

THE Registry™

BAY AREA REAL ESTATE JOURNAL

MAY 2009

BAY AREA
DEVELOPMENT

Looking Forward, Looking Back

Bay Area's cities chase redevelopment opportunities

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- ▶ Without Pier 70 in San Francisco
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Mission Statement

The Registry is a real estate journal that aspires to fulfill the need of Bay Area professionals for accurate, unbiased and timely news, analysis and information.

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CORRECTION

In the April issue that listed the IIDA-NC Honor Awards winners, in the Work Big Notable category we referred to one of the design team members as Lucas Brown. His name should have read Lucas Martin.

Contributors



Rob La Eace
The Market About...
Nothing! pg. 28

Responding to emergencies as a firefighter in a variety of uncertain situations and diverse neighborhoods taught Rob La Eace a lot about how people should be treated, not only during a crisis, but also in everyday problems. Today, these same skills are an asset to those who work with this San Francisco native in his career as a broker associate with McGuire Real Estate. The tools he puts to work as a firefighter are what makes the difference to the clients Rob works with as an agent. While it may help that Rob is the type of guy with a warm smile and a friendly attitude, his professionalism, organization and drive to succeed are what make him stand out in his career. Working in his fifth year in the industry, Rob is in touch with his clients' needs and with the city—putting a local's perspective to work.



Jill Pilaroscia
Colorful Character,
pg. 26

Jill Pilaroscia has been an international color consultant since 1984. She earned her bachelor of fine arts degree from the San Francisco Art Institute and is an accredited member of the International Association of Color Consultants. She has been a consultant for multiple high-profile projects across the Bay Area including China Basin biotech offices in Mission Bay for McCarthy Cook & Co. and RREEF Alternative Investments; Marin Commons, a San Rafael office campus owned by the Hines company, a developer and property manager; Aventino Apartments in Los Gatos for The Sobrato Organization, a South Bay office and apartment owner; and Emeryville's Bay Street townhomes for Regis Homes of Northern California. Her firm recorded sales of \$650,000 last year and has four employees.



Scott D. Rogers
Smoking Gun,
pg. 25

Scott D. Rogers is a senior partner in the Real Estate, Development, Land Use and Finance Group of Holme Roberts & Owen LLP. His practice focuses on representing institutional and private real estate investors in all aspects of real estate equity and finance transactions. He obtained his bachelor's degree in economics from the University of California, Irvine, and his law degree and master's of business administration from the University of California, Los Angeles. He is chair of the Executive Committee of the Real Property Section of the State Bar of California.



Tay C. Via
Carbon Caps Land,
pg. 20

Tay C. Via is a partner with San Francisco law firm Coblenz, Patch, Duffy & Bass LLP. She specializes in land use and development, with particular emphasis on large public/private projects, including the San Francisco Giants' ballpark, the 303-acre Mission Bay development, Westfield San Francisco Centre and the Academy of Sciences' internationally renowned new LEED platinum museum. Via chairs her firm's Renewable Energy and Climate Change practice and also serves as co-chair of the SB 375 Task Force for the San Francisco Planning and Urban Research Association (SPUR). She is listed in BestLawyers in America for her expertise in land use and zoning. ■

Carbon Caps Land

New laws reducing greenhouse-gas emissions control how land can be developed in California.

By **Tay C. Via**

The nation is watching California as it implements Senate Bill 375, the state's new anti-sprawl measure. Governor Schwarzenegger calls the law "the most sweeping revision of land-use policies since Gov. Ronald Reagan signed the California Environmental Quality Act." Detractors say that it invites litigation, creates more bureaucracy and does not do enough to curb greenhouse-gas emissions. It is too early to declare a debate winner, but here are highlights and issues to watch.

The law implements the state's major greenhouse gas emission reduction law, AB 32, adopted in 2006. AB 32 proposes carbon-emission reductions by increasing new vehicles' fuel efficiency, cutting the carbon content of fuels and altering land use and transportation patterns to reduce vehicle miles traveled. SB 375 focuses on land use by giving local government and developers incentives to build high-density projects near public transport through the following process:

- The California Air Resources Board sets regional targets for greenhouse-gas emissions linked to land uses;
- Each regional land-use authority (the Association of Bay Area Governments and the Metropolitan Planning Commission in the Bay Area) creates a plan to meet the targets;
- Transportation projects and programs must jibe with the regional plan to receive state transportation funding. The regional plan is also coordinated with the regional housing-needs allocation process;
- CEQA streamlining, and, in some cases, exemptions are available for projects consistent with the regional plan.

The legislation reflects compromises made to win the support of environmentalists, home builders, local governments, the California League of Cities and the California State Association of Counties and affordable-housing representatives. These groups successfully lobbied for limits on CEQA streamlining, quicker rezoning of identified housing sites, retaining local control and affordability as a requirement for CEQA relief. The California Chamber of Commerce and commercial builders oppose the law because it does not address commercial projects, and certain local authorities are resisting the move toward regional decision-making.

SB 375 contains novel provisions. It is the first legislation to address carbon emissions from the demand side and marks the first time that transportation and planning will be subject to tar-

gets based on quantifiable measures. Together with other pending changes to CEQA, it begins to supplant traditional transportation studies and levels of service analysis with a new approach based on vehicle miles traveled.

However, many experts emphasize the legislation's limits and the compromises made to gain broader support. The legislation only requires that a transportation project be consistent with the regional plan and does not assign priority for the long list of projects competing for the state's annual \$5 billion in transportation funds. Local elected officials also run regional planning agencies and are subject to significant political pressure in making funding decisions, all of which may undermine SB 375.

The CEQA exemption is limited. To qualify, a development must, among other things, be consistent with the regional plan, be located within a half mile of a major transit stop or high-quality transit corridor, contain a minimum 50 percent residential component, consist of fewer than 200 residential units, be located on a site of not more than eight acres and meet specified affordable-housing or open-space requirements. While eligibility for the streamlining process is broader, it is also subject to numerous caveats.

What is next? Expect at a minimum fascinating political and legal theater. The California Air Resources Board is required to produce the draft targets by June 30, 2010 and to adopt the final version by September 30, 2010. The key issue is how aggressive the targets for each region will be, and lobbying will be intense. Many observers believe that the board will take political cover by focusing on other aspects of AB 32 and adopt conservative targets, particularly with respect to the more recalcitrant regions.

One of the most efficient ways to meet the law's objectives would be to prohibit or substantially restrict growth in a large number of cities that are not located near transit or jobs. While that would coincide with the no-growth stance of some jurisdic-

Below:
San Jose Diridon development with the train entering the station



PHOTO BY CHAD ZIEMENDORF

Regardless of whether SB 375 lives up to its promise, developers face a changing environment.

tions, others will vigorously oppose growth limits. There are some metropolitan-area cities that should grow, but that resist additional density. The law's emphasis on development that is more urban and transit friendly is not universally embraced, and the Internet is replete with blogs decrying the "elitist, anti-suburban" measure. The targets will be met with opposition and possibly with lawsuits.

Once the targets are adopted, the regional agencies will prepare the regional plans to coincide with the next Regional Transportation Plan update, scheduled for adoption in March 2013. This is where local jurisdictions will work with the regional agencies to identify preferred development patterns and locations. Again, we can expect opposition, and possibly litigation, as the plans are developed and approved.

Various groups are working on legislation to address the law's shortcomings, and this may present an opportunity. Commercial interests are working on a bill to extend CEQA benefits to commercial projects. Urban-infill advocates are considering how to broaden the CEQA exemption and provide other legal and financial incentives for developing infill near transit. The major environmental groups have fiercely opposed CEQA streamlining, and for now, will likely resist further reforms. However, the concern over carbon emissions and the promise of infill development may ultimately create an alliance for additional reform.

Many states and localities across the nation are beginning to look at California's law as a potential model. Advocates are attempting to elevate the legislation to the national level, where it could be leveraged by prioritizing federal transportation money.

Regardless of whether SB 375 lives up to its promise, developers face a changing environment. Especially in metropolitan areas, constituents are slowly beginning to counter not-in-my-back-yard sentiment about density with concerns about the impacts of vehicle miles traveled. For projects not located sufficiently close to transit, developers will encounter increasing pressure to fund transit links to extend the regional system. These factors, in combination with growing market preferences for green and transit-friendly housing products, will continue to increase the value of infill sites.

In the short-run, however, concerns over the economy and the extent of the credit crunch threaten to undermine SB 375. Development is at a stand-still, and the risks and costs of infill development create special challenges that SB 375 alone will not solve, even when the market recovers. This is the time to lobby federal, state and local governments to encourage infill development by reducing exactions and/or deferring the payment period, minimizing the length and risk of the entitlement processes and implementing creative financing mechanisms. For developers, this is the time to influence federal and state-level follow-on legislation to SB 375 and work with local jurisdictions on these reforms so that infill development can be accelerated as the economic climate improves.

The fluid regulatory landscape presents new challenges for real estate professionals. While most land-use decisions will remain primarily local, the regional, state and federal planning and appropriations processes have increased relevance. With transportation funding and CEQA incentives tied to a larger process, we will all need to understand and influence where regional plans encourage growth, how transit funds are allocated, and where transit facilities are located. The outcome of the law's implementation is uncertain, but the playing field has expanded, and to succeed, we will need to develop new knowledge, skills and relationships. ■

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