equal semiannual payments. This could result in a mismatch between the funds in successor agencies’ coffers and the monies that are owed to serve

RDAs’ debt.

- AB X1 26 calls for former tax increments to be pooled in Redevelopment Property Tax Trust Funds, with one trust fund for each county. CRA contends that this pooling does not respect the distinct project areas, including affordable housing, that rely on different types of financing and typically draw from funding pools that are kept separate from each other.

- The disposal of assets that are funded by tax-exempt bonds could run afoul of federal tax law.

- Agencies that received loans from their parent jurisdictions, in lieu of issuing more costly bonds, owe money to those jurisdictions that may not be covered under AB X1 26’s definition

# >>> CRA CLAIMS SIGNIFICANT FLAWS IN AB X1 26

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of “enforceable obligations.”

➤ Many redevelopment agencies are members of joint powers authorities and may be party to bonds that have been issued by JPAs. AB X1 26 does not specify how successor agencies are supposed to approach these bond obligations.

➤ Many agencies include employment contracts that require 120-day advance notice of termination. Successor agencies may not have funds to pay employees for this period.

CRA has identified other problems with AB X1 26. Among the concerns are administrative costs, legal status of successor agencies, ability of RDAs to transfer properties, and the status of redevelopment plans and land use controls.

Gov. Jerry Brown has expressed his opposition to any changes in the timeline or the provisions of AB X1 26. As for the prospect of wholesale redevelopment reform, in a press conference called to present the 2012-2013 budget Jan. 5, Brown said he would consider funding redevel-

opment only if the Legislature brings him offsetting cuts.

The California Redevelopment Association is seeking legislation that would postpone the elimination of RDAs beyond the February 1 date set by the state Supreme Court last week. In response to a reporter’s question about whether Brown would support an extension “for a few months,” Brown said:

“Our position is the Supreme Court has invalidated AB X1 27 and we’re left with AB X1 26 and that’s the way it stands. I know

that people have concerns about economic development and housing, and I’ll be glad to hear whatever thoughts people can bring forward. But, remember, we cut out redevelopment not because I dislike redevelopment – I don’t exactly – but we are short of money, and we’re just saying core services trump the redevelopment program. And if people want to add back spending, we’re going to have to find that substitute, because if we’re going to finance redevelopment, we’ve got to get the money from somebody.” ■

# RDA TIMELINE: HATCHET TO FALL FEB. 1

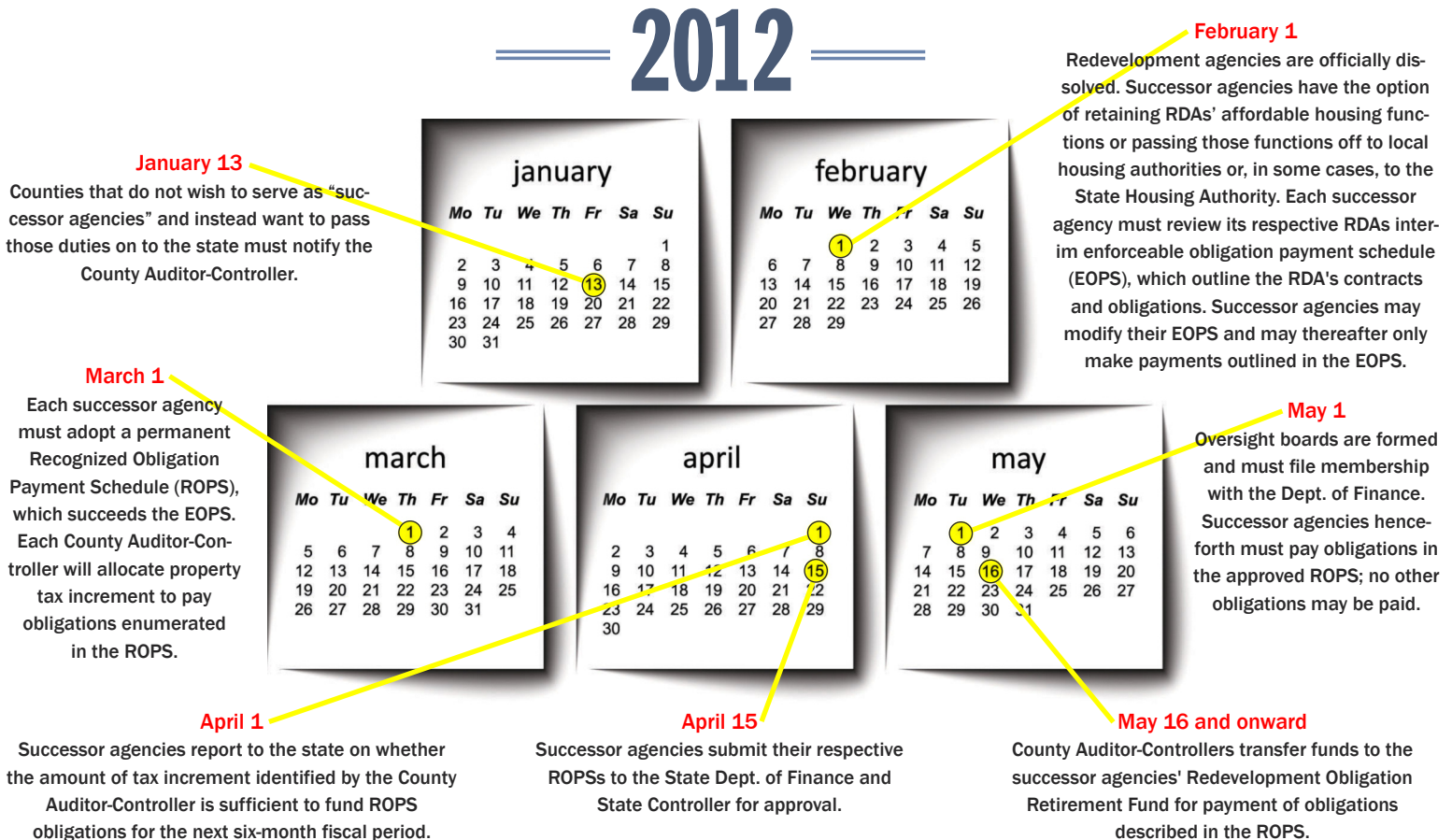
THE CALIFORNIA SUPREME COURT’S DECISION to strike down AB X1 27 and uphold AB X1 26 sets off a frantic timeline by which redevelopment agencies essentially must preside over their own funerals while “successor agencies”

take control of their assets and contracts.

State senators Alex Padilla and Luis Alejo have reportedly introduced Senate Bill 659, which would extend the deadline for agencies’ dissolution for several months. Though it will be heard

soon in the Senate Local Government Committee, its chances of success remain unclear.

Barring legislative action, the working timeline includes the following benchmarks:



## >>> While Cities Scramble, State Has Luxury of Time

— CONTINUED FROM PAGE 1

and no redevelopment activities can move forward. Counties and school districts will presumably move forward in creating the oversight committees required under the law to take over and dispose of redevelopment agency assets.

One thing is clear: Time is on the state's side. For now redevelopment does not exist. The longer the status quo persists, the more the state can claim the money — and the farther down the line counties and school districts will go in trying to lay claim to redevelopment agency assets. If the redevelopment establishment can't strike a quick deal, we may be in for a long siege.

Even if legislators and the governor are inclined to dig in their heels, however, they need to keep in mind one thing: the longer they wait to reinstate redevelopment, the more the bureaucratic infrastructure of redevelopment will deteriorate. Within weeks, redevelopment agencies are to be replaced by "successor agencies" that will essentially liquidate their assets. This means that offices will close, staff members will be laid off, and institutional memory will vanish. So folks in Sacramento need to decide quickly if they're going to salvage redevelopment, and if they do, they need to then act quickly.

The other big question is whether the state will seek to extract a substantive price from the redevelopment agencies as part of the deal. Last year, the debate revolved only around money and the Legislature didn't even consider any redevelopment reforms of redevelopment. But at least one knowledgeable insider, recently retired Senate Local Government Committee staffer Peter Detwiler, said that many legislatures have grown weary of the redevelopment establishment's "stubborn donkey" pose and will seek to tighten up the blight definition and extract other reforms as part of the deal.

The permissible use of redevelopment "can't be a big long laundry list," Detwiler said. "It has to be tight and very well crafted."

On the other side, the redevelopment establishment is likely to lean heavily on logical allies — especially the affordable housing lobby and urban Democratic legislators from Los Angeles and the Bay Area — to gain political leverage in a tough situation.

Within hours of the ruling's release, both sides issued statements that could be considered conciliatory. Gov. Jerry Brown — who investigated the proposed elimination of redevelopment agencies in his budget last January — issued a one-sentence statement saying that the

ruling "validates a key component of the state budget and guarantees more than a billion dollars of ongoing funding for schools and public safety."

Brown doesn't crow about the death of redevelopment. He doesn't even mention redevelopment; nor does he stake a claim to all \$6 billion in redevelopment funds. He simply says the ruling means \$1 billion more for schools and courts — making it easier for him to cash in last week's promise that schools will get more money in this fiscal year.

Meanwhile, the CRA and the League — which have taken a slash-and-burn rhetorical approach since Day 1 of this battle — also issued a statement containing calm-it-down language aimed at making a deal. CRA's interim executive director, Jim Kennedy, said the organization looked forward to finding "ways to restore redevelopment while also providing the state budgetary relief in a manner that doesn't violate Prop 22." The League provided quotes from the likes of Sen. Alex Padilla, D-Los Angeles, a former member of the L.A. City Council, touting the benefits of redevelopment. Padilla and all other Democrats in the Legislature voted to kill redevelopment last year when they passed AB X1 26 and AB X1 27 as part of the budget package.

The ruling in *California Redevelopment Association v. Matosantos*, S 194861, was surprisingly straightforward given the convoluted nature of the oral argument in front of the Supreme Court last month. And it was the redevelopment establishment's worst-case scenario: AB X1 26, which eliminated redevelopment, was upheld. AB X1 27, which gave redevelopment agencies the option of voluntarily paying a "remittance" to the state in order to avoid death, was struck down.

The basic issue was whether AB X1 26 violated Proposition 22, the constitutional amendment to protect redevelopment funds from state raids, which passed in 2010. The League and the CRA had argued that Proposition 22 implicitly made it unconstitutional to eliminate redevelopment, even though the whole redevelopment system had been enacted by statute rather than by constitutional amendment.

In a 6-0 opinion written by Justice Kathryn Werdegar, the Supreme Court: "Proposition 22 contains no express language constitutionalizing redevelopment agencies. (Cf. Cal. Const., art. XXXV, § 1, added by initiative, Gen. Elec. (Nov. 2, 2004) [creating the Cal. Institute for Regenerative Medicine as a constitutional en-

tity]; id., art. XXI, § 2, added by initiative, Gen. Elec. (Nov. 4, 2008) [creating the Citizens Redistricting Com. as a constitutional entity].) It would be unusual in the extreme for the people, exercising legislative power by way of initiative, to adopt such a fundamental change only by way of implication, in an initiative facially dealing with purely fiscal matters, in a corner of the state Constitution addressing taxation. As the United States Supreme Court has put it, the drafters of legislation "do[] not, one might say, hide elephants in mouseholes." (*Whitman v. American Trucking Assns., Inc.* (2001) 531 U.S. 457, 468.)"

On the question of AB X1 27, Werdegar wrote: "Proposition 22 ... expressly forbids the Legislature from requiring such payments. Matosantos's argument that the payments are valid because technically voluntary cannot be reconciled with the fact that the payments are a requirement of continued operation. Because the flawed provisions of Assembly Bill 1X 27 are not severable from other parts of that measure, the measure is invalid in its entirety."

Chief Justice Tani Cantil-Sakauye concurred on the AB X1 26 portion of the ruling but dissented from AB X1 27, claiming that while the law calls for remittances, it does not require the money come from redevelopment tax-increment funds which is the one step prohibited by Proposition 22. Building on the points she made during oral argument in November, she noted that — at least in theory — a city could use any source of funds to pay the remittance.

The League and the CRA immediately tipped their hand as to what the likely negotiating points will be — and how they will build up enough political support to force a solution in the Legislature. Many urban Democratic legislators are logical allies of redevelopment and seemed uncomfortable in the party-line attack on it last year — just as Republicans seemed uncomfortable supporting it.

The CRA board reportedly met via conference shortly after the ruling to discuss their strategy. CRA had already indicated that it would use at least two tactics to build support: First, use the powerful affordable housing lobby as much as possible; and, second, resubmit their proposal from last year, which would permit voluntary payments to school districts in exchange for extended life of project areas.

It was not immediately clear on Dec. 29 what Brown and legislature leaders will seek to extract as a price. But one thing is clear: Time is on the state's side. ■

## Redevelopment Should Be Reincarnated in General Plans

IT'S TAKEN ME A FEW DAYS to absorb the California Supreme Court decision in *California Redevelopment Association v. Matosantos*, which effectively killed redevelopment in California. Although I was a longtime critic of isolated cases of abuse, I believe it was a huge mistake to relegate the entire institution to the glue factory of failed policies. Wiser heads at CP&DR maintain that a creative compromise is possible that would allow redevelopment to survive in some altered form. But if redevelopment is dead, then, what can cities do to build up their downtown areas and attract business?

My proposal: Planning and design. Cities should use their next general plan updates – the process by which most California cities think about their futures – as the chief way of determining the way the city should look and function.

Here are my suggestions, naïve or not:

- 1.) Adopt a vision statement, e.g. “We want a walkable downtown area full of large and small merchants that places a priority on historic ‘fabric’ and regional character.”
- 2.) The vision statement should identify the most important parcels suitable for infill development. Residential mixed-use (including low income and senior housing) and transit orientation are big plusses.
- 3.) This is potentially controversial: Cities should stick with their gen-

eral plans, and not give them away to WalMart, Costco or a developer who’s touting a sports stadium or convention center hotel. Difficult? Probably, but if cities are not willing to stick to their own plans, they can’t control their future.

4.) Even more controversial: Cities must be willing to buy land and/or property at market rate (as opposed to through eminent domain). The purpose, of course, is to convey the parcels at below-market rates to developers who agree to build what the city needs, i.e. a specialty grocery, plus a chain drug store, 20 “in-line” merchants, at least half of which would be local mom-and-pop retailers, plus some housing within walking distance of a transit station. If cities don’t have the cash, they still have some bonding authority. The developer can agree to pay the debt service on those bonds for three years or so, prior to the completion of the new development, so the city ends up revenue neutral on the deal. (The cash value of the discount price on the land would be equal to money spent on debt service.)

The real test here, of course, is whether local governments can “sell” new development to their constituents. And that’s a different bucket of eels entirely.

– MORRIS NEWMAN | JANUARY 10, 2012 ■

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