CP&DR

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CALIFORNIA PLANNING & DEVELOPMENT REPORT

Cities Cultivate New Approaches to Urban Agriculture

BY KATE WOLF

When the upscale cafeteria-style restaurant Forage opened in Los Angeles's Silver Lake neighborhood in early 2010, it did so with a new take on the "farm to table" movement that's slowly been gaining ground in California, as well as the rest of the country in recent years.

Forage features produce grown not only by local famers, but, most unprecedentedly, by urban farmers, inviting the latter to bring their backyard harvest to the restaurant for use in its kitchen (in exchange, growers receive market price or store credit). With a stack of positive reviews and a feature article in the *Atlantic Monthly*, Forage's chef Jason Kim has gained national recognition for this concept. Despite its popularity, Forage's "foraging program" was put on hold after concerns from the Los Angeles County Health Department soon after its inception but has now been reinstated, as long as all participants get grower certified by the county at a fee of $63 dollars annually. And the restaurant is thriving.

That Kim's fairly simple idea should have drawn so much attention and in many ways come off as radical, hints at an assumed division between the food found in cities and where that food comes from. California

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COURTESY FORAGE

Affordable Housing Caught in Redevelopment Crossfire

BY LARRY SOKOLOFF

When redevelopment first arrived in California, it included no provisions for affordable housing. Introduced in 1976, the affordable housing set-aside – amounting to 20% of an agency's annual tax increment – was intended to mollify critics who contended that redevelopment amounting to nothing more than a boondoggle for developers. With the governor's successful dissolution of redevelopment, affordable housing now counts among the most lamented collateral damage.

For decades, cities in California relied on redevelopment agency funding and mandates to help bridge the state's considerable gap between supply and demand of housing. Redevelopment agencies across the state had gotten mixed reviews for their production of affordable housing, with some accused to stockpiling funds rather than actually promoting development. But many cities did produced promised housing, and they are now being forced to adapt to the new reality.

Long-planned projects will appear for the next several years. The dissolution legislation allows redevelopment successor agencies to continue to fund "enforceable obligations," as long as contracts were signed before June 1, 2011. But the outlook for affordable housing after that looks more uncertain.

Some lawmakers in Sacramento are trying to replace TIF funds with another statewide funding source, rather than force localities to fend entirely for themselves.

An initial attempt to stanch the loss of housing funds through redevelopment was Senate Bill 1220, which attempted to raise $700 million a year for affordable housing through a real estate document recording fee. That measure failed to get two-thirds necessary for passage in the state senate, losing by two votes.

Dianne Spaulding, executive director of the president of the Nonprofit Housing Association of Northern California, remains optimistic, in light of the close vote. "1220 was the

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inside

NORTHERN CALIFORNIA

THE YUROK TRIBE of California is revisiting a new draft legislation that will transfer more than 1,200 acres of land from Redwood National Park to the Yurok Tribal Park System. The tribe is presenting a revised version of a previous draft from last year that is aimed to reclaim parts of ancestral territory containing important ceremonial sites such as Redding Rock, a sea stack (oceanic rock slab) on the coast of Northern California. Concern from the National Park Service (NPS) Superintendent Steve Chaney stems from the fact that the language of the legislation excluded measures for complying with federal policies regarding resource protection, public use and recreation management. The NPS feels that commitment to regulation and policies for management to which the NPS is bound would be challenged if the lands were transferred outside of their control. In response, the tribe has added further information regarding its management planning process, specifically regarding activities of harvest.

THE SAN FRANCISCO BETTER STREETS PROGRAM has been created an innovative to engage a whole new division on the path to urban improvement – civil society. Created by San Francisco's Planning Department, Department of Public Works, Public Utilities Commission, and the SFMTA, the website (*www.sfbetterstreets.org*) offers users a centralized location to find resources such as San Francisco's guidelines, permit requirements, and documents on the improvement of public space such as landscaping, bicycle parking, and relieving traffic congestion. The website will also take suggestions through submission, and although does not guarantee the consideration of each and every suggestion, it offers an open forum in which stakeholders can participate in the betterment of its environment that it knows best.

DEVELOPER DMB has withdrawn its application from the Redwood City city council to develop the Saltworks project. The fate of lowlands along the Bay has been under fierce debate as developers push for a plan that will convert 1,500 acres of salt ponds producing salt for Cargill into developments such as affordable housing, schools, parks, and retail facilities. Alternatively, the ponds can instead be restored back into wetlands, which are important nesting places for birds and buffer zones in the face of sea level rise.

THE COASTAL COMMISSION has approved a deal to preserve the privately owned Coast Dairies land on the North Coast. The 7.5-mile, 6,800-acre swath of land includes an array of resources including redwood forests, agricultural fields, coastal bluffs, watersheds, and historical and biological resources as well. It was ultimately determined that the land will be opened up for public access and enjoyment, despite persistent speculation that it could be subject to future development. The federal Bureau of Land Management, to which 5,750 acres has been transferred for management, has made last-minute changes to the management plan to clarify issues such as the prohibition of off-road vehicles. Resource development activities such as hydraulic fracturing for gas or oil are also strongly prohibited. Many are optimistic about the strides taken by the deal, which they believe is emblematic of coastal conservation in California.

CHANGES TO SAN FRANCISCO'S historic preservation project policy have been approved, easing a load off property owners and low-income housing developers, who face financial challenges conforming to strict preservation standards that govern even design and materials when making changes to buildings that are historic landmarks or fall within such districts. Furthermore, local interpretation of federal preservation standards would be allowed by the legislation in order to factor in the urban environment. Pedestrian improvement projects would be exempt from preservation rules unless "the sidewalk itself had some significance." These changes were approved by the Board of Supervisors 8-3, with the "left flank of the board" in opposition including Supervisors John Avalos, David Campos, and Eric Mar.

SCOTT GABALDON, a 42-year-old contractor of Wappo Native American descent, filed a lawsuit in 2009 calling for the reinstatement of recognition for his tribe that was terminated in the California Rancheria Act of 1959. Gabaldon seeks the restoration of the Wappo's historic rights, including the right to make their own decisions about land use, instead of going into the gambling business against their will. The counties of Sonoma and Napa, on the other hand, hired history professor Stephen Beckham to investigate, who concluded that Alexander Valley Rancheria "was never a true Indian reservation" and that "the courts cannot restore what never existed." Since the 1820s, Wappo Indians have been faced with enslavement, forced onto a reservation, and "assimilated" into Western society.

A REPORT recently released by the Greenbelt Alliance contends that over 322,000 acres of open space in the nine-county Bay Area are at risk of being developed in the coming decades. Seventy-seven thousand acres are likely be developed within the next ten years alone. The report notes that these figures are lower than they were in 2006, before the economic downtown. The alliance notes that many protection measures are set to expire, and others have not yet been adopted. The report also notes that the economic downtown has weakened the ability of the government and nonprofit organizations to step in to acquire and preserve undeveloped land.

PRESERVATION GROUPS and local activists are in favor of a new park on the former Naval Air Station in Alameda Point while the US Department of Veterans Affairs is pushing for a huge complex. The 700-acre site would feature a clinic, national cemetery and a conservation management office. Environmentalists are questioning the vehicular traffic the new facility will have on the surrounding ecosystems and wildlife. Planning for the location has been delicate because the land is a nesting ground for the endangered California Least Tern. Environmentalists contend that building a world-class park in the East Bay will drive up property values and have a positive economic impact in the long run.

IONE BAND OF MIWOK INDIANS' plans to build a casino near Plymouth of Amador County was approved by the US assistant secretary for Indian Affairs. The proposal for a 228-acre gambling development was filed back in 2005. The project was approved because the 750-member tribe was declared to have "significant historical connection" to the site.

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The project is on its way to having three tribal casinos. In the past, there has been strong opposition by residents to building a $250 million casino and convention center near Plymouth and to an advisory measure that would approve gambling expansion.

THE INTERIOR DEPARTMENT vetoed the Scotts Valley Band of Pomo Indians' proposal to build a casino north of Richmond. The agency denied the project because the tribe lacked any "significant historical connection" to the site. Interior Officials also rejected a proposal by the Guidiville Band of Pomo Indians to build a casino and resort at the former Point Molate Naval Fuel Depot near the Richmond-San Rafael Bridge. Contra Costa County spent over $1 million in fighting casino projects in fear that casinos would bring? social problems such as smoking, gambling and alcohol addictions. The Scotts Valley Band tribe argues that casinos would help struggling landless tribe members while providing jobs and tax revenue to the area.

SAN JOSE OFFICIALS are to appeal a recent court decision striking down a city by-law requiring housing developers to include units affordable to low-income buyers. In January 2012, San Jose's "citywide inclusionary housing ordinance" mandated developers to provide 15 percent of units in new complexes of 20 or more at below-market prices. The California Building Industry Association challenged the law in court and argued that this policy would only force the housing industry to increases prices for buyers of their market-price homes to compensate for the below-market rate units. And, in a continuing effort to spur downtown growth, the San Jose City Council approved a tax break for developers of residential high rises. The ordinance grants tax breaks to developers who break ground before the end of 2013. The tax breaks will go to the first 1,000 units developed. One of the first projects to take advantage of the program may be the Carlyle, a 21-story, 350-unit tower that has been on the drawing boards for several years. Towers often pose financing challenges because they typically cannot be built in phases.

SOUTHERN CALIFORNIA

A PROPOSED SOLAR PROJECT in the California desert is under fire from environmentalists on the grounds that the large-scale power plant will negatively impact already endangered species such as the desert tortoise, golden eagle and bighorn sheep. The controversial legislation, if passed, will allow Calico Solar to move past county governments directly to the California Energy Commission for approval of its project. Environmentalists are concerned that the commission will overlook their concerns based on the urgent mission to meet California's target of one-third renewable resources for electricity by 2020. Although state and federal government officials have generally been in agreement with environmental groups regarding the budding solar industry in California's desert, the Calico case is one stark exception. The project already suffered a rocky start, with a reduction from a proposed 8,230-acre site in the Pisgah Valley to 4,613 acres to create a corridor for desert tortoises. Environmentalists are disappointed by what seems like California's leaders putting "corporate interests ahead of the public's interest."

BRIGHTSOURCE ENERGY CO. plans to downsize its large-scale solar development project in Riverside County near the Colorado River for the reasons of reducing visual impacts and speeding up construction by avoiding a rerouting of transmission lines. Further, the reduction in footprint is estimated to be 1,800 acres. The smaller project will generate 500 megawatts of electricity, enough for about 200,000 homes, despite the reduction from three to two "power towers." Each tower will have thousands of mirrors that focus sunlight on a boiler to generate electricity.

THE CITY OF VENTURA faces the question of making its parking requirements more stringent. Councilwoman Christy Weir favors revising current standards "to ensure adequate parking in new developments and prevent overflow in adjacent neighborhoods." On the contrary, this will make infill development more challenging, according to critics such as real estate agent Dawn Dyer, who urged the City Council to "study the issue more closely." The size of parking spaces will also be examined, including possible reductions to the size of parking spaces and the use of tandem parking.

THE SECOND PHASE of the Newhall Ranch project in Santa Clarita Valley, a planned development that would add more than 20,000 new homes and a number of new commercial areas, has been approved for construction by the Los Angeles County Board of Supervisors. The 1,860-acre phase named Mission Village will add 351 homes, 3,704 multi-family units, and 1.55 million square feet of mixed use and commercial space. Other services include an elementary school, library, fire station, bus transfer station, and open space for public parks, private recreational facilities, and preserves for an endangered plant species. The Newhall Ranch specific plan for the overall project was approved several years ago, although its different villages are now going through the approval process. A joint lawsuit by several environmental organizations including the Sierra Club was filed in March against the entire Newhall Ranch project, but county staff said that concerns regarding the project's impact on the environment had been already addressed.

A SEVEN-YEAR BATTLE over a proposed rock mine in Temecula is long from finished, as the Board of Supervisors voted to deny Liberty Quarry but surprisingly certified its environmental impact report, leaving a chance for the project's return. According to the rules, in the future, developer Granite Construction needs only to resubmit an application without an environmental review so long as it can prove that the site has remained the same since the report was cer-

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tified. Despite that the developer was given a new condition of paying the county's legal expenses in the event of being sued, a coalition of environmentalists, doctors and others believe the certification of the environmental review opens doors for the project's return. This is unfavorable due to worsened air pollution in the form of microscopic silica dust, crippling of Temecula's tourism industry, and disruption of a nearby ecological reserve.

THE NOTORIOUS, gang-ridden Jordan Downs public housing project in the Watts neighborhood of Los Angeles will be demolished, redesigned, and rebuilt at a cost of roughly $1 billion. The Los Angeles housing authority named developers The Michaels Organization of New Jersey and Bridge Housing of San Francisco to transform the 700-unit community into a mixed use urban village of 1,800 units.

IN A SIGN of a possible resurgence in housing construction, Toll Brothers and Shea Builders announced plans to develop a 2,000-home, 386-acre luxury development in the Orange County city of Lake Forest. Toll Brothers reportedly paid over $100 million for the land, making it one of the biggest sales of its kind in the history of the county.

AT A RECENT PUBLIC MEETING for California's wind energy industry, military officials unveiled plans to limit commercial wind development to the Mojave Desert, Las Vegas, San Bernardino County's High desert communities and parts of southern Sierra Nevada range. Under the authority of the U.S. Bureau and Land Management, energy enterprises are managing meteorological investigations to acquire at least 15 wind farms on public property. However, a study done by MIT confirmed military tests and showed that wind power's turbines affect the radar systems of aircrafts. Military opposition is a huge hurdle to energy officials who want to develop environment-friendly wind energy in Southern Californian deserts. The spinning blades echo radar waves back to aircraft, which hinders the operator's ability to sense and track targets. Radar concerns by military officials have terminated several wind projects in the past.

LOS ANGELES HOMEOWNERS opposed to a $2.5 million, 3.85-mile bike path claim that the bikeway will violate federal environmental laws. The project is planned to travel along the right-of-way route owned by the MTA from Robertson Boulevard and Venice Boulevard to Santa Monica. In this court case, the Federal Highway Administration, the US Department of Transportation, the State of California Department of Transportation, the City of Los Angeles and its Metropolitan Transit Authority. Homeowners argue that the bike path will cause more traffic congestion and have adverse environmental impacts.

AS EXPECTED, Beverly Hills Unified School District filed suit against county transportation officials over the route of the $5.6-billion Westside subway extension. The suit argues that the Los Angeles County Transportation Authority violated the California Environmental Quality Act. City and school officials maintain that routing under the school and though an old oil field could ignite a deadly methane gas explosion. They also claim construction work would damage the school and that tunneling underneath the school is dangerous. The subway project will construct nine miles more to the rail service west from the current station at Wilshire Boulevard and Western Avenue to the Veterans Administration hospital by UCLA campus.

THE LOS ANGELES Department of City Planning is creating a trio of community plans to streamline planning and zoning in South LA. The three ordinances are a part of a set of 12 community propositions from 2006 and 2007 and will comprise the South Los Angeles Planning Region –an effort to develop a historically neglected part of the city. The plans will address issues of liquor stores, fast food restaurants with poor urban design, recycling centers, used car dealerships, and tire dealers in these communities. The three plans will focus on residential growth by forming districts around transit stations.

THE CITY OF BELLFLOWER'S downtown revitalization plan was presented to The 2012 Los Angeles County Neighborhood Planning Award. The American Planning Association granted the award to Bellflower for turning the township around with its Downtown Bellflower Revitalization Vision Strategy Plan. Bellflower redesigned the downtown commercial corridor and incorporated plazas for mixed-use, residential and commercial neighbors. The Towne Center Plaza, Laurel Street, Pirate Park, the Train Depot, the Transit Center, the Library Garden and the Bellflower Village Live-Work Project all won awards. Bellflower developed new affordable housing and the $7 million Belmont Court multi-use plan is under construction. The city's municipal plan is now in the running for the statewide section of the California Chapter of the American Planning Association Awards Program.

SAN BERNARDINO COUNTY, the federal government and three environmental groups' five-year dispute ended since the National Park Service has now agreed to maintain roads in the Mojave National Preserve. The roads in and around the preserve will stay open and maintained while protecting the wildlife animals around the eastern Mojave Desert. The opposing parties were arguing for control of the land.

LA/ONTARIO INTERNATIONAL AIRPORT is an economic asset as well as nuisance for the communities in the area. The airport is causing noise and safety issues and now city officials are entering agreements with the nearby cities on the LA/Ontario International Airport Land Use Compatibility Plan in effort an effort to give greater local control on land use. The six cities will come together and simplify the procedure of reviewing ventures within the airport project area. The cities will address any conflicts from any homes, buildings and developments impacted by the noise or airport's flight pattern.

STATEWIDE

THE WILD CONSERVATION BOARD'S new policy on transparency is garnering disapproval from conservation groups who are wary that layers of bureaucracy will stall the acquisition of open space. The new ordinance delineates the rules for public disclosure of assessments for land acquisitions and conservation protections. The board supervises voter-approved bond funds and much of this money is given to nonprofit conservation groups for buying and managing land. Before, all appraisals for purchases were under the jurisdiction of the Department of General Services. Only land purchases exceeding $25 million in state funding were subject to an additional independent review before completing the transaction. Due to legislator and resident criticism on government spending, the board will now require independent review of purchases above $5 million or 5,000 acres.

THE NATIONAL TRUST FOR HISTORIC PLACES recently released its annual list of America's 11 Most Endangered, and two sites in California made the list. The trust identified three historic stone bridges over the Merced River in Yosemite Valley, Terminal Island, and within the ports of Los Angeles and Long Beach. The bridges, built in the 1920s, are falling into disrepair and the National Park Service is considering replacing, rather than restoring, the bridges. Terminal Island has a collection of historic industrial buildings and warehouses that have fallen into disuse and are slated for demolition. Preservationists are clamoring for an adaptive reuse plan instead.

LEAGUE OF AMERICAN BICYCLISTS, a non-profit organization that endorses cycling, ranked California as the 12th most bike-friendly state. California scored high on legislation enforcement, policies and programs, and education and encouragement of cycling as transportation. For improvement on bicyclist safety, LAB advised the state to adopt a vulnerable road user law with a minimum safe passing distance. California had increases of people commuting by bike, implemented bicycle education for police and dedicated state funding for cycling.

—Compiled by
Eleanor Fang and Amber Kong

Court Upholds Use Permit for Walmart Supercenter

Annexation application, mitigation measures deemed sufficient under CEQA

BY KATHERINE J. HART

Citizens for Open Government v. City of Lodi involves the consolidation of three separate actions revolving around the City of Lodi's approval of a conditional use permit (CUP) for a shopping center to be anchored by a Wal-Mart Supercenter. The first action stemmed from the city's petition to discharge the writ issued in an earlier lawsuit wherein the 2004 EIR for the Supercenter was challenged and the city's lodging of a supplemental administrative record. The second and third actions arose out of appellants Citizens for Open Government's (Citizens) and Lodi First's challenge to the city's certification of the 2008 revised EIR, and subsequent approval of the CUP and shopping center project. The trial court consolidated all three actions and issued one ruling.

Adequacy of the Administrative Record

Appellants sent letters to the real parties in the cases – Wal-Mart and the Browman Company –contending that certain internal agency communications were missing from the supplemental administrative record. (Why the petitioners would send such a letter to real parties – as opposed to the city – is not clear from the facts in the opinion. However, such a practice is questionable given the city is the entity which certifies and lodges the administrative record, not the real parties.) The city responded to petitioners by preparing a privilege log outlining the privileged documents, and augmenting the supplemental record with additional documents.

Still discontented with the supplemental record, Citizens filed a motion to augment the record. The trial court conducted an *in camera* review of the documents claimed to be subject to the deliberative process privilege and ordered five of the 27 documents to be produced. Notably, the trial court did *not* conduct an *in camera* review of the attorney-client or attorney work product privileged documents. A hearing on the merits was held in February 2010 and the trial court granted the city's request to discharge the writ in the first case, and denied the petitions for writ of mandate regarding the revised EIR certified by the city in 2009.

On appeal, appellants first argued that the trial court erred in excluding 22 emails exchanged between city staff and the EIR consultants pursuant to the deliberative process privilege, and thus, the record was so incomplete as to require reversal.

Initially, we note the appellate court *never* addressed appellants' first three arguments as to why the deliberative process privilege should not apply (For instance, Public Resources Code section 21167.6(e) abrogates the privilege, the privilege does not apply to quasi-judicial decisions, and the privilege does not apply to emails that post-date the release of the final revised EIR). Instead, the appellate court agreed with petitioner Lodi First that the city failed to make the detailed and specific showing required to establish a claim of privilege and never demonstrated that the public's interest in nondisclosure outweighed the public's interest in disclosure of the 22 emails. Accordingly, the appellate court found that the trial court erred in excluding the 22 emails from the administrative record based on the deliberative process privilege. In reaching this conclusion the court did not have to address appellants other contentions, leaving these issues for another day.

The appellate court then questioned what prejudice was incurred by Lodi First, and held that "reversal is not required because Lodi First has failed to meet its burden to show prejudicial error in the trial court's exclusion of [the] emails from the administrative record." In noting the missing emails did not deprive the appellate court of its ability to review the judgment, the appellate court acknowledged that the exclusion of the emails simply "deprived Lodi First of the opportunity to review 22 e-mails between the city staff and EIR consultants to determine whether those documents could have bolstered the analysis of the arguments it was going to make on appeal."

The appellate court then rejected petitioners' argument that any time one document is erroneously excluded from an administrative record, reversal is required. The appellate court then advised that the proper procedural avenue to remedy petitioners' concerns regarding the trial court's ruling on the motion to augment the record was to seek an extraordinary writ, which petitioners had not done. The appellate court declined to exercise its discretion to treat petitioners' appeal as a petition for extraordinary writ since the normal 60-day time frame for filing such an appeal had long since run.

Reasonable Range of Alternatives

The Third Appellate District rebuffed Lodi First's contention that an EIR must include alternatives that both satisfy most of the project objectives and reduce significant effects of the project. Focusing on subdivision (a) of Section 15126.6 and citing to *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, the court of appeal reiterated the "rule of reason" as a guide to selecting what alternatives should be analyzed in an EIR, and held that despite the fact the revised EIR did not discuss an alternative that would feasibly attain the most basic project objectives *and* avoid or significantly reduce project impacts to less than significant, the record contained substantial evidence to support the conclusion that a reasonable range of alternatives had been analyzed.

Urban Decay – Baseline for Review

One of the main purposes of the city's revised EIR was to address the 2004 EIR's inadequate discussion of cumulative urban decay impacts, which the trial court had previously determined was defective due to a lack of discussion of the two existing Wal-Mart Supercenter projects in Stockton, a neighboring city. The appellate court held that the revised EIR did not need to address urban "blight" conditions contained in Redevelopment Agency documents because "blight" and "urban decay" are two separate issues.

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E-mails Can Become Part of CEQA Administrative Record

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It also held that the city did not abuse its discretion in using an economic baseline of late 2006/early 2007 (as opposed one of late 2008 as suggested by petitioners) in the revised 2007 draft EIR based on the evidence in the record. That evidence suggested changing the baseline would be problematic given the fluctuating economic conditions and because the economic conditions did not affect the urban decay findings. Finally, the appellate court found there was substantial evidence to support the city's code enforcement as a mitigation measure for urban decay. That discussion was not certified for publication.

Agricultural Impacts

Appellant Citizens challenged the city's analysis of project impacts on agriculture arguing that the city failed to disclose the cumulative impacts to agriculture, and failed to support its rejection of a heightened mitigation ratio (i.e., 2:1) with substantial evidence.

The Court of Appeal soundly rejected both contentions.

First, the court said that because the revised EIR contained both a table of approved developments, and acknowledged that an annexation application had been filed with the city to annex 320 acres of prime land adjacent to the Wal-Mart project, the city had satisfied its duties under CEQA to disclose potential cumulative impacts to agricultural resources.

In addressing petitioner's second contention, the court reframed the issue as not whether there was substantial evidence to support the rejection of a heightened mitigation ratio, but rather, whether the city's finding that there were no feasible mitigation measures was supported by substantial evidence. Ultimately, the court of appeal found the city's requirement that Wal-Mart purchase a permanent agricultural conservation easement over 40 acres (1:1 ratio) to mitigate for the loss of the 40 acres of prime land due to the project's development, was adequate and well within the city's discretion to establish given there were no feasible mitigation measures to avoid the loss of prime agricultural farmland.

The Application of the Doctrine of Res Judicata

The legal doctrine of *res judicata* precludes the litigation of a cause of action or issue that was previously adjudicated in another proceeding between the same parties where the decision in the prior proceeding is final and on the merits. *Res judicata* also bars the litigation of issues that *could have been* previously litigated.

In this case, Lodi First attempted to claim the project would have significant and undisclosed impacts on water supply. Both the trial court and court of appeal rejected Lodi First's claim as barred by the doctrine of *res judicata* on the grounds that the original 2004 draft EIR contained a water supply discussion. Thus, Lodi First should have raised the issue in its first petition for writ of mandate filed against the city because the water supply claims were based on the same conditions and facts in existence when the original writ petition was filed, which it did not do.

Comment

While none of the appellate court's rulings comes as a surprise, there are two key aspects of the opinion to note. First, with respect to the administrative record issues, this opinion illustrates that courts are unwilling to deem interagency communications (e.g., emails) between staff and consultants (treated as an extension of staff) privileged pursuant to the deliberative process privilege unless the agency can show that the benefits of nondisclosure outweigh the public's interest in disclosure. In other words, the mere assertion that the communication in issue reveals deliberative discussions and that disclosure of it would hamper candid discussions does not constitute a valid showing that the public's interest in nondisclosure outweighs its interest in disclosure. Thus, agency staff should exercise caution when communicating via email since those communications could very well become part of the administrative record in a CEQA case. Second, the appellate court makes clear that disputes regarding undesired rulings on the administrative record by the trial court should be taken up on an extraordinary writ so as to reduce continued delay in a CEQA proceeding. ■

Katherine J. Hart is an attorney with the Sacramento law firm of Abbott & Kindermann, LLP.

➤ **The Case:**
Citizens for Open Government v. City of Lodi (March 28, 2012, C065463, C065719) 205 Cal.App.4th 296

➤ **The Attorneys:**
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Case Upholds Homeowners Associations' Standing in Suit Against Realtor

Realtor can be held liable for failing to disclose evidence of water damage

BY GLEN C. HANSEN

In a case pitting a real estate brokerage against a homeowners association, the trial court sustained demurrers to the HOA's complaint against real estate brokers who acted as dual agents in the developers' sale of properties in the development to HOA members.

The Glen Oaks Estates Homeowners Association, representing a five-parcel development in Pasadena, alleged in the complaint that the realtors had obtained inaccurate soil reports and had misled the members, resulting in defects of a common roadway and common area slopes. The Court of Appeal for the Second Appellate District reversed the trial court's determination that the association did not have standing to assert claims on behalf of its members against the brokers under Civil Code section 1368.3.

Part of the Davis-Sterling Common Interest Development Act ("Act"), section 1368.3 states that that a homeowners association established to manage a common interest development "has standing to institute, defend, settle, or intervene in litigation … in its own name as the real party in interest and without joining with it the individual owners of the common interest development … ." However, such associations have standing only in particular matters, specifically matters pertaining to (1) "[d]amage to the common area," and (2) "[d]amage to a separate interest that arises out of, or is integrally related to, damage to the common area … ."

The act defines a "[s]eparate interest" as "a separately owned lot, parcel, area, or space." A "[c]ommon area" is defined as "the entire common interest development except the separate interests therein." In this case, the HOA argued that while the right violated was "personal to the members" in that the realtors owed the HOA members a fiduciary duty, their damages consist of a $3 million repair obligation for the common area driveway and slopes.

The Court of Appeal first held that the complaint failed to allege damage to the HOA members' separately owned lots or parcels, and therefore there was no standing under the provision in section 1368.3 for damage to a "separate interest" that is integrally related to damage to the common area.

However, the Court of Appeal held that the complaint sufficiently alleged facts that show that the matter pertains to damage to the common areas. The theory alleged in the complaint was that the HOA members would not have purchased their homes in the development had the realtors: 1) acted as proper fiduciaries; 2) not concealed information relating to the budget for the HOA monthly dues; 3) warned the members about the alleged invalid soil reports; and/or 4) complied with the laws requiring them to provide a final report and other transactional documents. The complaint further alleged that, because the members did purchase their homes, the HOA is now embroiled in third party actions arising from the failure of the common area slopes and roadway, and it is responsible for certain expenses to repair the common areas. According to the Court of Appeals, those allegations were sufficient for section 1368.3 to confer standing to the HOA.

The Court of Appeal went on to reject the realtor's argument that section 1368.3 confers standing only to sue a developer for damages to the common area, and not a realtor. The court explained that the statute does not, by its plain terms, contain a limitation on whom the HOA may sue. Quoting *Windham at Carmel Mountain Ranch Assn. v. Superior Court* (2003) 109 Cal.App.4th 1162, 1175, the Court of Appeal held that the statute gave associations "the standing to sue as real parties in interest in all types of actions for damage to common areas." That included the claims against realtors alleged in this case. ■

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

➤ **The Case:**
Glen Oaks Estates Homeowners Assn. v. Re/Max Premier Properties, Inc. (2012) 203 Cal.App.4th 913

➤ **The Attorneys:**
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For the Defendant: Carlson Law Group, Inc., Mark C. Carlson, Jonathan A. Feldheim; Sedgwick LLP and Douglas J. Collodel

CEQA 'Exhaustion Doctrine' Upheld

Supreme Court upholds requirements for plaintiffs to exhaust administrative remedies in CEQA exemption suits if a public hearing is held

BY KATHERINE J. HART AND DANIEL S. CUCCHI

In 2007, a developer proposed to divide two existing 'R-1' zoned parcels totaling 1.89 acres into 11 lots to allow for the development of single-family homes in the community of Fairview in unincorporated Alameda County, bordering the City of Hayward. The county sent out written notices to a number of agencies, neighbors, and other interested parties, including the group that would become the appellants, indicating the county's intent to utilize the section 15332 (Infill Development) CEQA exemption.

Several weeks after sending the notices, the county sent out another notice for a hearing before the Planning Commission to consider the project and the section 15332 CEQA exemption. At the hearing, appellants objected to the county's plans to utilize the exemption, arguing that issues such as traffic and parking should undergo thorough environmental review. The Planning Commission continued the matter, but eventually held another public hearing and approved the project, determining it was categorically exempt from CEQA pursuant to the section 15332 exemption. Appellants appealed the decision to the Board of Supervisors again arguing that environmental review was necessary to address their particular concerns.

No one raised the issue that the section 15332 exemption is only applicable to projects within city limits. The Board denied the appeal and Appellants filed suit.

The Superior Court denied appellants' claim for failure to exhaust administrative remedies, but the Court of Appeal reversed, citing the analysis of exhaustion in CEQA exemption cases in *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165 (Azusa). The *Azusa* court held that section 21177's exhaustion requirement does not apply unless CEQA requires a public hearing, or a public hearing is held before a notice of determination is filed. Thus, the Court of Appeal held that because neither a public comment period, nor a notice of determination is required by CEQA for exempt projects, the exhaustion requirements of section 21177 does not apply to CEQA exemption cases.

The California Supreme Court then reversed the Court of Appeals' decision, reasoning that its reliance on *Azusa* was misplaced. The Supreme Court agreed that exhaustion is inapplicable to exemption determinations under the first prong in section 21177, because no public hearing is required by CEQA preceding an agency's exemption determination. As for the second prong, however, the Court of Appeals' emphasis on the notice of determination language rather than the public hearing language in section 21177 was flawed. The filing of a notice of determination limits the time in which a lawsuit may be filed challenging an agency's decision. However, failure to file in a timely manner does not eliminate the agency's ability to utilize a section 21177 exhaustion defense. Thus, it is the public hearing language in section 21177 that is paramount and which gives rise to the exhaustion requirements. Accordingly, since the County of Alameda held noticed public hearings on the project prior to its exemption determination, the agency was entitled to assert the section 21177 exhaustion requirements as a defense.

Comment

The re-affirmation of the exhaustion doctrine illustrates the court's commitment to judicial efficiency, especially in these trying times of budgetary difficulties. It also reminds public agencies that they hold the key to how much litigation exposure they are willing to tolerate. While CEQA does not require a public hearing on exemption determinations, the pros and cons of choosing not to do so must be carefully evaluated. While it may be quicker to forego a public hearing process, doing so comes at a price. If an agency foregoes the public hearing process, it allows potential petitioners to craft creative arguments in opposition to a project and spring those oppositions on the county in a CEQA lawsuit. In the alternative, as in this case, agencies can elect to hold public hearings on CEQA exempt projects to allow concerns and issues to be expressed and assert the exhaustion defense thereafter for any concerns or issues not fairly and properly presented to the agency during the public hearing process. ■

Katherine J. Hart and Daniel S. Cucchi are attorneys with the Sacramento law firm of Abbott & Kindermann, LLP.

➤ **The Case:**
Tomlinson v. County of Alameda (June 14, 2012, S188161) __Cal.4th

Court OKs Use of Tolling Agreements Under CEQA

BY WILLIAM W. ABBOT

IT IS NOT UNCOMMON in CEQA cases for the opponents and the lead agency to extend the statute of limitations through a tolling agreement. The use of such agreements puts the litigation on hold, and can help facilitate settlement by taking the pressure of litigation off the front burner.

In *Salmon Protection and Watershed Network v. County of Marin*, involving the use of a tolling agreement to extend the time lines for a CEQA challenge to a general plan update, a demurrer was sustained to a complaint in intervention later brought by property owners potentially affected by the CEQA lawsuit. As the settlement discussions were undertaken (ultimately unsuccessful), the property owners were left in an indeterminate state as to what to do with their property.

The property owners' complaint in intervention, following the filing of the underlying CEQA action, alleged that the underlying CEQA lawsuit was barred due to the passage of the statute of limitations, and that any extension between the petitioner and the county was contrary to public policy. Relying in part on the policy favoring settlement of litigation, the First Appellate District court upheld the dismissal of the complaint in intervention.

The appellate court held that the fact pattern was one in which no private party was involved, as there would be in the instance of a lawsuit challenging approval of a private project. Given that the interests of property owners potentially affected by the litigation were only "incidental," their concurrence was not required as a condition to the validity of the tolling agreement. ■

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➤ **The Case:**
Salmon Protection and Watershed Network v. County of Marin (April 20, 2012, A133109) 205 Cal.App.4th 195.

➤ **The Attorneys:**
For Plaintiffs: Environmental Law Clinic at Stanford Law School, Deborah A. Sivas, Alicia E. Thesing, Leah J. Russin, Tori Ballif,

For Defendants: Patrick K. Faulkner, Nancy S. Grisham; Remy, Thomas, Moose and Manley, LLP, James G. Moose, Jennifer S. Holman, Jeannie Lee

(Subway) Tunnels of Love: *Human Transit* and *Straphanger*

BY JOSH STEPHENS

A FEW WEEKS AGO, the nation's public radio listeners let out a collective sigh of lament when the Tappet Brothers announced the discontinuation of Car Talk. Cars are so much of who we are that it's no wonder that Car Talk was public radio's highest rated show. It's also no wonder that there's no outcry for a "Public Transit Talk" – though two authors are trying to change that.

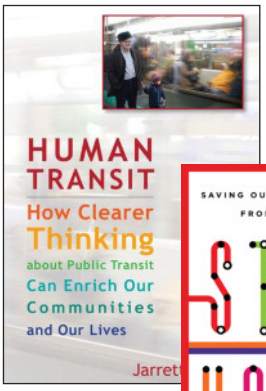
Whether one assaults the sound barrier in a Veyron, caresses the biosphere in a Prius, or simply tries to get to work on time in a beater, most drivers in most American cities share one thing in common: utter indifference to alternative modes of transportation. Buses and trains, to say nothing of cyclists and pedestrians, blend in with all other mundane bits of urban infrastructure, evoking no more passion or scrutiny than do streetlights or garbage cans.

Two new books are unlikely to convert (or even be read by) the already uninitiated. But they do illuminate nuances – and even joys – of public transit in ways that drivers may never appreciate so long as they remain pinned behind their own wheels. *Human Transit: How Clearer Thinking About Public Transit Can Enrich Our Communities and Our Lives*, by Australia-based transit planner Jarrett Walker, presents itself as a sort of *Public Transportation for Dummies*, explaining in abstract, but remarkably clear, terms the logic that governs public transit systems and the choices – some technical, some ethical – that transit planners and operators make.

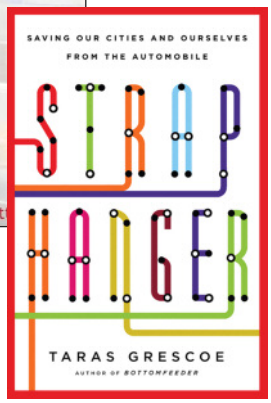
Straphanger: Saving Our Cities and Ourselves from the Automobile, by travel journalist Taras Grescoe, is what you get when an enthusiastic passenger boards one of those transit systems – even the imperfect ones – and finds in them a measure of rhapsody usually reserved for hot rods and luxury saloons. It's telling that the two books have nearly identical sub-titles, which situate public transit at the very heart of not just cities but, indeed, of what it means to be human in the modern world.

Human Transit

Walker directs *Human Transit* at the typical automobile driver – who may not understand where all those buses are going, or why – and at the typical taxpayer. Of course, in most cities, this person is often one in the same. Without referring to any particular city, Walker aims to inform everyday stakeholders and would-be activists about the approaches that professional transit planners take when they decide to add a bus line or hike up fares. Walker doesn't single out urban planners, but to the extent that urban planning and public transit are becoming ever more intertwined, *Human Transit* offers land use planners a handy, readable opportunity to understand the work of their mobility-obsessed counterparts.



Human Transit
by Jarrett Walker



Straphanger
by Taras Grescoe

Transit agencies worry a lot about routes, fares, and headways – all of which Walker discusses. But Walker emphasizes that agencies must also make some excruciating subjective choices about the type of service they offer – and to whom. Indeed, those two issues are, in large part, one in the same.

Many transit advocates (and critics) tend to view transit through what Walker might characterize as myopic frameworks, which assume that transit systems have one goal and that all resources should be directed towards that goal. In California, the influential Bus Riders Union in Los Angeles has long lobbied, and sued, for L.A. Metro to run more buses to serve minority, transit-dependent riders. They claim that shiny new light rail lines in relatively affluent areas have implicitly led to long, circuitous, and transfer-filled commutes for poor riders. For every pampered lawyer who rides heavy rail from his apartment in Koreatown to his Bunker Hill office (or from her four-bedroom in Pleasanton to the Transamerica Pyramid), someone else is on a hellish 2-hour zigzag so they can vacuum the floors in those very same homes and offices.

But wait, implies Walker. Though the indignation of the BRU may rumble down from a seeming moral high ground, it represents only one of many legitimate choices that transit planners can make. Indeed, planners and stakeholders alike must first decide what a transit system is for. Certainly, it can move people who have no other way to move. But it can also combat traffic. Or pollution. Or it can maximize revenue. Or it can make a city more liveable. It can even stoke development.

Let's take the intertwined goal of reducing the twin menaces of pollution and traffic. These go away only when drivers abandon their cars. But if a transit system is focused on transit-dependent riders, then there's no net gain. So, sometimes, a transit system might have to do a little primping in order to attract the discretionary rider, whose ridership creates a net benefit. Likewise, a system could be dedicated to serving suburban commuters who travel during peak traffic hours, or it could be dedicated to serving the constant throb of a center city.

Ultimately, Walker faults agencies and stakeholders alike for failing to discuss these fundamental values questions, the most basic of which he boils down to "ridership vs. coverage" – "coverage" meaning equity or social justice.

Walker extends this sort of debate to all aspects of transit. Cash vs. swipe cards. Point-to-point vs. hub-and spoke. Express vs. local. Heavy rail vs. light rail vs. BRT vs. local bus. Peak service vs. off-peak service. Speed vs. frequency. (Walker cautions against making the "motorists' error:" while motorists care about speed, frequency is far more important for transit riders.) The list goes on.

We learn that the speed of a bus line depends nearly as much on the amount of time it takes to accept and discharge passengers as it does on the speed of traffic. The overall density

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of a city matters not nearly as much as does the number of people living at very high densities. That's the trouble, in fact, with many cities in California: many have high average densities, but they rarely reach those Manhattan-type proportions where mass transit really works.

Much of Walker's technical discussions aren't any more riveting than they sound. And yet, on the whole, it emerges as a surprisingly un-tedious exercise in armchair planning. Walker loves and believes in public transit, but his awareness of the costs and tradeoffs render him a shockingly neutral advocate (if such a thing is possible). On the one hand, Walker is trying to encourage stakeholders to advocate for better transit systems. But, no matter how closely you read Walker, the complexities, and ambiguities of planning for public transit might still induce mental gridlock (while actual gridlock grows all the worse).

Straphanger

If Walker's account is an admirably dispassionate affair directed at "clear thinking," Grescoe's is specific, exuberant, and unapologetically biased. Grescoe is fascinated by all forms of non-automobile transportation, from Moscow's czar-worthy subway stations to each one of Copenhagen's 560,000 bicycles.

Straphanger often reads more like travel literature than like anything related to engineering or policy, and so much the better. Transit systems attract Grescoe the way the Eiffel Tower does tourists. What we get is a fascinating tour of some great world cities from what Grescoe would argue is the most crucial part of their respective infrastructures. You can't do much with the Eiffel Tower except snap a picture of it. But millions of Parisians can – and do – live, day-in and day-out, in the Paris Metro.

Grescoe is not immune to cities' above-ground charms, but they are almost beside the point. Though his enviable itinerary includes the likes of New York, Tokyo, Vancouver, and his hometown of Montreal, Grescoe does not dwell on them as cities per se. Rather, he sees every city as a fascinating problem, each of which can be solved – well or poorly – by transit. Grescoe of course chooses his cities wisely, seeking places where transit works well or where cities are at least trying.

In each city, Grescoe offers a bit of history of each system. He catalogs the public officials, local stakeholders, and finance mechanisms that gave rise to them. He offers glimpses of Robert Moses, Baron Haussmann, Joseph Stalin, and Los Angeles' own Antonio Villaraigosa. Likewise, Grescoe evaluates the ways in which the systems complement (or not) its respective urban fabrics. In a thicker volume, these accounts would get tedious. But Grescoe offers a palatable mix of history, politics, engineering, and whimsy in each chapter to keep things moving.

Indeed, public transit offers as good a point of reference for comparing cities as does anything else. Every major city has transit and, therefore, every major city can be described and evaluated based on the form and function of its transit network. In visiting cities on four continents, Grescoe discovers idiosyncrasies and delights that seem to surprise even him:

- The world's subway systems carry 155 million passengers daily – four times the number that fly on commercial flights.
- 25% of Paris' municipal budget goes to transportation infrastructure.
- Tokyo's busiest subway station handles more passengers in three hours than New York's Penn Station does in a day.
- Some of the developed world's worst traffic jams take place in Moscow, where only 9% of the surface area is dedicated to transportation – as opposed to 30% in most US cities.
- Phoenix has enough excess single-family homes to last it through 2050.

Amid his enthusiasm for strap hanging, Grescoe never entertains the idea that non-auto transportation could be bad for a city – regardless of the cost. For him, investment in public transit is almost always a good investment, one that greases a city's economic wheels and creates stronger communities. Indeed, Grescoe himself is the ultimate discretionary rider, and possibly the kind of person that the Bus Riders Union loves to hate: an educated, upscale resident who uses transit for amusement and righteousness.

In his younger years, Grescoe witnessed a gruesome highway death in his rearview mirror, inspiring him never to own a car himself. "My animus against automobiles runs deep," writes Grescoe, "but I come by it honestly." Even if his interests coincide with those of the transit-dependent, it's unlikely that he could fully appreciate their needs and their experience of transit. It's safe to assume, for instance, that Moscow's more destitute citizens don't draw quite the same inspiration from those underground chandeliers as Grescoe does.

Of all the cities Grescoe visits, the ones that get the lowest marks are, predictably, Phoenix and our own Los Angeles. Phoenix's lone light rail line looks like a squiggly, microscopic strand of DNA floating in the indiscernible blob of the Valley of the Sun. It's a lost cause. (By contrast, Grescoe loves Philadelphia, calling its working-class train network one of the country's best.)

Grescoe takes a more nuanced attitude towards Los Angeles. On the one hand, he praises its attempts to put a tourniquet on sprawl. For over a decade the region has been shoehorning a motley collection of light rail, bus rapid transit, subways, and transit oriented developments into what has become a dense, mature metropolis. But Grescoe stops short of true praise. He calls the Gold Line a means of procuring "the billion-dollar taco," meaning that the region has spent mucho dinero on a train only to end up in East L.A. "This is one city," writes Grescoe, "that even the most visionary planners and politicians might not be able to redeem." Did I mention that Grescoe is from Montreal?

Grescoe concludes *Straphanger* with an ode to his hometown, whose Bixi system pioneered the use of bike-sharing for intra-city transportation. Of course, Bixi's success owes itself largely to the form of Montreal: largely flat, well-off, and full of charm. Indeed, Grescoe steers clear of the world's less-charming places. He never endures the crush of a Lagos or a Mumbai. Long-gentrifying Bogota is as close as he gets to the developing world. He makes a compelling argument that its Transmilenio bus rapid transit system is at least partially responsible for the city's recent prosperity. Grescoe would likely find plenty to capture his interest in some of the world's rougher spots, but, for the moment, his odd cruise around the world is at least a three-star affair.

Whether the costs and benefits of transit outweigh those of private automobiles will be forever debated. Grescoe, at least, offers a few tantalizing reasons to tip the scales in favor of busses and trains. He also reveals that which every urban planner already knows – every city is unique, and every transportation system is unique. Grescoe goes so far as to imply that the soul and culture of a people can be found as much in its trains, buses, bikes, feet, and, yes, cars as in its economy, politics, arts, and letters. Every city must invest in its own best vision of itself. And if there's a few bucks left over for chandeliers, so much the better. ■

>>> Cities Adopt Policies to Promote Urban Agriculture

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has been the most productive agricultural state in the country for over 50 years, but most of the production takes place in decidedly agricultural areas – in the Central Valley or Imperial County – not within a city's limits.

Even with a grow-local movement that ultimately dates back to the environmentalism of the 1960s, big-city zoning codes have reinforced this rift.

According to Daniela Aceves of the food sustainability advocacy group Roots of Change, in San Francisco: "Zoning policies exist in the first place because of the belief in incompatible land uses." Activists like Aceves contend that, in cities throughout California, these codes are now proving outdated, keeping out desirable uses, as more and more people turn to agriculture in urban areas for both personal and financial sustenance, to reduce carbon footprint or simply for lack of better options for access to fresh produce and animal products. Many proponents also contend that city-grown foods can help cut down on traffic and greenhouse gas emissions, because of reduced distances from field to table.

A spate of legislation throughout the state in the last two years reflects this trend.

In June of 2010, the Los Angeles city council passed an amendment to its 1946 general plan, which indirectly outlawed the cultivation of anything other than vegetables for sale off-site. Written at the behest of an embattled flower farmer in Silver Lake and informally dubbed the "Fruit and Flowers Freedom Act," the bill, introduced by Council President Eric Garcetti in 2009, sought to define truck gardening to include berries, flowers, fruits, herbs, mushrooms, ornamental plants, nuts and seedlings, essentially ensuring the legality of small-scale agriculture throughout the city by clearly addressing the previously murky term.

"In Los Angeles, there's definitely been a growth of interest in locally-grown food, and I was proud to author an ordinance that clarified city policy on urban farming. L.A. has always been ahead of the curve when it comes to sustainable living," said Garcetti, himself an avowed gardener.

Other recent changes throughout California, include a 2011 ordinance passed by the City of Santa Monica that allows backyard beekeeping on single-family residential properties, allotting a maximum of two hives per residence to be registered with Santa Monica's Animal Control Office.

San Diego passed an ordinance in February making it easier for city dwellers to keep chickens by easing up on property line restrictions that had called for them (up to 25 only) to be kept at least 50 feet from residential structures. Under the new law, as long as coops are well ventilated and provide six square feet of space per chick, depending on space, residents are able to keep a varying number of chickens on their property, from five to 50. San Diego also passed a law in January allowing residents to keep two – for companionship's sake – miniature goats per property (though products such as milk and cheese are still for personal consumption only) as well as two beehives.

COURTESY FORAGE

Forage chef Jason Kim

In Northern California, at the urging of local urban farmers whose livelihoods were directly being affected, in May Berkeley's Planning Commission passed an amendment (known as the Berkeley Edible Gardens Initiative) on the zoning code's permitting process for Moderate Impact Home Occupations (the permit has been waived previously for home teachers). If the ordinance wins approval of city council, home growers will be able to avoid a permit for selling their produce that can cost upwards of $3,000 and take as long as six months to obtain.

Finally, in April of 2011, the City of Oakland passed a law updating its zoning to allow for the growing of vegetables on empty lots without a conditional use permit. Planners are currently working on a further overhaul of their city's zoning regulations in relation to urban agriculture.

The most dramatic actions, however, have been taken by San Francisco, which passed two major ordinances in the last year and a half.

The Urban Agricultural Ordinance, passed in 2011, permits farms in virtually all areas of the city and, even more progressively, allows farmers to sell their produce on-site as well. The zoning for the ordinance is based on size (operations must be under an acre) as opposed to category – such as commercial, community, demonstrational – the way it is in other cities.

Eli Zigas, a Food Systems and Urban Agriculture Program Manager for the San Francisco based nonprofit SPUR thinks that's a wise decision.

"If what you're concerned about from a zoning perspective is intensity of activity or possible nuisance or just general noise or smells, you could have a community garden that's not commercial at all, that's attracted lots of people, and has ended up being a very big operation, and smelly," said Zigas. "And you could have a market garden that was just one or two people working and was quiet and run very well, so the real risk for impact for a neighborhood or area of the city, I think, comes more from size than what they're doing with the food itself."

In April SPUR published *Public Harvest: Expanding Land Use for Urban Agriculture in San Francisco*, a report that outlines a number ways that the city could further promote urban agriculture. Though seven separate agencies spent nearly $1 million on urban agriculture in San Francisco in 2010-11, SPUR deemed the efforts uncoordinated and lacking focus.

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Urban Farming Seen as Benefit to City Life

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Supervisor David Chui recently introduced urban agriculture legislation that reflects many of SPUR's recommendations. The draft ordinance proposed that the city set goals with outlines and timelines, create a single urban agriculture program that could bring together disparate government agencies, and commission an evaluation that would take stock of the current state of existent programs and decide how best to move forward, whether with a city agency or a nonprofit partially funded by the city at the helm of things, by the end of 2012. Last month the Board of Supervisors approved the ordinance unanimously

> "Individuals benefit, but the city as a whole does as well, so we think it's important for the city ... to continue to help support people who are trying to grow food."
>
> *– Eli Zigas, SPUR*

This policy is intended to provide more comprehensive support for urban agriculture in San Francisco, giving farmers a kind of "one-stop shop" for application processes on public land. It will also provide information and technical assistance. However, hurdles still remain for farmers in urban spaces.

"The obstacles are land resources and institutional support," said Zigas. "People finding a place to start growing food has been a big obstacle at least here; I think in Detroit, for example, it's not a big obstacle but it certainly is here." The cost of materials, water, permits and farmers' ability to support themselves through full-time farming remain in question.

Some farmers across the state are, nonetheless, making a go of it.

Jennifer Little, who runs Little Farm Fresh from her home in San Gabriel, started farming just a couple of year ago and is now working at her business full time. She sells an eclectic mix of fruit, vegetables, herbs and seedlings, many of them lesser known or heirloom variety. She claims that her and her partner, James Imhoff, are about two-thirds of the way to being sustainable.

"Being so small, we are limited in how much we can produce," said Little. "We want to get a larger plot, perhaps city owned land, but we would need a loan or a grant to be able to do it. It's really hard to find available resources that apply to us since we are so small. Of course all of the normal problems that farmers face with pests and plant diseases affect us too. We grow everything organically, so we spend a fair amount of time squishing bugs."

Little's business model is so rare in Los Angeles that the coordinator for a study she's participating in on urban agriculture through the UC Extension Program often tells her that there's hardly anyone else in the city doing what she does. She wonders if that might mean she's "crazy, or revolutionary."

"There are lots of great things about being an urban farmer," she said. "For one, it's really nice to be home together all the time. Also it feels really good to work hard all day in the dirt with the sun beating down on you, and even though we don't make much money, we know we earn every penny."

Though Los Angeles ranks low opposed to other cities in California and the rest of the US for urban agriculture, if policy continues to shift, Little might not be alone too much longer.

"The city benefits from the people growing food," said Zigas. "Individuals benefit, but the city as a whole does as well, so we think it's important for the city to meet that demand and continue to help support people who are trying to grow food." And what shape that support will take in the future seems to be continuing to grow as well. ■

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>>> Cities Scramble to Fund Affordable Housing

– CONTINUED FROM PAGE 1

beginning," she said. "It raised a lot of awareness."

On a number of controversial issues, she noted, "you have to start, and it takes years before you get there."

Some cities are waiting to see what the state government does to make up for the loss of millions of dollars in redevelopment funding for affordable housing. But others, such as San Francisco, are moving ahead. Two measures are on the city's November ballot to increase funding for affordable housing there. Other cities are looking at local real estate transfer fees, Spaulding said.

Affordable housing, of course, is not financed solely by redevelopment money.

Federal money and inclusionary zoning also helped to add more affordable housing.

But cities were required to spend 20% of all redevelopment money on it. And redevelopment money helped non-profit developers acquire land and keep construction costs down.

Some cities adjusted early to the new reality. The City of San Jose, said Housing Director Leslye Corsiglia, struggled with state takeaways of redevelopment money in the two years before redevelopment ended, and laid off 25%of its housing staff. In its heyday, the city was producing 500 to 1,000 units of affordable housing per year, she said.

But as a large city with almost 1 million residents, San Jose still has few programs robust enough to continue its output of affordable housing units. The city gets $3 million a year in federal home investment partnership funding, and also gets money from inclusionary programs and developer programs that help, Corsiglia said. San Jose also has a large loan portfolio of $800 million that allows it to loan money to developers and first time homebuyers. As those funds are repaid, new loans can be made.

Similar loan programs exist in smaller cities such as Emeryville in Alameda County, which has 10,000 residents. Emeryville's program has 317 outstanding loans worth $13.4 million, and its work continues, according to Helen Bean, Director of Economic Development and Housing.

Bean said the city is also looking at a linkage fee on new commercial and residential construction that would fund affordable housing. That kind of fee will provide some of the money lost after the end of redevelopment, but not all of it.

Non-profit affordable housing developers are among those wondering what's next. The lost funding will not come from private sources, according to Linda Mandolini, president of Eden Housing, a non-profit housing developer in Hayward. Mandolini said that her organization used to receive between $2 million and $10 million per project from local redevelopment agencies, and wonders where that money will come from.

"You can't replace millions of dollars a year in $5 increments," Mandolini said.

Eden Housing, which serves the entire Bay Area, has 7,000 people on its waiting list for affordable units, she said. Two affordable developments that Eden recently opened in Fremont and Dublin in Alameda County had ten applicants for every available unit.

> "You can't replace millions of dollars a year in $5 increments."
>
> *– Linda Mandolini, president, Eden Housing*

Housing proponents are still trying to make sense of the demise of redevelopment after 60 years.

"Part of the challenge right now is the demise of redevelopment agencies is incredibly complicated," Mandolini said. "It's just too soon to be innovative."

Terry Henderson, a city councilwoman in La Quinta in Riverside County, said cities don't know where they stand. Henderson said a recent letter from the state Department of Finance stating that it has the discretion to change its mind on locally approved projects has local officials confused.

It's now "more complex (and) more confusing for cities to work on low-income housing," she said. "We remain in a state of limbo."

Her own city is in the midst of rehabilitating an 85-unit housing complex, but the end of redevelopment has complicated how parts of that project will proceed, she said.

San Francisco's ballot measures provide one glimpse of what the future may hold in other California cities. The measures would set up a housing trust fund, financing it with a variety of taxes and fees. The measures would provide between $20 million and $50 million a year for housing programs for 30 years. Part of the funding comes from property tax revenue that would have gone to the city's redevelopment agency in the past.

San Francisco voters last approved a bond measure for affordable housing in 1996, and state voters last approved bonds for affordable housing through Proposition 1C in 2006, Spaulding said. Spaulding said San Francisco's ballot measures have no formal opposition, and are supported by the business community. She said

Corsiglia of San Jose said her staff will discuss options for funding San Jose's affordable housing in the fall when the city council reviews its housing investment fund, a process it undertakes every five years. She said "provocative" ideas will be presented to the council.

Like many public officials, Corsiglia said her city should be okay for the next two years. What happens after that is the unknown. "It's a real concern," Corsiglia said.

Mandolini pointed to one affordable housing project in her area that had ended due to the collapse of redevelopment. Another in Livermore is on hold. Others have been reduced in scope, like an 800-unit mixed income complex at the South Hayward BART station planned by Eden. That project is now slated to have 375 units, she said.

Government officials acknowledged that redevelopment had its excesses, but point to affordable housing development as one its successes.

"It's a dark time for the state of California," said Bean, of Emeryville. Redevelopment, she said, "was the only affordable housing and economic development program the state had. There's nothing to replace it." ■

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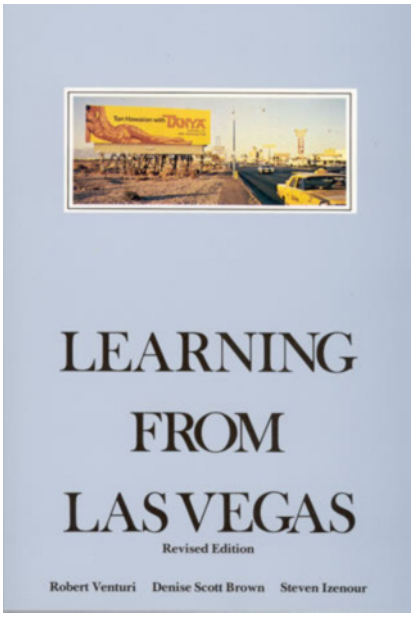
Learning from Robert Venturi

Robert Venturi has, as of last week, retired from architecture. If that seems like unremarkable news, because you didn't know Robert Venturi was still practicing, you're probably not alone.

But when you consider that no art form moves so slowly as architecture does – planning being slower, but not exactly art – then it's quite something that the man who, with his collaborators, instantly changed architecture has also been quietly practicing ever since. Venturi's revolution was both instantaneous and glacial, as his writings immediately changed how we view the landscape and his designs, like those of any architect, changed the real thing much more slowly.



Though he wrote about architecture, he leaves no small influence on planning.

When I was an undergraduate, *Learning from Las Vegas* (1969) and *Complexity and Contradiction in Architecture* (1966) – by Venturi, his wife Denise Scott Brown and co-author Steve Izenour – inspired me to consider the built environment in ways that I had never considered before. Indeed, before I read Venturi, et al, I had never considered the built environment at all. I suspect that many other Americans had not, and still do not. Their books held the distinctions of being familiar, provocative, and fun to read. They are still the source of the glee I feel every time I pass by an Arby's fronted by an outsized neon hat.

Tracing the history of urban planning, it's hard to situate Venturi, now in his late 80s. On the one hand, he allies with the forces of smart growth and New Urbanism, boring into the fortress of High Modernism. It was Venturi, after all, who reintroduced humor into architecture, metaphorically pantsing stern bores like Meis and Corbu. On the other hand, this is the same architect who gleefully designed his own big boxes. His designs for Best stores (no corporate relation to Best Buy) included flower patterns and facades that seemed to be crumbling and other playful flourishes. Lamentably, these designs helped legitimized the typology, literally paving the way for the flimsy monstrosities that followed.

Of course Learning from Las Vegas celebrates roadside America in every possible way. And why shouldn't it? In the 1960s, the road was the place to be. In that respect, Venturi took after Corbu, but without the pretense. Indeed, it's been so long since Venturi debunked high-minded architectural theory – the type that lamely attempts to attach tortured, indecipherable rhetoric to things that are, well, just things – it's a wonder that anyone attempts it anymore.

Seeing that Modernist sterility was about as uplifting as a hand full of jokers, Venturi made the world safe for ornament again. His own designs make reasonable, if sometimes unremarkable, attempts to put his own ideas into practice. He and his firm are responsible for countless handsome structures with just enough surface flourish – masonry patterns; unusual arrangement of windows – to keep them interesting. That might have been Venturi's genius: he embraced the garish, profane elements of kitsch and commercialism, but he knew that the world already had plenty of it. He promotes refinement, but not dogma.

I'm not sure if New Urbanism takes Venturi a step further or whether it does an about-face. In any event, whether you embrace ornament as it used to be as ornament that comments on ornamentation, you still arrive roughly at aspects of New Urbanism. That's because, whether you prefer the cutesy, retro New Urbanist aesthetic or the practical, compact neighborhood, Venturi enabled architects and planners to stop with the ridiculous effort to "push the envelope," with ugliness and abstruseness, and start thinking about humanity again. He didn't bother with perfection but instead sought designs that were "almost all right."

So, on the one hand, Venturi gave us the eclectic highway strip and the garish billboard: both necessary to snap the world out of the Modernist hypnosis. On the other hand, he revered Main Street, and he gave us ornament and freedom: both necessary for the planning movements to come.

I'm not sure if Venturi learned about the world quite the way his revolutionary counterpart Jane Jacobs did – she putting about the front stoop and he roaring by the vernacular in a ragtop Corvette – but, as far as Modernism was concerned, I think they played for the same team. And I'd like to think that both were necessary to make the world safe to question the orthodoxy of Modernism (itself scarcely less authoritarian than the regimes that Mies and Groupius had escaped).

Of course, Venturi is still an architect, not a planner. The arrangement of buildings and the life that takes place between them has never seemed to concern him. (Though, unlike many neo-modernists and starchitects, at least he acknowledges that streets exist and that they are things to which buildings are usually attached.)

I once interviewed Andres Duany (about convention centers, of all things), and he gave me the most self-defeating assessment of architecture that you'd ever expect to hear. He basically said that aesthetics do not matter. "I love it. You hate it. Who cares?" he said. That sort of insouciance is one of the many gifts Venturi gave us. Venturi's own take on that theme, recounted by (pdf) Paul Goldberger in 1971: "you don't have to like something to learn form it."

Even if his buildings, which are now part of a complete body of work, don't always look like much, Venturi is, after all these years, still more than all right.

– JOSH STEPHENS | AUGUST 9, 2012 ■

Blessed Are the Hipsters, for They Shall Inherit the Earth

How much is a hipster worth to a city? Is she worth more when she's building an app, or when she's writing a blog? Is a hipster with a walrus mustache and a mean whiffle ball pitch worth more than one who wears a sarong and practices aerial yoga? How many of them can dance on the pull tab of a PBR?

These questions (or at least less absurd versions thereof) underlie Will Doig's lastest "Dream City" column in Salon last week. Doig picks up on a discussion begun elsewhere on the interwebs about whether hipsters – typically described as scruffy 20-somethings, with or without trust funds, each engaged in their own personal counter-culture movements – in particular, and the "creative class" more generally, deserve much of the credit they've gotten for "saving" the cities where they live. A decade after Richard Florida anointed the "creative class" as the drivers of 21st century urban economies, we can now start figuring out whether he was right. And, if he was right, we can figure out whether he was catalytic or merely prescient.

(Though hipsters and creative-industry workers are not one in the same, it's safe to assume that the dude who's growing arugula on the roof next to his Indica probably isn't suiting up for work at Skadden every day.)

As easy as it may be for some to ridicule hipsters (e.g. the NSFW website "Look at This F&%ing Hipster"), Doig doesn't exactly take sides. He prefers to acknowledge that genuine "vibrancy" – a fraught word that, he says, may be be making the transition from au courant to trite – lies not in the suburbs, the projects, or Brooklyn, but probably somewhere in between. He's ready to banish "placemaking" entirely.

We're always going to have semantic debates, mainly because it's easier to change the language than it is to change cities.

Doig is frustrated because the creative class hasn't exactly saved dying cities. They've added color to neighborhoods in New York, San Francisco, Portland, Los Angeles, and many other cities. I'm too old and square to be a hipster – In fact, by some accounts, I'm supposed to be pretty unamused – but I've eaten enough brunch in Williamsburg to know what the fuss is about. Doig thinks that cities can do better that to simply attract creatives and let them do their thing. The real problems--of the inner city and of desperate backwaters – are not solved through games of ironic croquet. In fact, they're hardly being solved at all.

One of Doig's passing observations, which he presents more as a rumination than a conclusion, well captures well the fixation on the creative class in cities: "No one wants to feel like they're participating in a movement that's just a distraction from more pressing problems."

Of course, being distracted is what residents of the hipster city have been doing. And why shouldn't they?

In the decade or so since they first arose, in Brooklyn and then elsewhere, hipsters have indeed left their marks on cities--but those marks have been largely cosmetic. Hipsters have moved into unwanted buildings, devised new menus, set up curious new shops, written blogs, organized dodgeball tournaments, painted murals, and, yes, bathed in dumpsters. They have indulged in deliberate ugliness, gender nonchalance, recreational blacksmithing, freeloading, apathy, steampunk, gearless bicycles, political correctness, veganism, and nihilistic escapades like setting up a living room on a railroad track or having a Native American-themed binge in McCarren Park. (The examples are nearly endless.)

Hipsters indulge in all of these idiocies of attenuated youth because they can: because the city – whichever city it may be – offers them the opportunity to do something.

Once you get past the thin beer, Goodwill clothes, vague income sources, hipsterism depends in large part on self-reliance. It's not a heroic, Emersonian self-reliance. It is, rather, a self-reliance of resignation. The DIY ethos governs everything from hipster cooking to the hipster economy. Computer programs and artisanal whatnots spring likewise from the individual mind and hand. So do those whisky shots and the all-night jam sessions. If some of this creativity leaks out into the greater economy, creating jobs where venture capital firms and Fortune 500 companies cannot, so be it.

I grew up a half-generation removed from hipsters, so I can't claim to be inside the mind of everyone in Williamsburg. But it's not hard to imagine that hipsters are resigned to living with a government and a mainstream economy that refuses to solve those "pressing problems" that Doig invokes. Pick your issue: climate change, health care, the drug war, education, real wars, campaign finance, civil liberties, the justice system, corporatism, the financial crisis, Mitt Romney, Barack Obama, the 1%, the 99%.... whatever. Cataclysms loom so large that only a massive entity, on the scale of a government, can address them. Hipsters can't help but distract themselves from these problems, because what else can they possibly do?

I don't find this attitude admirable, but I certainly find it understandable.

Peel back the irony, and many 20-somethings may simply be trying to cope with profoundly confusing times. They've absorbed astounding technological advances, and they've witnessed injustice on a global scale. They've lived amid unspeakable wealth and pitiable destitution all at the same time. As the last great suburban generation, they grew up in places designed without them in mind – maybe in McMansions, even – and they will inherent a degraded landscape. They woke up one morning ready to go to homeroom and instead watched their nation's indomitability crumble into a twisted wreck. They have since come of age beneath the twin pillars of melancholy and melodrama.

Whether they were terrified by the event itself or appalled by the response – or both – we knew that this generation would invent its own hangups and own coping mechanisms. And it only stands to reason that they would flock to cities, seeking shelter among each other, and seeking human contact in a world so heavily mediated by technology.

When left to their own devices, hipsters have found that they can change their immediate world, even as the larger world drifts ever more into peril. Yes, some hipsters have done really stupid things. But while art projects and skinny jeans may be aesthetically questionable and functionally pointless, rarely are they morally questionable.

I agree with Doig. Hipsters may not be worth much to cities. But cities are worth the world to hipsters. And maybe that's enough.

This piece also appears on Planetizen's Interchange blog.

– JOSH STEPHENS | JULY 31, 2012

Real Estate, Redevelopment Woes Caused Stockton, San Bernardino Bankruptcies

Despite the tumult caused by that the demise of redevelopment, the recent perils of the cities of San Bernardino and Stockton did not stem from redevelopment-related costs. If soaring pensions costs and operational expenses were the immediate cause of the bankruptcies, the underlying cause did not stem from overly ambitious redevelopment schemes but rather from the prolonged housing bust that has choked off revenue to the cities (and, not to mention, financially crippled many of their residents).

Stockton has already filed for Chapter 9 bankruptcy protection, while San Bernardino had scheduled a fiscal emergency vote for July 17 authorize the bankruptcy filing. A third city, Mammoth Lakes, also filed for Chapter 9, apparently to fend off a $43 million judgment owed to a developer, and appears unrelated to the problems in the larger cities.

A June 26 fiscal report from the City of San Bernardino sums up the problem: Costs "continue to outpace revenue due to increased operational expenses and significant rapid declines in property taxes revenues, as a result of a drop in property values and decline in sales tax revenue." That's a lot of causality in just one sentence.

In Stockton, the list of creditors in the Chapter 9 filing tells the story. The city owes nearly $272 million in pension costs, including $147 million in unfunded pension contributions to CalPers, the public employee pension system, and another $124.28 in pension bond payments to Wells Fargo. Redevelopment-related bonds represent at least $142.98 million, including $10.84 million owed to the state Department of Boating and Waterways for work done on the controversial Stockton marina, which some local residents have cited as an expensive luxury for a largely working class farm community.

Stockton took on much of the debt in the decade prior to the 2007 credit freeze, when home prices were growing and high-profile projects like the marina and a convention hotel seemed feasible. Currently, however, Stockton is a study in civic misery, with a 22% unemployment rate and one of the highest foreclosure levels in the state. The city has slashed its budget repeatedly, laying off nearly a third of its police force and fire fighters – a tough call in a city rife with gang warfare and the second highest murder rate in California.

The next big dates for the Stockton bankruptcy are July 20, when the city is scheduled to make public the key points of the mediation between the city and creditors mandated by state law, and August 23, the next court hearing scheduled in Sacramento.

In San Bernardino, the city's financial report, prepared in anticipation of the City Council vote to declare a state of fiscal emergency, offers some broad parallels to Stockton: falling revenues and looming pension obligations. In all, the city faces a $46 million shortfall in 2011-12. Property tax revenues alone have fallen $11.69 million from their peak of $30.5 million in 20-07-08. Unfortunately, the city seems to have been caught by surprise in part due to two years of inaccurate estimates by staff, according to the Los Angeles Times.

Sale of city owned real estate, including redevelopment assets, may provide marginal assistance, at best, according to the city's own report. Currently, the city and the successor agency own or participate in commercial real estate with a "book value" of about $300 million (roughly, what it was worth when purchased) with a current market value of $100 million. The city is entitled to 18% share of any sale, or $18 million. San Bernardino is considered a secondary or tertiary market by institutional investors, however, who are channeling their money into safe, income-producing properties in places like San Francisco and Silicon Valley.

Not coincidentally, on July 17, a task force co-chaired by former Fed Chairman Paul Volcker and Richard Ravitch reporting on the financial condition of California and five other states seems to draw similar conclusions: "While state revenues are gradually recovering from the drastic decline of the Great Recession, they are not growing sufficiently to keep pace with the spending required by Medicaid costs, pensions, and other responsibilities and obligations," says the report, adding: "This (decline) has resulted in persistent and growing structural deficits in many states which threaten their fiscal sustainability." The report identifies several "major fiscal threats," including Medicaid spending growth, underfunded retirement promises, "eroding, narrow and volatile" tax bases, impact of the federal deficit reduction, and "local government fiscal stress."

Beyond the dismal numbers in both Stockton, San Bernardino, and elsewhere throughout the state, the question remains whether the timing of the dissolution of redevelopment agencies was hurtful to California cities in the long run. In both cities, however, the proverbial camel's bank was broken with or without real estate liabilities.

– MORRIS NEWMAN | JULY 19, 2012