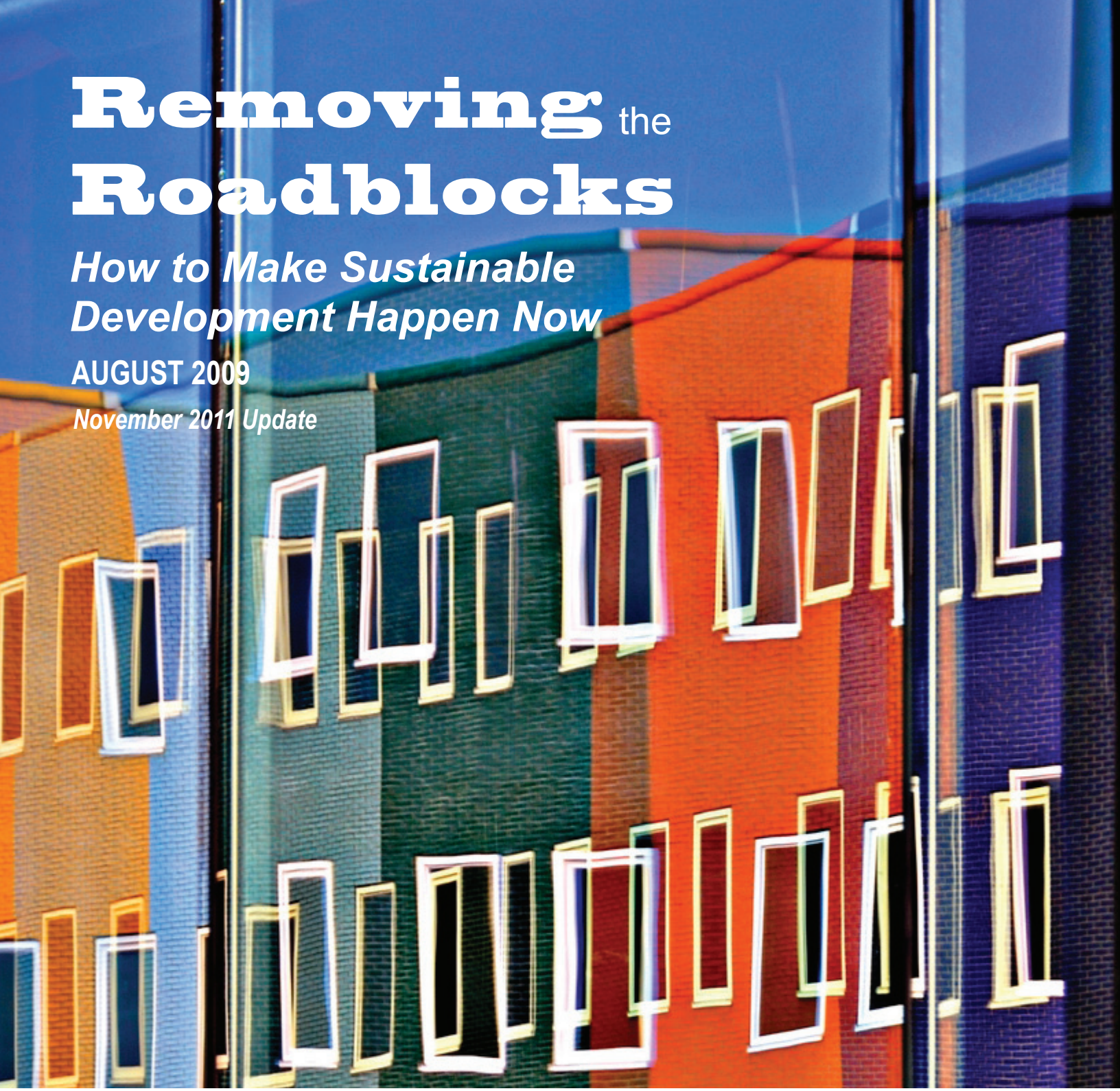
Removing the Roadblocks

How to Make Sustainable Development Happen Now

AUGUST 2009

November 2011 Update



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About this Report

This policy paper is the first in a series of reports on how climate change will create opportunities for specific sectors of the business community and how policy makers can facilitate those opportunities. Each policy paper results from one-day workshop discussions that include representatives from key business, academic and policy sectors of the affected industries. The workshops and resulting policy papers are sponsored by Bank of America and produced by a partnership of the UCLA School of Law's Environmental Law Center & Emmett Center on Climate Change and the Environment; UC Berkeley School of Law's Center for Law, Energy & the Environment (CLEE); and the California Attorney General's Office.

Authorship

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Preface

Since *Removing the Roadblocks* was released in August 2009, new business, policy, and market developments have addressed or implemented some of the conclusions contained in the document. This preface highlights some of the most important changes.

Market demand for sustainable development has only continued to grow. As an example, the United States Environmental Protection Agency conducted a survey of residential building permit data in the fifty largest metropolitan areas between 1990 and 2008. The results showed a substantial increase in the share of new construction built in central cities and older suburbs, with a dramatic rise over the past five years – a time period that encompasses the real estate downturn (United States Environmental Protection Agency, Residential Construction Trends in America's Metropolitan Regions, January 2010).

In California, state and regional policy makers have begun implementing SB 375, the state's 2008 effort to redirect regional transportation funding toward more sustainable land use. The California Air Resources Board set regional greenhouse gas emission reduction targets for each metropolitan planning organization (MPO) in the state to meet by 2020 and 2035, as discussed on page 10 of this report. The San Diego Association of Governments (SANDAG) approved the first Sustainable Communities Strategy (SCS) for its regional transportation plan on October 28, 2011, as required by the law. The SANDAG plan projects that most new growth will be multifamily housing in urban areas, underscoring the need for action on barriers related to sustainable development.

Removing the Roadblocks recommended steering local redevelopment funds to sustainable development projects and neighborhoods, especially those located near existing major transit stops (see page 11 of this report). Using one of the most powerful financial tools provided by California's redevelopment law, local governments can borrow against future increases in property tax revenues to finance infrastructure and project investments. These investments will theoretically accelerate future revenue increases by improving the value of the property. However, since the paper was published, California Governor Jerry Brown and the state legislature passed a budget in June 2011 that dissolves redevelopment agencies that are unable or unwilling to make large specified annual payments to local schools that in turn provide state general fund relief. Local governments and redevelopment interests sued to prevent the budget provisions from taking effect, creating uncertainty about the future of the program in California. Regardless of the outcome of the court proceeding, however, state and local leaders should retool redevelopment in California to focus solely on financing sustainable development infrastructure that reduces driving, provides greater housing options, and bolsters the state's existing transit networks.

Many infill developers cite California's environmental review process, required under the California Environmental Quality Act (CEQA), as placing a potentially costly burden on infill projects by delaying or thwarting project implementation. Partly in response to this sentiment, the Legislature passed and Governor Brown signed SB 226 (Simitian, Chapter 469, Statutes of 2011) on October 4, 2011. SB 226 creates a streamlined review process for infill projects that meet certain environmental standards, which will allow individual projects to incorporate prior master level environmental review. The goal is to avoid duplicative review and save developers costs associated with analyzing effects that have already been studied at a larger scale. While it was modeled on an existing streamlining provision (see pages 9 and 10 of this report for further discussion), SB 226 expands that provision for eligible infill projects and limits or exempts review on certain specific project impacts where existing codes or standards already mitigate the impacts. For individual projects

(continued...)

to be eligible for these provisions, the project must satisfy a set of performance standards that the Governor's Office of Planning and Research will develop in 2012. SB 226 and the development of the implementing guidelines and performance standards may significantly expedite environmental review for infill projects, reducing costs and encouraging more developers to meet the high performance standards.

Finally, the workshop gathering that informed *Removing the Roadblocks* convened some of the state's top infill developers. Following the meeting, as discussed on page 8 of the report, a number of participants organized to form a new trade association called the California Infill Builders Association (Infill Builders). Since launching in 2010, the organization has been instrumental in advocating for aggressive SB 375 targets to encourage more infill development (a position at odds with the larger California Building Industry Association). In addition, the Infill Builders sponsored legislation with Assemblywoman Nancy Skinner to reduce excessive parking minimums in transit intensive areas. Although the bill, AB 710, ultimately failed to win passage in the State Senate in 2011 due primarily to opposition from local government advocates, it passed unanimously in the State Assembly and will likely be reintroduced in 2012. The bill holds the promise of significantly reducing the costs for infill projects, thereby helping developers to build more units of infill and produce more construction jobs.

The topic of sustainable development continues to be of prime importance for achieving the state's greenhouse gas emission reduction goals, meeting market demand for diverse housing options close to transit and services, and helping the residential construction sector recover from the economic downturn. While depressed property values hinder both public and private sector investment in real estate, advocates continue to push for policies to direct the next wave of growth in California in a sustainable direction.

UCLA / UC Berkeley Schools of Law
November 2011

Executive Summary: A Blueprint for Sustainable Development

Business-as-usual real estate development in California has resulted in crushing traffic, fewer housing options, loss of open space and agricultural land, and significant air pollution, including the greenhouse gas emissions that cause climate change. Traffic alone costs Californians hours each year of lost time, frustration, and wasted fuel.

Sustainable development represents the solution. This development is typified by compact, walkable communities located near transit, jobs and services. California already has examples, such as downtown Berkeley and LosAngeles, neighborhoods in San Francisco, Pasadena and San Diego's Gaslamp Quarter, to name a few. Many residents there have the option of walking to services (such as stores and schools), jobs, and major public transit stops. And the diverse nature of housing means grown children can live near parents, empty-nesters can downsize within their communities, and residents of diverse incomes can live near each other.

Despite the demand for these neighborhoods, however, local land use policies often prevent developers from building them. To identify solutions, a group of leading developers of sustainable real estate projects, along with California Attorney General Jerry Brown, met at the UCLA School of Law in March 2009. The gathering resulted in two major findings. First, the group identified the four most critical roadblocks to sustainable development. Second, the group offered specific solutions to these barriers.

Based on the discussion, this paper presents for the first time a comprehensive blueprint for how policy makers and industry leaders can make sustainable development more widespread and easier to build. It recommends a series of immediate and longer-term actions these leaders must take to remove the sustainable development roadblocks. The most critical of these recommendations is that local governments develop comprehensive neighborhood plans for sustainable development. State and federal leaders must support local governments in this effort with financial assistance and regulatory reform.

The Top 4 Roadblocks to Sustainable Development

1) Inadequate infrastructure: a lack of public transit, insufficient or aging utilities, and underperforming schools in city centers and other areas that are prime locations for sustainable development.

2) An uncertain regulatory process: myriad local government requirements, planning and zoning restrictions, fire and other code limitations, extensive project-specific environmental review processes, and local opposition ("no-growth" advocates and unhappy neighbors).

3) Higher economic costs: a typically more expensive construction process, longer permitting time, and additional infrastructure burdens make sustainable development in existing neighborhoods less economically competitive than constructing in undeveloped areas.

4) Skewed tax incentives: local governments prefer to permit large single-use retail buildings to maximize sales tax revenue and minimize infrastructure costs, rather than mixed-use development.

Short and Long-Term Solutions

Local Governments

- Promote and require sustainable development through integrated "sustainability plans" or "climate action plans" in the general plan process, following the California Environmental Quality Act.
- Extend redevelopment powers to transit-adjacent areas to allow the purchase and financing of sustainable development projects without resorting to the use of eminent domain.
- Impose variable or differential impact fees that reduce or eliminate impact and other fees for sustainable projects.

Regional Entities (such as Metropolitan Planning Organizations)

- Distribute state and federal infrastructure funds and state housing allocations to support sustainable development and not just auto-oriented projects.

State Government

- Re-direct discretionary infrastructure funding, through grants, contracts and budgeting, to sustainable development in existing communities rather than to auto-oriented projects.
- Enact legislation that enables local governments to devise variable or differential impact fees that reduce or eliminate impact and other fees for sustainable projects.
- Create income tax incentives for sustainable development projects.
- Eliminate the sales and property tax incentives that lead local governments to favor large-scale commercial development over housing.
- Help local governments to extend redevelopment financing techniques (such as tax increment financing) to transit-adjacent areas to assist with the purchase and financing of sustainable development projects.

Federal Government

- Target federal spending, through grants, contracts and budgeting, for infrastructure and facilities (such as courthouses and other federal buildings) to support sustainable development.
- Require relevant projects that receive federal grants to be environmentally sustainable.
- Eliminate the Federal National Mortgage Association (FNMA) requirement that a condominium project must have pre-sold 70 percent of its units in order for the developer to qualify for a federal loan guarantee.
- Make permanent the temporary FNMA increase on high-cost area loan guarantees.

Industry Leaders

- Invest in sustainable development and utilize the experience and expertise of sustainable developers.
- Create a group of industry leaders to lobby government decision-makers to end the barriers to better land use policies.
- Educate decision-makers and the public about the economic, social and environmental benefits of sustainable development.

Conclusion

The burden of land use reform falls mostly on local officials. To assist them, the state and federal government will need to provide the tools and resources necessary to make sustainable development the norm. Regardless of the tools employed, policy makers have much work to do to change business-as-usual land use patterns. Market trends and economics will not create a sustainable built environment. Only a strong commitment from leaders at all levels of society and government will remove the roadblocks to sustainable development and make it the norm for our communities.

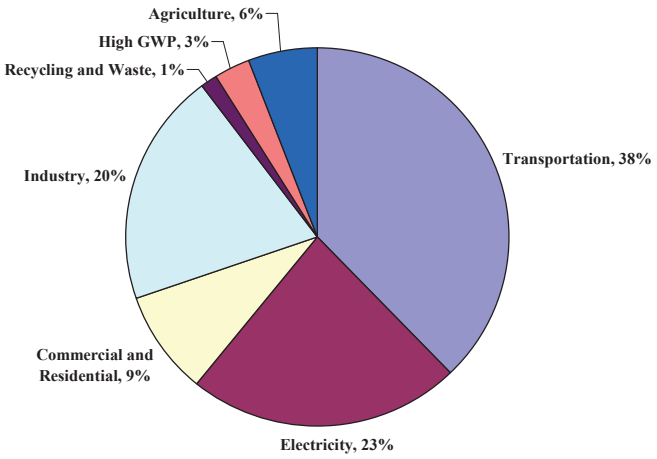
Why Care About Sustainable Development?

California has long struggled with issues of sustainable development. In 1978, for example, then-Governor Jerry Brown issued *An Urban Strategy for California*, in which he called for "the revitalization of existing cities and the sound management of new urban development."[1] More recently, the climate change crisis has sparked a renewed and urgent push, with a focus on the revitalization of existing cities. Suburban and exurban development result in significant increases in vehicle miles traveled, greater disturbance of land and other resources, and more demand for electricity, all of which increase greenhouse gas (GHG) emissions and contribute to climate change.[2] As a result, decision-makers are refocusing attention on land use, regional planning, reduction of auto dependency, and sustainable development.

California is Committed to Addressing Climate Change

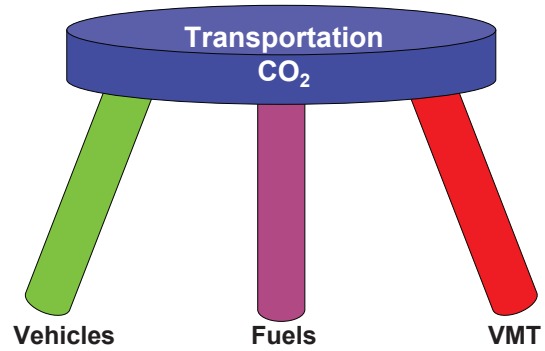
Climate change poses a unique threat to California's economy, natural resources and quality of life. As a result, the state passed a number of laws to combat climate change. These laws now provide added legal incentives to address the problems resulting from haphazard land use decisions. The California Global Warming Solutions Act of 2006 (AB 32) mandates that the state roll back its GHG emissions to 1990 levels by the year 2020, equivalent to a 30 percent cutback from the business-as-usual scenario projected for 2020.[3] In addition, California Governor Arnold Schwarzenegger's Executive Order S-3-05 calls for an 80 percent reduction from 1990 levels by 2050.[4] In the AB 32 Scoping Plan, the California Air Resources Board (CARB), the agency responsible for implementing AB 32, estimates that better land use decisions could result in GHG reductions of five million metric tons by 2020 (with greater reductions to be realized thereafter) and calls for local government to reduce community-wide GHG emissions by 15 percent from 2005 levels by 2020.[5] Meanwhile, California enacted SB 375 in 2008 to provide a regional approach to transportation and land use planning. SB 375 requires CARB, by September 30, 2010, to set regional GHG emission targets for 2020 and 2035. Regional metropolitan transportation organizations must then devise plans to meet these targets through a synchronized housing and transportation planning process.

In addition, the California Environmental Quality Act (CEQA) requires local governments to analyze the environmental impacts of projects they permit or undertake (including individual development projects and general plan updates), evaluate alternatives that may have lesser impacts, and mitigate significant impacts where feasible. CEQA review now includes a well-established requirement that local govern-



California's Greenhouse Gas Emissions (2002-2004 Average)

Source: California Air Resources Board



The 3-Legged Stool

Source: Center for Clean Air Policy

"We have already oversupplied large-lot single family homes in this country, given the demographics of housing demand. We built way too much of one thing because it was the easiest thing. We got the machine running, so you just crank these things out."

– Peter Calthorpe
Calthorpe Associates

ments address a project's climate change-related impacts. Because suburban and exurban development typically results in higher GHG emissions than sustainable developments, these projects will likely have to engage in greater mitigation to comply with CEQA.

AB 32, SB 375 and CEQA, along with other legislative and regulatory efforts, provide a framework for making progress in reducing GHG emissions, particularly from land use and transportation. But these laws alone do not ensure better land use practices and decision-making. Leaders in government and business must take further action to confront and overcome barriers to sound land use decision-making.

Reducing GHG Emissions From Transportation and Land Use Is an Essential Element of Our Response to Climate Change

In California, the transportation sector represents the single largest source of GHG emissions in the state at roughly 40 percent,[6] compared to 33 percent nationwide.[7] Transportation emissions result from three factors,[8] which are often referred to as the legs of a three-legged stool: 1) vehicle fuel economy (vehicle technology), 2) the carbon content of the fuel itself, and 3) the amount of driving, or vehicle miles traveled (VMT). [9]

Miles traveled are the direct consequence of land use policies that encourage sprawl while simultaneously discouraging compact, walkable communities near public transit. The Urban Land Institute's 2007 book, *Growing Cooler: The Evidence on Urban Development and Climate Change*, predicts that technological progress in vehicle efficiency and fuel content are likely to be offset by continued growth in VMT from inefficient land use policies nationwide.[10] These policies will result in a 48 percent increase in driving between 2005 and 2030, compared to a projected 23 percent increase in population.[11]

In California, the Department of Transportation concludes that even with CARB's GHG regulations and improvement to the carbon content of fuel, projected VMT increases will outweigh the policies' combined impact on GHG emissions. [12] Any strategy for reducing GHG emissions from transportation will therefore be ineffective without changing land use patterns. [13]

Sustainable Development Represents the Only Viable Long-Term Solution for Reducing GHG Emissions from Transportation

Sustainable development is described by many different names, including "compact," "transit-oriented," "smart growth," "infill" and "new urbanist," among others. Its main features are compact, walkable developments that feature housing located within walking or biking distance of services and jobs. Although sustainable development includes the concept of higher-density development, it does not necessarily require densities akin to those found in America's largest cities.

Sustainable development patterns reduce VMT. Citizens who live in sustainable communities drive less and generate fewer GHG emissions on average. "Despite housing two-thirds of the nation's population and three-quarters of its economic activity, the nation's 100 largest metropolitan areas emitted just 56 percent of U.S. carbon emissions resulting from highway transportation and residential buildings in 2005," according to a Brookings Institute report.[14] The average urban American resident in 2005 had a smaller carbon footprint (2.24 metric

tons per year) than the average American (2.60 metric tons), primarily as a result of less car travel and energy use.[15]

In addition to the benefits associated with reduced GHG emissions, sustainable development also results in reduced smog, decreased traffic congestion and energy consumption,[16] preservation of farmland and open space, conservation of scarce water resources, and more walking, which leads to healthier lifestyles and more community interaction.[17]

Sustainable Development is Needed to Meet Current and Emerging Market Demand

American consumers are beginning to demand sustainable development in significant numbers. The Journal of the American Planning Association reported in 2008 that roughly 50 percent of American households want smart growth features in their neighborhoods – an increase from the roughly one-third of households that desired these features a decade ago.[18] In their comments to CARB's draft scoping plan for AB 32 implementation, Professors Reid Ewing and Arthur Nelson argue, "Given that new construction and replaced units combined only add about 1.5 percent annually to the nation's housing stock, it would take to 2050 or beyond to meet this pent-up demand" for sustainable development. [19]

Professional market analysis also documents a significant trend among consumers toward sustainable development. As the Urban Land Institute (ULI) reports, "In every [urban and suburban] location examined, about one-third of respondents prefer smart growth housing products and communities."[20] ULI also cites studies by the National Association of Homebuilders, the National Association of Realtors, the Fannie Mae Foundation, high-production builders, and university researchers that have noted similar trends and in some cases greater demand for sustainable development. For example, ULI found that when smart growth offers shorter commutes, it appeals to another one-quarter of the market, because many people are willing to trade lot or house size for shorter commutes. [21] And for the first time in the nation's history, the 2003 sales price per square foot for attached housing (i.e., condominiums and townhouses) was higher than the square foot price of the detached housing that comprises sprawl. These studies indicate that a new market trend is emerging, fueled not only by a rising awareness of climate change, but also by economic and social considerations.

Removing the Top Four Roadblocks: Local, State and Federal Government

Participants at the UCLA workshop identified and prioritized the most significant roadblocks to sustainable development. Their list expands upon the conclusions of many reports in this field, including from ULI,[22] the California Energy Commission,[23] Robert Cervero,[24] and other academics researching these issues. [25]

ROADBLOCK #1:
LACK OF INFRASTRUCTURE

Some of the best sites for sustainable development (typically in previously-developed areas) often lack the infrastructure necessary to support these projects. Given that most jurisdictions do not have rail and bus rapid transit, how will they be able to promote transit-oriented development? Built environments with inadequate sewer or utility systems will not be able to accommodate multi-story or mixed-use developments, while neighborhoods with underperforming schools will be unlikely to attract middle class families.

"We should take all the gas tax and other transportation dollars and put eighty percent into mass transit and limit twenty percent to freeways and roads."

– Workshop Participant

SOLUTION:
RE-DIRECT INFRASTRUCTURE FUNDS TO SUSTAINABLE DEVELOPMENT

Sustainable development will require local governments to invest in infrastructure like water and sewer utilities, transit and schools. But this investment will require funding, and federal, state and local governments will need to dedicate the funds they have to sustainable development sites and away from auto-oriented projects. They will also need to commit future revenues (from a cap-and-trade program, gas tax, bond money, or other sources) to these sustainable purposes. Simultaneously, governments need to shift funds away from infrastructure that supports sprawl.

California can learn from states that have had success attracting sustainable development, such as Maryland, Oregon, and Washington, which emphasize prioritizing transit-rich areas for state and federal infrastructure spending.[26]

For policy-makers, it is important to note that public infrastructure investments can yield strong economic returns. State and federal support for the operation and construction of mass transit, such as bus rapid transit, light and heavy rail and high-speed rail, has produced a significant return when targeted toward areas with sustainable development potential and supportive land use policies. For example, in Portland, Oregon, a $73 million investment in light rail helped to attract $2.3 billion in private investments within two blocks of the route, representing a 30-fold return on investment.[27] Similarly, $20 million dedicated to rail in Little Rock, Arkansas attracted $200 million in investments, while $60 million in Tampa, Florida for transit attracted $1 billion. [28] In terms of lowering VMT, residents living near transit stations

"People are living in the suburbs for a reason. They say, 'I still want to get my kid educated.'"

– Workshop Participant

are roughly five times more likely to commute by transit than the average resident in the same city. [29]

Local Government

- Prioritize infrastructure investment in areas that can support sustainable development, including sewer, utilities, and road improvement projects.

Regional Entities

- Distribute infrastructure funds and housing allocations to support sustainable development and not auto-oriented projects. Under the state Regional Housing Needs Assessment and the Regional Transportation Plan process, regional entities can influence where local governments plan for transportation and housing.

State Government

- Target infrastructure and facilities funds, through grants, contracts, and budgeting, to support sustainable development instead of low-density projects and require that relevant projects receiving state funds are built sustainably. The governor could issue an executive order mandating that agencies consider sustainability as a requirement for awarding grants and contracts for real estate projects. By prioritizing infrastructure spending in areas that are ripe for sustainable development, state officials will enable transit-adjacent areas to support more sustainable projects and attract more residents to live in them.

Federal Government

- Target infrastructure and facilities spending, through grants, contracts, and budgeting, to support sustainable development and require relevant nongovernmental projects receiving federal funds to be sustainable. Funds for transportation, schools, federal buildings (like courthouses), and community infrastructure projects should be directed away from low-density, auto-oriented projects and toward supporting sustainable communities. The president should also issue an executive order requiring agencies to make sustainable development a requirement for real estate projects applying for government contracts or grant awards.

Industry Leaders

- Lobby decision-makers to re-direct education, transit and utility funds to neighborhoods that can support sustainable development. The real estate development community will need to advocate for these political changes. Sustainable developers can take the lead by organizing politically. As one participant remarked, “An in-fill [group] with really good environmental and design credentials might have sufficient clout with the legislature and local commissions actually to change the way business is done.” No such organization currently exists to speak for these sustainable developers. Advocacy groups like the Building Industry Association are dominated by mainstream developers whose interests sometimes diverge from the more specialized interests of sustainable developers.

  Inspired by the workshop discussion, participants have formed a new, more focused statewide advocacy group. By forming coalitions with existing organizations that share a common interest in sustainable development, such as environmental groups, downtown businesses, transit advocates and labor, this political organization can impact policy at the local, state and national level.

- Conduct a public education and outreach campaign to inform voters about the benefits to them of sustainable development and the need for infrastructure support like transit and utility upgrades. Industry leaders can partner with nongovernmental organizations on this campaign.

ROADBLOCK #2:
AN UNCERTAIN REGULATORY PROCESS

Sustainable development is often best suited for existing neighborhoods, but these jurisdictions typically contain myriad local government restrictions and "no growth" or unhappy neighborhood associations. The restrictions include limits on density and height for buildings, street and parking requirements, and fire and other codes. The zoning in these areas often prevents the mix of uses (retail, residential, and commercial) necessary for sustainable development.

Neighbors to a proposed infill development may see only more traffic and more strain on existing infrastructure and services. As one participant related, "NIMBY [Not In My Backyard] opponents have so many tools in their arsenal. Part of it is CEQA, but it's regulatory. There are so many places to put pressure on you to extort something that you can't predict the time or outcome of any of these processes." With the uncertainty caused by NIMBY attacks, developers have less economic incentive and financing options to invest in these projects.

"If state and local politicians removed the overly restrictive zoning ordinances, 100% of our new development could be built on existing developed land, rather than on open space or farm land."

– Patrick Kennedy
Panoramic Interests

SOLUTION:
PLAN FOR SUSTAINABLE COMMUNITIES IN ADVANCE

Local and regional government officials have the greatest role to play in addressing the uncertainties surrounding sustainable development projects. Local governments must take the lead through the general plan process to plan for and remove many of these barriers. Local governments can immediately take advantage of CEQA's tiering provisions by preparing programmatic documents, which can substantially streamline the review of subsequent projects and avoid haphazard, project-by-project development. In the longer term, SB 375 offers an incentive structure that may spur changes to where housing and transit get built. Finally, local leaders will have to show political will to get well-designed projects entitled in the face of unwarranted NIMBY opposition.

Local Governments

- Plan for, promote and require sustainable development through the general plan process. Addressing sustainability, including community-wide GHG emissions, at the programmatic level has numerous environmental and administrative benefits. It allows local governments to 1) consider the "big picture" of transportation and land use in their jurisdiction and to plan for walkable communities near transit nodes, 2) decide which suite of measures will most efficiently reduce GHG emissions, consistent with community needs and priorities, and 3) provide streamlined CEQA review for individual projects. If these projects conform to the updated general plan, subsequent environmental review can "tier" off the programmatic review to avoid delays and minimize paperwork. Local officials will also need to lead outreach efforts to inform community members about the general plan process and how it affects their communities and to give them an opportunity to comment on the plans.
- Support and promote local sustainable development projects to the community and educate the community about their substantial benefits. Participants commented that having the support of local officials was critical to ensuring that they could build their projects. One builder recalled a key public hearing on a sustainable project: "We were building a high-density development in a suburban part of the city. Somebody got up, they were neighbors next door, and they said, 'We don't want this next door to us.' And the mayor said,

"There is tremendous uncertainty in funding the entitlement effort of a project, when you know there is absolute certainty of NIMBY litigation exploiting CEQA awaiting you on the back end."

– Workshop Participant

bless her, 'Where were you when we did our master plan ten years ago? That was your time. This was zoned for this.'" Without this local leadership, sustainable projects are less likely to survive NIMBY complaints and receive approval from local governments. Local leaders must also work to educate citizens groups and neighbors about the benefits of sustainable development to their communities. These benefits often include increased housing options for seniors and young families in the community as well as improved property values for existing homes.

Regional Entities

- Ensure that local governments honor their housing and transportation commitments to support sustainable development. Oversight from Metropolitan Planning Organizations (MPO), through their control of transportation funds and housing allocations, may prevent local governments from opting out of their housing and transportation commitments.

State Government

- Encourage a regional approach to transportation and land use planning. Efforts like SB 375, which emphasizes regional planning and steers transportation funding to sustainable development, and recent proposals to allow regions to distribute sales tax revenue generated from local cities, represent steps in the right direction. CARB can properly implement SB 375 by setting aggressive GHG targets for each MPO. The state and federal government should also offer financial support to MPOs to assist them with the SB 375 planning process.

Industry Leaders

- Identify priority sustainable development zones and encourage local governments to identify them in the general plan.
- Mobilize to conduct a public education campaign about the benefits of sustainable development. As sustainable developers organize politically, a major task for them will be to conduct robust campaigns to persuade neighborhood leaders, local environmental and other civic groups, and local, state and national leaders to eliminate barriers to sustainable development. In particular, outreach to communities in advance of the entitlement process may eliminate or minimize local opposition.

"Projects may be zoned for 144 units, but by the time you're done, it's 90. So forget density bonuses, just get it built for what it's zoned for."

– Workshop Participant

"How do we educate the public to live within our collective ecological means and promote a sustainable future?"

– Workshop Participant

ROADBLOCK #3:
ECONOMIC COSTS

Sustainable development is often more expensive to build than low-density, single-use, auto-oriented development. The costs stem from the more expensive building materials needed for compact development (such as steel instead of wood frames), the small scale of many projects, site cleanup, and the price of doing business in existing neighborhoods with zoning permit delays and higher infrastructure costs.[30] Auto-oriented developments, on the other hand, often do not have to pay for the externalities they create, such as worsened air quality, loss of open space and more intensive energy and water usage.

"Down the street, single family homes are going for $160 a square foot, but infill is going to cost you $250 to $300 a square foot just to produce."

– David Mogavero, Mogavero Notestine Associates

SOLUTION:
SHIFT FEES AND TAXES AWAY FROM SUSTAINABLE DEVELOPMENT

Government decision-makers at all levels will need to level the playing field for sustainable development by shifting the burden of sprawl away from taxpayers and onto the auto-oriented developers to absorb the external costs of their projects. Revenue from these increased fees and taxes should go directly to support sustainable development projects. The state and regional entities will need to ensure that local governments remove systemic barriers to sustainable development.

Local Governments & Regional Entities

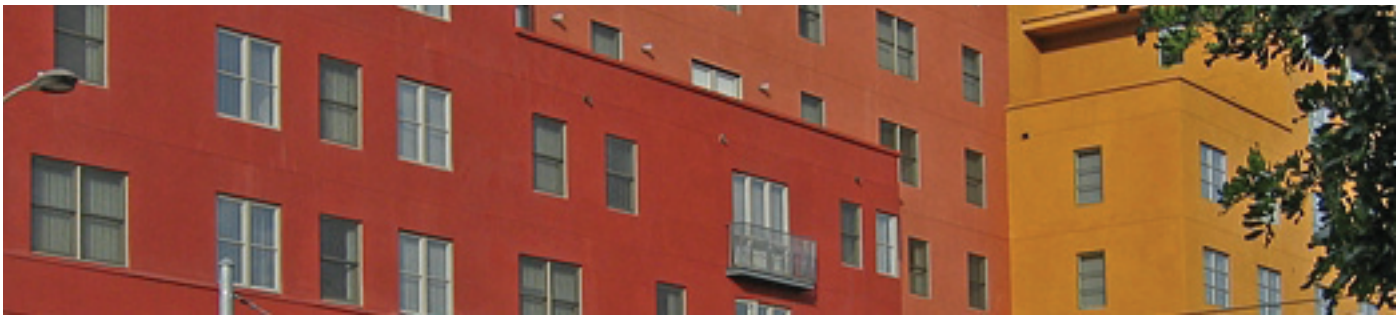
- Extend redevelopment powers to transit-adjacent areas to assist the purchase and financing of sustainable development projects without resorting to the use of eminent domain. Expanding the use of redevelopment powers beyond areas of blight to include transit-oriented development zones would provide a critical mechanism for bringing sustainable development within walking distance of transit. Local governments could then use tax-increment financing (TIF), which taxes the increases in existing property values from redevelopment improvements, to fund the redevelopment of station areas.
- Devise variable or differential impact fees that reduce or eliminate impact and other fees for sustainable projects and simultaneously raise them for sprawl developments. Currently, local governments tend to burden sustainable developers with fees to pay for infrastructure improvements. Meea Kang of Domus Development noted, "Impact fees are a huge opportunity for cities to overburden projects. They haven't planned for the future, so you are burdened with improving blocks and blocks of sewer and water. You are charged with not only paying fees

"The big, slow moving players will want to get on the field when some others have made lots of money, not before."

– Workshop Participant

"How do we realign incentives? Are we going to tell people, 'Don't build out past Manteca! Go to Berkeley and deal with the city council there and pay twenty percent more'? Infill is not for the faint of heart."

– Attorney General Jerry Brown



but redoing roads and infrastructure, to the point where it can kill your project." Instead of forcing sustainable developers to cover these costs, fees from sprawl projects should fund the necessary transportation/transit, processing costs, schools, parks, affordable housing, police and utilities. This re-balancing would force these projects to internalize the true costs of their projects to the region in the form of added greenhouse gas emissions and inefficient use of land and energy and water resources.

- Require appropriate mitigation under CEQA for the increased GHG emissions from permitted suburban or exurban developments. Such mitigation should meet specific standards and be quantifiable, verifiable, additional and permanent. Requiring development that will generate higher VMT to pay more in mitigation fees will force these greenfield developments to internalize their costs, thereby making sustainable development more competitive in comparison.

State Government

- Enact enabling legislation for local governments to extend redevelopment powers to transit-adjacent areas to assist the purchase and financing of sustainable development projects without resorting to the use of eminent domain.
- Enact enabling legislation for local governments to create variable or differential impact fees that reduce or eliminate impact and other fees for sustainable projects. Similarly, local governments should raise fees for low-density developments to internalize their external costs to the community.
- Create corporate income tax incentives for sustainable development projects and simultaneously increase taxes on auto-oriented developments. The state could also provide tax credits for residents who live near transit or take transit to work.

Federal Government

- Create corporate and personal income tax incentives for sustainable development projects and their residents and tenants and increase taxes on developments that create sprawl. Like higher impact fees, the tax increases provide a means of internalizing the present external costs of auto-oriented projects that the public absorbs through increased GHG emissions, traffic, loss of open space (including agricultural land), energy waste, inefficient use of land, and high VMT levels.
- Eliminate the Federal National Mortgage Association (FNMA) requirement that a condominium project must have pre-sold 70 percent of its units in order for the developer to qualify for a federal loan guarantee. As a result of this pre-sale requirement, many banks are unwilling to loan developers money to build these projects without a FNMA guarantee. The high pre-sale requirement hinders access to critical sources of capital for many sustainable projects and should be lowered or eliminated.
- Make permanent the temporary FNMA increase on high-cost area loans. FNMA will purchase mortgages worth as much as $729,750 until December 31, 2008, a temporary increase from the $417,000 loan limit. However, banks are reluctant to offer these bigger mortgages out of concern that the transactions will close too late in 2008 to qualify for the new limit. Making the higher limit permanent will remove the uncertainty and allow banks to make the loans critical to financing many sustainable development projects.

Industry Leaders

- Invest in sustainable development and utilize the experience and expertise of sustainable developers. As the market trends toward sustainable development, and as the oversupply of large-lot homes depresses prices, the current economic downturn and changes to land use planning may provide traditional developers with an opportunity to reinvent their approach to development.

ROADBLOCK #4:
SKEWED TAX INCENTIVES

Why would local governments prefer to permit a large-scale commercial development over a sustainable mixed-use development? The answer is that local governments can reap more revenue from sales taxes than from property taxes. Proposition 13, approved by voters in 1978, fundamentally altered the property tax revenue scheme and made sales tax revenue a much more plentiful source of funds for local governments. As a result, many local governments choose to permit large single-use, auto-oriented retail buildings instead of housing or mixed use development. To make matters worse, sustainable projects also require significant infrastructure investments while generating only minimal property tax revenue. Sustainable developers therefore have a difficult time getting local approval for projects when competing against large-scale commercial development.

"There is no better solution to most of California's economic and environmental problems than to place 100% of our new growth on vacant and underutilized properties in our existing commercial and industrial districts."

– David Mogavero
Mogavero Notestine Associates

SOLUTION:
RESTORE PROPERTY TAX INCENTIVES FOR LOCAL GOVERNMENTS

Reforming Proposition 13 is politically challenging because it involves increasing property taxes. However, state and local governments can partner on various solutions that do not require reform to that controversial law.

State Government

- Eliminate the sales and property tax incentives that lead to the "fiscalization of land use," in which local governments look to land primarily as a vehicle for generating revenue. Numerous solutions exist to solving this problem, but they require cooperation and support from state and local governments. For example, the state could expand voluntary sharing of sales tax revenues across a region so that cities would not have to compete against each other to lure retailers, or the state could mandate regional sales tax sharing on a per capita basis. The state could also allocate 50 percent of state property tax revenue to municipal services.

  Local governments have historically opposed these efforts, out of concern they would lose revenue or cede control to the state.[31] They helped thwart then-Assemblyman Darrell Steinberg's measure to share sales tax revenue among Sacramento-area counties in 2002 (AB 680) and his 2003 attempt to institute a property tax/sales tax swap (AB 1221). State legislators will therefore have to overcome local government concerns.

Local Government and Regional Entities

- Support efforts to reduce or eliminate the sales and property tax incentives that lead to the fiscalization of land use. Such measures include sharing regional sales tax revenues among local governments.

Industry Leaders

- Organize sustainable developers to form a political lobbying group to motivate government decision-makers to end the fiscalization of land use barrier to better land use policies.
- Devise mixed-use projects that can bring revenue to local governments and are more likely to be economically sustainable in the long term as compared to large-scale retail. Educate local officials about the long-term economic advantages of smaller scale, neighborhood serving retail.
- Support state efforts to expand voluntary sharing of sales tax revenues across a region and to allocate 50 percent of state property tax revenue to municipal services.

Conclusion:

The Future of an Industry

California will have to address the complicated issue of land use reform in order to meet the challenge presented by climate change. Because the authority to make land use decisions rests with local government, the burden of reform falls mostly on local officials. Their planning efforts, local leadership and ability to persuade residents about the benefits of sustainable development will be critical to the reform effort. To assist them, the state and federal government will need to provide the tools and resources necessary to make sustainable development the norm.

Non-governmental organizations will also be critical to motivating local government decision-making. Environmental organizations and sustainable development advocates can continue to advocate on a project-by-project level and also lobby decision-makers to incorporate sustainable development into general plans and to provide the resources to fund them.

These organizations can also join forces with sustainable developers as they organize politically to lobby for changes at the state and local levels. With this broad coalition of groups with similar interests, such as downtown businesses, labor and environmentalists, sustainable developers will have significant political influence and can strengthen existing laws, like CEQA, AB 32 and SB 375, while advocating for new ones.

Traditional builders, meanwhile, will need to re-examine their ability to meet the new legal and market demand for sustainable housing. Will they be able to continue to produce large-scale developments with sustainable features on open space and agricultural lands? Or will climate change, existing environmental laws, and market trends require them to look for redevelopment opportunities in the existing built environment?

Regardless of the tools employed, policy makers have much work to do to change business-as-usual land use patterns. Market trends and economics by themselves will not create a sustainable built environment. Only a strong commitment from leaders at all levels of society and government will remove the roadblocks to sustainable development and make it the norm for our communities.

"Is platinum sprawl good enough? We can all do that. We can go out anywhere and build really efficient buildings, recycle all the water and generate electricity and hand out electric vehicles."

– Peter Calthorpe
Calthorpe Associates

Participant Bios

Peter Calthorpe

Calthorpe Associates

Peter Calthorpe was named one of 25 "innovators on the cutting edge" by Newsweek Magazine for his work redefining the models of urban and suburban growth in America. His long and honored career in urban design, planning, and architecture began in 1976. Mr. Calthorpe's early published work includes technical papers, articles for popular magazines, and a number of seminal books. The Next American Metropolis: Ecology, Community, and the American Dream, published in 1993, introduced the concept of Transit-Oriented Development (TOD) and provided extensive guidelines and illustrations of their broad application. His latest book with William Fulton, The Regional City: Planning for the End of Sprawl, explains how regional-scale planning and design can integrate urban revitalization and suburban renewal into a coherent vision of metropolitan growth. A graduate of Yale's Graduate School of Architecture, he formed Calthorpe Associates in 1983. With groundbreaking work in Portland, Salt Lake, Austin, the Twin Cities, and Los Angeles, he has helped established the emerging field of regional design. Peter Calthorpe's 30 year practice has helped solidify a national trend towards the key principals of New Urbanism: that successful places - whether neighborhoods, villages, or urban centers - must be diverse in use and user, walkable and transit-oriented, and environmentally sustainable.

Art Chapman

JMA Ventures LLC

Mr. Chapman has served as President of JMA for 20 years and has over 30 years of professional experience in real estate management and development. Before joining JMA, Mr. Chapman was Vice President of Campeau Corporation California, a two billion-dollar real estate development company. At Campeau, Mr. Chapman served as General Manager of Housing where he was responsible for multiple residential projects throughout California including high rise condominiums in West Los Angeles, for rent apartments in conjunction with the San Francisco and San Jose Redevelopment Agencies and the luxury condominium project located at 333 Bush Street in the San Francisco financial district. Prior to Campeau, he spent 11 years with the City of Long Beach, serving as the Executive Director of the Long Beach Redevelopment Agency where he oversaw a number of residential projects including historic projects and high rise oceanfront condominiums. Mr. Chapman received his BS in Finance from California State University, Long Beach, with graduate work in Management and Public Administration at Cal State and at the University of Southern California.

Michael Dieden

Creative Housing Associates

Michael Dieden founded Creative Housing Associates in 1997. His career began in politics, and in 1974 he was one of the youngest staff members to help elect Jerry Brown Governor of California. He moved to Los Angeles to become political director of a statewide public interest organization and successfully managed Tom Hayden's initial campaign for the California State Legislature in 1982. In 1983, he launched The Michael Dieden Company, a public affairs company which specialized in consensus building real estate entitlement campaigns. In 1986, Michael headed The R.A.M.M. Partnership, a group of investors who rehabilitated dilapidated buildings in Venice into desirable homes. In 1988, Michael partnered with The Lee Group to develop award-winning urban infill projects such as Venice Renaissance, a 132,000 square-feet mixed-use building in Los Angeles, and Crossroads, 176 for-sale condominiums in Inglewood. Governor Gray Davis appointed Michael to the California Architects Board. Michael founded and served as president of PV Jobs, an innovative and highly successful construction industry employment program for at-risk youth at the Playa Vista master planned community. He serves on the boards of the Transportation and Land Use Collaborative of Southern California and the USC Sustainable Cities program, and is a member of Congress for the New Urbanism, as well as the Westside Urban Forum. Michael was raised in the Oakland/Berkeley area and was educated at Gonzaga University and the University of California at Berkeley.

John Given

CIM Group

Mr. Given is Senior Vice President, Development of CIM Group. He joined CIM Group in 1997, and is responsible for acquisition, structuring and planning development activities for the CIM California Urban Real Estate Fund, L.P. For over 20 years, Mr. Given has worked building partnerships between public development agencies and private real estate development companies which engage in the public sector. He was the City Planner for Greeley, Colorado for 4 years and then moved to Los Angeles, where he served with the Los Angeles Community Redevelopment Agency ("CRA") and the Los Angeles County Metropolitan Transit Authority ("MTA") for 12 years. Mr. Given is an active member of the Urban Land Institute, the International Conference of Shopping Centers, and the American Institute of Certified Planners. He has served as a founding board member of the Hollywood Entertainment District and chaired the City of Santa Monica Housing Commission. Mr. Given holds a BA degree in Urban Planning from the University of Washington and a Masters degree in Regional Planning from Harvard University.

Ben Golvin

Equity Community Builders

Ben Golvin joined ECB in 1998. The focus of his work at ECB – active management of an array of complex developments, primarily residential - is a natural outgrowth of his experience as a developer with BRIDGE Housing, the country's largest non-profit housing developer, Edison Capital and his own firm, Golvin Klein Development. Ben's recent work with public benefit-driven clients and partners has enhanced the San Francisco cityscape through a range of successful communities: the two blocks of revitalized public housing at North Beach Place; a key block of the Mission District at Valencia Gardens; a permanent home for homeless families at the Cecil Williams Glide Community House; and assisted living for seniors at Rhoda Goldman Plaza and BridgePoint, where both developments saved and creatively incorporated landmark historic buildings. Ben earned a Bachelor of Arts degree in American studies from UC Santa Cruz in 1977, and a Masters Degree in city and regional planning from UC Berkeley in 1984. Ben serves on the board of San Francisco's Chinatown Community Development Center.

Aidan Hughes

Arup

Aidan Hughes is a Principal of Arup, leading its planning business in the Americas. He has more than 20 years experience in planning, transportation and master planning projects around the world. Aidan is currently leading the planning of the Concord Naval Weapons Station, a 5,000 acre brownfield site in the San Francisco Bay Area, for the City of Concord. He is also working on sustainable development projects for Lennar in San Francisco and General Growth Properties in Hawaii. Aidan is a LEED™ accredited professional and has worked with clients to integrate sustainability into land development projects. He has a particular specialism in the interaction of land use and transport and is achieving sustainable and cost effective outcomes that support better communities.

Curt Johansen

Triad Communities LLC

Curt Johansen has been creating award-winning, mixed use communities for over twenty-five years and has been responsible for California development for Triad Communities since 1997. Curt has pioneered Triad's commitment to sustainable development. Recently, Curt entitled an economically sustainable mixed use, mixed income development preserving 80% of the project area in open space, agriculture, park land and recreational uses. This 1,000 unit residential community adheres to principles of New Urbanism while creating 2,000 permanent new jobs. Curt is currently working on transit-oriented infill projects in several cities throughout the San Francisco Bay Area. Curt is also the visionary behind Triad's newest venture, California's first developer-inspired

ecovillage, in the Napa Valley. This compact, sustainable community will mandate PV solar and geothermal energy, a local transit system, a 50 acre CSA organic farm, ecoliteracy in local schools, maximum water conservation and 100% recycled wastewater reuse, and place-centered goods and services in a local Town Square. Curt is a long-standing member of numerous organizations, including the Urban Land Institute, and he is active on many civic boards and committees promoting sustainability. He is an active participant in shaping California's Assembly Bill 32 land use policy for greenhouse gas emissions, at work on his first book about the philosophy of sustainable development, and is a frequent speaker on the topic of best practices for sustainable land use.

Meea Kang

Domus Development

Meea Kang is President and co-founding partner of Domus Development, an affordable housing development company with offices in San Francisco, Los Angeles and Irvine, California. Meea and her firm are industry leaders in incorporating "green" and energy efficient building methods and innovative technologies into affordable housing developments in order to protect the local environment, enhance the quality of life in our communities, and educate residents of the benefits of sustainable practices and measures. Her firm's focus is on sustainability and community revitalization through infill of multi-unit housing. Recent projects include sustainable, low-income and high density transit-oriented developments, and she is currently working on the first LEED affordable workforce housing project in Lake Tahoe. Meea's career has contributed to the production of over 1,600 units of affordable and market-rate housing, valued at an estimated $400 million. Meea's expertise includes real estate finance, public private partnerships, site acquisition, community outreach, oversight of design, construction and asset management. Meea holds a Masters of Architecture from University of California at Berkeley and a Bachelor of Fine Arts from Cornell University.

Mark Kehke

DMB Associates

Mr. Kehke is a Senior Vice President with DMB Associates with responsibility for the firm's activities in California including land acquisition, project planning, community outreach, project entitlement, environmental stewardship and community development. In addition to his more than 25 years of experience in legacy community development, Mr. Kehke has the distinction of having been instrumental in negotiating a number of landmark conservation agreements with major environmental groups. His efforts to bring together seemingly disparate interests have resulted in the permanent preservation of more than 250,000 acres throughout the state of California. Mr. Kehke served as a founding trustee of the Orange County Museum of Art. He has been an instructor in the University of California, Irvine Certification Program in Development Management. Mr. Kehke received a Bachelors degree in Economics and a Masters degree in Business Administration, both from the University of California, Irvine. Mr. Kehke is past Chair of an Urban Land Institute community development council and is a Governor of the Urban Land Foundation.

Patrick Kennedy

Panoramic Interests

Patrick Kennedy is the owner of Panoramic Interests, a development firm that has been building housing, live-work space, and commercial property in Berkeley since 1990. The firm has focused on dense mixed-use, mixed-income, infill developments, typically financed with private funds. All of the multi-family housing projects include below market rate units (usually 20%). Since 1995, Panoramic Interests has built 483 units of housing in 10 mixed used projects in and around the downtown, and currently has another 35 units in development. All of the firm's projects have been built on infill sites ranging from 5,000 to 15,000 s.f. and incorporate the Smart Growth principles designed to discourage auto use, promote local business, and enhance the pedestrian experience.Mr. Kennedy received his B.A. from Claremont McKenna College, his J.D. from Harvard Law School and an M.S. from the Massachusetts Institute of Technology.

David Mogavero

Mogavero-Notestine

David Mogavero, Senior Principal, has over 30 years experience with special expertise in the areas of ecological building, environmental planning, infill development, urban design, and energy efficient design. His commitment to human-based architecture, the revitalization of existing neighborhoods, economic and ecological sustainability of communities, and participation in the planning and design process by end-users is well-known and recognized within professional and citizen communities. As one of the most experienced advocates and practitioners in land use transit issues in the Central Valley, Mr. Mogavero has actively lectured, written and advocated for environmentally-sound urban development, including infill and higher density transit and pedestrian oriented development. Through his professional practice and tenure as a board member and President of the Environmental Council of Sacramento and The Planning and Conservation League, he has facilitated the widespread adoption of these principles in projects and communities throughout California.

Kirstie Moore

Codding Enterprises

Ms. Moore joined Codding Enterprises in 2007 as Sustainability Project Manager after a successful career in the West Coast Development Industry. Ms Moore is responsible for assisting the company's transition into deeply sustainable development projects and the implementation of high performance procedures and best management practices. She is the Development Manager for Sonoma Mountain Village which is the first development in North America to be accepted into the prestigious One Planet communities program, positioning it at the leading edge of the international sustainability movement. The 200 acre community is a zero carbon, zero waste development in California. Ms. Moore plays a key role in the development and implementation of the plan to reduce the ecological footprint of the entire 1900-home community from a U.S. average of 5.3 down to a truly sustainable, one planet level by 2020.

Elizabeth Moule

Moule Polyzoides

Elizabeth Moule received her Bachelors of Art from Smith College. She attended the Institute for Architecture and Urban Studies and obtained her Masters in Architecture from Princeton University. She is a founding partner of Moule & Polyzoides, Architects and Urbanists. Ms. Moule is a registered Architect in the State of California and is a California native. Ms. Moule's distinguished career involves architecture, urbanism, real estate development, teaching, writing and civic involvement. She is a co-founder of the Congress for the New Urbanism (CNU) and is an Emeritus member of its Board of Directors; CNU is a national organization aimed at integrating aesthetic, social, environmental, economic and policy aspects of urbanism. She led a board committee overseeing a joint project with the Natural Resources Defense Council (NRDC), the U.S. Green Building Council (USGBC), and the CNU authoring LEED guidelines for Neighborhood Design. Other current projects include the restoration of the Vista del Arroyo bungalows on three acres. She is currently designing a sustainable neighborhood on 200 acres in Rancho Mirage, California two high profile hotels in West Hollywood, the new Administration and International Studies Building at New College in Sarasota, Florida—the first two buildings under the Moule & Polyzoides Master plan completed in 2006. She has led many education projects for such schools as University of Arizona, Polytechnic, Scripps College, and Westridge.

Daniel Solomon

Solomon ETA-WRT

Daniel is an architect and urban designer whose 35-year career combines achievements in professional practice with academic pursuits of teaching and writing. He is the founder of Solomon E.T.C., now a WRT company, and the principal author of its many award-winning projects. Residential architecture and the interaction between housing and urban design have been the main focus of his work. He is a co-founder of the Congress for the New Urbanism and author of many articles and three books: ReBuilding (Princeton Architectural Press, 1992), Global City Blues (Island Press, 2003) and Cosmopolis (2008). In 2004, Daniel won the Maybeck Award, the AIA California Chapter's honor for lifetime achievement by an individual architect for producing consistently distinguished design

David Smith

DMB Associates

David C. Smith is the Director of Regulatory Affairs for DMB Associates, Inc., a master planned community land developer with communities throughout the western United States. Mr. Smith's primary focus is on three DMB communities in Southern, Central, and Northern California. He has represented both individual land development and conservation companies as well as the industry at large in a broad array of land use, entitlement and regulatory contexts. His particular areas of legal expertise include land use and entitlement laws, especially climate change (e.g., SB 375 and AB 32), water supply (SB 211 and SB 610), the Endangered Species Act, the Clean Water Act, the California Environmental Quality Act, and California's Planning and Zoning law. In addition to his job responsibilities, Mr. Smith has published many articles on issues of concern for development and conservation interests, including Endangered Species Act compliance and policy, water supply, storm water quality and regulation, and anti-growth litigation. Mr. Smith has also lectured throughout the nation, including the University of California, Los Angeles, the University of Southern California, and the U.S. Fish and Wildlife Service's National Conservation Training Center. He received his B.A. from the University of California, Los Angeles, and his J.D. (magna cum laude) from Pepperdine University. Additionally, He served as a judicial extern for the California Supreme Court.

Gary Teague

Bank of America

Gary Teague is responsible for overseeing Commercial Real Estate Banking Division (CREB) for the San Francisco Bay Area for Bank of America. CREB serves privately-owned professional developers and/or investors of income producing real estate, including retail, office, industrial, condominiums and multi-family properties. Bank of America provides a full range of banking services, including construction and interim financing, treasury management, interest rate protection products, capital markets services and permanent debt placement. Since 2000, the Bay Area Region has procured in excess of $6 Billion in real estate loan production. He is Chairman of the Education Subcommittee for CREB's Sustainable & Green Initiative and a member of ULI, ICSC, and NAIOP as well as of the Washington State University Real Estate Advisory Board. He has served as the past Chairman of the Bay Area Council Housing Committee. Gary started his career with Bank of America in 1992 in Seattle and moved to San Francisco in January of 2000. He has been involved in Commercial Real Estate Finance for 25 years. Mr. Teague graduated from Washington State University in 1983 with a degree in Finance.

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Photos courtesy of the Greenbelt Alliance. Cover photo by Flickr's Netstream.