CP&DR

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California's First Sustainable Communities Strategy Comes Under Fire

BY JOSH STEPHENS

Last year, the San Diego Association of Governments released the state's first Sustainable Communities Strategy, which Senate Bill 375 requires of California's metropolitan planning organizations. SANDAG officials hailed the SCS, coupled to its Regional Transportation Plan, as a bold step towards reducing sprawl and meeting the per capita emissions reductions targets that the California Air Resources Board had set.

Not so fast, say a group of opponents, including a coalition of environmental groups and Attorney General Kamala Harris

A coalition of environmental groups – including the Sierra Club, Center for Biological Diversity, and Cleveland National Forest Foundation – filed a lawsuit alleging that SANDAG's SCS not only fails to meet SB 375's greenhouse gas emissions targets but also violates the California Environmental Quality Act.

Whereas SB 375 merely requires MPOs to meet greenhouse gas reduction targets, CEQA requires a thorough analysis of impacts and mitigation measures for all environmental issues, including air pollution and greenhouse gas emissions. On that count, plaintiffs say, SANDAG has fallen short.

The suit contends that SANDAG's SCS pays only cursory attention to SB 375's goal of reducing vehicle miles traveled through compact development and decreased use of single-occupancy motor vehicles. Most notably, the plaintiffs argue, the plan calls for the construction of new highway lanes at the expense of development of more rail lines and other forms of public transit and that it does so without the impacts analysis and mitigation alternatives that CEQA requires.

SANDAG planners contend that plaintiffs miss the point of the planned highway improvements. Most of the new lanes are planned as

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insight

WILLIAM FULTON

Existing Policy Tools Can Help Cities Prosper Without Redevelopment

For now, redevelopment in California is dead. But that hasn't eliminated the need for public policy to support urban revitalization.

Indeed, Gov. Jerry Brown still supports aggressive policies in this vein – for example, implementing the SB 375 regional planning law passed in 2008 as part of the climate change effort, and streamlining environmental review for infill projects.

So the question is not whether redevelopment will come back, but how and in what form. And the fact is that both the state government and California's cities can take steps right now to encourage infill development and urban revitalization without going back to redevelopment.

The state has a bundle of tools and funds that could be packaged and organized better to help cities with infill development. The state has at least two pots of money that local governments use for planning – Proposition 84 funds and Caltrans planning grants – and this money could be pushed out the door faster, with a focus on redevelopment-style efforts. The same goes for the infill infrastructure funding and transit-oriented development housing money provided by

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COMPILED BY LAUREN DIETZ AND ERIN BRODWIN

THE LOS ANGELES CITY COUNCIL has approved a new development plan to drive economic investment along the Los Angeles River. The plan, which sets guidelines for all future development along the riverbed, aims to restore the river as a free-flowing waterway and incorporate bike paths and walkways to revitalize river-adjacent businesses. The City Council's Ad-Hoc River Committee has been working on the project since 2003.

THE OBAMA ADMINISTRATION has released its plans for the development of 17 solar energy zones in six Western states. The biggest zone – 148,000 acres, or more than half the total – would run along Interstate 10 in eastern Riverside County. The Administration, while having won support from several environmental groups, including the Natural Resources Defense Council and The Wilderness Society, faces pushback from local residents concerned about potential harm to wildlife. According to the federal Bureau of Land Management, the zones were chosen for their proximity to urban areas, availability of power lines and abundant sunshine, and because they are less environmentally sensitive. Projects within zones still would be designed to minimize harm to the environment. The Administration expects to finalize its plans by October 2013.

THE SANTA CLARA VALLEY Transportation Authority has unanimously approved the allocation of $772 million to begin construction of the 10-mile BART extension from Fremont to San Jose. The funds represent the first major contract to be awarded for the $2.3 billion project, awaiting final approval by the Federal Transit Administration in February. The VTA estimates that construction will create approximately 13,200 jobs. The extension will be completed in four separate, simultaneous projects to speed completion.

A FEDERAL AUDIT has faulted the Los Angeles Metropolitan Transportation Authority for what it has called a lack of planning, claiming that the agency failed to consider the effects on low-income customers of eliminating bus lines, adding services, or changing fares. The review also claims the agency failed to address problems communicating with those who do not speak English.

THE RIVERSIDE COUNTY Transportation Commission has pledged $24 million for wildlife habitat lands considered crucial to a conservation plan that eliminates environmental barriers for development. The Western Riverside County Regional Conservation Authority will receive $3 million annually for the next eight years, which it will use to buy 980 acres critical to maintaining the county's habitat plan for rare and endangered plants and animals. Some council members disputed the allocation, arguing that funds should instead be used for transportation projects. According to County Supervisor Jeff Stone, the goal of the habitat project is to build a system of wildlife reserves. If the plan falters, Stone said development projects could face lengthy environmental reviews.

SANTA FE SPRINGS is to be awarded the California Redevelopment Association Award of Excellence for its successful transformation of a former 54-acre oil field into residential land. The city's redevelopment agency and developer Comstock Homes collaborated to bring the site, now home to the 546-home Villages at Heritage Springs development, to residential standard. The two-year transformation process necessitated the removal of oil sumps, concrete oil derrick vaults, and deteriorating pipelines.

THE URBAN LAND INSTITUTE has concluded in its Land Use Scenario for 2020 and 2035 that long-term housing market trends represent an alignment between consumers' housing preferences and the greenhouse gas reduction objectives of SB 375. The report finds that, according to housing preference surveys, Californians consider transit options to be far more important in choosing a living location than the rest of the nation. The scenario also predicts that the existing supply of conventional-lot, single-family detached homes will exceed their projected demand, and that changes in demographics and home mortgage finance will reduce the rate of homeownership in California by up to 5 percent from 2010 levels. The report projects that rental housing will make up three-quarters of the demand for new housing in the state's largest metropolitan areas, leading to an increase in the use of existing residences for multiple or intergenerational households. The report projects the changes will lead to the emergence of a variety of new housing formats.

IN ITS HIGH SPEED RAIL Authority Follow-Up Report, the California State Auditor has concluded that: 1) the authority's funding scenario is increasingly risky, and 2) that it has failed to provide an adequate amount of project oversight for the rail line, intended to connect San Diego with San Francisco via a bullet train corridor. According to the report, cost estimates for the project's first phase (excluding operating and maintenance fees) have increased to approximately $105 billion, of which only $12.5 billion have been secured. The report also raises issues of understaffing; the number of authority contractors and subcontractors outnumber employees by 25 to one.

THE CADIZ VALLEY Water Conservation, Recovery and Storage Project has released an environmental impact report for its $225 million plan to transfer water from the eastern Mojave Desert to Riverside County and other areas of southern California. The project, which would pump water from ancient underground Mojave basins and store Colorado River supplies there, would necessitate construction of 44 miles of pipeline. In surplus years, water would travel from the Colorado River Aqueduct to the company's property between the Mojave National Preserve and Joshua Tree National Park. In dry years, it would be pumped from an aquifer underneath the company's 35,000 acres. Cadiz would need agreement from the Metropolitan Water District of Southern California – which backed out of the project in 2002 amid environmentalists' opposition and concerns about costs – to convey water through the aqueduct. The draft environmental report found no impact or less than significant impact with mitigation and will be open for public comment until Feb.13.

CITY OF LOS ANGELES MAYOR Antonio Villaraigosa has released a new citywide bicycle plan, which includes construction of 40 miles of new bikeways each year. The city has thus far utilized "sharrows," chevrons painted on city streets, to direct car drivers to share lanes with cyclists. The new plan calls for the addition of about 1,680 miles of various bike paths and networks over the next 30 years, including bicycle lanes on vehicular streets and areas where engineering devices are used to slow car traffic.

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THE SAN FRANCISCO PLANNING COMMISSION has unanimously authorized an impact report for the development of infrastructure for the America's Cup races, set to begin summer 2013. The final environmental analysis of the event, which would include construction of an America's Cup Village extending from Piers 27 to 29, was released Dec. 1. The analysis proposes solutions to issues ranging from curbing air pollution to recreational access for swimmers and kayakers. Opponents of construction include the Sierra Club and the California Native Plant Society, who remain concerned about potential traffic jams and damage to local plant life.

THE LOS ANGELES CITY PLANNING COMMISSION has approved new zoning guidelines designed to simplify the requirements necessary for the development of bigger, taller buildings in Hollywood. The guidelines, which give incentives to developers to place buildings near transit stops, are part of a larger vision of transit-oriented development outlined by Mayor Antonio Villaraigosa. The Hollywood community plan was last updated in 1988 and will be the first of several reworked neighborhood-specific plans to be adopted in the coming year.

THE SANTA CLARA CITY COUNCIL has approved the construction of a $1 billion 49ers stadium on the Great America parking lot. The Council and the Santa Clara Stadium Authority voted 4-2 on a deal between the team, the city, the Stadium Authority, and Cedar Fair Entertainment, the company that owns the theme park, ending a lawsuit by Cedar Fair challenging the project over Great America's parking lot. Under the agreement, the 49ers would pay Cedar Fair annually for parking rights and would build their stadium on the overflow parking lot. The main lot would be reconfigured to include up to 7,000 spaces for use during games and events. The deal extends Cedar Fair's lease with the city from 2039 to 2074 while maintaining its current annual rent of $5.3 million. The city will receive an $850 million grant for stadium construction from Goldman Sachs, Bank of America, and U.S. Bank to be reimbursed with stadium revenues.

PLACER COUNTY SUPERVISORS have unanimously rejected an appeal by environmental groups on the planning commission's approval of the $250 million Homewood Mountain resort development proposal. Homewood's proposal would enlarge its current 25,000 square foot space by 40 times. Friends of the West Shore, the League to Save Lake Tahoe, and the Tahoe Area Sierra Club contented that the proposal did not seriously consider smaller development alternatives. Since then, those groups, along with the Tahoe Regional Planning Agency, have filed a federal lawsuit to block the project.

SACRAMENTO COUNTY SUPERVISORS have given initial approval to one of three hard-rock mining operations planned for the eastern agricultural area south of White Rock Road. The unanimous vote allows Angelo G. Tsakopoulos to begin mining 620 acres at the Stoneridge Quarry for the next 100 years. Because the vote included a change to the county's general plan, supervisors must wait until next month before giving final approval. The project, which county planners say is crucial to the continued growth of the region, raises concerns about truck traffic, water supply, and noise.

FIVE NORTHERN CALIFORNIA conservation groups committed $30 million to conserve 8,532 acres around the shuttered Davenport cement plant. The 8 square mile property is the largest piece of privately owned land in Santa Cruz County. The deal will connect 26,000 acres of protected open space. Under the purchase, environmental groups – which include the Peninsula Open Space Trust, the Gordon and Betty Moore Foundation, and the Nature Conservancy – will pay the Cemex Company for all of its property except its cement plant, which remains for sale. Rather than donating the property to the state parks department which faces severe budget cuts, the groups plan to conduct biological surveys over the area and place it under a conservation easement held by the Save the Redwoods League and the Land Trust of Santa Cruz County.

THE CARSON CITY COUNCIL has voted to annex the unincorporated Rancho Dominguez area northeast of the city. The 2.6-square-mile industrial pocket bordered by Long Beach, Compton, and Carson contains the historic Dominguez Rancho Adobe Museum, a manufacturing area, and several mobile home parks. The area's eastern portion is being considered for annexation by the City of Long Beach, which has an application pending. Carson considered annexing West Carson last December, but backed out due to anticipated costs. The council has allocated $25,000 for the initial application, the first step in an approximately six-month annexation process.

THE DISTRIBUTION OF LANDS from the bankruptcy settlement of Pacific Gas and Electric Co. is ongoing. Most recently, land in the mountains of Nevada and Placer counties has been given to public agencies. Over 1,500 acres will be split between the Auburn Recreation and Parks District and the University of California Center for Forestry, 64 acres and 1,484 acres respectively. The Auburn parcel will most likely be developed into a community park, and the Center for Forestry land is designated for research on sustainable ecosystems adapting to climate change. The recipients of the parcels must allow the land be open to the public, for research, habitat, recreation, or other benefits.

A PUBLIC HOUSING PROJECT in Sunnyvale is the first neighborhood project in the country to garner accolades at the LEED Gold Level. The Sunnyvale project will include over six acres of parkland, which is just one aspect qualifying it for that certification. The certification is an acknowledgement of projects designed and built with solid understanding of environmental growth and green design. There is no final price as of yet for the replacement and revitalization of Sunnyvale. The project itself is the result of a partnership between Mercy Housing California and Related California as part of the HOPE SF program.

GOV. JERRY BROWN has announced a draft package of reforms to the California Environmental Quality Act. The reforms are intended to streamline and simplify certain types of urban developments in order to reduce costs and hardship for developers who are pursuing environmentally friendly infill projects. The reforms, drafted by the Office of Planning and Research, come in accordance with Senate Bill 226 and Assembly Bill 900, both of which were signed into law late last year.

THE CALIFORNIA DEPARTMENT of Water Resources has released the $17 billion Central Valley Flood Protection Plan, with $6.5 billion worth of investments to protect the Sacramento metro region and Yolo County. To be completed over the course of several decades, the plan seeks to protect the valley from a 200-year flood. Planners say it would be the first comprehensive approach to flood control in the area in nearly 100 years. The plan includes a complex system of bypasses and weirs, which would funnel flood waters away from population centers and delicate levees. Planners insist that the plan would only minimally impinge on farming activities and that environmental groups support the plan. Public hearings are planned through July. The plan is partially funded by a $5 billion flood control bond passed in 2007.

AFTER A FALSE START in December, when an administrative glitch scuttled a planned vote, the Long Beach City Council approved, on a 7-2 vote, a new Downtown Plan in early January. The plan, which is intended to be implemented over 25 years, is intended to give the 725-acre downtown area an economic boost, hoping to attract and enrich residents whose incomes will be 30% greater on average than they are today. It would increase density and building height limits in the 1.25-square-mile area and allow thousands of new residential units, millions of square feet of office and retail space, nearly 1,000 new hotel rooms, and added restaurant space. Opponents of the plan were concerned that it would displace low-income residents and lobbied for affordable housing requirements. The plan includes a Sustainable City Action Plan to promote environmentally friendly building and planning practices. ■

CEQA Analysis of Marine Terminal Must Account for Existing Conditions

Court declines to pretend that 110-year-old facility does not exist

BY WILLIAM W. ABBOTT

The best method for setting the proper baseline in a CEQA document still remains a matter of debate. For the project opponents, the payoff is often big if they can convince a court that the wrong baseline was used, as the ensuing analysis is all keyed to the baseline. If the wrong baseline is used, then the balance of the CEQA evaluations is upset. *Citizens for East Shore Parks v. California State Lands Commission*, the last CEQA decision for 2011, involves one of those baseline challenges.

The facts involve a lease extension between Chevron and the State Lands Commission for a marine terminal in the Bay Area city of Richmond. Originally built in 1902, the terminal had been periodically upgraded. In 1947, the Lands Commission entered into a 50-year lease with Chevron's predecessor. Starting in 1998 with the NOP, the Commission eventually certified the EIR for the lease extension, nine years later. CEQA litigation followed, with a case filed by a neighborhood group.

The key issue in the case was the setting of the baseline. While administratively the Commission had considered the baseline as if no terminal was currently operating, it eventually determined that the appropriate baseline included existing active terminal operations. The opponents argued that a "no terminal" baseline was appropriate on the basis that the Commission had the right to not extend the lease, effectively terminating the activity. The appellate court disagreed.

The lead agency had the discretion to include the existing operations, and whether viewed as a question of substantial evidence or as a question of law, the appellate court held that the Lands Commission chose correctly. The commission's actions did not include the error of including hypothetical operations, a practice invalidated by the California Supreme Court in *Communities for a Better Environment v. South Coast Air Quality Management Dist*. (2010) 48 Cal.4th 310, 315.

Most of the opponent's remaining arguments were hinged to their initial argument that the commission erred in its baseline selection. The appellate court rejected those claims as well, including an argument that the commission erred in failing to study an alternative that assumed that the terminal did not exist. Because the proposed lease activity had no impacts to recreational activities, there was no duty to examine potential impacts to trail plans (land and aquatic).

The appellate court also rejected an argument that the project description was too narrowly drawn as it omitted the upland operations associated with the refinery. As the appellate court observed, the commission only had jurisdiction over the lease for the marine terminal, it was not required to consider the existing refinery as connected to the proposed lease.

The appellate court also considered the claim that the lease violated the public trust doctrine. Upon achieving statehood, the State of California acquired title to all tidal and navigable river lands, and holds them in trust for the public. However, the appellate court concluded that the granting of a lease for a marine terminal was consistent with the public trust, and declined the urgings of the project opponents to compel the commission to engage in a wide-ranging identification, evaluation and mitigation of other potential public trust uses. ■

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➤ **The Case:**
Citizens for East Shore Parks v. California State Lands Commission 2011 Cal.App. LEXIS 1645. No. A129896. Filed December 30, 2011.

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CEQA Does Not Require Analysis of Sea Level Rise on Project

Court upholds EIR for Playa Vista infill development

BY WILLIAM W. ABBOTT

The Second Appellate District tackled several technical but important legal considerations in *Ballona Wetlands Land Trust v. City of Los Angeles*, including that of whether a lead agency must analyze the impact of the environment on the project.

This case involves the aftermath of an earlier court decision finding the environmental impact report for the massive Playa Vista infill project on the west side of Los Angeles to be deficient. That decision directed the City of Los Angeles to vacate the approvals and correct certain EIR deficiencies. Consistent with the court's earlier ruling, the city and developer went back to work on a revised EIR.

As a result of amendments to the CEQA Guidelines, the new EIR included an analysis of greenhouse gas emissions. Upon completion of that EIR, and the City Council re-approved the project, with mitigation measures. The Ballona Wetlands Trust, an environmental group dedicated to preserving a creek and wetlands area on the Playa Vista property, filed an opposition to the return to the writ, as well as a new petition.

The trial court consolidated the two actions, denied the petition, then discharged the writ, following which the opponents appealed. The issues on appeal included sufficiency of analysis and disclosure of archaeological resources and mitigation, sufficiency of analysis of GHG as it related to coastal flooding; and whether the opponents could renew a challenge to the project description.

With respect to archaeological resources, the appellate court acknowledged the CEQA rules that prioritize preservation in place as the preferred means of mitigating impacts to archaeological resources (Guidelines Section 15126.4). The first EIR identified two sites, and disclosed that a riparian corridor could not be constructed in a manner which avoided impacts to archeological resources. (The first EIR included the only feasible mitigation was data recovery.) In the first EIR lawsuit, the appellate court rejected this approach, saying that the analysis rejecting preservation in place was insufficient. In the second EIR, the lead agency provided additional discussion of preservation in place, as well as other potential mitigation strategies. This time around, the appellate court upheld the analysis as satisfying CEQA.

Turning to climate change, the appellate court considered the argument that the EIR was required to address sea level rise impacts on the project, as well as the project's contribution to sea level rise on surrounding areas. The appellate court, suggesting that Guidelines section 15126.2(a) overstepped the statute, rejected the argument that the EIR was required to study the impact of the environment on the project, citing earlier decisions reaching similar conclusions, including *City of Long Beach v. Los Angeles Unified School District* (2009) (see *CP&DR* Legal Digest Vol. 24, No. 11, Sept. 2009 [ ]) and *South Orange County Wastewater Authority v. City of Dana Point* (2011) (see *CP&DR* Legal Digest Vol. 26, No. 22, Nov. 2011 [ ]).

Applying the substantial evidence test, the appellate court noted that there was a dispute in the record over the potential impact of global sea level rise on the project. But as there is adequate, competent evidence in the record to support the lead agency's conclusion that the project site would not be inundated by sea rise, the EIR satisfied its disclosure obligation. The opponents also sought to challenge the project description. However, this challenge went beyond the scope of the judgment in the first action, and the trial court's jurisdiction is limited to insuring compliance with the terms of writ. ■

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➤ **The Case:**
Ballona Wetlands Land Trust v. City of Los Angeles (2011) ___ Cal.App.4th ___, filed Nov. 9, 2011, case No. B231965.

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Factory Seeks to Block Housing in Downtown San Diego

BY MORRIS NEWMAN

San Diego politicians and land-use officials have become polarized over an unusual controversy pitting one of the city's largest private employers against an apartment developer in the city's downtown area. At issue is whether the proposed Fat City development in the Little Italy neighborhood threatens the operations of nearby Solar Turbines.

Solar is a unit of Caterpillar Corp. that employs 3,800 workers in a plant on the city's industrial waterfront, plus an additional plant in Kearny Mesa. The company has argued that the proposed Fat City apartment project, located 240 feet from the plant, could result in air-quality complaints from future residents, and threaten its operations. Solar appears especially anxious because it plans to install new spray booths and other equipment that could conceivably boost its emission levels. Any complaint, according to the company, could trigger a new air quality assessment of the plant, at a cost of $100,000. A consultant to the developers, who asked not to be named, speculated that Solar had already spent as much or more on a "phalanx" of lawyers and lobbyists.

This is the latest in a series of instances around California in which an existing institution has expressed concern over its environmental impact on a new project, rather than vice-versa. Recent court cases, in Los Angeles and in Dana Point (see *CP&DR* Legal Digest Vol. 26, No. 22 Dec. 2011 [ ]), have held that the California Environmental Quality Act does not require a developer of a new project to consider this role reversal. However, in San Diego, Solar is not threatening legal action; it is threatening simply to move away of its own accord – even at its own expense.

Solar has taken an all-or-nothing position, rejecting several compromise measures, and even threatens to leave the city if the 242-unit project is approved. Public hearings in January featured a long line of Solar employees pleading with board members of the Centre City Development Corp., one of the city's former redevelopment agencies, to reject the project.

Several local officials, including the San Diego County Board of Supervisors and even the county's Air Pollution Control District of San Diego County (APCD) are backing the manufacturer. APCD director Bob Kard told reporters in January that he had never experienced a situation with housing and industry side-by-side that did not generate complaints.

The homebuilders, architect-developer Jonathan Segal and Garth Erdossy, and their lawyers claim that Solar has little or no reason to fear the new project. Although the plant currently operates within 400 feet of existing housing in Little Italy, where Segal and Garth have built several multifamily complexes in the past decade, no local resident has ever filed a complaint against Solar. Of the three types of air pollution regulated by APCD – smoke, dust and odor – none seems to apply the Solar plant. The plant site is entirely paved and dust-free, and the building, which has no smoke stacks, emits neither smoke or smell.

"I've bicycled by there every day for 20 years, and I've never smelled anything," said Richard G. Opper, an environmental attorney representing the home builders. He added that Solar's emission levels have actually fallen 80 percent as compared to an initial air quality assessment conducted on the plant decades ago, due to the installation of improved air-scrubbing technology.

The apartment developers argue that the city has no basis to deny the project, which conforms to existing zoning for residential use.

"The reason they've (CCDC) been so successful in San Diego in the last 10 years is that the city has done such a great job of making the process transparent, predictable and consistent," said developer Garth Erdossy, president of GLJ Partners, who seeks to build the project in partnership with architect Jonathan Segal. "Investors have flocked to San Diego because of this."

Erdossy points out that a car painting shop, with both odor and noise, operates immediately next door the existing Waterfront Lofts in the same neighborhood, without eliciting complaints.

COURTESY CENTRE CITY DEVELOPMENT CORP.

A rendering of the proposed Fat City Lofts.

The developer said he and Segal have offered several compromises to appease Solar, including requirements that renters sign waivers on air-quality issues, and offering to negotiate any complaints about the plant directly with Solar, rather than refer complaints to the APCD. The developer also offered a land-swap with the city, in which the developer would switch locations with a public parking structure planned about 1,000 feet from the Solar plant. The company reportedly rejected all the offers.

On January 25, the board of the Centre City Development Corp. rejected the housing proposal by a 4-2 vote, with three abstentions. Board member Laurie Black resigned in protest, although she told the San Diego Union-Tribune that the demise of redevelopment was also a cause for leaving the board.

A final decision rests with interim Centre City president Kim John Kilkenny, although any decision he makes is likely to be appealed to the city's Planning Commission. ■

CRA'S JIM KENNEDY ON THE DAY REDEVELOPMENT DIED

BY JOSH STEPHENS

On the occasion of redevelopment's demise in California, *CP&DR* editor Josh Stephens caught up with Jim Kennedy, the interim executive director of the California Redevelopment Association. Kennedy has been on the front lines of the unsuccessful effort to win *CRA vs. Matosantos* and, since the Dec. 29 Supreme Court ruling, has been lobbying for legislators and Gov. Jerry Brown to extend the Feb. 1 deadline for dissolution while also helping member agencies prepare for the worst. Now that that day has arrived, Kennedy has called for the state to acknowledge challenges facing successor agencies and their communities.

Jim Kennedy, interim executive director, California Redevelopment Association

CP&DR: What is the mood at CRA today? Many agencies have already wound down and become successor agencies, so does anything momentous happen today?

JIM KENNEDY: It's been characterized as a funeral. It's not a positive day in the careers of people that have worked in redevelopment for a long time. It certainly represents a different environment for the foreseeable future. We try to strike an optimistic tone the issues that redevelopment was charged with dealing with haven't miraculously gone away as of this morning. Additional tools will be forthcoming to help localities continue to address those issues, albeit, I don't think anyone has an expectation that that's going to happen quickly or the amount of revenue that might be associated with it will be anywhere near what redevelopment had.

CP&DR: Over the past few weeks CRA convened technical advisory committees to discuss the transition and some troubles that you've had with the legislations. How have those meetings gone? Have any of those problems been ironed out?

JK: We've been operating at the technical level in two different venues. One is with our members and we've hosted a variety of conference call meetings, that we've had upwards of 700 participants on, trying to help our members both understand and implement the terms of a very poorly drafted statute. We are going to continue that with some additional technical face-to-face meetings hopefully in late February or early March. They will replace what would have been our annual conference, which was scheduled for Los Angeles. We have changed that, under the circumstances.

The second venue in which discussions are going forward are with the state Department of Finance – and, to a lesser extent the controller, and state treasurer – on a whole variety of issues ranging from bonds, to housing, to what constitutes enforceable obligations. Thus far I will characterize those sessions as less than productive. The Department of Finance's posture has been "none of the issues that have been raised are ones that we don't think can be taken care of simply with the issuance of administrative guidelines or clarifying memoranda or something along those lines." We substantively disagree with that.

We've had bond lawyers and folks with expertise in some of the esoteric areas engaged in these discussions and they've clearly provided the message to DOF that bond lawyers, for example, cannot rely on administrative guidelines that are not authorized in the statute and effectively represent new law that hasn't been approved by the Legislature.

My suspicion is, now that we're at Feb. 1 that will change.

CP&DR: What do you think will change now that we're past this milestone?

JK: Our attempt was to try to identify the significance of these issues and the need for additional time to make the difficult corrections to the law. Senate Bill 659 was the vehicle for providing more time. That clearly didn't get passed and we're now in a position where the dissolution process will be initiated and you can't turn back the clock. We think now that the issue of dissolution of Feb 1 or later is moot that the posture of DOF may change as well. We're certainly hopeful that that's the case. We are very disturbed by the almost cavalier approach that DOF has taken on very substantive issues.

CP&DR: From the RDAs' perspective, are there now offices in California where the lights are off, or are people still going to work in the capacity of successor agencies? And what does that mean they're doing?

JK: In almost every case the host community has agreed to be the successor agency. Seven or eight that we're aware of have not. The others still have the lights on and are doing one of two things: 1) preparing the records for ultimate review and determination by the oversight boards, county auditors, and ultimately Department of Finance as to what constitutes enforceable obligations; 2) for those projects that are on the enforceable obligation list, there's the implementation and they can continue to be undertaken. And that's hopefully what they're doing.

CP&DR: Regarding those projects, many are concerned about projects that have been designed, but not implemented. The oversight boards seem to have a great deal of discretion and the ability to kill such projects. How big of a concern is that for communities?

JK: It's a significant one and one that we've raised with DOF. There are two aspects to that. One is, just what a waste it would be to have gone through the effort and cost of completing a design for a project that you're not going to pursue. Secondly, there's an aspect associated with particularly infrastructure projects where not only do you have design but you've earmarked bond proceeds for the construction side. Those bond proceeds cannot be simply captured and sent to the taxing agency as part of the residual. They're limited by federal law as to how they can be used. In most cases, if they're not being used for projects, they can't be used to redeem bonds in the near term.

Most bonds have been sold with at least ten-year call protection. And most bond proceeds are probably at the short end of a ten-year call – they're probably a year or two old at most. So they have another 6, 7, 8 years before unused proceeds could be used to redeem bonds. If that plays out, you have the IRS, which has gotten very aggressive on auditing and examining the use of tax-exempt bond proceeds. One thing they're concerned about is the failure on the part of localities to not use the proceeds in a timely fashion. Sitting on bond proceeds is a clear violation of a reasonable expectation test, and you could find yourself crosswise with the IRS.

Those are the kinds of things that haven't really been addressed.

CP&DR: If you're a developer looking for property to buy, is this now a fire-sale situation?

JK: The possibility exists for a fire-sale scenario. I hope saner minds prevail. The oversight boards ultimately are charged with overseeing the disposition of assets associated with the former RDAs and, presumably, in their fiduciary capacity would view a fire-sale approach to things as being contrary to their charge to pursue a return on the assets and the availability of funds for distribution to the taxing entities. But they may fall prey to saying, "we'd rather have whatever we can get now to help stem the tide on the challenge to public agency budgets in the current environment." That could lead to the fire-sale scenario. ■

This interview has been edited and condensed.

DEMISE OF REDEVELOPMENT TO REMAIN WORK IN PROGRESS, EVEN AFTER FEB. 1

BY JOSH STEPHENS

Today ostensibly marks the end of redevelopment in California, when no new projects may begin and no new agreements may be forged. But that's how it's been for nearly a year, ever since Gov. Jerry Brown announced his intent to do away with redevelopment and made repeated assurances that the state would not allow agencies to shield assets or rush into agreements before his proposed deadline. Since then, agencies have been quivering, hoping for a reprieve but doing very little by way of redevelopment.

By turning themselves over to successor agencies today, redevelopment agencies essentially become accounting firms: poring over their books, figuring out their assets and liabilities, and submitting to the approval of oversight boards – one seven-member committee for every defunct RDA – to ensure that funds are disbursed to either the state or to legitimate creditors.

"It's a new tack on February 1," said Jean Hurst, lobbyist with the California State Association of Counties. "Instead of planning for projects and executing projects, it's going to be more, 'Let's figure out where we are financially. Let's figure out what our debts and contracts are.'"

Redevelopment agencies are, therefore, not going to disappear overnight.

"I think the keys will still work and the computers will turn on," said Hurst.

Though the transformation will take place largely on paper, it is not expected to be easy.

Assembly Bill X1 26 enumerates the roles and obligations of successor agencies, oversight boards, and other entities involved with the dissolution of RDAs.

Since Dec. 27, a host of entities has been rushing to interpret the regulations outlined in AB X1 26 and turn them into actionable items. The state Department of Finance, State Controller, CSAC, and California Redevelopment Association have all published interpretations of what AB X1 26 means for successor agencies as of Feb. 1. Those discussions have, many say, been fruitful.

"I think it's fair to say that we were a little caught off-guard by the case and by the timeframe that we had to figure out what our role is," said Jean Hurst, lobbyist for CSAC. Counties are, in many ways, on the front lines of the dissolution. It is up to each county assessor-controller to scrutinize redevelopment agencies' books and help determine how to allocate their former tax increment funds.

"The hardest part of this whole thing is going to be the flow of revenues from the counties to the successor agencies to make sure we get that right," said Marty Coren, a consultant who is chairing one of the CRA's technical advisory committees. "There's a lot of ambiguity so we're trying to figure out common-sense approaches to make it work."

Coren said that determining the dissolution process has required an uncommon amount of collaboration among state and local entities. The goal, he said, has been to come to a common understanding of what the law requires so that once it goes into effect all parties at least have a baseline set of principles from which to operate.

"We had some areas of disagreements," said Coren. "It's not either side is right or wrong, but there are different ways to interpret things."

Coren said that one of the most puzzling questions from AB X1 26 concerns the definition of a "special district" for the purposes of forming oversight committees. The law does not indicate whether it refers to special districts that are dependent on or independent of other jurisdictions.

By May 1, oversight committees are to be formed to govern the successor agencies. The legislation dictates that each oversight committee consists of seven members. Those seven members are appointed by: the mayor of the local jurisdiction, the county board of supervisors (two members, one of whom must be a member of the public), the largest special district with an interest in the RDA area, county supervisor or board of education, the chancellor of the California Community Colleges, and a member of the RDA's former association of employees.

Despite the specificity of the recipe for constituting an oversight committee – and of the centrality of oversight committees to the dissolution process and the accurate disbursement of funds – AB X1 26 does not actually indicate how they are to be formed.

Successor agencies may thus have to lobby for the formation of their own oversight committees.

"There's no guidance in the legislation," said Coren. "But what we're telling our clients is that as a successor agency go ahead and contact the county and school board and call a meeting and that will get it started."

Some are anxious that oversight committees will have the expertise needed to parse the finances of redevelopment agencies, with operate differently from almost all other public entities.

"Up until now RDA's were responsible for tax-sharing agreements…a lot of counties did not get involved with that," said Coren. "Now, overnight committees are going to have responsibility for 100 or more tax-sharing agreements and they're not set up to do that."

Hurst noted, though, that county assessor-controllers have experience from their involvement with the ERAF payments of previous years. They will, however, now have a massive addition to their workload.

"Los Angeles County has 71 redevelopment agencies, so it's going to be an issue," said Hurst. "We don't have the ability to decline the responsibility, so we have to make it work."

Brent Hawkins, an attorney who has represented the League of California Cities on redevelopment matters, is similarly pessimistic about Los Angeles County's ability to handle the workload.

"The task of inventorying all of those agencies and getting it done by sometime this summer, while taking care of everything else they're supposed to be taking care of – I don't know how they're going to do it," said Hawkins.

Hawkins added that he was also concerned that county staff in rural counties with few RDAs may not have the requisite experience. He said that the state was unlikely to provide meaningful assistance because "The state doesn't have any expertise; redevelopment is a local program."

Making it work, according to Coren, entails a tremendous amount of collaboration, even though different entities may have different feelings about the demise of redevelopment. Cities have deplored it, while counties, which may reap more in property taxes, have not been so opposed.

"The best thing we can have going forward is to work cooperatively with the counties and the other taxing entities," said Coren. "There's a loss of a sense of entitlement by some of the cities. We've got to overcome that and make the best of what's being presented."

Others are not so optimistic.

"I think this is going to be a slow-motion train wreck," said Hawkins. "Some people think the sun isn't going to rise tomorrow. I don't think that's going to be the case." ■

HANDFUL OF CITIES REFUSE TO SERVE AS RDA SUCCESSOR AGENCIES

BY JOSH STEPHENS

Among the roughly 400 redevelopment agencies that shut down Feb. 1, the vast majority effectively elected to dig their own graves. The option for cities to serve as their own successor agencies was one of the stipulations of AB X1 26. Successor agencies will oversee the wind-down of operations, liquidation of assets, and payment of outstanding obligations. In most cases, former redevelopment staff are staffing successor agencies.

At least a handful of cities, however, indicated that they want no part in what many consider an unfortunate process. The Los Angeles City Council very publicly voted not to serve as successor agency for the Los Angeles Community Redevelopment Agency. That vote was based in part on a city report that indicated that overseeing the shutdown of the state's largest RDA could cost the city up to $130 million – more, by far, than the entire annual budgets of many redevelopment agencies.

In addition, the cities of Los Banos, Merced, Pismo Beach, Riverbank, and Waterford have all taken similar action as of last week. If a city opts out, then any other taxing entity that is affected by a city's redevelopment tax increment could volunteer to be successor agency. Most likely, this entity would be the county, but it could also be a school district or other special district. Thus far, no such entities have volunteered to take over.

The morning of Feb. 1 Gov. Jerry Brown named twelve individuals to serve on four governing boards – one for each county with cities that opted out – responsible for dissolving local redevelopment agencies.

Of the cities that have opted out, some were simply indifferent to the whole process.

"We didn't see a lot of benefit to the city to being the successor agency," said Riverbank city manager Pam Carder. "I know that we would get a little bit of money for administration, but the amount of work that was required for that money we just didn't see any benefit."

The city councils of Pismo Beach and Bishop felt similarly.

> **"We felt that there was not enough clarity in the legislation to hold the successor agency harmless."**
>
> *–John Bramble, Merced city manager*

"We have no blight and we have no bonded indebtedness," said Pismo Beach mayor Shelly Higginbotham. "It would become much more expensive for the city to take on that duty." Bishop assistant city clerk Denise Gillespie said that the city's redevelopment agency had been essentially dormant for over ten years and had "zero money;" it was dissolved Jan. 9.

Carder said that serving as successor agency would not save anyone's job either, since the city does not employ full-time redevelopment staff people. "It didn't affect our budget because we have no staff people that are being paid for out of redevelopment," said Carder.

The City of Merced, however, had deeper concerns.

"We felt that there was not enough clarity in the legislation to hold the successor agency harmless," said Merced city manager John Bramble.

Bramble noted that, in part because AB X1 26 was passed hastily last year, legislators may have inadvertently left out language that legally protects cities that serve as successor agencies.

"The Legislature cannot go backwards and determine what their legislation intent was," said Bramble. "Both AB 26 and AB 27 were approved at the end of the session…we found nothing that there was no liability to being successor agency."

Bramble said that Merced, which has been famously devastated by the recession and housing collapse, did not have the financial resources to defend against litigation that could arise in the course of dissolution. Being held liable, he said, would be even worse. So the city was happy to shift both the burden of dissolution and the associated legal responsibilities to a successor agency.

Bramble said that, as in Los Angeles, Merced's City Council was also concerned about the cost of dissolving the RDA. Although AB X1 26 provides for some administrative costs, Bramble said "the amount of funds that are available to unwind the RDA assets does not even come close to what we have in terms of staff resources or cost" and that Merced's full-time city is obligated to the City Council, not to a potentially all-consuming special project.

Merced's approach does not, however, mean that it isn't reasonable for hundreds of other cities to accept the burden of serving as successor agencies. In many cases, creating a successor agency temporarily salvages the jobs of at least some RDA employees. As well, cities have an interest in making sure that successor agencies use a light touch when liquidating assets.

"There's always the desire to maintain control," said Bramble. "If they have a project that isn't quite finished and they're not quite sure where it stands, they're going to want to make sure it's done right."

Many cities, however, may not have made such measured calculations. Cities had only two weeks to decide on whether to serve as successor agencies, and those that may not have been certain were automatically opted-in under AB X1 26. By contrast, cities like Los Angeles and Merced took pains to understand what that choice entailed.

"We dropped everything for the next two weeks," said Bramble. "I involved city attorney, the finance office, my office, and economic development and redevelopment staff to go through absolutely everything."

With that decision made, cities that opted out left themselves to the discretion of the state to assign three-member oversight boards that will oversee successor agencies, unless any other taxing entity shows interest by Feb. 1.

"If a city declines, then it's up to one of the other taxing entities to decide whether they want to become the successor agency, and if none of them step into that, then it goes to the state," said Jim Kennedy, interim executive director of the California Redevelopment Association.

In some cases, relatively obscure taxing entities could have stepped up if they so chose. For instance, the Merced Redevelopment Agency could, potentially, have been succeeded by the Merced County Mosquito Abatement District. Not that it would choose to take on that task.

"There's not a lot of rewards to being a successor agency," said Marty Coren, a consultant and head of a California Redevelopment Association committee that is studying the RDA transition. ■

A version of this story was posted Jan. 31 on www.cp-dr.com.

LAWSUITS SEEK 11TH-HOUR REPRIEVE FOR REDEVELOPMENT

BY JOSH STEPHENS

Shortly after hearing initial arguments Jan. 28, Superior Court Judge Lloyd G. Connelly refused to grant a stay against the dissolution of redevelopment, rejecting arguments advanced in two separate suits, led by the cities of Cerritos and Carlsbad. The ruling cleared the way for the dissolution of redevelopment to proceed Feb. 1 as ordered by the state Supreme Court.

With seven days to go before redevelopment agencies vanish from California's landscape, two consortiums of cities sent up two different hail Marys in the hopes that the Sacramento Superior Court would give redevelopment a stay of execution – or even wholesale salvation.

Friday afternoon, the court will hold preliminary hearings on both suits. The first, filed by a consortium of cities led by the City of Cerritos, seeks to overturn Assembly Bill X1 26 on constitutional grounds. It had originally been brought by the cities before the state Supreme Court rendered its decision in *California Redevelopment Association vs. Matosantos* but was put on hold while that case was decided.

The other, unrelated, suit was filed by a consortium of cities led by the City of Carlsbad following the *Matosantos* decision. It alleges that AB X1 26 can only be valid if its companion budget bill, AB X1 27, were enacted. But, because AB X1 27 was struck down by the Supreme Court, plaintiffs in the Carlsbad case contend that AB X1 26 can never go into effect.

Both suits – either of which could have delayed or prevented implementation of AB X1 26, regardless of the other's success – pursued different legal approaches than the CRA did in the *Matosantos* case. CRA had focused largely on Proposition 22, which, it contended, prohibited the state from appropriating redevelopment funds and, by extension, from dissolving agencies.

"We raised constitutional challenges that were in addition to the primary focus of the lawsuit brought by CRA and League," said Bill Irkhe, partner at the law firm of Rutan and Tucker, which is representing the City of Cerritos. "Per the request of the attorney general's office, we stipulated to holding this case off until the League and CRA case would be decided."

The Cerritos suit centered on three main claims. The first was that AB X1 26, which was passed by a simple majority, effectively redefines redevelopment's tax increment as an ad valorum property tax – thus fundamentally changing the nature of the tax. That sort of change, plaintiffs argued, would require a two-thirds majority vote in the Legislature. Second, plaintiffs argued that AB X1 26 results in violations of federal and state contract law by impairing or invalidating contracts between redevelopment agencies and their respective cities. Third, plaintiffs claimed that Gov. Jerry Brown's and the Legislature's efforts to go after redevelopment funds overstepped their bounds by responding to a short-term budget emergency with a remedy whose effects may last for 30 years, which is the lifespan of a redevelopment project area.

Irkhe said he believes that these arguments held sway in part because, according to a footnote in its decision, the Supreme Court explicitly did not consider this line of argument in deciding *Matosantos*. Therefore, the Superior Court may consider it an open legal question and therefore grant the injunction that plaintiffs were seeking.

Plaintiffs in the Carlsbad case – which named the state and five counties' auditor-controllers as defendants – contended not that AB X1 26 is invalid but rather that it could be enacted until AB X1 27 is enacted. The Carlsbad suit alleged that the enactment of AB X1 26 is contingent upon the enactment of AB X1 27 in part because the Legislature intended the two laws to work in concert. Carlsbad city attorney Ron Ball said that AB X1 26 depended on the enactment of AB X1 27 – which occurred – and on the inclusion of Part 1.9, which is the part of AB 1X 27 that calls for redevelopment agencies to make voluntary payments to the state.

"The whole law was determined to become unconstitutional, so Part 1.9 never arose," said Ball. "So how could the law become effective? There were two contingencies, one of them it made, and one failed."

"The state's position is contrary," said Ball. "They feel that either the law was not void ab initio, or else it was valid for a while before the Supreme Court turned it down."

Plaintiffs' argument, according to Ball, differed from the "severability" argument that arose in *Matosantos*, in which attorneys for the state successfully argued that the Supreme Court could invalidate one of the laws without invalidating the other.

"We learned more about severability than I ever wanted to know," said Ball. "That's fine. But it didn't answer this question."

Neither groups of plaintiffs collaborated directly with the CRA or League of California Cities, which were the lead plaintiffs in the *Matosantos* case. ■

A version of this story was posted Jan. 31 on www.cp-dr.com.

BILL TO SALVAGE AFFORDABLE HOUSING FUNDS ADVANCES

BY JOSH STEPHENS

THIS WEEK, as redevelopment agencies were shutting down in observance of yesterday's dissolution deadline, the State Senate approved a bill that would preserve former redevelopment funds that had been dedicated to the provision of affordable housing for low- and moderate-income residents. Senate Bill 654, sponsored by Sen. Darrell Steinberg (D-Sacramento), passed on a vote of 34-1. It now advances to the Assembly Housing and Community Development Committee and then to the Assembly Appropriations Committee.

The bill would preserve an estimated $1.36 billion currently in the coffers of former redevelopment agencies (now successor agencies) that were earmarked for affordable housing. Municipal and county housing authorities or other approved entities can recieve the funds from their respective successor agencies. Without passage of the bill, those monies would go back to the state and localities would lose what many consider to be a crucial source of subsidy for the development of affordable housing.

While housing advocates and many lawmakers have hailed the vote, they have expressed frustration that Senate Republicans refused to support the bill as an urgency measure. Therefore, rather than take effect upon the governor's signing, SB 654 would not take effect until Jan. 1, 2013. Democrats had refused to support a version of the bill that included some measures to streamline the process of dissolving RDAs.

Amid partisan tit-for-tat, Steinberg complained that the lack of an urgency measure could cost over 20,000 jobs related to affordable housing. Senate Republican leader Bob Huff (Diamond Bar) noted that it was Democrats, led by Gov. Jerry Brown, who pushed for the elimination of redevelopment in the first place. Many supporters of redevelopment have claimed that it maintained and created countless jobs throughout the state.

Steinberg has said that he may try to re-insert language that would implement SB 654 immediately upon signing. ■

>>> Suit Claims SANDAG Plan Relies Too Heavily on Highways

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high-occupancy lanes, which will serve both carpools and public buses. Two highways that will be expanded for HOV lanes are I-15 and I-805.

"What we see is transportation planning resembling what we used to see in the 1960s," said Rachel Hooper, a partner at Shute, Mihaly & Weinberger and lead attorney for the plaintiffs, "emphasizing planning for the auto, freeway building and expansion rather than a focus on public transportation and transit."

"I'm not sure whether they understand the fact that we're going to be running bus rapid transit on those lanes," said Charles "Muggs" Stoll, SANDAG's director of land use. "They just say, oh, you're investing in freeways."

Last month, Attorney General Kamala Harris joined the suit, thus setting up a confrontation between SANDAG and the state over what is arguably the most significant planning and environmental initiative of the next generation. Last year, Harris' office sent a letter with concerns about the draft SCS. SANDAG officials say that they responded to each of Harris' concerns, but "obviously not to the attorney general's satisfaction," said Stoll.

Harris' office declined to comment for this article.

The outcome of the suit – whether it goes to court or whether SANDAG and plaintiffs can reach a compromise – bears heavily on the statewide effort to pursue sustainable regional plans.

"I think it says that it's sort of business as usual, which is exactly what SB 375 was intended to change," said Bruce Reznik, executive director of the Planning & Conservation League and former executive director of San Diego Coastkeeper. "Because it is first out of the gate, I think it's really important to set a good example for all the SCS's coming forward."

"What we're concerned about in part is that their plan may set a precedent for the other SCS's that are emerging," said Hooper.

But MPO officials say it is the suit itself that sets a bad precedent.

"The worst thing that could happen to the implementation of SB 375 is to have these lawsuits, because the MPOs have made great progress in moving the thinking of our leaders," said Hassan Ikhrata, executive director of the Southern California Association of Governments. SCAG released its own SCS/RTP at the end of 2011.

Nonetheless, plaintiffs say that the SCS/RTP explicitly ignores that primary goal of SB 375.

SANDAG 2050 Regional Transportation Plan ■ 1-9

COURTESY SAN DIEGO ASSOCIATION OF GOVERNMENTS

"One of the major issues in our lawsuit is that the plan does not provide for mitigation for global warming impacts," said Hooper. "They could have required that their member cities adopt TOD policies…and they could have required their member agencies to adopt climate action plans."

Meant to accommodate a projected growth of over 300,000 households by 2050, the RTP/SCS calls for the investment of over $200 billion in new highway lanes, trolley lines, and infrastructure projects. Many of those highway miles are funded and mandated by TransNet, the 2003 initiative that imposed a half-cent countywide sales tax to fund certain transportation projects. SANDAG officials say that the TransNet program, which was envisioned well before SB 375 had been drafted – and, indeed, before compact growth became popular

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>>> SANDAG Plan Emphasizes Managed Highway Lanes

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in California, constrains the RTP.

Most of the highway projects are slated to be built in the next decade, whereas many of the public transit projects are planned for the 2020s. Opponents say that these priorities are backwards – with 28% more spending on highways than on transit in the first decade of the plan – and that the construction of transit in the near term would stoke centralized, compact growth in the long term. The reverse, they say, simply is not going to happen.

"They say that they're going to support transit," said Jack Shu, board president of the Cleveland National Forest Foundation. "That may be true in terms of some of the dollar figures, but …of the 15 trolley projects, half of them will take place after 2030." SANDAG's RTP extends to 2050, SB 375's targets extend only to 2035.

"It's a big challenge now because we have not done our job the past 30 years," said Shu, speaking of the region's low-density development. "That does not mean that we have to avoid that challenge now."

Hooper said that the plan should have focused on transit in the urban core.

The suit is also something of a referendum on methods of regional planning, which relies on heavily studied but often unproven methods of modeling traffic and emissions. Plaintiffs say SANDAG's models include unfounded assumptions and overstate the emissions reductions that will result from implementation of the SCS in its current form.

Hooper said that SANDAG assumes an unwillingness on the part of high-income residents to ride public transit. This assumption, she said, leads to artificially low transit ridership projects, which in turn bias SANDAG towards highways.

Though methods of regional modeling are still evolving, SANDAG contends that its methodologies follow common practice in the SB 375 era.

"We've worked with all of the other MPOs throughout the state to assure that the methodologies that we're using are consistent among the regions," said Stoll. "We've worked with ARB staff."

SCAG's Ikhrata said that MPOs have been developing their models "for the past 40 years" and that they have all been rigorously peer reviewed.

Ultimately, SANDAG planners say that plaintiffs and other opponents fail to understand how the SCS/RTP relates to the unique attributes of the San Diego region. Though opponents claim that the plan creates urban sprawl, SANDAG planners say that sprawl in the region is inherently contained by natural and political barriers: the ocean to the west, mountains to the east, and Camp Pendleton and the Mexican border to the north and south, respectively.

"We are a bit unique because we almost have a de facto growth boundary," said Stoll.

> "I don't go to bed worrying about who is going to sue me. I go to bed wondering if I did the right thing for the SCAG region."
>
> *—Hassan Ikhrata, executive director, Southern California Association of Governments*

"There's so much preserved in our county (as opposed to) Sacramento, where there's nothing but farms as far as the eye can see, there's a lot more potential for that kind of thing to happen."

Stoll said that opponents unfairly assume that the region's history of low-density development will simply persist even though SANDAG planners are confident that the region's culture is already changing. Most importantly, he said, the RTP/SCS plans for 85% of new housing to be multifamily – thus curtailing the sort of low-density, inefficient development that comes with single-family homes.

"There's very little suburban development planned for the next 40 years," said Stoll. "I think that's not well understood by the stakeholders who live outside San Diego."

Stoll said that requirements such as TOD policies and climate action plans are not necessarily because most of the region's 18 jurisdictions are already, of their own accord, adopting general plans that promote compact development. The SCS, therefore, simply goes along with a trend that is already well underway.

Opponents, however, call this attitude a cop-out.

"They took the land use plans that were adopted by their jurisdictions and they threw up their hands and said, 'we're not a land use planning agency….so we're going to build our transportation system around what's already in the plans of these jurisdictions,'" said Hooper. "We're saying that they could have done better."

Just how much they could have done is a matter of debate, however. Because land use planning – as opposed to transportation planning – is generally a matter of local control, the authors of SB 375 hesitated to vest too much power in regional planning bodies.

"SB 375 clearly says MPOs have no authority over land use whatsoever," said Ikhrata. "With that in mind, you can't have such an ambiguous law and come back and say, 'well, you need to do more.'"

Though many environmental groups may want SCS's in San Diego and elsewhere to strive for more aggressive curbs on greenhouse gas emissions, some remain anxious about suits such as the one brought against SANDAG.

"The reason you don't have 100 groups filing lawsuits is that they are worried about the chilling effect," said Reznik. "If you bring this suit against SANDAG, what happens to groups in like Bay Area and Sacramento who are trying to do a better job. Does this chill discussions and slow everything down?"

Groups like SCAG, however, remain undaunted by SANDAG's challenges.

"I don't go to bed worrying about who is going to sue me," said Ikhrata. "I go to bed wondering if I did the right thing for the SCAG region. We all want SB 375 to be implemented and we all want it to succeed." ■

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>>> Insight: Ready Alternatives to RDA

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Proposition 1C, which was passed in 2006. In addition, the state could also speed up implementation of SB 226, a law to create faster environmental review of infill projects that Gov. Brown signed earlier this year.

Individually, all of these reforms can help cities create valuable urban projects that promote the state's policy goals. But they can be far more effective if they are coordinated. The Brown Administration should fast-track a package of strategies that will help move urban projects forward in the absence of redevelopment

Cities have options too – even with redevelopment gone. Four options look strong: land, sales-tax increment, bonus densities, and streamlined processing.

LAND

Redevelopment has always sought to "level the playing field" with suburban development, which is subsidized in other ways. Traditionally redevelopment agencies have subsidized land in order to make urban projects work. But there are ways to make land available cheaply.

All government agencies – cities, counties and school districts for example – own urban land. Nonprofit institutions located in urban areas – universities, hospitals and the like – also tend to be land-rich. These agencies and institutions don't want to give away their land. But they can come to the redevelopment table as equity partners, committing their land at no cost to a redevelopment deal upfront in exchange for a back-end financial payoff.

SALES-TAX INCREMENT

The redevelopment law only affects property tax. Some cities also have aggressively used tax-increment financing drawn from sales-tax generating projects – essentially, committing a portion of the future revenue stream to pay for infrastructure or subsidize development. Obviously, this method will work only if the project throws off sales tax. In the past, sales-tax-increment deals have been used to fund suburban-style shopping centers and auto dealerships. But this technique could assist urban projects with a retail component or an employment center that generates a lot of taxable business-to-business sales – an often-overlooked source of funding.

BONUS DENSITIES

By offering higher densities in exchange for infrastructure and amenity funds, cities can make well-rounded urban projects worthwhile for developers. Transferring development rights is tricky, but can also help. The idea is this: Developers "buy and sell" existing rights to either wind up with a more advantageous zoning restriction or generate cash to pay for infrastructure and subsidize land costs. This technique has been used successfully in both downtown Los Angeles and downtown Seattle.

STREAMLINED PROCESSING

Cities can also help by creating "specific plans" for whole urban neighborhoods, which frontloads the environmental and community review process so that individual developers can then construct projects more quickly at the back end.

Obviously, the state's actions can help local efforts. For example, aggressive guidelines to streamline environmental review under SB 226 can help expedite local specific plans, while state planning grants can fund them. And surplus state land could be made available to cities to help make urban projects work.

Even if redevelopment is gone for good, California will need public policy to promote infill development and urban revitalization in the years ahead. The state needs to make sure those opportunities are available, but these opportunities must be packaged in a coordinated and strategic way. And California's cities must get used to thinking more broadly about how to make redevelopment work. ■

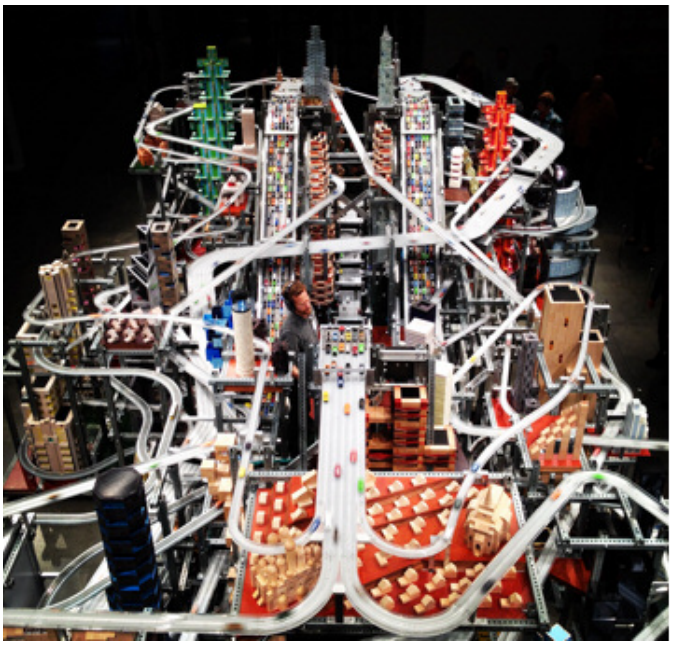
This piece was also published in the Feb. 4, 2012 Sacramento Bee.

Art Review: *Metropolis II* Captures Complexity, Motion of Cities

Even though I'm a professional planner and am familiar with the gritty details, I find model cities appealing because they allow me to examine a city from angles and perspectives not possible in real life. The idea of building a city comprehensively from scratch is exciting, especially when compared to the incremental, piecemeal, and fragmented approach to planning most of us have grown accustomed to. This sort of fantasy is on full display in *Metropolis II*, a dynamic kinetic sculpture by artist Chris Burden, currently showing at the Los Angeles County Museum of Art.

PHOTOS BY JULIE YOM

Metropolis II, a dynamic kinetic sculpture by artist Chris Burden, is currently showing at the Los Angeles County Museum of Art.



Metropolis II features miniature cars that race through the city at 240 scale miles per hour; this means that every hour, the equivalent of about 100,000 cars circulate through the dense network of buildings. Steel beams form an eclectic grid interwoven with a complex system of 18 roadways, including a six-lane freeway and train tracks. Not only is this sculpture a sight to see, it also features the noise of the zooming cars efficiently captures and communicates the busyness and sometimes craziness of city living. In Burden's words, "The noise, the continuous flow of the trains, and the speeding toy cars, produces in the viewer the stress of living in a dynamic, active and bustling 21st Century city." Traditional architectural models of future projects or even the impressive models of major cities at Legoland are static, and lack the energy and vibrancy generated by Burden's piece. He suggests that motion is as much a part of a city as form is.

As a park planner, I was initially disappointed that *Metropolis II* does not include any parks or open space. Although the piece could represent a variety of cities and not just Los Angeles, I even thought Burden could have made the point that Los Angeles is one of the most park-poor cities in the country with *Metropolis II*. In fact, Burden represents nature by the use of different colored panels that the buildings rest on. Thus, while abstract, the green, brown, or light tan panels may be perceived as the parks, open spaces, or recreational areas that contribute to the vitality of any city. Abstract though it may be, this sort of representation suggests, rightfully, that open space is a crucial part of any city, even if buildings and vehicles seem more exciting.

While I spent much time marveling at the wide variety of buildings, *Metropolis II* is actually more about transportation and mobility than architecture. It is a representation of Burden's dream of a future city where cars can go faster and are completely automated, as envisioned by projects such as Google's driverless car project [ ]. The buildings were only put in after the car-racing tracks had been installed and the entire kinetic sculpture was operational.

The process and approach Burden took to create *Metropolis II* is refreshing and admirable because he was able to consider the city in its entirety. Unfortunately, planning in reality has become fragmented, with planners specializing in particular fields (like transportation, land use, parks) and not necessarily working collaboratively due to bureaucratic and other factors.

Two of the biggest ongoing challenges for us planners are communicating clearly with the public and maintaining interest on important planning issues. Obviously, through *Metropolis II*, Chris Burden has achieved both, as evidenced by the great turnouts at LACMA and the extensive media coverage. Part of the appeal of *Metropolis II* can certainly be attributed to Burden's reputation as the well-known artist who created installations like *Urban Light* (which is displayed at the entrance to LACMA).

Nevertheless, this does not mean that planners cannot attract or engage large crowds at urban planning events without Burden's participation. On the contrary, the popularity of *Metropolis II* should challenge all of us to rethink current practices and pursue innovative ways to involve community members in planning. For example, James Rojas' interactive planning approach through the use of model building has proven successful in engaging the public and encouraging creative city-making. Having participated in a Rojas-led exercise before, I understand firsthand how this approach empowers participants by allowing them to shape and share visions in a supportive environment without the fear of providing a "wrong" answer.

Clement Lau is a planner with the L.A. County Department of Parks.

Metropolis II is open for viewing on Fridays, Saturdays, and Sundays. For specific show times and more information, visit: http://www.lacma.org/art/exhibition/metropolis-ii

– CLEMENT LAU | FEBRUARY 9, 2012

Passion Erupts on Both Sides of RDA Debate

In the waning moments of last week's UCLA Extension Land Use Law and Planning Conference in downtown Los Angeles, I was on the verge of deploying the following tweet via @Cal_Plan:

"Ucla Land Use Law Conf: am in a roomful of lawyers and all seem in accord: no one has voiced support for death of #redevelopment"

I'm not even sure if Twitterese would have fully conveyed the seeming irony. In session after session, lawyers – they of eternal contentiousness – on the dais and in the audience alike bemoaned nearly everything about the death of redevelopment, decrying its very fact and, moreover, the sloppy – and, indeed, inadvertent – method by which the Legislature and governor sealed its fate. The closest anyone came to celebrating the implementation of Assembly Bill X1 26 was when they spoke of the chance for reform.

Even the redevelopment panel itself, featuring Housing Finance Agency executive director Claudia Cappio, former CRA/LA head Cecilia Estolano, attorney Iris Yang, and Fullerton community development director Al Zelinka was a strangely harmonious affair, full of the usual criticisms and of some compelling ideas for the future but with little actual debate. In truth, I think everyone is worn out – and it was only Day Three since dissolution officially set in. In any event, if we ever sort this out, it would seem that sustainability and economic development are in and blight is out (legally, if not practically).

I'm glad I didn't tweet too soon.

During Q&A, Frank Gruber, an attorney and journalist based in Santa Monica, addressed the panel with, shall we say, a contrarian viewpoint. It's worth it just to quote him verbatim:

"I don't want to sound ungrateful for a great panel, but it does seem that it would have been good for this panel to have someone who is not mourning the demise of redevelopment. For a lot of us redevelopment was not a solution to a problem."

"I never heard of a CRA that ever bothered with...metrics about creating middle class people. When (a panelist) said that we need government that is clear and explanation, CRA was the exact opposite. It was the kind of thing that made people suspicious of government because they just saw all this money being skimmed off and given to developers. Middle class people leave cities. They've left cities for 50-plus years because of the schools. Did the CRA ever do anything for the schools? I remember being at a conference in 2003 when all of a sudden somebody from CRA said, 'yes, we're now working with the school district'– given that they raised $14 B in bond money."

"When you think of all the irrationality that this kind of funding brought, and of course stealing the money from the county and school districts. there's nothing to stop the Legislature in Sacramento from saying…'we want 5% of all tax increment around the state to go into affordable housing,' rather than just take back the 20 percent that you were going to steal. They can do that. They can enact all sorts of funding with a rational basis for where the money comes from. All these cities are now going to get more general fund money; they can decide what they want to do with it. There's no reason to mourn redevelopment."

> "I don't want to sound ungrateful for a great panel, but it does seem that it would have been good for this panel to have someone who is not mourning the demise of redevelopment."
>
> *—Frank Gruber, Santa Monica-based journalist*

"Jerry Brown: What a great guy. To have been a city guy and used it and realized how corruptible it was and to get rid of it."

After some hemming and hawing by the panel – who reiterated hopes for a renewed, reformed system of redevelopment – Joel Rosen, community development director, City of Buena Park, offered a rebuttal:

"I am mourning the loss of redevelopment. Redevelopment was transformation for our community, and it was transformative for many communities across the state. Were there abuses? No question. But this was a money grab. This was not about redevelopment."

"I would propose something more radical: it's not about finance structure; it's about governance structure. We need to reform governance in California. We have too many school districts, too many special districts, too many overlapping jurisdictions. There's probably a lot of money in the system."

"I would argue that redevelopment was an incredible tool for 50 years. I am mourning its loss. I am mourning the loss of friends who are losing their jobs."

Ashes to ashes, dust to dust.

– JOSH STEPHENS | FEBRUARY 4, 2012

Downtown Lancaster Goes to the Birds

Question: What is the sound of urbanism in the California desert?

Answer: The sound of birds chirping. Over outdoor loudspeakers.

A press release crossed our desk a few days ago, announcing that CT/KDF Community Development Partners has received funding to redevelop four existing retail buildings and make the entire shopping street sing – literally – with the sound of canned birdsong.

The developer's investment partner (known in some circles as a "lender") U.S. Bancorp Community Development Corp., plans to use $16.15 million from the sale of New Markets Tax Credits to redevelop Lancaster Promenade III, four properties along the new Lancaster Promenade, to be known henceforth as The BLVD (pronounced "bull-vid") in downtown Lancaster.

From the press release: "The BLVD is known for the calming sounds of bird chirping and singing, which have been piped in over 70 speakers for the past several months. The bird chirping, blended with calming synthesized music, is played five hours a day along a half-mile stretch of the boulevard. The piped-in music was the brainstorm of Mayor R. Rex Parris, who says that the chirps have a calming effect on the local population."

Make a mental note to yourself: Birdsongs are brainstorms.

This proposal is innovative because sound, per se, is rarely used as a design element in urban areas. One possible exception, if memory serves, is the big barrel vaulted structure that covers historic Fremont Street in Las Vegas, which has a computerized light show with an ear-splitting soundtrack. For further examples, however, I'm stumped. Swallows, of course, play an important role in downtown San Juan Capistrano, by returning each year on the same day, but their melody is apparently unrelated to tax credits.

To my mind, the question is whether little, far-flung Lancaster should be allowed to monopolize the boon of piped-in sounds on public streets. Other California cities have the same right to commit public sound pollution. In the Inland Empire, for instance, which has the highest office vacancy rates in Southern California, we could have loudspeakers blaring the sound of wind whistling through empty spaces, in a creepy way. (Whooo-ooo-ooo!) In high end shopping district of Union Square in San Francisco, we could broadcast the sound of cash registers. (Ka-ching!)


The BLVD in downtown Lancaster

In the Pechanga casino in Temecula, we could replicate the sound of a winning slot machine. (Bing-bing-bing, clunk-clunk-clunk-clunk.) And in Sacramento's Old Town, a historic recreation of the city during Gold Rush days, we could pipe in the sounds of a grizzled miner clearing his throat and…. Well, maybe not. But as for the sound of birds, forget it. Lancaster got there first.

– MORRIS NEWMAN | FEBRUARY 9, 2012