Commercial Stewardship In Japantown

Assessing the Feasibility of a Community Land Trust in Japantown

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Executive Summary

Context

Community leaders are concerned about the very real threat of the continued erosion of Japantown's commercial core, due to a number of historical and present day factors that include an aging population of local business owners, outside investment in the ownership of commercial spaces and general market condition that are beyond their control. Of particular concern is the Japan Center, the commercial and economic center of the community. The draft Japantown Better Neighborhood Plan calls for "creating a Japantown community land trust can help make retaining and improving properties with historic and cultural priorities easier". In November 2010, funding was committed from the Ford Foundation to contract with Burlington Associates in Community Development to assist the Japantown community in assessing the feasibility of establishing a community land trust (CLT) in Japantown. At the same time, funding was provided by the City and County of San Francisco to contract with Seifel Consulting to conduct financial analysis of the Japan Center Malls East and West, with an eye to assessing the potential for a Japantown CLT, were one to be established, to acquire and operate it successfully.

Process

Over the course of the next seven months, a steering committee, comprised of Japantown business owners, community leaders and advocates, met to explore the feasibility of a Japantown community land trust that would protect and preserve key commercial properties – including, potentially, the Japan Center Malls East and West – to help Japantown continue to play its critical threefold functions as a neighborhood center, the cultural home of the Bay Area's dispersed Japanese American community, and a regional tourist destination. Issues discussed and deliberated by the steering committee included: Is a CLT the best approach for helping Japantown remain Japantown? What would be the mission and the activities of a Japantown CLT were one to develop? What kind of organizational structure would be most appropriate for Japantown - and who would serve on the CLT's board of directors? Additionally, the committee reviewed and considered the results of the financial analysis of the Japan Center Malls East and West, and deliberated what an acquisition of the malls might require, how much it would cost, and what kinds of renovations to the facilities would be required, were such a community acquisition to take place.

The following summary is a report to the Japantown community on this process of assessing the feasibility of creating a community land trust to preserve and sustain key commercial properties in Japantown, for the long-term benefit of the community.

Recommendation

Upon the completion of this CLT feasibility assessment process, at their June 22nd 2011 meeting, the Japantown CLT steering committee adopted the following recommendation to the Japantown community, for their consideration:

> It is the recommendation of the Japantown CLT steering committee to the Japantown community to proceed with creating a Japantown Community Land Trust and to develop a campaign to raise the community capital needed to acquire the Japan Center East and West malls and other commercial properties and community assets in Japantown, as feasible.

Context

Japantown

Japantown in San Francisco is the first and oldest Japantown in the continental United States and one of only three remaining in the entire nation. Established shortly after the 1906 earthquake, Japantown has been – and continues to be – the cultural heart of the Japanese American community in San Francisco, playing an important local and regional role to many Japanese and Japanese Americans as a place to visit for cultural, educational, commercial and entertainment reasons.

Japantown also plays an important local, regional, national, and international role for San Francisco residents and tourists seeking Japanese and Pan-Asian goods and services and the unique cultural opportunities that Japantown provides. Situated in the middle of the city, between downtown and the city's western neighborhoods on the major transit corridor of Geary Boulevard, Japantown attracts people from all over the Bay Area – and from around the world – to participate in cultural events, watch cultural performances, conduct business, shop and access services.

Japantown, at one time, had been the center of a highly concentrated Japanese American residential population. However, repeated uprooting of the Japanese community, through the forced internment during World War II and the evictions and dispersal resulting from urban renewal in the 1960s-1970s, dispersed the Japanese American population. Today, the Japantown community is striving to retain and promote its cultural and historic identity as it seeks to preserve its cultural, commercial and spiritual sites.

- Japantown's many small businesses and community and cultural organizations function as the neighborhood's center of gravity. Together, commercial and non-profit uses create a culturally and economically vibrant place that serves the needs of local residents, and attracts tourists and Japanese Americans from around the region to the district on a daily basis.

- Small businesses and cultural, religious, and human services/advocacy organizations also play a critical role in transmitting Japanese American culture and heritage to the next generation and small businesses provide goods and services that contribute to Japantown's cultural identity and keep the community organization's core constituencies returning regularly to the community.

- Maintaining the neighborhood's institutions, as well as a culturally-oriented retail base that sells everyday goods, is critical for preserving Japantown's threefold roles as a neighborhood center, the cultural home of the Bay Area's dispersed Japanese American community, and a regional tourist destination.

Community leaders are concerned about the very real threat of the continued erosion of Japantown's commercial core, due to a number of factors that include an aging population of local business owners, outside investment in the ownership of commercial spaces and general market condition that are beyond their control. Of particular concern is the Japan Center, a major feature of the commercial and economic center of the community. The Japan Center currently provides a showcase for Japanese American culture as it offers space for small, locally owned, and/or culturally relevant businesses. The malls provide space for many businesses which have a distinctly Japanese character, including several restaurants and cafes, and many jewelry, apparel, arts and gift stores. Many of these businesses are small and locally owned. In addition, the malls of the Japan Center play a critically important role as a gathering place for the community, providing space for community festivals and daily informal gatherings.

Central to Japantown's Post Street commercial district, the Japan Center consists of three blocks of commercial properties including Sundance Kabuki theatres, three malls (Kinokuniya, Mall East and Mall West) and the Hotel Kabuki. The malls are in a complex condominium ownership with the majority of Malls East and West currently owned and operated by an investment company located outside the Japantown community. When it took ownership in 2006, it agreed to covenants on the properties, requiring that it will maintain ownership of the mall buildings until 2021 and, during this timeframe, will continue a Japanese or a Japanese American design theme and leasing strategy. The covenants are enforced by the City. While the intentions of the owner of the Malls East and West appear straightforward, there is no clear indication that it has the long-term interests of the Japantown community in mind. This reality has contributed to a general sense among the community, particularly within the business community, that the eventual loss or conversion to uses that do not retain existing cultural themes will have a direct and catastrophic effect throughout Japantown. This is why one of the primary recommendations of the Japantown Better Neighborhood Plan is to: "retain the Japan Center's character and its roles as a community gathering place, showcase for Japanese American culture and home for culturally appropriate businesses."

Community leaders have, for some time, been looking for strategies and mechanisms to prevent the potentially slow erosion of the cultural and historic identity – and the economic vitality – of Japantown, to help assure that Japantown remains Japantown. The notion of community ownership and long-term control of key commercial assets prompted them to consider exploring the community land trust (CLT) mechanism as a central component of their efforts to preserve and promote Japantown

Very specifically, the Draft Japantown Better Neighborhood Plan (BNP) calls for "creating a Japantown community land trust can help make retaining and improving properties with historic and cultural priorities easier".

BNP Implementation Strategy #2.2.6: Develop Japantown Community Land Trust (JCLT)

2.2.6.1 Determine the financial feasibility of investing in the protection of resources through purchase and leasing of properties under a JCLT program

2.2.6.2 Rally private investment interests to endow funds for the purpose of implementing a JCLT program

2.2.6.3 Form a new entity whose mission is to preserve properties of cultural, historic, artistic and/or architectural merit, through purchase of properties to covenants and easements upon those properties and offer them for resale

Community Land Trust Feasibility Assessment Process

In the fall of 2010, Paul Osaki, a member of the community committee reviewing and developing recommendations to the Draft BNP , contacted the Ford Foundation, requesting funding for technical assistance to explore the feasibility of a community land trust for Japantown. At the same time, a request was made of Michael Brown, a Partner in Burlington Associates in Community Development, (www.burlingtonassociates.com) the premier technical assistance consulting group specializing in assistance to community land trusts and their public and private sector partners in the country, to develop a proposed scope of services, budget and timeline to coordinate this feasibility assessment process. In turn, George McCarthy, Director of the Metropolitan Opportunity Unit, determined that the Ford Foundation would provide $39,175 to fund Burlington Associates, with Michael Brown as the lead, to work with the Japantown community to explore the feasibility of a Japantown community land trust – and a contractual agreement between the Ford Foundation and Burlington Associates was executed on November 23, 2010. The scope for this contract indicated that the work in this feasibility assessment would focus on four primary objectives:

1. To develop a marketing strategy to educate the Japantown community about community land trusts and the potential benefits of a CLT for Japantown.
2. To determine the most appropriate organizational operating plan for a CLT in Japantown were one to develop.
3. To assess the feasibility of community acquisition and ownership of the pertinent portions of the Japantown Center.
4. To develop a preliminary business plan for a commercially focused community land trust in Japantown, articulating basic assumptions regarding the operations of such a CLT.

At the same time, with support from Ross Mirkarimi, Japantown's District Supervisor, funding from the City was arranged, through the Department of Planning, for Seifel Consulting (www.seifel.com) to conduct financial analysis of the Japan Center and the potential for a Japantown CLT, were one to be established, to acquire and operate it successfully. This work, designed to complement and inform the CLT feasibility assessment, focused on gathering information and assessing (a) the operations and financial viability of the Center and (b) the architectural and structural condition of the facility. Additionally, this analysis was to include recommendations and requirements for rehabilitation and upgrades, projected acquisition and development *pro forma,* scenarios for financing this acquisition and development, and projected operating budget scenarios for operating the Malls East and West.

A steering committee, comprised of Japantown business owners, community leaders and advocates, was designated under the leadership of Paul Osaki and Bob Hamaguchi, to work with Burlington Associates on the completion of the CLT feasibility assessment process.

The members of the Japantown Community Land Trust steering committee are:

Stephen Jordan	Sandy Mori	Paul Osaki	Tak Matsuba	Robert Sakai	Roy Ikeda
Tobin Tsuji	Ron Kobata	Robert Rusky	Harry Hayashi	Richard Hashimoto	Lowell Kimura
Ryan Kimura	Richard Matsuno	David Fukuda	Gary Kitahata	Karen Kai	Bob Hamaguchi

Given the dual focus of this feasibility assessment process – exploring the potential for acquiring and operating portions of the malls and exploring the potential for a community land trust as the preferred vehicle for doing so – two subcommittees were established: a Project Finance subcommittee, focused on the malls analysis, and a Organization subcommittee, focused more directly on the planning issues regarding the community land trust. Each of these subcommittees met in between – and reported on their progress at – regular meetings of the larger steering committee. In turn, the CLT steering committee met on December 14, 2010 (mostly a introduction and overview of the planning process) and four times in 2011: February 9; March 16; May 18; and June 22 (during which common areas of agreement and recommendations to the community were finalized). The work plan for the CLT feasibility assessment process coordinated by the steering committee is summarized in the "Organizational Issues and Options" document prepared by Michael Brown, dated February 21, 2011 [attached below as Exhibit A].

This report documents the process, findings and recommendations of this CLT feasibility assessment process.

Community Land Trust Feasibility Assessment

The overall goal of this feasibility assessment process was to provide the Japantown community a framework to use to determine whether to proceed with planning and implementation of a community land trust in Japantown. To do so, the CLT steering committee focused and found agreement on a number of key foundational issues, including:

Addressing Community Needs: Why a Community Land Trust?

The first priority of the assessment process was to focus on why a community land trust was needed - what the most urgent needs a CLT would address; why a community land trust is the most appropriate strategy to address these needs; and what unique niche a CLT would fill in Japantown.

Among the most urgent needs faced by the Japantown community and its future, the CLT steering committee highlighted two:

- From the beginnings of Japanese-American settlement in San Francisco, to the reconstruction of these blocks by the San Francisco Redevelopment Agency in the mid-20th century, to the present, the Post Street commercial district, much of which was replaced by the Japan Center has been the center point and cultural hub of the Japantown community. There is a very real chance that Japantown could one day witness the slow erosion or outright loss of the Japan Center's character and role as a commercial and cultural hub of Japantown – and this loss could be devastating, culturally, historically and economically for Japantown.

- In addition to being negatively impacted profoundly by any conversion of the Japan Center's use for Japanese American retail, other businesses and properties in Japantown may already – or soon will be – at risk of loss or conversion themselves.

When looking at long-term solutions and their effectiveness in helping the Japantown community achieve its goals and protect its interests over time, the CLT steering committee considered two fundamental choices: external controls and community ownership, each of which has its own distinct advantages and disadvantages.

- *External controls* – Legal obligations can be imposed on the owner of property by an "outside" party – typically in consideration for some assistance provided to the owner – either mandating that the owner do something (known as an affirmative covenant) or refrain from doing something (known as a restrictive covenant).

  Currently, the owner of the Japan Center East and West Malls have agreed to covenants stipulating that it will maintain ownership of the mall buildings for at least 15 years and will maintain a Japanese or a Japanese American design theme and leasing strategy, as long as it is economically feasible.

  The primary advantage of these "externally" imposed controls, in this case, is that the City has the ability to monitor and enforce the stipulated conditions.

  As is the case with any non-possessory interest in the land, the challenges with these covenants, are several, including: (1) Restrictions such as these are difficult, particularly for a municipality, to monitor and enforce, particularly when it comes to interpreting what constitutes "economic feasibility"; and (2) More importantly for the future of the Japantown, there are only ten years left on these restrictions, which means that, at the end of these covenants, the owner can modify the use the Japan Center or transfer ownership to another entity in any manner that local zoning, city ordinances and market economics allow.

  It is not likely that the City can extend the term of these covenants on the current owner of the Japan Center. It may, however, be possible for the City to require these or similar covenants on new owners of the Japan Center, should ownership ever change hands.

- *Community ownership* – An alternate approach to externally imposed (and monitored) controls would be for a local community entity to acquire, own and operate portions of the Japan Center – and, on behalf of the Japantown community, assure it maintains its existing cultural themes. The community land trust would be the ideal mechanism for doing so.

  A community land trust is a nonprofit organization governed by a board of directors representative of the community its serves – whose primary purpose is to acquire targeted properties within its service area, removing these properties from the speculative market and placing long-term control of their use and disposition in the hands of the local community. CLTs generally lease the land that they own to others who live on or operate businesses on the CLT's land, although there are other situations in which CLTs own buildings and other improvements and lease out space in these properties to individual users. The ground lease or other legal instrument stipulates continued operation and use of the improvements in a manner consistent with its original intended purpose and provides the CLT with a preemptive option to control any conversion, transfer or resale of the improvements

  The primary advantage of CLTs is community ownership of the underlying land (or other property) allows the CLT to control the use of the properties and ultimately control the future disposition of the land and improvements and ensures that private partners meet community goals over time. Additionally, because of this long-term commitment to stewardship of essential community assets, any public or private investment used to create these assets in the first place are preserved and leveraged forever, rather than benefiting only the initial occupant or user – at the same time that the long-term interests of the local community are assured over the long haul.

  The primary challenges of community land trusts include: (1) CLTs are still a relatively new and occasionally unfamiliar concept and strategy, although separate ownership of land and improvements is a very common practice in commercial development; and (2) The creation of a community land trust as a new or retooled community organization is time-consuming and requires the infusion of human and cash resources and the commitment of the community to sustain the organization over a long period of time.

  Additionally – and importantly – all the other 250+ CLTs in operation around the country are focused around creating and preserving affordable priced housing. While an increasing number of them have begun adding commercial properties to their portfolios, the community land trust being considered in Japantown would be the first commercial CLT to be established in the United States.

After carefully considering the options and the merits and constraints of each approach, the steering committee clearly determined that community ownership of key commercial assets – through a local community land trust – was the most appropriate strategy for Japantown.

Targeting the Community Land Trust's Activities

From the outset, the steering committee was resolute that the primary (and, some argued, only) focus of a Japantown CLT would be commercial. The steering committee prioritized the targeting of such a CLT first to the Japan Center – i.e., the portions of the East and West malls that are currently owned by 3D Properties and are now subject to covenants restricting ownership and use. They also agreed that other businesses in Japantown, such as those along the Buchanan Mall and Post Street, where current owners may sometime soon be looking to sell or transfer, could well be a priority for a CLT. And, finally, the committee acknowledged that there are other community properties, such as Kinmon Gakuen, that are culturally, historically and/or architecturally significant and may be targets for acquisition and preservation by a Japantown CLT.

There was also considerable discussion about the potential for a local CLT to include residential properties in its portfolio of key community assets, as is the case with every other CLT in the country. Opinions were generally mixed about including affordably priced housing as part of the CLT's core activities. In the end, there was agreement that housing could, somewhere down the line, become a part of the CLT's activities – particularly in instances of mixed-use,

residential/commercial applications – but that the priority focus of a Japantown CLT would be commercial acquisition and stewardship.

Community Land Trust Mission Statement

All strategic and business planning for any organization begins with its mission statement. These organizational mission statements serve two primary purposes: (1) First and foremost, it is the organization's *raison d'etre*, spelling out its overall goals and directions which, in turn, guide it actions and decision-making; and (2) The nonprofit organization's mission statement is used by various governmental entities to determine whether the organization meets their standards of approval. (For example, the Secretary of State's office will evaluate whether the organization meets the requirements of the state's nonprofit corporation statutes and the IRS will review the mission statement (and corresponding materials) to determine whether the organization qualifies as a "charitable" organization).

Based on the steering committee's clear preference for community ownership and for a primary focus on acquiring and preserving commercial properties, the committee focused a great deal of time and attention on drafting a mission statement for a Japantown CLT. Recognizing that the mission statement will be finalized once a decision is made to proceed with establishing the CLT, the steering committee's recommendation to the community on the mission statement of a Japantown CLT (were one to be established) would read:

The mission of the Japantown Community Land Trust is to preserve and promote the cultural and historical heritage and economic vitality of the Japantown community through community ownership, long-term control, and the preservation, rehabilitation and development of targeted community properties and assets.

Additionally, the steering committee developed the following list of prioritized activities to be included in the statement of purposes in the bylaws of the Japantown CLT:

a. To make land and real property available for commercial, cultural – and, as needed, residential – projects and activities that improve the quality of life in Japantown;
b. To promote economic opportunities for low-income and moderate-income members of the community;
c. To preserve the quality and affordability of commercial, cultural – and, as needed, residential – properties for successive owners and renters through various means, including land leases and covenants; and
d. To assist members of the Japantown community, including its residents, consumers, organizations, business owners and property owners in their efforts to promote the economic vitality, cultural heritage, livability, safety and well-being of their community.

Community Land Trust Organizational Structure

An essential component of assessing the feasibility of a Japantown community land trust is determining what the most appropriate *corporate structure* of the CLT would be. The steering committee, along with the Organization subcommittee, considered options for structuring a Japantown CLT that ranged from establishing a brand new, independent nonprofit corporation whose sole purpose is to be a CLT for the Japantown community to "nesting" the CLT's operations within an existing organization.

- *CLT is incorporated as a new, standalone entity* – In this arrangement, a new, separately incorporated, nonprofit, modeled on the "classic" CLT organizational design. The CLT would employ (or contract) its own staff and would be governed by a board of directors representative of the Japantown community.

  One of the primary advantages of this option is that the CLT is able to begin building an identity of its own and enthusiasm and support for its mission and activities. Additionally, there are no issues of cross-liability between the assets and liabilities of the CLT and those of a "parent" organization.

  However, establishing a new organization (incorporating the organization; setting up an office; recruiting and hiring staff; developing policies and procedures and administrative systems; securing funding sources; etc.) is time-consuming and expensive. Additionally, the new-kid-on-the-block CLT will not benefit from any credibility stemming from its association

with another established organization. And, of course, there would be, as a result, another nonprofit organization in competition for operational revenue, project funding, staff and other assets.

- *CLT is operated as a **program** under the corporate structure and governance of an existing organization* – Instead of incorporated the CLT as a separate new nonprofit entity, the CLT is structured as an internal program of a willing "parent" organization and operated under its corporate charter and governance. In this arrangement, the CLT is staffed and administered by the sponsoring, "parent" organization, which retains effective and permanent control over the policies, procedures, priorities, and budgets of the CLT. In turn, the CLT is able to benefit from the credibility and reputation of the "parent" organization while the "parent" organization can claim the CLT as its owns.

  The same amount of work is required to create a CLT program as is required to create a partially or completely autonomous organization. Additionally, there is clear and full cross-liability between the assets and liabilities of the CLT program and those of the "parent" organization. Additional challenges to this approach include that it is difficult for the CLT to build an identity of its own, impossible for it to build its own distinct membership and problematic to build "buy-in" from those served by the CLT unless the "parent" organization is willing to accommodate CLT stakeholder representation on its board of directors.

  And, of course, this strategy requires an established organization willing and capable of managing the complexities of the CLT's operations being willing to take on these responsibilities and manage them over the long haul[1].

After considerable deliberation, the steering committee agreed that the most likely and most preferable scenario for Japantown would be to establish the CLT as a separate, new, nonprofit corporation. This agreement was due primarily to recognition that few existing Japantown nonprofits had the organizational and technical capacity needed to take on the complex management of a community land trust's operations – and, at least to date, none were stepping forward to volunteer.

In the end, however, the committee agreed that (1) the recommendation to the community be the endorsement of the mission statement [above] which would determine the focus and priority activities of a Japantown CLT, however it is structured; and (2) the plan (if the community agrees with the committee's recommendation to proceed with establishing a CLT) is to establish the CLT as a separate, new, community-based nonprofit unless, in the meantime, an existing Japantown nonprofit organization steps forward and agrees to take on the CLT as its primary programmatic responsibility.

Community Land Trust Governance

One of the hallmarks of the community land trust strategy is the commitment to broad community representation on governing boards of CLT organizations. CLTs typically have tripartite boards of directors comprised of three categories of representatives from within the communities they serve: one-third of the board seats are reserved for persons or entities that lease land or buildings or space in buildings owned by the CLT; one-third of the board seats are reserved for community representatives – i.e., persons who to the community served by the CLT who are not direct beneficiaries but who are impacted by the activities of the CLT; and the remaining third of the board seats are reserved for those who represent more broadly the interests of the general public and who have skill sets needed to help assure the success of the CLT. Additionally, many community land trusts are membership-based organizations in which anyone occupying leasing land or space within buildings located on CLT-owned land are members as are residents, business owners and property owners and other individuals who are part of the community served by the CLT who support the CLT's mission and pay annual membership dues. And each year, at the corporation's Annual Meeting, this membership comes together and elects the board of director, filling vacant seats in each of the three categories. Accordingly, the community becomes "shareholders" of the CLT organization.

The steering committee felt that this tripartite board structure would be a good fit for a Japantown CLT. While the specific details size and configuration of the board structure would need to be worked out in the implementation phase, the committee thought the following composition would be appropriate for a CLT operating in Japantown:

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[1] *It bears noting that there are variations on the concept of "nesting" the CLT within an existing organization, both of which involve incorporating the CLT as a separate, nonprofit corporation and "tethering" the CLT to an existing organization. In one such arrangement, the CLT is structured as an affiliate of the "parent" organization, which provides staffing and administrative services on a contract basis for the separately governed CLT. Alternately, the CLT could be a subsidiary of the "parent" organization, with the CLT's governing board appointed by the boar of directors of the "parent" organization. Both options require a capable "parent" organization willing to take on and manage the CLT's operations.*

- ⅓ of the seats reserved for business owners operating in properties owned or controlled by the CLT
- ⅓ of the seats reserved for local stakeholders, including business and property owners in Japantown properties not owned or controlled by the CLT, representatives of Japantown community organizations, as well as local advocates and residents
- ⅓ of the seats reserved for persons with skill sets conducive to enhancing the prospects for the CLTs ongoing success

Community Land Trust's Charitable Designation

Virtually every existing community land trust in the United States – all of which have a mission to provide and preserve affordably priced housing, typically to lower-income households – have successfully applied to the Internal Revenue Service and received IRS designation as a "charitable" organization under the provisions of Section 501(c)(3) of the Code. The benefits of this "charitable" designation by the IRS are twofold: (1) The organization henceforth is *tax-exempt*, meaning that it does not need to pay taxes on revenue it receives in pursuit of its charitable mission; and (2) Contributions made to the charitable organization are *tax-deductible* – i.e., donors can typically subtract the amount of the contribution from their gross adjusted income, thereby reducing their taxable income. As a result, many donors and charitable organizations (and often, public agencies) require IRS charitable designation as a condition of their funding.

It bears noting that all of these CLTs who have received 501(c)(3) designation have done so by targeting and restricting their affordably priced housing very narrowly to low-income households, as specified by the IRS to meet the needs of "the poor and distressed". The challenge faced by the CLT being considered for Japantown is that its focus is exclusively commercial (as opposed to residential) and, accordingly, there can be no commitment to target the activities of the organization to benefit "the poor and distressed"[2]. Roy Ikeda, a retired attorney involved on the CLT steering committee, has been very clear in his opinion that the proposed activities of a Japantown CLT would be regarded by the IRS as inconsistent with their requirements for charitable 501(c)(3) organizations, stating "If the aim of the CLT is to assemble real estate within Japantown and ground lease the properties to people/companies to conduct for-profit businesses on the condition that the businesses conform to some notion of being supportive of a Japantown concept, then it will be very difficult, if not impossible, to qualify for tax-exempt status". On the other hand, an analysis of possible public benefit uses that might satisfy the requirements for 501(c)(3) status was presented by Karen Kai, another attorney on the CLT steering committee, which will figure into future consideration of what tax-exempt status to seek for the CLT.

Clearly, a CLT established in Japantown would need to be tax-exempt and be able to assure donors that their contributions are tax-deductible, yet both the demographics of Japantown and what Japantown needs the CLT to be and to do create an uncertain fit between the CLT and the IRS' requirements for 501(c)(3) charitable organizations. There appear to be a number of potential strategies to resolve this tax designation dilemma, however, including:

- 501(c)(3) – After incorporating the CLT, it could apply for charitable designation under Section 501(c)(3) of the Code, emphasizing (and perhaps bolstering) the CLT's charitable and educational activities. Additionally, the CLT's application to the IRS could seek to build the case that the mission and activities of the CLT are focused on "combating neighborhood deterioration" not in the economic sense but in a cultural and historical sense. Also, the application could build the case that, in so doing, the CLT is "lessening the burdens of government", as the City and County of San Francisco has a cultural, political and economic stake in the ongoing vibrancy and cohesion of the Japantown community.

- 501(c)(4) – The CLT could be incorporated and structured as a public benefit corporation and apply to the IRS for 501(c)(4) designation, allowing the CLT to be tax-exempt. In turn, the CLT could negotiate an agreement with an existing 501(c)(3) entity (e.g., the Northern California Community Loan Fund or the San Francisco Foundation) that would "pass through" grants and donations – likely, for a fee – to the CLT.

- There may be other options worth considering, including IRS designation as a 501(c)(2) or as a 501(c)(25) designation.

[2] *A number of Community Development Corporations (CDCs) involved in economic development activities have been successful in securing 501(c)(3) designation, primarily because their work is located in –and of benefit to – low-income, blighted communities. The East Bay Local Development Corporation (EBALDC) in Oakland is an example.*

In the end, the committee agreed that this issue was critical enough that it demands priority attention and that an opinion should be sought from an attorney specializing in nonprofit organizations and IRS charitable designation issue. The committee is recommending that highest priority be given to raising the funds needed (estimated to be in the $10,000-$15,000 range) to secure the opinion of counsel on the most appropriate strategy for securing a charitable designation for a Japantown CLT.

Financial Analysis of the Japan Center Malls East and West

As referenced earlier, funding was allocated by the City to Seifel Consulting to conduct financial analysis of the Japan Center Malls East and West, with an eye to assessing the potential for a Japantown CLT, were one to be established, to acquire and operate it successfully.

Two important clarifications regarding this financial analysis of the malls are in order:

1. During the development of the draft Japantown Better Neighborhood Plan, a study of the potential acquisition and renovation of this malls without closing the garage was never undertaken; this financial feasibility provided an opportunity to study such a renovation scenario.
2. The financial analysis of the malls was completed without the assistance of the owner – and during the study it was discovered the properties are not for sale. Nevertheless, this study still serves well to illustrate the capacity and potential of a commercial CLT. There was every intention of asking the owners to assist if there was feasibility to proceed.

A full report on Seifel's findings has been provided separately to the CLT steering committee. Since, however, the acquisition and preservation of the malls is (as outlined above) the highest priority identified for a Japantown CLT – and the feasibility of a Japantown CLT is, accordingly, linked closely to the feasibility of the CLT being able to acquire and coordinate the operations of the Japan Center – the most pertinent elements of Seifel's analysis of the center are as follows:

- The Malls East and West are a combined 133,000 gross sq. ft., with 3D Properties owning 105,000 gross sq. ft., with the remainder owned by Union Bank and others.
- The buildings are not currently configured for maximum efficiency, with Mall West having 73% leasable space and Mall East with only 53% leasable.
- 3D Properties purchased the majority of the malls in 2006 for $19.7 million, paying $14.7 million for Mall West and $5.0 million for Mall East.
- The assessed value on the tax rolls of the 3D-owned portions of the malls today is $20.9 million.
- The estimated combined value of the malls today (based on the information available) is $22.5 million, with Kintetsu valued at $17.5 million and Miyako at $5.5 million.
- Acquisition costs of the two malls, therefore would likely be in the range of $20-$25 million.

Based on an architectural review – as well as two separate walk-through assessments by experienced commercial developers – the malls, if acquired, would need an estimated $9 million of renovation[3], including:

- Interior renovations - $3-4 million
  - New lighting, ventilation and HVAC
  - New interior finishes: flooring, walls and ceilings
  - New interior signage (including tenant signage standards)

- Exterior renovations - $5-6 million
  - Major renovation of entry areas
  - Exterior façade modifications, plus paint and cleanup
  - New roof

[3] *This estimated budget does not include any modifications or seismic improvements to the parking garage nor does it include any improvements to the Peace Plaza.*

A preliminary Sources & Uses budget for the acquisition and renovation looks something like this:

Project Costs (Uses)	
Acquisition Cost	$22,500,000
Predevelopment Cost	$900,000
Renovation Cost	$9,000,000
Soft Costs	$1,400,000
Developer Fee	$600,000
Construction/Acquisition Loan Interest and Fees	$3,200,000
Re-lease Up/Temp Relocation/Tenant Compensation	$1,0000,000
Total Project Cost	**$38,600,000**
Sources of Funds (Permanent)	
Conventional Mortgage (65% LTV)	$22.5 million
New Market Tax Credits	$7.5-$9.5 million
Other Equity and Grants	$6.6-$8.6 million
Total Sources of Funds	**$38,600,000**

Key assumptions for this acquisition/renovation and operating scenario:

- Tenants rents to would need to be increased by 50%, up to around $4.00 per sq. ft. over the first 4-5 years following completion of renovation.
- Lenders willing to consider making an acquisition loan will undoubtedly require a comprehensive plan to renovate and reposition the malls, like above, as a condition of originating the financing.
- This acquisition and renovation will require the CLT, however it is structured, to partner with an experienced, well-capitalized commercial developer.
- In order for this scenario to work, the CLT would need to raise somewhere between $7 million to $9 million in grants and other cash equity to invest in the project. And this funding must be structured as cash, rather than as debt, to the project.

Opportunities and Challenges

Strategic Opportunities

The potential for the success of a Japantown CLT is enhanced by the prospect of a number of factors and circumstances, including:

- There appears to be a considerable base of support in the Japantown community for the principles of a community land trust, most particularly, community ownership and long-term control of key commercial properties in the community. Those in support of a Japantown CLT include merchants and business owners located in the Japan Center who have been involved in the planning process, as well as other business owners who have been consulted by those involved in the feasibility assessment process to date. Additionally, as noted above, the formation of a commercially focused community land trust in Japantown is one of the recommendations stemming from the Better Neighborhood Plan for Japantown that evolved out of a much broader community planning process.

- Additionally, there is clearly stated support from the City and County San Francisco for a commercial CLT in Japantown. During the five visits I made to Japantown, I had the opportunity to meet with a number of City officials and was very impressed with the articulated support for Japantown in general – and the notion of a Japantown community land trust, as well – from the Mayor, the Supervisor and the officials from the Planning Department.

- I was also invited, along with others from Japantown, to a meeting with Consul General Inomata who expressed support for future planning for the preservation of Japantown.

- Additionally, the commitment of the Ford Foundation to provide the funding to facilitate this community assessment process to determine the feasibility of a commercially focused community land trust in Japantown is an indication that their Metropolitan Opportunity unit deemed this effort as an innovative and potentially replicable strategy worth exploring.

- The ten years remaining on the existing covenants on the Japan Center provides a window of opportunity in which the Japantown community can attempt to raise the resources needed to acquire the property before its outright sale or conversion.

- In addition to the potential for acquisition of key portions of the Japan Center, there are other opportunities for CLT expansion in Japantown. A number of local, Japanese American businesses are currently owned and operated by elders who may be looking to sell or bequeath their businesses sometime in the near future – and the CLT could acquire and continue the operation of these smaller, strategically important local businesses.

- While $5-7 million is a lot of money, this amount may be a manageable and attainable amount for the Japantown community to raise, to invest as equity in order to purchase, reposition and preserve the Japan Center as a key community asset for the useful life of the buildings – and beyond.

- The community land trust being considered in Japantown, focused on preservation and stewardship of commercial community assets, has never been attempted before, creating an opportunity for Japantown and the City and County of San Francisco to plow new ground and establish a model that could potentially be replicated in other communities across the country.

- While the fact that the Malls East and West are located on top of a municipally-owned parking garage creates its own challenges, the continued existence of the Japan Center Garage as a publicly-owned resource with net cash flows that could

potentially be used for financing related improvements is a potential opportunity for a Japantown CLT as well as a vital consideration for the future of Japantown.

Challenges and Constraints

Just as there are opportunities, so too are there obstacles that must be addressed in order for a community land trust in Japantown to be successful. These challenges and constraints include:

- The portions of the East and West malls currently owned by 3D Properties, are at some risk of loss or conversion even though the covenants imposed on the properties by the City will remain in place for another ten years and the commercial market in San Francisco, as elsewhere, remains relatively flat. There is already some indication that businesses that are not truly Japanese or Japanese American in theme (e.g., the cupcake shop) are being leased in the Center.

- Even so (and even though detailed and up-to-date information about rents and expenses are not readily available) there are indicators that the Japan Center is performing significantly better than even seven months ago, when the assessment process began. Indicators of this improved performance include an increased number of renewed leases and decreased vacancies. Likely for these reasons, 3D Properties has indicated that the malls are not for sale.

- It takes time, energy and commitment – as well as a substantial infusion of financial resources – to establish a new CLT organization and to build its organizational capacity to meet its ongoing administrative, programmatic and stewardship responsibilities. Community land trusts typically generate a portion of the revenue through fees earned from their real estate holdings – and, even so, they generally remain reliant on a blend of personal contributions, membership fees, foundation grants and public sector operating support to meet their annual operating budget requirements. It will take time – perhaps years – before a Japantown CLT will be able to earn fee revenue from commercial properties in its portfolio; during this time, the CLT will unquestionably be solely reliant on grants and contributions. Once the CLT is operational and builds a portfolio of properties, its dependence on outside sources of funding will decrease, although the economics may never be such that the CLT will be fully supported by fees generated from its portfolio. And, to date, there are no indications of where grant funding to support the CLT's activities and operations will come from.

- There is already a relatively dense nonprofit infrastructure in San Francisco in general and in Japantown in particular, which has already raised some concern over the implications of creating another community-based nonprofit organization. The founders of the Japantown CLT will need to be very clear, persuasive and strategic in building a marketing and community education initiative, to build a broad base of support for a new community land trust organization.

- As is the case with any new organization, regardless of its level of capacity and commitment, there is no substitute for experience. Accordingly, a Japantown CLT may experience challenges as it seeks, in its first years of operations, to secure operating support, as well as commitments for project equity and project financing.

- Just as the development of a commercially focused community land trust in Japantown can be seen as an opportunity to create a community solution that may be replicable in other major U.S. cities can be seen as an opportunity [above] it must also be viewed as a challenge and a complication. Unlike residential CLTs, there is little in the way of precedents for what is being considered in Japantown, with no model documents available and limited examples of best practices to adopt. In

many ways, a Japantown commercial CLT will be starting from scratch. And, just as a successful, first-in-the-country commercial CLT in Japantown would likely serve as a shining star example for other metropolitan areas to consider, so also a failure in this endeavor could create a rather high profile example of how *not* to develop a commercial CLT.

- Because the Malls East and West are situated directly above the city-owned Japan Center Garage, any significant construction on the malls will require a civil engineering and financial analysis of the impact on the Garage.

Committee Recommendations to the Community

At the June 22nd meeting of the CLT steering committee – the final meeting of this feasibility assessment process I summarized the decisions and recommendations made by the committee to date. I also observed that the planning process is at a crossroads, as the committee now has a framework to use to determine whether to proceed with planning and implementation of a community land trust in Japantown. I explained how I saw the "go/no go" decision:

- ✓ GO – The community decides to proceed, at which point efforts focus around two primary task areas: (1) figure out how to raise sufficient community capital (equity) needed to be able to arrange for the acquisition of the Japan Center and/or other commercial properties and community assets in Japantown; and (2) establish the community land trust as a means to assure long-term community ownership and control of these key community assets. The order in which these strategic task areas take place (i.e., raise the equity first and the create the CLT or vice versa) will need to be determined.

- ✓ NO GO – After further consideration and deliberation, the community agrees that the costs are too high, the risks too substantial, and the work is too complicated and intense (particularly given that the Japan Center is apparently performing well and is not for sale) and decides that it does not wish to proceed with the CLT at this time.

Acknowledging that the final decision to proceed or not proceed with the CLT rests with the community at large, the committee discussed and deliberated each of these options – and, by the meetings end, there was clear consensus to pass along the following recommendation to the community:

> It is the recommendation of the Japantown CLT steering committee to the Japantown community to proceed with creating a Japantown Community Land Trust and to develop a campaign to raise the community capital needed to acquire the East and West Malls of the Japan Center and other commercial properties and community assets in Japantown, as feasible.

Consultant Observations

Community land trusts make long-term, multi-generational commitments to a broad array of stakeholders – to business owners, property owners, tenants and lessees; to local government and funders; and, most importantly, to the communities they serve. Community ownership of strategic real estate and key community assets – and the long-term preservation and stewardship of these properties and the people that occupy and use these spaces – are not to be taken lightly. Accordingly, the decision to *establish* a community land trust must be accompanied by a communitywide commitment to *sustain* the CLT organization that, by definition, must outlive the useful life of the buildings in its portfolio and the human lives of those involved in its creation.

Clearly, the decision whether to proceed with creating a CLT and devoting the resources, human and financial, to assure its ongoing success, is a decision that can only be made by the community in which the CLT will operate and to whom the CLT will be accountable. This decision is the community's, and theirs alone.

However, in case it might be helpful, I would like to offer a couple of professional observations, for your consideration. As an admitted, unabashed devotee of community land trusts and as a consultant who has worked with dozens of start-up CLTs facing many of the same issues and challenges you face, here are what I see to be the rather remarkable and somewhat compelling array of opportunities available to you as you consider the potential benefits of a Japantown community land trust.

First, I see a rather remarkable level of support already exists for a Japantown CLT, most notably at the local community level and at the level of city government. It bears noting that many CLTs spend years trying, often unsuccessfully, to drag reluctant or resistant public officials towards support for the CLT's activities.

Additionally, (although this is easy for an outside consultant like me to say) I think a sum of $5-$7 million of community capital is not an impossible amount of equity to generate for Japantown to acquire and preserve a central part of its identity, its vitality and its legacy. Potential sources I think could well include: City funding commitments; foundation grants; private and corporate donors in Japantown; private and corporate donors from Japantown's diaspora; and private and corporate donors in support of Japantown, as an ethnic, cultural and social community, remaining Japantown.

And, finally, I believe there is a very compelling story in a "Buy Back Japantown" campaign, particularly given the tragic and painful history of Japantown, with forced relocation and urban renewal. And I respectfully suggest that utilizing the community land trust strategy – assuring community ownership and long-term input into and control over key community assets acquired to keep Japantown, Japantown – as the cornerstone of such a campaign makes the case all the more persuasive. Additionally, the long-term community investment protections make a powerful argument to potential donors that funding a Japantown community capital campaign will not only contribute to a community's efforts to control its destiny but, at the same time, will guarantee a sound and leveraged investment of their resources.

Recommendations for Next Steps

Should the Japantown community follow the steering committee's recommendations and determine to proceed with creating a Japantown community land trust, there are many decisions to be made and a great deal of work to be done. Briefly stated (and overly simplified), the next steps in the process to establish a Japantown CLT include:

- ❑ Secure funding needed to retain the services of an attorney specializing in IRS 501(c) issue to provide an opinion on how best to structure the CLT to secure the necessary and appropriate IRS approval.
- ❑ Develop a business plan for the Japantown CLT, identifying:
    - Anticipated pace and scale at which the CLT's portfolio will develop over the next ten years
    - Organizational capacity needed to manage the CLT's operations at this scale
    - Projected annual operating costs for the CLT over its first ten years of operations
    - Revenue projected annually for the CLT over its first ten years of operation
        - Revenue earned from CLT's real estate holdings
        - Resulting funding gaps that need to be filled by grants from public and private sources
- ❑ Resolve the language in the Mission Statement and Statement of Purposes for the CLT.
- ❑ Secure funding to pay for organizational start-up costs, technical assistance/consultant services, legal services and first years' operating support for the CLT
- ❑ Develop Articles of Incorporation, complete organizational bylaws, and incorporate organization
- ❑ Recruit, orient and seat initial board of directors and adopt bylaws
- ❑ Draft and submit appropriate tax designation application to IRS
- ❑ Develop and implement administrative systems, policies and procedures
- ❑ Develop strategic plan and work plan for first 2-3 years of operation – and operating budget projections for this timeframe
- ❑ Develop and implement staffing plan to carry out work plan – and hire or contract staff, accordingly
- ❑ Develop priorities and procedures and project selection criteria for commercial acquisitions – and develop legal documents required for various transactions
- ❑ Develop and implement a comprehensive, targeted community education and marketing initiative

Of course, Burlington Associates and I are ready and willing to provide professional, technical assistance to support your efforts in each of these critical task areas, should you find that helpful.

Conclusion

It has been an honor and an inspiration to work with the members on the steering committee in this CLT feasibility assessment process and witness up close their vision for Japantown and their personal commitment to do what they can to make that vision a reality in their lifetimes. And it was a pleasure and a privilege to meet with other members of the community and public officials who are so committed to help keep Japantown, Japantown. I also enjoyed the opportunity to travel to the lovely city of San Francisco (especially when the weather in my home state of Minnesota was particularly awful) and to meet and interact with local business owners and community leaders in Japantown, as well as with elected officials and public servants, all of whom are committed to making Japantown an even better place to live and to work. I also want to acknowledge my gratitude to George ("Mac") McCarthy and the Ford Foundation for funding this critically important assessment process and, in so doing, provide this terrific learning opportunity for me and for all the others involved.

I wish you, the Japantown community, well in your decision-making process. If I can be of any additional assistance as you make the decision to proceed or not – or in additional planning and implementation if you decide to proceed – I would be happy to do so.

I look forward to learning the results of your decision.