



# Sacramento Region SCS Builds on Tradition of Blueprint Planning

BY JOSH STEPHENS

FOR MANY JURISDICTIONS that are part of California’s “Big Four” metropolitan planning organizations, Senate Bill 375 has ushered in new, unprecedented degrees of collaboration. But whereas SB 375 makes a regional planning revolution for many, for the jurisdictions of the Sacramento Area Council of Governments, the SCS is business as usual.

Having pursued so-called “Blueprint” planning since 2004, and having built its 2008 Metro Transportation Plan (MTP) around it, the Sacramento region’s efforts inspired some of the tenets of SB 375 in the first place. The SACOG SCS, released in November and scheduled to be voted on next month, is no novel concept but rather more of a revision of existing plans. It has been met with broad support in part because the heavy lifting was done years ago.

“It’s been a nudge. It’s not like it was a revolution,” said McKeever.

“The revolution happened when the Blueprint was adopted.”

Thus far, developers, environmental groups, and member cities alike have hailed the plan. In fact, the enthusiastic support is a far cry from the response to San Diego’s SCS, which was hit with a lawsuit at the same time that SACOG released its draft. That lawsuit claims that the SCS favors highway too heavily and increases sprawl in the region. In addition to the environmental groups that filed the suit, Attorney General Kamala Harris recently joined the suit.

No such complaints have been lodged in the Sacramento area and scarce opposition has arisen.

The SCS responds in part to estimates for population growth that have recently been revised downward. Those residents who do move to, and

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# Creswell Departs HCD After 25 Years of Affordable Housing Advocacy

IF YOU EXTRAPOLATE from the current annual under-supply of affordable housing in California, California should have produced 5.5 million units of affordable housing during Cathy Creswell’s career at the Department of Housing and Community Development. While the actual number is likely to be somewhat less, the point remains that HCD has faced and continues to face a monumental task. For the past year, that task has ultimately fallen on the shoulders of Creswell, as she has led the department as its interim executive director until stepping down in February. *CP&DR* caught up with Creswell to discuss the department’s evolution and its immediate challenges.

**CP&DR:** What are you pleased with, and what, if anything, have you left undone?

**CATHY CRESWELL:** The year as director was a great opportunity to be able to look at the direction of the department and see if we were in a position to serve the housing needs of Californians in the best possible way. The department had, for the last few years since we got Prop. 46 and Prop. 1C, focused on getting that money out in the most efficient and expeditious way possible. We were incredibly successful in doing that. We have allocated virtually all of the Prop 46 bonds, \$2.1 billion, and have allocated all but a few hundred million of Prop 1C.

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**THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY** has approved bidding requirements for a \$1.5-million, 29-mile segment of the line from east of Madera to the south end of Fresno. Contractors are expected to submit bids by September 2012. The Merced-Fresno section of the rail line awaits environmental assessment approval and final bid approval by the state's Public Works Board.

**THE LOS ANGELES COUNTY** Department of Regional Planning has released its Healthy Design Ordinance with the stated overall goal of improving public health through changes in the built environment. The ordinance, funded by the Los Angeles County Public Health Department's Project RENEW (Renew Environments for Nutrition, Exercise, and Wellness), proposes changes to subdivision regulations aimed at increasing levels of physical activity to reduce the County's obesity rates.

**THE CLOVIS CITY COUNCIL** has approved a 175-home project on 18 acres at the southeast corner of Ashlan and Locan avenues. The project, originally planned to house two 9-acre projects with nearly 300 residences, was downsized after facing a tough real estate market and local opposition.

**THE SACRAMENTO** Local Agency Formation Commission has unanimously approved a 3,500-acre expansion of the city of Folsom. The expansion, which will take place south of Highway 50, is aimed at adding new housing and jobs to the region while following smart-growth principles and emphasizing local and regional public transit. Opposition to the project centered around concerns about the city's inability to secure a future water supply and demonstrate that housing in the region would accommodate low and moderate-income families.

**THE EAST BAY** Regional Park District has bought the Joseph Galvin Ranch property and the Big Moss property from the Save Mount Diablo conservation group, adding 82 acres to the to the Morgan Territory Regional Preserve. The purchase, funded mainly by grants from the East Contra Costa County Habitat Conservancy, will allow the District to link existing preserved lands by trails and habitat corridors.

**DOWNTOWN LOS ANGELES** has announced plans to move forward with construction of a long-stalled \$400-million federal courthouse project at 1st Street and Broadway. The new building would fill the gap left by the demolished Junipero Serra State Office Building, now a rainy-season pond, and replace the Depression-era federal courthouse on Spring Street. Construction is likely to begin in the last quarter of 2012; the building is estimated to be ready for occupancy by March 2016.

**THE ANAHEIM/ORANGE COUNTY** Visitor and Convention Bureau is set to expand the Anaheim Convention Center beginning May 1 with a 100,000 square foot Grand Plaza. The city has additional plans for 200,000 square feet of space along Katella Avenue across from Disney California Adventure. The expansion will be funded by the Tourism Improvement District fee approved in 2010.

**A LAWSUIT BROUGHT** by former UCLA Chancellor Charles Young to overturn Proposition 13 has entered the appeals process. The suit, which follows a lengthy history of challenges against Prop 13, claims that the Proposition's "supermajority" vote is unconstitutional.

**A STUDY BY DUKE UNIVERSITY** and the Environmental Defense Fund has predicted that California grasslands could shrink by almost 40 percent by the end of the century. State shrublands, conversely, could increase by as much as 70 percent. The change would pose a challenge for California's ranching industry, whose cattle depend on the grasslands for feed. In 2011, the California Rangeland Conservation Coalition and the Cattlemen's Association joined several environmental groups in asking the California Air Resources Board to integrate rangeland into the state's carbon market. Ranchers have proposed the selling of carbon credits in exchange for more environmentally-sound land management practices.

**SAN MATEO'S BAY MEADOWS DEVELOPMENT**, proposed in 2009 to replace the San Mateo racetrack with condos, offices, parks, and retail space, has failed to make headway and is facing a 2013 deadline. The project faces the threat of re-approval if it does not succeed in pulling building permits by May 2013.

While residents are worried about the site's lack of progress, the project's developers say it will be completed by the end of 2012.

**THE CALIFORNIA SECRETARY OF STATE** has approved a petition to allow voters to revisit approval of the \$98-billion high-speed rail project. The "No Train Please Act," submitted by a Beverly Hills resident, would kill the entire bullet train plan should a majority of Californians vote "yes" in November.

**THREE LOS ANGELES-BASED** advocacy groups for people with disabilities are suing the Community Redevelopment Agency and the city of Los Angeles for violating the Americans with Disabilities Act by failing to ensure that federal and community development-funded apartment complexes are accessible to people with disabilities. The litigation, which arrives as the CRA/LA winds down operations, comes amid similar investigation by a U.S. Attorney.

**THE SANTA CLARA STADIUM AUTHORITY** has approved an \$878-million construction contract with New York City-based company Turner-Devcon to build the new 49ers football stadium. The contract comes just before the city received a \$200-million loan from the National Football League. Construction on the 68,500-seat stadium is scheduled to begin July 1; the project is estimated to be completed by 2014.

**FEDERAL TRANSPORTATION OFFICIALS** have approved \$250 million in federal funds for a 10-mile, \$2.1-billion BART extension from Fremont to San Jose. The Valley Transportation Authority will receive \$100 million in federal funds once an agreement is reached with the Federal Transit Authority on March 12, and an additional \$150 million for the fiscal year beginning in October.

**SAN DIEGO'S** Centre City Development Corp. has declined to approve permits for the proposed Fat City Lofts development in downtown San Diego. CCDC cited the project's inconsistency with the 2008 City of San Diego General Plan Economic Prosperity Element and the Centre City Community Plan. The project had roused controversy when it garnered opposition from

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nearby Solar Turbine, which was wary of having a residential development near its industrial site. Supporters of Fat City contended that the lofts were perfectly in line with the city's promotion of dense, downtown living. CCDC Chairman Kim John Kilkenny offered the following statement: "The proposed project is inconsistent with the General Plan's Economic Prosperity Element Policy and Centre City Community Plan, which recognizes that base sector industries should be protected and land use inconsistencies should be avoided. The construction of a residential project close to Solar Turbines would result in increased regulatory burdens which may jeopardize Solar Turbines' continued operations." Kilkenny's decision is appealing to the San Diego Planning Commission, but not to the San Diego City Council.

**THE BART BOARD OF DIRECTORS** has unanimously approved environmental studies, early engineering, and development of a ridership plan for the proposed 4.8-mile extension to Livermore. The agency has agreed to partner with Livermore and the Alameda County Transportation Commission to brainstorm ideas for funding the \$1.1-billion dollar plan, which is predicted to draw 21,000 new riders.

**UNDERNEATH A CONTENTIOUS** land-use debate in Fresno lies a pressing issue: will the city expand westward, or towards the southeast? There are two competing ideas on which direction to develop the city, the Southeast Growth Area plan (SEGA) and the West Growth Area plan (WEGA), which each put forth distinct visions for Fresno. SEGA has been bounced around for nearly a decade, and envisions a master-planned community for 100,000 people across 9,000 acres. The unfinished plan drew criticism last year from impatient city council members Andreas Borgeas and Lee Brand, who were publicly skeptical of the need to invest millions of dollars in a development that would remain incomplete for they claimed would be decades. Instead, they called for the WEGA, claiming that planning and real estate would be better west of Highway 99 once the market picks up.

**OFFICIALS FOR THE** California High Speed Railroad Authority endorsed a route for the state's proposed high-speed rail between Fresno and Merced, which has been hotly contested. The route will follow portions of the Union Pacific Railroad route along Highway 99 and the Burlington Northern Santa Fe route, as opposed to one or the other, which the planners insist will cost less and disturb fewer businesses. San Joaquin Valley farmers are unhappy with this compromise, as they say the route may negatively affect agriculture and farmland. The cost of the hybrid route is estimated to be \$500 million less than following the BNSF route the whole way, and \$1 billion less than adhering to the UPR route. A final EIR is anticipated to be released



ORANGE COUNTY GREAT PARK

A bird's-eye view of what Orange County's Great Park might look like from the park's balloon ride attraction is seen in this artist-rendered publicity handout.

## GREAT PARK PLANS IN JEOPARDY

**THE BELEAGUERED** Orange County Great Park, may be one of the biggest casualties of the demise of redevelopment. Originally, the city of Irvine planned to partially pay for the redevelopment with tax increments, or increased property taxes, on a development of 5,000 homes near to the park and selling 35 acres of property for \$134 million at 9% interest, which incurred state debt to the city and qualifying the city for other property tax increments. Those 35 acres were sold by the city to Irvine's redevelopment agency, but in the midst of the redevelopment crisis last year were transferred back to the city. As a result, the state debt may not be repaid, and the financing the park redevelopment project is in trouble. This issue is causing a major rift between the Republican and Democrat Irvine City Council members. So far, the Democrat majority in the council has prevailed over the Republican minority in keeping up efforts towards redeveloping the 1,300-acre park, recently voting to continue moving forward with construction plans.

in March or April, allowing for property to be acquired and construction begun by the end of this year.

**IN AN EFFORT TO** fulfill the requirements of the multi-species habitat conservation plan, Riverside County has spent seven years accumulating land to protect animals and native species from development. The conservation plan satisfies federal and state requirements for environmental preservation if a developer wants to build in an area where an endangered or threatened species lives. The conservation plan subsequently allows development to move forward with fewer environmental hold-ups. Riverside County must manage the habitat requirements for 146 species. Under the Western Riverside County Regional Conservation Authority, the county planned to amass 153,000 acres of habitat land by 2029. The problem is, without the proper funding, no land can be purchased. Currently, state agencies that have typically financed the land purchases have tight budget con-

straints, and cannot pledge at the same level or at all. In one example, the Riverside County Transportation Authority must decide to pledge \$25 million over the next eight years to the conservation authority, though that money would otherwise go to highways, roads, and other transit programs.

**THE FINAL** environmental impact report for the Regional Connector Line of the Los Angeles Metro has been released ahead of schedule. The Regional Connector is planned to run under Downtown L.A. and to connect the Blue, Gold, and Expo lines along a route going northeast, which has been approved by the Metro Board of Directors. There are three planned stops in this route, at Second/Hope, Second/Broadway, and First/Central, with a fourth stop at Fifth/Flower cut due to exorbitant costs. Installing a pocket track at Fifth/Flower has been discussed to retain the possibility of adding a stop there in the future.

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# legal digest

## EIR Need Not Consider Impacts of Surplus Land Act

### *Court rules that Carmel-by-the-Sea may sell off historic home*

BY WILLIAM W. ABBOTT

**HAVING ALREADY** prepared one environmental impact report that was set aside by a court, the City of Carmel-by-the-Sea undertook a new EIR for the purposes of evaluating the impacts of the City disposing, by sale or lease, of a historic mansion.

In 1971 and 1972, the city acquired the Flanders Mansion and surrounding preserve property. Constructed in 1924, the mansion was a “two-story Tudor Revival English Cottage,” designed by a prominent architect Henry Higby Gutterson. The city had used the property for various purposes: including residential, gallery, and office space, but had been vacant since 2003. Facing ongoing ownership of a property with significant deferred maintenance, the city proceeded with an EIR to deal with disposition options.

Pursuant to the EIR, the city’s primary objective was to divest itself of the mansion, with secondary objectives of (1) preserve the mansion as a historical resource; (2) put the mansion to productive use; (3) provide that ongoing use of the mansion would not impact the surrounding neighborhood; (4) protect the public’s enjoyment of surrounding preserve; (5) protect the environmental resources and (6) provide the public as many park benefits as are practical.

The DEIR included four alternatives: no project; residential lease; public use lease; sale with conservation easements and mitigations. The DEIR concluded that all the project alter-

natives had fewer environmental impacts than the project as proposed, but only the sale alternative would meet the basic objective of divestment. The administrative record, although not the EIR, included an economic feasibility analysis of the various options. One of the letters on the DEIR commented on the feasibility analysis, the Surplus Lands Act, and the alternative of selling the home on a smaller parcel. The FEIR responded to the first two, but not to the third comment in this particular letter.

In May 2009, the city adopted various resolutions certifying the EIR, adopting a mitigation monitoring and reporting program, adopting a statement of overriding considerations, and approving the project (sale with conservation easements and mitigation measures). Following the CEQA challenge, the trial court held that the EIR failed to consider the impacts of selling the property in compliance with the Surplus Lands Act as well as failure to respond to one comment. The city appealed and the Flanders Foundation, the petitioner, filed a cross appeal implicitly to prevent the city from relinquishing ownership of what it considered an important public resource.

The appellate court ruled for the city on all issues save one.

First, the court concluded that while the Surplus Lands Act applied to the sale, the evidence was that the development of an affordable project was unlikely. Therefore, sale to another government agency—at anything resembling a fair price—was irrelevant and, therefore, there was no requirement to study this potential scenario in the EIR. The appellate court also concluded that there was no obligation for

the lead agency to include the economic feasibility in the analysis, and in a detailed critique, that the evidence contained within the analysis constituted substantial evidence. Notably, the court held that analytical framework in the study of what a reasonable prudent property owner would do, as compared to what the city could afford to undertake, was appropriate.

The court writes, “The Foundation insists that...restoration and maintenance of the Mansion property ‘can be achieved’ without selling the Mansion property. This argument ignores the fact that...substantial evidence supports the City’s finding that it would be economically infeasible for the City to retain ownership of the Mansion property.”

The appellate court also rejected the foundation’s challenge to the statement of overriding considerations, after determining that there were multiple independent grounds stated in support of the override (and that the opponents failed to demonstrate a lack of substantial basis for each one). The appellate court did concur with the trial court that the City’s non-response to the question regarding the viability of mitigation to park impacts through the sale of a smaller parcel (along with the home) warranted a response, and that the “City’s certification of the FEIR was therefore invalid.” ■

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► **The Case:**

*Flanders Foundation v. City of Carmel-By-The-Sea* (January 4, 2012, H035818) \_\_\_ Cal.App.4th \_\_\_

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# Church Shut Down for Failure to Obtain CUP

## *9th Circuit court rules that San Diego County's CUP requirements do not violate religious freedom*

BY GLEN C. HANSEN

IN SAN DIEGO COUNTY, a dispute involving a long overdue application for a conditional use permit has resulted in the closure of a church that had been essentially squatting in a trailer park for over 25 years.

The Ninth Circuit Court of Appeals held that a church's claim that a land use permit regulation violated the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc ("RLUIPA") was not ripe for judicial review because the church had not completed the requirements for the use permit, and therefore the courts could not determine the particular burden that the church would have to shoulder under the challenged regulation.

In 1986, the Guatay Christian Fellowship moved to a recreation building on the grounds of a trailer park in an unincorporated portion of San Diego County. The park was zoned "rural residential." While use permits are not required for religious assembly in five of the county's twelve commercial zones, and in one of the county's residential zones, the building in question was not located within such a zone.

Soon after the church moved into the building, a county employee informed the church secretary that the church would have to submit a use permit application. The secretary then prepared and attempted to submit an application in person to the county offices, but after speaking with several people at the county offices, ultimately did not turn in the application.

A new owner bought the property shortly after the church began using the building in 1986. In March 1988, the owner submitted an application to the county for a minor deviation

from the approved use permit in order to relocate six of the park's RV trailer sites. The plot plan submitted with this application labeled the building as a recreation hall and did not mention a church. The County Planning Department disapproved the proposed minor deviation plan, in part because the existing recreation hall was being used as a church. A county employee again informed the church that "it seemed that the church would probably require a major use permit."

No use permit application was ever completed. Nonetheless, the church continued to use the property for religious assembly for the next 20 years.

The county issued a Notice of Violation (NOV) to the park via the owner in April 16, 2008, which identified numerous violations, including the recreation building being "illegally converted for use as a church." The NOV required that the church stop using the building for religious assembly. The county separately informed the church that because the property was not zoned for religious assembly and no permit had been obtained to allow such use, the continued operation of the church for that purpose was illegal.

The church ceased all religious assembly on the property and brought an action in U.S. District Court, alleging claims that the county enforced a land use regulation in violation of the church's constitutional and statutory rights under 42 U.S.C. § 1983 and RLUIPA. The District Court granted summary judgment, holding that the church's claims were not ripe for review. The church appealed. The Ninth Circuit affirmed.

The court first disposed of the church's argument that the principles of equitable estoppel should spare the church from completing the use permit application process. The church failed to satisfy several elements of estoppel

under California state law. The county had never expressly stated that the church's use was permitted, and the church could not rely on lack of county enforcement to support its estoppel argument.

The court then held that the church's claim was not ripe for judicial review. As a matter of first impression, the Ninth Circuit applied that ripeness rule to RLUIPA claims because, in land use contexts, the final decision requirement (1) aids in developing a full record; (2) is the sole means by which a court can know precisely how the regulation at issue would finally be applied to the property; (3) might provide the relief the landowner seeks without requiring the courts to engage in unnecessary constitutional analysis; and (4) accords with principles of federalism because, by encouraging resolution of land use disputes at the local level, it evinces the judiciary's appreciation that land use disputes are uniquely matters of local concern. Here, the court was unable to determine if the church has suffered a "substantial burden" under RLUIPA until the church had submitted at least one use permit application to the county.

The Ninth Circuit did not consider, and left for another day, the church's argument that the costs of complying with the county's use permit requirements (a) is a "substantial burden" under RLUIPA because such costs are "unreasonable and unattainable" for a non-profit organization in its position, and (b) implies that the county has deliberately imposed these requirements to quash the church's religious exercise. ■

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### ► The Case:

*Guatay Christian Fellowship v. County of San Diego*, \_\_\_ F.3d \_\_\_, 2011 U.S.App. LEXIS 25581 (9th Cir. 2011)

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# CITIES FRET OVER FATE OF REDEVELOPMENT-OWNED PROPERTIES

BY JOSH STEPHENS

AS THE ADAGE GOES, they may not be making any more real estate these days. But, for some bargain-hunters, the death of redevelopment may be the next best thing.

In the coming months, successor agencies and their oversight boards will be deciding which in-progress redevelopment projects will go forward and, conversely, which assets will be disposed of. Presumably, all of those assets that are not placed on respective agencies' lists of enforceable obligations will be sold and their proceeds dedicated to local taxing entities.

Uncertainty about the fate of those properties – both the prices they will fetch and, perhaps more importantly, the developments that could result – are adding to cities' anxieties during the wind-down of redevelopment.

Properties held by successor agencies fall generally under a few categories:

- Larger, developable sites that need no unusual preparation or environmental remediation.
- Small parcels that had been intended to be merged with others to form viable development sites.
- Contaminated sites awaiting publically financed remediation.
- Dilapidated historic structures awaiting publically or privately renovation.
- Sites acquired and designated for affordable housing.
- Sites acquired and designated for infrastructure and public services.

The number of such holdings ranges from zero in some cities to roughly 400 in Los Angeles. The former Los Angeles Community Redevelopment Agency holds around \$300 million in property that was intended to be leveraged into roughly \$3 billion in invest-

ments, according to CRA/LA spokesperson Richard Bloom. But those numbers do not necessarily have anything to do with the values once properties are liquidated – that figure is unknown even to the agency itself.

The city is hoping for a few blockbusters, at least in high-profile former project areas such as Hollywood.

"It's location, location, location," said Bloom. "Some of these properties are going to be ex-

selling it at the highest value," said Bloom.

Riverside Mayor Ron Loveridge put it even less diplomatically. "The instructions are to sell them 'expeditiously,'" said Loveridge. "I'm not quite sure what that phrase represents."

Loveridge estimated that Riverside has about 160 properties that could be liquidated. He said that figure is comparable to those of neighboring cities in the Inland Empire, which has been famously hard-hit in the recession.

"Across the state, you multiply ours and a lot of properties are going to be on the market at a very down time in the economy," said Loveridge.

A notable foil to Los Angeles

remains soft and successor agencies may be forced to take relatively low bids unless they are permitted to wait until more opportune moments.

Meanwhile, certain properties may find few, or no, bidders no matter when they go on the market. Statewide, redevelopment held countless marginal properties and even properties that would be considered useless to anyone but the agencies themselves. Agencies acquired slivers of real estate with the intention of folding them into larger assemblies, and they own untold acres of contaminated properties that many of them were intending to remediate with funds provide by the "Polanco" brown-fields program. (The Polanco program, created by AB 3193 in 2005, provides some immunity from liability for redevelopment agencies and successor property owners of contaminated sites.)

While small agencies may have no trouble cataloging their holdings, some larger agencies are struggling just to figure out how many properties they own and what those properties are like.

"Part of the challenge of compiling the list of things you're going to sell is not only figuring out the properties but also tracking down all the funding sources...and the strings attached in that regard," said Bloom. "Are there environmental remediation issues or anything else that might affect the value of a piece of property...and then look at the market value? It's sort of hard to know until you put it on the market."

Many of the properties that are likely to catch developers' eyes – and therefore fetch the highest prices – are also those that cities considered crucial for their redevelopment plans. In downtown San Diego, the former Centre City Development Corp. may have to liquidate properties that had been set aside for such crucial facilities as parks and fire stations. Though those projects were in only the early planning stages, CCDC had

**"One of the uncertainties about this is that if you have five people who want a property and the one who bids the most money is the worst of the five, do you go to the highest bidder? If you're the highest bidder and you're not selected, do you go to court?"**

–Ron Loveridge, Riverside mayor

tremely attractive to developers."

Renata Simril, managing director at real estate services firm Jones Lang LaSalle and formerly a developer with Forest City Enterprises, said that many former RDA properties will be inherently unattractive to developers, if not because of their site characteristics then because of their locations.

"I think it's important to note that redevelopment's function was to help provide tools in blighted or underserved," said Simril. "So by nature of them being RDA project areas, the majority are very depressed areas."

Bloom said that the agency is currently putting together a list of its assets, but even the most detailed list will not reveal the properties' market values.

"There's a conflict between expeditiously selling this stuff and

and its large Southern California neighbors is San Francisco.

Tiffany Bohee, interim executive director of the San Francisco Redevelopment Agency, said that the city has relatively few uncontracted properties on its books. San Francisco is often considered an anomaly in the redevelopment world because the city and county are one in the same; therefore, the city had less incentive to shield tax monies through redevelopment.

Cities are, of course, hoping that these properties fetch top dollar from developers who are eager to carry out the cities' redevelopment plans. But that's a best-case scenario. The process and timelines by which these sales may take place have yet to be determined. Timing could drastically affect the value of certain assets, as California's real estate market

# PROCESS FOR LIQUIDATING RDA PROPERTIES UNCLEAR

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acquired properties with the express purpose of securing them before developers did.

CCDC contends that selling those properties – and thus losing the opportunity to build parks and fire stations – imperils the robust residential development that is planned for the area. Intended high rises and their thousands of would-be residents will have inadequate fire protection and limited access to open space, both of which, planners say, are crucial for creating a viable community there.

“If downtown continues to build out and absorb up to 90,000 people by 2030 with no new parks and no new fire stations, at some point it’s just not going to be a livable place anymore,” said Jeff Graham, spokesperson for the Centre City Development Corp.

Many cities fear that developers who acquire former RDA properties will have little incentive to build anything resembling that which the redevelopment plans had envisioned.

“One of the uncertainties about this is that if you have five people who want a property and the one who bids the most money is the worst of the five, do you go to the

highest bidder?” said Loveridge. “If you’re the highest bidder and you’re not selected, do you go to court?”

Moreover, without redevelopment agencies will no longer be around to negotiate for other an-

ing a zoning change that would make its intended fire station and park sites for “public use.” The city had not previously done so because CCDC controlled the properties already.

“There are some controls avail-

entities will decide properties’ fates.

“There’s absolutely no direction on how the oversight board conducts its meeting, how it liquidates assets. There are no procedures in place to standardize any of that,” said Graham, echoing common criticisms of Assembly Bill X1 26, the bill that guides the dissolution process. “It appears that each county and city will be creating its own process as it plods along.”

Cities are particularly anxious about what will happen in the event of disagreement.

“We don’t know how forcible the Department of Finance is going to be in reviewing the decisions of 400-plus oversight boards throughout the state,” said Graham. “How fair is that?” ■

**“There’s absolutely no direction on how the oversight board conducts its meeting, how it liquidates assets. There are no procedures in place to standardize any of that. It appears that each county and city will be creating its own process as it plods along.”**

–Jeff Graham, Centre City Development Corp. spokesperson

cillary community benefits.

“The agency was able, in its day, to not only get projects built, but also to get other community benefits in exchange for the agencies subsidies they were able to extract various commitments from developers to help get these projects built....a whole lot of that stuff obviously goes by the board,” said Bloom.

Zoning controls may thus offer cities their only remaining means of controlling land uses in former project areas. Graham said that the City of San Diego is consider-

able to a city to help maximize some of the more marketable properties because they have the ability to impose zoning/land use planning controls,” said Iris Yang, at attorney with Best Best and Krieger, who specializes in redevelopment.

Of course, the potential for selling properties, no matter how attractive or marginal they may be, first depends on the decisions of successor agencies’ oversight boards and the state Department of Finance. Cities are intensely wary of the process by which both

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## CONSULTING FIRMS’ KEY CLIENTS DISAPPEAR WITH DEATH OF REDEVELOPMENT

BY JOSH STEPHENS

THOUGH MOST cities maintained full-time redevelopment teams, not all the work was done in-house. That would be hard to do in a \$5 billion annual industry, with countless moving parts in hundreds of agencies across the state.

As with many public sector entities, redevelopment agencies retained consultants for a wide

range of services and special projects and services. Consulting firms often helped to devise plans, draw up deals for market rate development and affordable housing, and identify project areas in accord with redevelopment law.

When Gov. Jerry Brown announced his intention to shut down redevelopment agencies early last year and then when the California Supreme Court handed

down a nightmare ruling for RDAs – consulting firms were as surprised as anyone else was.

“Many assumed that ‘worst case’ translated into ‘least likely,’” said

may be, the abrupt cessation of a six-decade-old industry has taken a tremendous human toll, not just among redevelopment staff but also among the dozens of consult-

**“Some of the consulting firms are going to shrink – of course they are! You’ve easily got a couple of billion in cash flow that’s gone.”**

–David Rosen, principal, David Paul Rosen & Associates

John Oshimo, of RC Associates, of the Supreme Court’s ruling.

Whatever the aggregate benefit of the shutdown of redevelopment

ing firms whose practices depended, in part and sometimes in whole, on contracts with redevelop-

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# CONSULTANTS STRUGGLE IN WAKE OF RDA DEATH

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opment agencies.

“Some of the consulting firms are going to shrink – of course they are!” said David Rosen, principal of David Paul Rosen & Associates. “You’ve easily got a couple of billion in cash flow that’s gone.”

Rosen said that, because his is a national firm, it is large and diversified enough to weather the loss of redevelopment-related business. But others are not so secure.

Oshimo, whose employs only five consultants, said that the disappearance of redevelopment came abruptly, even with projects underway.

“(Dissolution) has been tremendous. It eliminated all the projects that we were scheduled for,” said Oshimo. “We were in the middle of a few projects that got put on hold.”

Oshimo said that he has not had to let any of his staff go. The same cannot be said for Kathleen Rosenow, principal of the Rosenow Spevacek Group, Inc. of Santa Ana. Rosenow said she has laid off roughly one-third of her staff in the past year.

Rosenow said that most of their work was on a project-by-project basis. All projects that did not already have construction projects are unlikely to be approved as enforceable obligations by successor agencies’ oversight boards. As such, any project that was still being evaluated by consultants is

unlikely to make the cut.

“How we have dealt with that is through layoffs and attrition,” said Rosenow.

The Feb. 1 deadline did not of course eliminate all redevelop-

Successor agencies are, however, seeking legal advice.

Unlikely their consultant counterparts, lawyers who specialize in redevelopment law have found themselves with plenty of new

Short of earning legal degrees in a pinch, consulting firms are holding out for a new version of redevelopment to arise. By then, the decimation of city staffs may create a greater demand than ever for consulting services. May think that affordable housing is likely to be revived relatively soon, especially with a bill pending in Sacramento that would restore the equivalent of the 20% set-aside.

“I think that everyone feels that at least the affordable housing or the set-aside funds will eventually come back,” said Oshimo.

Not everyone is so optimistic, however.

“I don’t really have a lot of hope for those companies,” said Larry Kosmont, whose firm, The Kosmont Cos., performs a wide range of land-use consulting services. “They are going to have to retool dramatically. Many of these companies have been involved in the arcane business for a long time.” ■

**Lawyers who specialize in redevelopment law have found themselves with plenty of new business – at least those who have quickly developed expertise in the new world governed by Assembly Bill X1 26.**

**“We’re very busy right now and have been probably for the last year because of the threat of dissolution, the ups and downs of what bills would be passed, and trying to help agencies work through all the various issues during that time.”**

– Iris Yang, Best Best and Krieger

ment-related work in California. To the contrary, successor agencies are working as intensively as ever on their wind-down. But former redevelopment agency staff are clinging to their own jobs, and the budget for the wind-down does not necessarily enable successor agencies to call for consulting help, no matter how badly it may be needed.

“There’s a lot of trying to figure out how to administer a lot of paperwork,” said Rosenow.

business – at least those who have quickly developed expertise in the new world governed by Assembly Bill X1 26.

“We’re very busy right now and have been probably for the last year because of the threat of dissolution, the ups and downs of what bills would be passed, and trying to help agencies work through all the various issues during that time,” said Iris Yang, an attorney with Best Best and Krieger.

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# Bay Area TOD Hailed as National Model

BY JOSH STEPHENS

**SMART GROWTHERS** tout transit-oriented development more often than any other strategy. Yet with the exception of a few showpiece developments, TOD has yet to catch fire in practice. This year, the American Planning Association recognized one such development in the hopes that, finally, the trend will catch on.

The Contra Costa Centre, located between Walnut Creek and Concord in the inland reaches of the Bay Area, will be receiving the 2012 National Planning Excellence Award for Implementation, one of 15 awards to be presented April 16 at the APA's National Conference in Los Angeles.

The award comes roughly three decades after the concept of developing a mixed commercial and residential around the Pleasant Hill station of the Bay Area Rapid Transit District's Pittsburg/Bay Point line. Though not yet fully built out, CCCTV sits on 125 acres in unincorporated Walnut Creek and features approximately 2.4 million square feet of Class A office/commercial space, two full-service hotels, 50,000 square feet of retail/restaurants and nearly 2,700 multi-family residential units.

Planners say that the project has created a 30% decrease in traffic congestion in the area as commuters have opted for BART and other means of transportation that do not require single-passenger vehicles.

Despite the popularity of the TOD model, planners say that the center's development was anything but smooth. It was, in fact, a complicated partnership between developers, Contra Costa County, the Contra Costa County Redevelopment Agency, and, as is inherent to transit-oriented development, a major transit operator. Notably, the redevelopment agency, now forced into dissolution, assisted the project with land assemblage, funding for affordable housing, and some of the placemaking efforts. (The agency was led at the time by Jim Kennedy, now interim executive director of the California Redevelopment Association.)

"It was remarkable that the project spanned political leadership. We felt it was an example of what should be done across the country," said Ann Bagley, who is a planner in the Dallas area and chair of the APA's awards jury.

Maureen Toms, program manager with the former Contra Costa County Redevelopment Agency, noted that the plan took as long as it did in part because market conditions never would have accommodated so much vacant space all at once. The tenancy, and the related commuting benefits, took time to reach critical mass.

"The Contra Costa Transit Village will ac-

complish positive changes as a result of planning, and the implementation award emphasizes long-term measurable results," said Bagley.

Initially, not everyone was so enthusiastic about the project. It received intense local opposition from neighbors who were accustomed to the area's bedroom-community feel. Gail Murray, BART's District 1 director, said that a series of charettes helped diffuse that initial opposition, in part as residents discovered that the transit village, though large, would likely be

tion that includes all office tenants – also sponsors regular traffic monitoring, with the goal of maintaining or improving upon that 30% traffic reduction.

"That's something that we keep tabs on," said Toms. "We want to make sure that that isn't moving backwards."

A few variables, however, remain to be defined. The village's master plan includes several large parcels that remain vacant.

"It's taken a number of years to complete



An aerial view of Contra Costa Centre

COURTESY CONTRA COSTA CENTRE

an improvement over existing conditions.

"The BART property was all parking; it wasn't attractive; it was just a sea of thousands of cars," said Murray. "Putting all the cars in a garage and building this TOD was an amenity to the surrounding neighborhoods."

Murray also said that the logic of TOD took hold when residents came to understand that the project would not encroach on their lifestyle.

"People are accepting the fact that around the BART station is the right place to have more density," said Murray. "It doesn't make sense to have single-family homes around a station."

CCCTV operates on the familiar premise that commuters will opt for rail rather than driving because of the project's proximity to the rail station. But planners say that the project required careful planning and programming in order to actually realize those goals. In particular, developers included several programs to encourage commuters to stay out of their cars during the workday and to make sure that non-driving workers could get around.

Toms cited such features as a car-sharing program, a circulator van, and a hiking/biking trail that runs alongside the freeway. The Contra Costa Association – the business associa-

the vision that they had back in the '80s to do this kind of project," said Toms. "It can't be that you adopt the general plan and you have build-out right away. You have to really stick with the plan."

Even among the relatively high concentration of transit oriented greenfield developments in the Bay Area, CCCTV is considered a standout.

"One of the original ones, at Fruitvale Station, is also in stages," said Murray. "It wasn't as successful because it was the first one out the door."

Meanwhile, other communities are looking forward to forming their own plans, inspired by what the CCCTV has done. Toms said that delegations from other cities have come to observe the project, and Bagley said that California seems to be on the leading edge of transit oriented development.

"We're always fascinated with California planning because y'all do a good job," said Bagley, the APA jury chair. "It's very important that we draw attention now to these transit areas. All over the country people are needing to live in more urban situations, by choice or by necessity. A successful transit area is critical to that." ■

# >>> SACOG SCS Envisions Small Growth Footprint

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are born into, the region will, as is typical in smart-growth planning scenarios, have a greater selection of high-density housing stock.

The SCS assumes that the region, currently at 2.2 million residents, will grow by roughly 871,000 residents – 400,000 fewer than the 2008 MTP assumes – translating to 361,000 new jobs and just over 300,000 new housing units. The SCS calls for all of this new growth to consume only 56,000 acres of greenfield land.

As SACOG executive director Mike McKeever noted, that amounts to a 40% population increase while increasing the region’s development footprint only 7%.

As a result of this more compact development pattern, the region is expected to meet its goals for greenhouse gas emissions. SACOG’s models estimate that vehicle miles traveled per household will decrease by 6%. Traffic congestion is expected to decrease 7% by 2035, as compared to an increase of 22% projected by the 2008 MTP.

These reductions in traffic stem largely from new investments in a range of transportation modes. The MTP/SCS calls for the expansion of metro Sacramento’s two light rail lines, the introduction of a streetcar in West Sacramento, and a host of bus improvements, including bus rapid transit. It also calls for spending on new arterial roads.

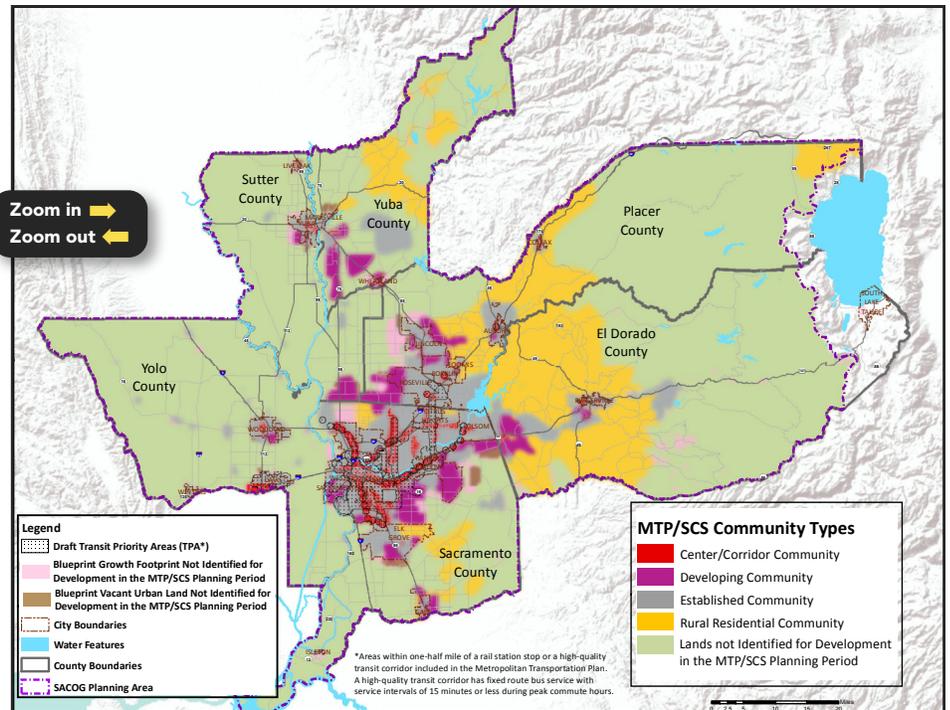
Notably, the plan also calls for \$2.8 billion in investment in bicycle and pedestrian infrastructure, which is projected to spur a 32% increase in the use of those modes.

“We’ve really turned a corner on what’s happened in the Sacramento area since about 1980,” said Matt Baker, habitat director at the Environmental Council of Sacramento. “We feel it can be improved by developing an implementation plan for a comprehensive network for active transportation – bike and ped – in alignment with the transportation network.”

McKeever said that the SCS/MTP also projects an increase in transit ridership and, notably, a farebox recovery rate that will increase from today’s 24% to 38% in 2035.

“That may seem like a boring number to people, but that’s a huge difference in terms of having an economically viable transit region in this region,” said McKeever. He said that, at those rates, the region would have an extra \$1 billion to re-invest in transit.

Single-family large-lot housing is planned to grow by 29% while single family small-lot and attached housing is planned to grow by 71



MTP/SCS with Blueprint footprint reference with TPA

COURTESY SAN DIEGO ASSOCIATION OF GOVERNMENTS

percent. All of this is projected to result in a far smaller growth footprint than that created during the previous few decades, when subdivisions of single-family detached homes spread across former farmland.

The SCS approaches land use and new development from three different perspectives: that of community type, Blueprint principles, and Transit Priority Areas. The region’s five community types range include (1) centers and corridors (i.e. major employment centers); (2) established communities; (3) developing communities; (4) rural residential communities; and (5) lands not intended to be developed. The plan attempts to focus growth on the more dense, established places.

As well, it overlays the concept of Transit Priority Areas (TPA), which are defined as areas within one-half mile of transit service with at least 15-minute headways. This would include the region’s light rail lines and certain high-capacity bus lines, both existing and planned. The SCS intends for developments in TPA’s to take advantage of SB 375’s relaxation of CEQA requirements, thus promoting infill development that will reduce per capita vehicle miles travelled.

These predictions come from what McKeever describes as an innovative “activity-

based” modeling methodology. The land-use modeling uses I-Places, an industry standard. He described the transportation model as unusually precise – measuring trips on a per-parcel basis – and accounting for the “tours” that drivers take during the day as they travel not only between home and work but also to intermediary locations along the way.

McKeever said that this sort of modeling did not necessarily bias the projections towards more trips or fewer trips; rather, he said, it is simply more precise than methods used in the past.

“It’s not that there’s a bias in the model one way or another,” said McKeever. “It’s more that it’s just a more precise way to estimate travel behavior.”

McKeever offered the example of a transit oriented development: “(Without) a parcel-based ability in both your land use and transportation models... you lose your ability to figure out whether putting that TOD in that particular place would have any meaningful impact on travel behavior or not.”

The RTP also calls for the expanded transit service to reach 150,000 residents and 240,000 employees who do not currently have easy access to transit.

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## >>> Preservation of Farmland Key to SACOG Plan

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Between 1988 and 2005, SACOG estimates that the region grew by approximately 657,000 people while consuming 200,000 acres of farmland. The new MTP/SCS calls for 800,000 new residents to consume only 36,000 more acres of farmland.

Unlike those in other the three regions that are implementing SCS's, the SACOG SCS takes pains to preserve farmland, as agriculture is to the Sacramento region what tech is to San Francisco and entertainment is to Los Angeles.

"It's a particularly big deal to us because our farm economy is a big deal in this region," said McKeever. "Farm products is one of the few things that we actually make in this region and export to the world. We get a lot of extra multiplier value and we want to save as much of that dirt as we can."

This avoidance of developing on farmland is complemented by the region's Urban-Rural Connection Strategy. This program seeks to analyze the relationship between agricultural areas and urban centers with respect to issues such as local food supplies, transportation routes, infrastructure demands, and irrigation.

Despite this sensitivity to the agriculture industry, some in the region's rural counties are wary of the SCS's prescription for compact growth.

"A lot of elected officials don't like to tie themselves to a plan that might limit their ability to do business with developers," said Yuba County Supervisor Mary Jane Griego, a member of the SACOG board. "I think the hangup might have been that this plan felt to some like it was stepping on their land."

Griego said, however, that public officials in Yuba County are content with the plan.

"We're a small agricultural county and wanted to make sure that growth is in appropriate areas," said Griego. "We wanted to preserve our farmland and make sure that we kept that business for a long time."

Griego added that many pro-development officials in rural counties may be dreaming that the boom of the early 2000s will rise again. Griego called such predictions "unrealistic."

"Content" generally describes the mood of the environmental community. However, the Environmental Council of Sacramento has raised a few concerns about the amount of ecologically sensitive areas that could be impacted by the SCS upon build-out. Baker noted that the Rural-Urban Connections program includes meticulous research about the impact of urbanization on the agricultural community but

that the SCS's analysis of ecological impacts is not as deep or conclusive.

As well, they believe that the SCS allows land to be wasted on housing types whose time has come and gone.

"We do applaud reduced growth footprint, but we also feel that there is too large of a percentage of large-lot, single family residences in the plan," said Baker. "The plan's proportion of large-lot single family housing does not reflect the oversupply that we already have in the area."

"A lot of elected officials don't like to tie themselves to a plan that might limit their ability to do business with developers."

—Mary Jane Griego,  
Yuba County Supervisor

One crucial constituency that embraces the SCS is that of SACOG's member cities. There seems to be an unusually strong symbiotic relationship between cities and the MPO in that cities in the region have been updating their general plan with the Blueprint in mind. To the extent that the SCS reflects the Blueprint, it is very much in line with what cities are already anticipating.

"From the city's perspective, the planning work that we've done to-date — we updated our general plan three years ago — and we did that consistent with the smart growth and blueprint principles that were already laid out," said Erik de Kok, senior planner with the City of Sacramento.

"You can't just paste those general plans together and say, 'this is our regional plan,'" said McKeever. "That being said, our land use pattern is largely consistent with the general plans."

This sort of synergy is a reason why Eliot Rose, deputy director of UC-Berkeley's Center for Resource Efficient Communities, considers the SACOG SCS a standout among its peers. Rose praised the plan for clearly describing and explaining the changes in land use that it

recommends, for using demographic data in a sophisticated way, and in reflecting cooperation between the regional body and its member jurisdictions.

"SACOG distinguishes really clearly between the roles that local land use plans, demographic, and economic trends that sometimes often are best analyzed at the regional level play in shaping land use change," said Rose.

In doing so, Rose said that SACOG may have avoided some of the problems that are plaguing SANDAG.

"They've taken a lot of steps to demystify this process and be transparent about it rather than rolling a lot of different local decisions and independent policies and programs together and presenting them as part of a package that may not actually be that cohesive behind the scenes," said Rose.

Rose might get some disagreement from supporters of the Tea Party movement. Over the past year, Tea Party supporters have voiced strong opinions in public meetings concerning SCS's throughout the state. Many of them object to centralized government planning and contend that SCS's are designed to limit residents' freedom of choice and to socially engineer a less free lifestyle.

McKeever said that Tea Party opposition has not been as strong in the SACOG region as it has been in the Bay Area, but he noted that the region's rural counties are strongholds of Tea Party sentiment.

In light of the Tea Party's outspokenness, McKeever said that SACOG has been prepared with responses to their concerns.

"We try to explain that much of what we try to do is in some ways consistent with what they're saying," said McKeever. "They talk about freedom and variety and options and choice and those are all things that are central to what we're trying to do." ■

### > Contacts & Resources:

SACOG SCS/MTP <http://www.sacog.org/2035/files/Draft-mtpscs/MTP%20SCS%20COMPLETE%2011-1011.pdf>

Matt Baker, Habitat Director, Environmental Council of Sacramento

Erik de Kok, Sr. Planner, City of Sacramento

Mary Jane Griego, Yuba County Supervisor

Mike McKeever, Executive Director, SACOG

Eliot Rose, Deputy Director, UC-Berkeley Center for Resource Efficient Communities



# >>> Creswell: Need for Affordable Housing Has Never Waned

— CONTINUED FROM PAGE 1

But in doing so in as quick a manner as we did, there were some things lost in the process in terms of supporting staff to be as effective as possible and maintaining effective relationships with our sponsors, who are actually the ones on the ground doing the work. We've spent the last year looking at how we can improve some of our internal processes for loan closings, for working and problem-solving with our sponsors so we can be as supportive as we can in getting those projects into the ground.

We needed to do some things, and I think we've done that in the past year, to improve our transparency, so that when we make decisions about regulations and how we're going to use the funds, we've established a more robust process of engaging with our stakeholders and getting their input prior to changing a process or regulation. We've made a lot of progress this year, and I'm very pleased with that.

**CP&DR:** You've been at HCD for 25 years. How has the housing landscape changed in that time and how has the department changed in that time?

**CC:** Housing has had these ups and downs in cycles of high demand and the costs and prices have gone through the roof. When I first started in the late '80s, we were at a peak of housing development. Then there were changes to the tax law and the economy in the '90s and we saw housing conditions and the number of housing units built go down dramatically, particularly in multifamily. We really didn't see an increase again until the beginning of the 2000s. But the housing need hasn't ever really declined. It just changes.

Even now, while we have the housing market collapse and housing prices significantly decline, we still have a great many of our population who still cannot afford rent or buy that first-time house. The foreclosure crisis, has actually exacerbated the rental housing problem. Many people who lost their homes are now competing for the limited stock of rental housing.

The one thing about housing that remains is that it's so dependent on the economy and people's incomes that the need has remained the same. What's changed is our ability to address it. There've been times when the state has been able to invest significant resources in trying to help that segment of the population. The market isn't really designed to help the extremely low income. That's just not the way the market works, so government needs to be there to provide that kind of assistance for the disabled, for homeless folks, and for the working poor.

There still is a significant resistance to housing development that exacerbates the ability of communities and government to address the needs of people who live there. I've never understood it. Everybody at some point has had a home. It's the one common bond that we all share. And yet it gets caught up in broader political discussions about, not necessarily, who needs housing but who's going to pay for it and what's the impact on "my" community.

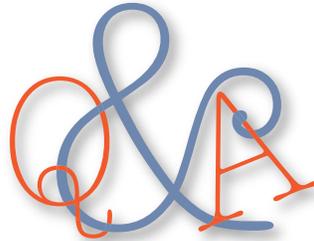
**CP&DR:** How has the demise of redevelopment affected HCD?

**CC:** Regardless of whether you thought it was a good thing or not, the loss of redevelopment will have significant impacts both on housing and on communities. The role the department can play is to be focused on some immediate issues. We had a number of projects in the pipeline that had RDA funds. We are working with our sponsors to evaluate the impacts and ensure that they'll be able to maintain that stock for the Californians who need it.

In terms of the loss of resources, the department has been working for a number

of years on identifying a permanent funding source for affordable housing that wouldn't be subject to bonds or the state general fund. The department is working with Cal FHA to evaluate what the options might be.

The loss of RDA increases the urgency to find an ongoing, permanent source of funding that can assist the market in meeting those needs for everything from the homeless, to rental housing to first-time homebuyers.



WITH CATHY CRESWELL



Former interim Executive Director of the Department of Housing and Community Development

**CP&DR:** *CP&DR* did an article several months ago on budget cuts that affected HCD's housing element review staff. How are those cuts playing out and how is the department gearing up for the next wave of housing elements?

**CC:** It's a continuing issue. Unfortunately, I was not able this year to resolve it. What we worked on and what we are about to embark on is an effort to work with stakeholders on how the department can streamline the housing element review process to reduce the resources needed to administer the law, both for the department and for local governments. There's a recognition, that as much as HDC and the housing policy units have been suffering through budget cutbacks, local governments are having that same issue.

The department is about to begin an effort to bring together local governments, housing advocates, and the building community to look at a proposal on how we can streamline our review and how housing elements are updated. Staff have been working the past five months on a proposal. With the amount of staff we currently have, we can continue to review every housing element that is projected to come in and ensure that we can review it in an effective and timely manner. The department is committed to doing that, because not only do we believe that the housing element is critical to ensuring equity and access to safe and affordable housing, but we also believe that the implementation of SB 375 rests strongly on an effective housing plan. If we want to reduce greenhouse gas emissions and reducing VMTs, getting the housing piece right is critical.

tation of SB 375 rests strongly on an effective housing plan. If we want to reduce greenhouse gas emissions and reducing VMTs, getting the housing piece right is critical.

**CP&DR:** Have you seen the SCS's that have recently been produced by SCAG and SANDAG and SACOG and how they handle the housing components?

**CC:** We've just started looking at them. We have worked in partnerships and believe that the MPOs have been putting forth good faith effort into trying to meet the challenge that they're facing with the SCS's. We haven't had the opportunity to go through them yet in the kind of depth that we want and plan on doing. But they have been very collaborative with us, and we want to be as helpful as we can to address issues before they become problems. We have gone through the regional Housing Need Allocations for SCAG, SANDAG and SACOG; and we're working on finalizing MTC. I think it's been the most productive and cooperative RHNA process that I've ever seen.

**CP&DR:** Any highlights from that process?

**CC:** The more transparent we can be about making sure everybody understands how those numbers are going to be used, the easier it will be for the regions to form an agreement on how those numbers should be distributed.

There had been for a long time in the statute, a direct link between the regional transportation plan population projections and the population projects that we use. With the amendments that were made with the Housing Element Working Group in

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## >>> Creswell: Affordable Housing Key to SB 375's Success

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2004, we also made some change to the RHNA to more explicitly focus on what was already happening in the statute and to find the intent of the RHNA to equitably distribute the housing need, while also focusing on efficient and compact land use patterns and to look at jobs-housing balances. While that is the way it had been implemented, it hadn't been explicit in the statute. I think that gives the regions additional support as they are working on implementing SB 375.

**CP&DR:** Recently the governor's budget proposed breaking up Business, Transportation, and Housing into separate agencies. How does that move affect housing and the SCS process since it splits up housing and transportation?

**CC:** BTH has had all of those agencies together for at least the last 15 years. At different times there was strong collaboration and other times there wasn't. If there's commitment by the administration, (and I think there is) to coordinate transportation, housing, business and environmental policy, that'll happen.

From a housing perspective, there is a symbolic loss in not having housing listed as an agency. That can send a signal that is not one that I think this administration necessarily wants to be sending. I believe that this administration is very committed to reducing greenhouse gas emissions and doing high speed rail — all of which gets to the same place of promoting more effective land use patterns which housing

will benefit from. HCD has been continuing to draw the link between housing, the economy and the environment. If we want to address and fix the environment and greenhouse gas emissions....we have to get housing done in the right places and affordably.

**CP&DR:** What is your next move professionally?

**CC:** I'm taking some time off to decompress and I'm evaluating what my options are. I know I will be staying involved with housing back in Grand Rapids, Michigan. 1978 is when I first realized how critical housing was in serving families in those neighborhoods and I believe, with every fiber of my being, that everybody in the state and in this country deserves safe and affordable housing. I'm going to make sure that I am always in a position to fight for these ideals.

It has been such as privilege, for the last 25 years to be in a position to, hopefully, make a difference up and down the state. I think that housing element law has really created opportunities where, otherwise, there might not have been. I think there are people housed today that wouldn't be, but for housing element law. I am proud of the role I have played in that. ■

## inbrief

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**GOVERNOR JERRY BROWN** and Secretary of the Interior Ken Salazar have both signed an agreement to expand solar, wind, and other renewable energy sources to California. The accord streamlines the process by which transmission lines to connect energy sources are permitted and planned. Though the state and the federal government already have a fast-track agreement for renewable energy projects, this agreement is being construed as a further effort to speed up job creation and position California as a leader in clean energy. Under the old agreement, more than 12 solar-power utility projects and over 130 green energy projects have been approved.

**IN JANUARY**, the U.S. Department of Transportation recommended to Congress that \$900 million of federal aid over several years be reserved to extend BART through San Jose to Santa Clara. This deal has been 60 years in the making, and with construction already beginning, officials say the train could open as soon as 2016. Former Governor Gray Davis earmarked \$760 million in state aid for this purpose over a decade ago.

**IN AN EFFORT TO** reduce greenhouse gases, Bay Area smart-growth urban planners have run up against an unlikely foe: public health experts. A 2008 law that requires regional agencies to reduce green-

house gases through urban planning prioritizes certain areas of the Bay Area for smart-growth development, but one-quarter of these communities are also listed as high health risk by the Bay Area Air Quality Management District. Public health advocates are concerned that more people will be vulnerable to toxic air pollution, like from diesel exhaust, if their homes are placed closer to freeways or similar freight-related transport, and are pushing for health-protective measures to be inserted into planning and development.

**A REPUBLICAN** representative from Corona and Sen. Dianne Feinstein, a Democrat, have introduced legislation that would ease land acquisition and save the Inland Empire millions of dollars. Riverside County, under the Multiple Species Habitat Conservation Plan, must purchase over 10,000 acres for wildlife preservation, but it does not have the capital to do so. In order to fix this problem, Rep. Ken Calvert (R-Corona) and Sen. Dianne Feinstein (D)'s legislation would allow for guaranteed federal loans to agencies that are purchasing land for conservation purposes.

**BY A MARGIN OF 6-1**, the City Council of Merced approved its Vision 2030 plan, including university housing projects but eliminating two master community plans. Merced's urban growth boundary is

28,576 acres. The lone dissenting vote, Mary-Michal Rawling, expressed concerns about overextending Merced coffers, considering the recent downturn. The last vision plan for Merced, Vision Plan 2015, was approved in 1997.

**THE ENVIRONMENTAL PROTECTION AGENCY** is drawing the ire of some environmental groups including the Natural Resources Defense Council, who are saying that the agency has violated the Clean Air Act by approving a less-than-satisfactory air monitoring plan. These groups, which have filed a suit in the Ninth Circuit Court, argue that the plan does not adequately answer concerns to Southern California residents who live near freeways and must breathe in pollution constantly. The plan includes sensors to monitor ozone, sulfur dioxide, particulate matter, and other pollutants at 36 sites across California. The environmental groups who have filed the suit are asking for sensors within 300 yards of all freeways. ■

*Compiled by Lauren Dietz and Erin Brodwin*



## Charles M. Haar, Leading Advocate of Comprehensive Planning, 1920-2012

**CHARLES M. HAAR**, one of the greatest land use and urban development lawyers of the second half of the 20th Century passed away Jan. 10 at his home in Key Biscayne, Florida. He will always be known for his brilliant articles on establishing the comprehensive plan as the constitution of land use planning in the United States in the 1950s, which has become increasingly important in the U.S. and California.

It is truly sad to see one of the greats no longer with us. Charles Haar was a good friend and colleague. We solidified our friendship when I was a visiting professor of law at Harvard in 1985 and later when we taught together at the University of Miami law school as visiting professors teaching land use courses.

Professor Haar had a brilliant career. After service in Naval Intelligence in World War II, and practice in real estate law, in 1952 he became a Professor of Law at the Harvard Law School and later on was named the Louis D. Brandeis Professor of Law. Together with Professor Jacob Beuscher of Wisconsin, he pioneered one of the first classes in the nation on land use law and in 1958 wrote one of the first, and for 30 years, the most influential, casebooks in the field, *Land Use Planning: A Casebook on the Use, Misuse and Re-use of Urban Land*.

Professor Haar's most original work was his two 1955 seminal law review articles on the comprehensive plan. That is what Charlie will always be remembered for, as well as having conducted one of the first law school classes on Land Use Planning law. Charlie was the first to break away from the 1930's, 40's and 50's influence of zoning attorneys and their narrow detailed zoning and subdivision treatises by emphasizing the need for comprehensive planning to serve as the underlay for land use implementation.

He particularly decried a series of 1950 New Jersey Supreme Court cases expressing the "majority view" rejecting the requirement of comprehensive planning to lie behind zoning. For this alone he will always be one of the greats for having shaped a new direction for consideration of environmental, economic, architectural and planning multidisciplinary approaches and to escape from the parochialism and lack of planning embodying local controls.

The greatest tribute to Charlie's efforts was the case of *Udell v. Haas*, 235 N.E.2d 897 (N.Y. 1968) in the New York Court of Appeals, which attributed the need for planning as central to rational urban growth to Charlie's articles, citing Haar, *In Accordance with a Comprehensive Plan*, 68 Harvard Law Review 1154 (1955), and *The Master Plan: An Imperfect Constitution*, 20 Law & Contemporary Problems 353 (1955):

*The mandate of the Standard State Zoning Enabling Act, § 4, that zoning be in accordance with a comprehensive plan, is not a mere technicality which serves only as an obstacle to overcome in carrying out their duties. Rather the comprehensive plan is the essence of zoning. Without it there can be no rational allocation of land use. It is the insurance that the public welfare is being served and that zoning does not become nothing more than a Gallup Poll....*

*As Professor Haar points out, zoning may easily degenerate into a talismanic word like the "police power" to excuse all sorts of arbitrary infringements on the property rights of the landowner. To assure this does not happen our courts must require local zoning authorities to pay more than mock obeisance to the statutory mandate that zoning be "in accordance with a comprehensive plan."*

In California, the influence of Professor's Haar's articles resulted in the adoption of California Government Code § 65860 (in 1965) "Consis-

tency of zoning ordinances with general plan" with one great omission, charter cities, with the exception of Los Angeles, are exempt from the consistency requirement, Cal. Gov't Code § 65803, 65860 (d). Nevertheless in *City of Del Mar v. City of San Diego*, 133 Cal. App. 3d 401, 414 (1982) the court held that:

*While the trial court was correct in concluding that charter cities such as San Diego are statutorily exempt from the technical zoning consistency requirement contained in Government Code section 65860, Del Mar persuasively argues that a city's general plan may be viewed in many ways as the city's articulated perceptions of what constitutes the locale's "general welfare." Thus, to the extent that a city approves a zoning ordinance which is inconsistent with the city's general plan, the inconsistency must at least give rise to a presumption that the zoning ordinance does not reasonably relate to the community's general welfare, and therefore constitutes an abuse of the city's police power.*

In the 1960s, Professor Haar's career path shifted to working with the Kennedy and Johnson administrations on federal solutions to poverty, re-development and housing. His finest contributions were the drafting of the Model Cities legislation in 1966, which for the first time directed federal grants to renew poverty and minority neighborhoods through economic development and minority citizen participation, in contrast to the federal Urban Renewal program which bulldozed and obliterated inner cities through eminent domain, leaving vast wastelands, such as those discussed in Martin Anderson's *The Federal Bulldozer* (M.I.T. Press, 1964).

Two years later he drafted Sections 235 and 236 of the 1968 National Housing Act which introduced the most effective federal subsidy programs the country has ever seen. Unfortunately his extensive and valuable work on national issues fell by the wayside with the demise of the Johnson Administration.

Charlie's efforts then shifted to the world of exclusionary zoning and discrimination in the provision of housing, basic services and infrastructure systems. In 1971, working with Daniel Fessler of Harvard, he won a great victory in the case of *Hawkins v. Shaw*, 437 F. 2d 1286 (5th Cir. 1971) in establishing the constitutional right of minorities to equal services. Charlie continued his work, over the years, in housing and exclusion, publishing a number of well received books: *Housing the Poor in Suburbia*; *Fairness and Justice, Law in the Service of Equality*; *The Wrong Side of the Tracks*; and *Suburbs under Siege: Race, Space and Audacious Justices* (highlighting the Mount Laurel Supreme Court cases in New Jersey). He also wrote definitive works on *Property and Law*, *The End of Innocence*, and *The Golden Age of American Law*.

In 1982, Charlie was appointed Special Master in a state court case resolving the problems of pollution in Boston Harbor. In 2005, he highlighted his experience in *Mastering Boston Harbor: Courts, Dolphins and Imperiled Waters* (Harvard University Press):

Professor Haar said the courts were indispensable in solving what was known as the tragedy of the commons. Though the harbor belonged in principle to everyone, "no single entity felt duty-bound to care for it." Thus it was being lost to all. "The energetic judicial response to prior legislative inertia was the most extraordinary and precedent-setting feature of Boston Harbor's journey from a national disgrace to a symbol of national pride."

## TIF Revival on the Table in Sacramento

**EVEN AS THE** redevelopment wind-down process continues, the Legislature is beginning to play around with possible ways to bring it back in a more limited form. Many of the ideas involve tinkering with tax-increment financing in ways that will hold the state financially harmless. Others would allow cities to keep some or all of their former redevelopment agencies' cash and land assets, which are likely worth several billion dollars.

"The body is dead and it is sitting in our front yard rotting away," said Assemblyman Chris Norby, a Fullerton Republican and longtime redevelopment opponent, at an Assembly hearing Wednesday. "Some people are picking at the carcass and carting pieces away. But now the undertaking must begin."

In a prepared statement to the hearing, Assembly Speaker John Perez said: "It was never the intent of the members of the Assembly to eliminate redevelopment" but rather "to rein in bad practices."

Whatever the Legislature is considering, however, Gov. Jerry Brown has not tipped his hand. So far Brown has shown no willingness to consider reviving redevelopment in any form. The only representative of Brown's office who spoke Wednesday was Pedro Reyes, policy chief at the Department of Finance, who talked about the wind-down process. He said Finance had reassigned 20 auditors to work on post-redevelopment issues and will likely reassign more in the future.

A parade of witnesses at the Assembly hearing proposed a variety of post-redevelopment solutions. For example, Claudia Cappio, director of the California Housing Finance Agency and Gov. Jerry Brown's former housing chief in Oakland, called for a "permanent revenue source for affordable housing." She said she had not cleared the idea with Brown and she did not specify a possible source. However, at a Senate hearing two weeks ago she mentioned the possibility of a real estate transfer tax, a technique used to fund both affordable housing and open space protection in other states.

Most of the discussions had to do with tax-increment financing, however. As Michael Coleman, a fiscal consultant to the League of California Cities, put it: "TIF has a long history all over the world of being used and used well."

It was the cities' expansive use of TIF, of course, that did redevelopment in. With little state oversight, TIF had expanded to include close to \$6 billion a year, or about 12% of the state property tax. Because the state is required to backfill the financial loss to schools, TIF was costing the state approximately \$3 billion per year.

Many of the new TIF ideas involve collaborative relationships among local governments that receiving a portion of the property tax funds and/or holding the state harmless. The most obvious possibility would be to permit cities and successor agencies to receive TIF on all property tax revenue except revenue that goes for schools. This would still drain property tax from counties and special districts, so some proposals would require the creation of a joint-powers authority including those other agencies in order to perform redevelopment functions.

John Lambeth of Civitas, the state's business improvement district guru, asked the Legislature to give cities the power to create TIF districts in which they divert only the tax-increment that would otherwise flow to the city general fund – generally about 15% of total property tax. He called this strategy the Downtown Economic Vitality Authority, or Downtown EVA.

Meanwhile, on the Senate side, Senate president pro tem Darrell Steinberg has been proposing that cities and successor agencies be permitted to keep former RDA assets even if TIF revenues are redistributed. At the Senate hearing a couple of weeks ago, Steinberg noted that RDAs cash assets of at least \$2 billion – and possibly more – at the time they were dissolved on February 1. The value of RDA real estate assets is impossible to determine at this point, but it is probably billions more. In addition, RDAs were sitting on about \$1.3 billion in unencumbered funds earmarked for affordable housing.

Both Senate and Assembly bills are likely to include protections for the \$1.3 billion as well as language designed to avoid a "fire sale" of former RDA assets. Quick sale of assets is encouraged by the language of AB 1x 26, the law that eliminated redevelopment.

– WILLIAM FULTON | MARCH 8, 2012 ■

