

CALIFORNIA PLANNING & DEVELOPMENT REPORT



August 1990

William Fulton, Editor & Publisher

Vol. 5, No. 8

Neo-Traditional Planning Grows in Popularity

As the so-called "neo-traditional" planning movement gains momentum nationwide, it is emerging as one of the leading topics of discussion in planning and development circles in California. Recognizing neo-traditional planning's potential to reduce traffic, a handful of private developers and public agencies from Chico to San Diego have undertaken projects based on the movement's concepts. If these early efforts meet with success — both in planning terms and in marketing terms — then neo-traditionalism could become a major force in planning California's communities in the future.

Neo-traditional planners believe that traffic can be reduced and community life can be enhanced by reviving traditional ideas about community design. Rejecting the precepts of postwar planning — sterile segregation of uses, cul-de-sacs and curvilinear streets — neo-traditionalists have advocated a return to traditional grid street patterns, mixed-use developments, and neighborhoods oriented around walking distances. Many neo-traditionalists argue that even in terms of handling traffic and preventing congestion, pre-World War II towns have proven more enduring and flexible than postwar suburbs.

Two events seem to have sparked the rising interest in neo-traditionalism in California. The first was a blistering attack on conventional planning delivered in Folsom in early

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Initiative Qualifies For Washington Ballot

A statewide growth management initiative has qualified for the November ballot in the state of Washington.

The initiative would require Washington's local governments, like those in Oregon and Florida, to conform to statewide planning goals. Two regional growth commissions would be established to review local plans.

The growth initiative goes much further than a bill passed in the Washington legislature this year, which established a California-style process that requires local governments to undertake planning but provides for little state oversight. The initiative's provisions are also tougher than the recommendations of Gov. Booth Gardner's Growth Strategies Commission. The commission recently recommended a "bottoms-up" program that would resolve state-local disputes through arbitration.

If passed, Initiative 547 would be the first state-level growth management system in the country to be passed via the initiative process. Florida, New Jersey, Oregon, and other states have adopted state-level growth management systems via the legislative process. Dozens of California initiatives dealing with growth-management have passed, but only on the local level.

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BRIEFS

Builders' Measure Placed on San Diego Ballot

A growth initiative backed by the building industry has been placed on the November ballot by the San Diego City Council.

The council declined a request to place a citizen slow-growth initiative on the ballot even though the initiative had not gathered signatures. However, the council decided to adopt its own growth management plan.

The San Diego 2000 initiative, supported by the building industry, had collected more than 80,000 signatures, about 30,000 signatures more than were required to place the measure on the ballot. The measure contains a variety of growth management provisions, though city officials say it would cap transportation fees on new development at a level far below the city's needs.

The council's own plan is likely to restrict new construction if the infrastructure to support that development is not in place; it would also include revenue-raising provisions to correct current infrastructure deficiencies.

Irwindale Consultant Gets \$1.28 Million

Irwindale has agreed to pay its former redevelopment consultant \$1.28 million in order to settle a long legal dispute.

Fred Lyte's contract called for him to receive a fee equal to 3% of all building permits in the city redevelopment area. But Irwindale's attempt to lure the Raiders football team in 1987 focused attention on the city's practices, which had permitted a stockpiling of funds in redevelopment agency coffers. In December 1988, the city fired Lyte, saying the contract was too generous.

Subsequently, the city sued Lyte for \$2 million, saying he had violated his contract with the city by recommending projects in which he had a financial interest. But Lyte countersued for \$1.4 million. At the time of the settlement, the city had already spent \$500,000 in legal fees on the case.

San Francisco Unveils Downzoning Plan

Seeking to avoid the "Richmond specials" problem, the San Francisco Planning Department has unveiled a new residential zoning proposal that would restrict duplex construction and limit height and depth of houses in many residential neighborhoods.

"Richmond specials" are new residential buildings that are much larger than existing houses, even though they may contain only two residential units. In most instances, a single-family home could be replaced only by another single-family home. Height limits would range from 24 to 40 feet, while house depths would be restricted to between 45 and 82 feet.

The planning department estimated that the rezoning would reduce the potential for additional housing in the city by 1,800 units. Only a few weeks before, the planning department issued a housing report calling for an increase in housing construction in the city.

L.A. Approves Porter Ranch Project

The Porter Ranch project, one of the largest in Southern California's history, has been approved by the Los Angeles City Council.

The \$2-billion Porter Ranch project, owned by Shapell Industries, has been a controversial project for several years. Building on 1,300 acres in the northwest San Fernando Valley, Shapell has plans for 3,000 expensive homes and 6 million square feet of commercial and industrial space.

Last winter, Porter Ranch became the first development project ever reviewed by the South Coast Air Quality Management District, which criticized it as too big. Later, L.A. Mayor Tom Bradley also

criticized the project, even though Shapell is a longtime Bradley campaign contributor.

The neighboring city of Simi Valley had threatened to sue L.A. over the project, claiming Porter Ranch will dump too much traffic onto the Simi Valley Freeway, which travels past the Porter Ranch site in connecting Simi Valley with the San Diego Freeway. However, the city backed off when Shapell officials assured them that a fourth lane of the Simi Valley Freeway would be in place prior to construction of the project.

School Boards Oppose Sacramento Redevelopment Project

Five Sacramento-area school boards have threatened to oppose redevelopment status for the Southern Pacific rail yards near downtown Sacramento.

The school districts are demanding that the Sacramento Housing and Redevelopment Agency pass through \$80 million of the \$500 million in tax-increment funds the rail yard redevelopment is expected to generate over the next 35 years.

Schools are reimbursed by the state government for funds lost to redevelopment — which, in the case of the SP project, would constitute about \$145 million. But the school districts are demanding an additional \$80 million, saying that even the state funds will not be enough to meet school needs created by the redevelopment project.

Roundup

Riverside has renewed its effort to replace the "San Bernardino" postmark on Riverside mail with an "Inland Empire" postmark....Some citizen groups express concern about the **appointment of developer John Vidovich to the planning commission** in Santa Clara County....Sacramento civic leaders, including a former mayor and a representative of the Sacramento Sports Association, **are calling for a \$100 million bond issue** to improve local parks, theaters, softball fields, and other amenities.

CALIFORNIA PLANNING & DEVELOPMENT REPORT

is published monthly by
Torf Fulton Associates

1275 Sunnycrest Avenue
Ventura, California 93003
(805) 642-7838

Subscription price: \$179 per year

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ISSN No. 0891-382X

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SPECIAL REPORT: NEO-TRADITIONAL PLANNING

As Traffic Congestion Grows, So Does Neo-Traditional Planning

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1989 by Andres Duany, the Miami architect who has emerged as perhaps the leading salesman for the neo-traditional movement in the United States. A videotape of Duany's presentation was subsequently distributed to more than 200 planners and developers around the state, and Duany continues to speak regularly to California audiences. He is currently working on two projects in California — a huge Blakely-Swartz development in Chico and Maguire Thomas's Playa Vista project in Los Angeles.

The second event was the startling decision last year by Sacramento developer Phil Angelides to redesign a conventional suburban project for which he had already obtained all governmental approvals. For the redesign, Angelides hired another neo-traditionalist, San Francisco architect Peter Calthorpe. Calthorpe has redesigned Angelides's suburban Sacramento project on his own "pedestrian pocket" model.

Curiously enough, Sacramento appears to have emerged as the epicenter of neo-traditional planning in California. Driven by a growing concern about air pollution — and encouraged by the Environmental Council of Sacramento — public and private leaders in the Sacramento area have latched onto the idea quickly. Also, Sacramento officials see the value of neo-traditional planning in bolstering their fledgling rail transit system.

Calthorpe's project for Angelides has received considerable publicity there, and subsequently Calthorpe was hired by Sacramento County to prepare a general plan element to encourage transit- and pedestrian-oriented development in the suburbs. Duany's Folsom tape was circulated widely in Sacramento, and Duany and his partner/wife, Elizabeth Plater-Zyberk, have established their West Coast office in Sacramento in connection with local architect James A. "Chip" Kaufman.

The Neo-Traditional Approach

At bottom, neo-traditional planning represents an attack on most of the principles that planning — and especially site planning — have operated under since the end of World War II. Postwar planning used that seductive mode of transportation — the automobile — in order to segregate land uses and shield the single-family home from the outside world. But neo-traditional planners say that in so doing, the postwar planners sacrificed community life, made Americans too auto-dependent, and created inflexible road patterns. "What you're administering is the building of miserable places," Duany told a group of planners at an AICP seminar in Florida recently. "What planning is about today is the provision of very high-quality, very durable, very well-drained, and very well-lighted parking lots."

To undo this "damage," neo-traditionalists have tried to incorporate the same elements included in a traditional suburb — a variety of housing types, retail centers, and employment centers — and rearrange them so they are less auto-dependent and more flexible. Rather than looking at the "big picture" as most planners do, neo-traditionalists concentrate on the small details in each neighborhood that create human scale, and often focus criticism not on broad planning goals, but on zoning and development codes that make traditional planning concepts difficult to implement.

Neo-traditionalism is not without its critics and skeptics. Environmentalists and traffic engineers are often critical of neo-traditional ideas. Mainstream planners are often drawn to neo-traditionalism on a gut level, but worry that neo-traditional ideas won't be practical in today's world, where people are used to relying on the car and

even retail outlets have grown to industrial size. "When you look at these ideas, they look very warm and fuzzy," says Aldon Roane, planning director in Lee County, Fla., who recently attended an AICP seminar on neo-traditional planning. "It makes you think, 'Oh, this would be great, it's the kind of community I grew up in.' But today's society is much more complex than that."

The rise of neo-traditionalism may suggest a return to physical planning for the first time since World War II. Most planning education in the past 40 years has concentrated on policy planning rather than design issues. Perhaps that's why the two foremost practitioners of neo-traditionalism in California today — Duany and Calthorpe — are not planners but architects who usually work for private developers. In many ways this makes sense, since many neo-traditionalists are "physical determinists" who believe that a better designed community will lead to a better community overall.

Duany's philosophy is strongly rooted in the classical physical elements of community design. Duany is a strong advocate of the grid street pattern and often recommends that zoning codes require that "all streets must end at other streets." He extols the virtues of streetlife as a cohesive element in communities and urges planners to think of streets not only as a thoroughfare for auto traffic, but as a diverse place where all sorts of activities occur.

He often takes an historical approach to designing a community and places great emphasis on a community's spatial dimensions and how people respond to them. In his acerbic speeches, he pokes fun at planners for not understanding the physical design aspects of their work. "Planners, they know everything about gopher turtles," he told one group of Florida planners. "But about human beings, they don't even know that they like spatial definition."

Calthorpe has developed a different model for designing neighborhoods that is less traditional but still seeks to reduce dependence on the automobile. Like Duany's designs, Calthorpe's "pedestrian pocket" concept is designed to work in a very small amount of space — less than 200 acres. While Duany harks back to the "small town" era in American history, Calthorpe talks about using pedestrian- and transit-oriented designs to accommodate changing social needs. (Calthorpe's "pedestrian pocket" idea was laid out in a short book, *The Pedestrian Pocket Book: A New Suburban Design Strategy*, published by Princeton Architectural Press in association with the University of Washington and available through the American Planning Association.)

Calthorpe criticizes the traditional single-family neighborhood as a ruthless form of development that cannot accommodate a diverse society. "Single people and single parents could benefit from different environments and a different kind of community," Calthorpe says.

Calthorpe's "pedestrian pocket" model connects residential neighborhoods with retail and office centers through diagonal promenades that lie outside the basic street system. The idea is that even single-family residents could easily walk to the neighborhood center to work, shop, or connect with the local transit system. Multi-family dwellings are located closer to the neighborhood center — often facing lakes or rivers, because, Calthorpe says, homebuyers must be rewarded for giving up the single-family investment. "The reason people don't buy high-density housing is that it's always in the worst place," he says.

Both Calthorpe and Duany claim that suburban communities can become less auto-oriented without a dramatic increase in density — always a fear of suburban residents. "We don't have to become Europeans living in apartment buildings," says Calthorpe, who

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claims that light-rail transit is viable in pedestrian-oriented communities with only 8-10 dwelling units per acre.

Despite the sociological arguments, neo-traditionalism's chief appeal for developers and politicians is the capacity to reduce traffic. "The problem with suburban growth isn't the number of people," says Duany. "It's the pattern. It takes very, very few citizens and very, very little growth to clog it up."

By rearranging existing elements, neo-traditionalists claim, traffic can be reduced — or, at least, re-routed so fewer trips take place on collector and arterial streets. "Most of the car trips we generate are dopey trips," Duany says. "Taking your kid to school. Driving to the jogging machine. Buying the milk." In neo-traditional communities, he says, these trips may be made on foot — or at least on neighborhood streets, so that every car is not forced out onto an arterial highway.

The other transportation-related aspect of neo-traditionalism involves the cost of driving. Both Calthorpe and Duany say that their community designs will increase a household's disposable income by reducing reliance on a second car — or even doing away with the need for a second car altogether. Developers who use neo-traditional design hope not only to gain favor among regulators, but also among lenders who'll bend mortgage qualification rules. "The auto is an invisible cost to the environment, the federal government, and the individual household," says Calthorpe.

Contacts: Peter Calthorpe, (415) 777-0181.

Andres Duany, (305) 644-1023.

Traffic Engineers and Environmentalists

Though neo-traditional ideas have received widespread praise from planners, others are more skeptical. Traffic engineers frequently question neo-traditional claims that different patterns of development can actually change traffic patterns. To a lesser extent, environmentalists also criticize neo-traditional plans, saying that the tyranny of traditional grid patterns gives little consideration to environmental issues, especially wetlands preservation.

Because traffic is perhaps the leading issue in suburban development, neo-traditionalists often attack traffic engineers as the bad guys who sacrifice all other aspects of community life to traffic flow. The sharp-tongued Duany is especially critical of traffic engineering, calling it "a degenerate profession" that has wrongly dominated urban planning and community design for the past 40 years. In his speeches, Duany often makes fun of traffic engineers, saying they assume all drivers are "spastic" and "stupid" people who require huge driving lanes and unnecessary signage.

Rich Chellman, a New Hampshire engineer who often works with Duany, says traffic engineers are not inflexible but merely limited in their world view. "The typical traffic engineer is attempting to deal with traffic that's been generated by bad land planning," Chellman says. "He's not asked to get into the loop on how to avoid it. As a result, they become single-minded with their own area of expertise and focus." When confronted with the challenge of designing a different type of street, Chellman says, traffic engineers often rise to the occasion.

The traffic engineering profession has begun to debate the neo-traditional ideas and their impact on traffic. In a recent article in *Development* magazine, published by the National Association of Industrial and Office Parks, two Florida traffic engineers found surprisingly favorable statistics about neo-traditional planning.

For example, they found that a mixed-use neighborhood using the traditional grid generates only 57% of the vehicle miles traveled generated by a suburban pattern with the identical mix of uses. Arterial traffic dropped 10-20%, though traffic on local streets increased. Also, the researchers found, while driving speeds were lower, overall travel time was the same, because destinations were

closer together. ("Traditional Neighborhood Development: Will the Traffic Work?", *Development*, July/August 1990, pp. 21-24.)

Environmentalists seem to be of two minds over the neo-traditional approach. Some environmentalists recognize that neo-traditionalism's compact development patterns can save land overall, and that neo-traditional traffic patterns might produce less air pollution. At the same time, however, environmentalists are critical of neo-traditionalism's "heavy-handed" approach to the natural environment, especially wetlands.

A good example is Duany's design for Avalon Park project, a proposed 10,000-acre development on land owned by Flag Development Co. in Orange County, Florida. The project straddles the Econlockhatchee River east of Orlando, an environmentally sensitive area dotted with wetlands. "We think they're just a great project in the wrong place," says Orange County Planning Director Ed Williams.

Duany says his redesign of Avalon Park, necessitated by the wetlands problem, has compromised the integrity of its grid pattern. "We lost Avalon on wetlands," he says. "To some extent there is a contradiction between saving a wetland and arranging a town with pedestrian continuity."

Duany has complained that preserving the environment "is not about saving a puddle here and there," and in recent speeches he has asked directly for environmentalist support. "Those people who are concerned about the environment should begin dedicating some of their energies toward the human habitat," he said in a San Diego speech in July. "The great battles of the environment have already been fought. At this point you're just mopping up. But the battle of the human habitat is still to be fought."

Neo-Traditional Projects in California

As their neo-traditional ideas have received more and more publicity in California, Calthorpe and Duany have also begun to work on specific projects throughout the state — projects that will go a long way toward determining neo-traditionalism's public acceptance in the state.

Laguna Creek

Perhaps the most publicized neo-traditional project in California has been Calthorpe's West Laguna development outside Sacramento. Calthorpe was brought into the project by developer Phil Angelides, a onetime Jerry Brown housing aide who had tired of developing traditional suburban subdivisions.

The Calthorpe project is actually part of a larger, 2,500-acre development that has been under way for several years. But Angelides turned to Calthorpe to design an 800-acre segment of the project, even though all governmental approvals were already in place. According to Calthorpe, the project has 3,300 housing units — and under his redesign, the single-family/multi-family split has been changed from 60/40 to 50/50.

West Laguna's design is very close to the theoretical model Calthorpe created with the sponsorship of the National Endowment for the Arts, with the retail/office center connected to residential neighborhoods via diagonal boulevards. Also, the project is consistent with Calthorpe's philosophy of trying to make multi-family sections as attractive as single-family sections. Many multi-family units front on lakes, while single-family units do not. Calthorpe said that the special design added \$3,000 to the price the building lots, which are now being sold to local builders. Half that cost was for the "pedestrian pocket"; half was for construction of the lakes.

Calthorpe's project had to overcome a list of 25 objections from Sacramento County's chief traffic engineer, Jim Ray. Though "cautiously optimistic" about the project all along, Ray objected to

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many elements of the plan, including narrow streets, the number of trees, and the problem of retail traffic driving through residential neighborhoods.

Nance Canyon, Chico

Andres Duany's first large-scale development project in California is Nance Canyon, a 6,000-acre project by Blakely-Swartz in Chico. The project consists of several "neo-traditional" neighborhoods south of Chico, linked by bus lines and streets but separated by wetlands, ravines, and other environmentally sensitive areas. The Nance Canyon grid patterns deliberately mimic the distinctive patterns of the older sections of Chico. Local environmentalists have praised the site planning but continue to oppose the project because of its size.

For Blakely-Swartz, Duany's approach held the potential not only for reduced traffic but also for reduced up-front infrastructure cost. "It seems to me much more phase-able than conventional planning," says Blakely-Swartz project manager Tom DiGiovanni. "You don't need huge amounts of backbone infrastructure up-front. That's the way I sold this thing internally."

While praising many of the pedestrian-oriented aspects of the Nance Canyon project, the Butte Environmental Council has criticized the entire development as "leapfrog" development. A recent BEC newsletter (which referred to Duany as Blakely-Swartz's "planning swami") suggested that the entire project may be unnecessary, given the number of other development projects in the works in the Chico area.

The Nance Canyon project is now awaiting the completion of the environmental impact report by EIP Associates in Sacramento.

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Tom Leonardi, Butte Environmental Council, (916) 891-6424.

Playa Vista

Duany has also been involved in site planning for Maguire Thomas Partners' massive Playa Vista project in Los Angeles. In his speeches, Duany often points to auto-oriented L.A. as urban planning's greatest failure. "Los Angeles has been the laboratory on which the great experiment of 20th Century urban planning has been played out, and it has not worked," he said in San Diego in July.

Playa Vista is the prime 900-acre site between Venice and the L.A. Airport long owned by Howard Hughes. The project faced stiff opposition until Maguire Thomas stepped into the picture and hired Duany among others to design the project. Now Playa Vista contains many neo-traditional elements, including many traditional streetscapes, courtyard housing reminiscent of L.A. in the '20s, and an internal transit system.

Media-savvy Maguire has also made effective use of Duany as a public relations tool, sending him to neighboring Venice for a charrette with local citizens on the future of that community, though the charrette had nothing to do with Playa Vista. Maguire Thomas's approach has caused political opposition to Playa Vista to diminish, though the project still must receive regulatory approvals.

Neo-Traditional Plans in California

In addition to specific development projects, some communities in California are trying to include neo-traditional principles in their plans. One of the neo-traditionalists' greatest complaints is that planning documents and zoning codes actually impede traditional design by insisting on suburban-style setbacks, parking ratios, and so on. In the view of neo-traditional planners, then, changing the zoning code is attacking the problem at its root. The Foundation

for Traditional Neighborhoods, a nonprofit group led by Duany, has written a model Traditional Neighborhood Development Code. It is available from Duany's office in Miami, but it is copyrighted.

Sacramento County

One of the most important neo-traditional planning efforts in California will be included in a revision of Sacramento County's general plan. Inspired by Calthorpe's West Laguna project, Sacramento County hired the San Francisco architect to draw up an optional general plan element that would permit neo-traditional projects. The "transit-oriented development" element, or TOD, is designed to encourage suburban communities that are relatively low-density but still will permit light-rail transit to be viable. "We're lucky to have a regional transit district coincident with the county," Calthorpe says. He envisions suburban sprawl in Sacramento replaced by pedestrian-oriented suburbs that are located either along the light-rail system or along feeder bus lines.

Developers are eagerly awaiting Sacramento County's new general plan, because the county has declared a moratorium on the conversion of agricultural land into suburban subdivisions until the new plan is done.

Irvine Business Complex

Neo-traditionalism has even made inroads in the area that serves as California's most powerful symbol of sprawling suburban development: the Irvine Business Complex in Orange County. Since the ouster of Mayor Larry Agran, however, the proposed transformation of IBC into an "urban village" with neo-traditional characteristics has become questionable.

IBC was originally designed as a 2,500-acre master-planned industrial park. Since the '70s, the area has already undergone a transformation into a suburban office center. With traffic congestion and air pollution becoming worse, however, Agran proposed that IBC be altered once again, so that it would become a mixed-use urban core with pedestrian-oriented street life, a monorail, and up to 50,000 residents. The first half-mile of the monorail will be constructed by McDonnell-Douglas Realty from its proposed office buildings in IBC to the John Wayne Airport.

With Agran's encouragement, city consultants prepared a plan last year for the urban village. Under the proposal, Von Karman Boulevard — presently an archetypical suburban arterial boulevard — would be transformed into "the Grand Street." Taking advantage of present suburban-style setbacks, the city would create a 220-foot boulevard with a 100-foot pedestrian-transit median. Other suburban superblocks in the area would be sliced up into urban-sized blocks, and housing would also be built inside the IBC.

Some elements of the community opposed to such large-scale urbanization, however, and Agran was defeated in April by Councilwoman Sally Anne Sheridan, partly on the urban village issue. Now the new council is reviewing six proposals, with a decision scheduled for the end of this year. "My sense is that we will have an urban village, but a version that is scaled back from the earlier version," says City Manager Paul Brady.

Contacts: Paul Brady, Irvine City Manager, (714) 724-6000.

The videotape of Andres Duany's Folsom speech is available from Sacramento planning consultant Stephen Jenkins. More information is available by writing to Jenkins at 2001 11th St., Sacramento, CA 95818.

William Fulton and Marci Malaster

Butte County Development Agreement Struck Down

A Butte County development agreement has been struck down as invalid by an appellate court, which concluded the general plan amendment on which it was based never took effect.

The case involved a situation where county supervisors approved the general plan amendment and the development agreement together. The Court of Appeal in Sacramento ruled that because the general plan amendment was subject to referendum, it did not take effect for 30 days — and therefore the development agreement was inconsistent with the general plan as it stood on the day when the development agreement was approved. Under state law, a 30-day waiting period to permit a referendum petition to be filed.

Some lawyers say the case calls into question the widespread practice of approving a general plan amendment concurrently with more specific regulatory approvals — development agreements, rezonings, subdivision approvals, and so forth. If the Court of Appeals' reasoning is applied, then all such approvals would be invalid unless cities and counties waited 30 days after a general plan amendment to approve them.

But Daniel J. Curtin, author of *California Land-Use and Planning Law*, said he would not change his often-quoted advice to process the general plan changes and the regulatory approvals together. The only change, he suggested, would be to acknowledge that the regulatory approvals would not take effect for 30 days. In fact, he said, if local governments waited 30 days because general plan amendments are subject to referendum, they would also have to wait another 30 days because development agreements are also subject to referendum.

The case involved Butte County's 1984 approval of a development agreement that would permit Midway Orchards to build 110 houses on land previously zoned for agricultural use. On October 30,

1984, the county approved a general plan amendment changing the land-use designation on the property. On November 27, 1984, the county Board of Supervisors approved a development agreement, which was executed on December 4. Six days later, the county clerk told the board that a referendum petition had been filed, meaning that the board either had to repeal the project approval or hold an election. The board chose to repeal the approval.

The county then filed court papers seeking a legal declaration that the development agreement had never been operative.

The appellate court found that while state legislation specifically says that an ordinance does not take effect for 30 days, there is no such guidance from the state regarding resolutions subject to referendum, such as Butte County's general plan amendment. However, the court concluded that resolutions too are subject to the 30-day waiting period because of "the nature of the power of referendum."

Therefore, the court ruled, the referendum petition stayed the effectiveness of the general plan amendment. "The resolution which would have provided consistency between Midway's development agreement and the general plan was therefore never effective."

The full text of Midway Orchards v. County of Butte, No. C004316, and County of Butte v. Midway Orchards, No. C003276, appeared in the Los Angeles Daily Journal on May 24 beginning on page 5669. However, Part I of the opinion (pages 5670-5675) and Part II-B (pages 5676-5677) were not certified for publication.

Contacts: Philip D. Kohn, lawyer for Midway Orchards, (714) 641-5100.

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Growth Initiative Qualifies for Washington State Ballot

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But Washington voters are familiar with the initiative process. In Seattle, environmentalists used it in dramatic fashion last year when a San Francisco-style limitation on downtown office construction was passed via initiative. (CP&DR, June 1989.)

In the current campaign, Citizens for Balanced Growth submitted petitions bearing 230,000 signatures for Initiative 547, far more than the 150,000 required to place a measure on the ballot in Washington. In hopes of averting passage of the measure, the state's elected leaders have discussed the possibility of promising that a stronger growth-management bill will pass in next year's legislature. But apparently they are not planning to call the legislature into a special session this fall in order to pass such legislation before the election.

The threat of an initiative apparently motivated the legislature to act on growth issues during its annual session last spring. According to Richard Ford, chairman of Gardner's Growth Strategies Commission, the state legislation was "a major threshold piece of work" that made planning and zoning mandatory in the state's largest and fastest-growing counties. Prior to passage of the bill, Ford said, the state had no such planning requirements, and planning and zoning ordinances were not required to be consistent. A separate bill permitted additional local tax levies for transportation planning.

Last April, the state's environmentalists temporarily dropped their plans for an initiative as the legislature debated a variety of growth bills. Unsatisfied with the resulting bills, however, they quickly revived the initiative drive later that month.

The report of the Growth Strategies Commission, which came out in July, didn't dissuade the environmentalists from pursuing the initiative either. Like the environmentalists, the commission recommended that the state establish planning and growth goals.

Unlike the environmentalists, the commission gave local governments some leeway in meeting those goals. Local plans would be presumed to be in compliance with state goals; if the governor concluded that a local plan was not in compliance, the matter would be referred to an arbitrator.

Both environmentalists and commission chairman Ford agree that the other differences between the two proposals were minor. Environmentalists say their initiative addresses such issues as urban sprawl and protection of environmentally sensitive lands more specifically than the commission report. At the same time, Ford claims the Growth Strategies Commission came out more "forthrightly" for higher densities. "The initiative has tried to play games on that in my judgment," he said.

Environmentalists did not criticize the Growth Strategies Commission's recommendations so much as complain about the legislature. "There are plenty of good ideas out there," said David Bricklin, a Seattle lawyer who serves as president of the Washington Environmental Council. "The problem is getting them through the legislature. We have some good friends in the legislature, but they seem to have pushed things as far as they're likely to go."

Bricklin said environmentalists expect to raise \$300,000-\$400,000 for a grassroots campaign and anticipate that opponents will pile up a \$2-3 million war chest, mostly from developers. He said those figures were approximately the same in the environmentalists' successful campaign to pass a toxics initiative in 1988.

Contacts: Richard Ford, Growth Strategies Commission, (206) 623-7580.

David Bricklin, Washington Environmental Council, (206) 621-8868.

COURT CASES

General Plan May Be Changed to Conform With Zoning, Court Says

Cities have the discretion to reconcile inconsistencies between the zoning ordinance and the general plan by changing the general plan to match the zoning, the Fourth District Court of Appeal has ruled.

"We do not wish to be understood as saying that a general plan can be made to conform to a zoning ordinance in order to achieve consistency between the two," wrote Acting Presiding Judge Thomas J. Hollenherst for a unanimous three-judge panel. "Quite the opposite is true. However, it is equally true that the law specifically contemplates amendments even as to the mandatory elements of a general plan as often as four times a year (and even more often in certain circumstances) to accommodate rapidly evolving and changing land-use needs. Thus, a city's general plan may well prove to be a moving target where the aim is consistency between that plan and various zoning ordinances."

As evidence of its reluctance to set a broad legal precedent, the court at first did not publish the opinion in *La Quinta Dunes v. City of La Quinta*. But at the request of 101 California cities who filed an *amicus curiae* brief, the case was later published.

The case involved a city, La Quinta, which inherited Riverside

County's zoning ordinance when it incorporated in 1982. After La Quinta passed its general plan in 1985, a parcel owned by La Quinta Dunes was permitted under the planning designation for high-density residential development. Under the inherited county zoning ordinance, however, the property was still zoned for low-density residential. Dunes then asked the city for a development permit on an apartment building — an action that would have included a rezoning.

When the proposed zone change met public opposition, however, the La Quinta City Council postponed a decision and ordered a re-examination of all high-density general plan classifications. Dunes sued, and Superior Court Judge Noah Ned Jamin ordered the city to change the zoning on the Dunes property and prohibited the city from changing the general plan designation.

The appellate court appeared reluctant to draw broad legal conclusions given this fact situation. Nevertheless, the court rejected Dunes' argument on appeal.

The full text of La Quinta Dunes v. City of La Quinta, No. E005606, appeared in the Los Angeles Daily Journal Appellate Report on July 10, beginning on page 7655.

Lack of Notice Violated Landowners Rights, 9th Circuit Rules

A federal appeals court has invalidated a Riverside County General Plan change because the property owner was not notified of the change before it was taken.

The Ninth U.S. Circuit Court of Appeals ruled that the rezoning of Steven J. Harris's property in the Coachella Valley violated Harris's procedural due process rights. Harris had been operating an all-terrain-vehicle rental business on his property, which was rezoned from commercial to residential use, and would have had to pay a fee of \$2,400-\$3,000 to apply for a change in the General Plan designation back to commercial. The appellate court cautioned, however, that the facts of the case were so unusual that the ruling should not be construed to require individual notice to all property owners affected by general zoning changes. (Thoughtful case, the court referred to the change in general-plan designation as a "zone change.") The Ninth Circuit also declined to review a lower court ruling that Harris's claim of a "taking" of property was not ripe for judicial review.

Harris had a long history of feuding with the county over the all-terrain-vehicle business. Shortly after he opened his business in 1984, the county told Harris he needed to file a plot plan in order to receive permission to operate his business. After investigation, Harris claimed the county regulations did not apply to his property. In 1986, the county arrested Harris on criminal misdemeanor charges of using more than 200 square feet of outside storage space and parking all-terrain-vehicles without an enclosure.

In December of 1985, Harris's property was redesignated for residential use, partly at the request of a neighboring developer. This change occurred as part of a broader General Plan Amendment. Harris then filed a lawsuit against the county *in pro per* — that is, without a lawyer. Eventually obtaining counsel, he alleged a taking of property without compensation under both the Fifth and Fourteenth Amendments and the federal civil-rights act, and he also alleged that his due process rights had been violated. In 1988, U.S. District Court Judge Mariana R. Pfaelzer issued summary judgment in favor of the county, essentially giving the county a legal victory without calling for a trial.

On appeal, the Ninth Circuit found that Harris's due process

rights had been violated because he had not been notified of the change in General Plan designation, and he could not regain commercial use of his property without paying an application fee of at least \$2,400.

"It is certainly debatable whether Harris was entitled to rent ATVs on his land and whether the county would have granted him a conditional use permit for this purpose had he applied for one," the court wrote. "By changing the zoning (General Plan) designation on the land, however, one thing was certain: Any commercial use to which the land could legally be put was precluded until Harris paid a substantial nonrefundable fee to apply to have his previous zoning designation reinstated. Moreover, Harris offered evidence that the land is unsuitable for residential use due to strong winds and other harsh environmental conditions that exist on the land for 120 days out of the year. Arguably, then, to make any use of his land, Harris must pay a substantial nonrefundable fee."

Writing for a three-judge panel of the Ninth Circuit, Judge Robert Boochever drew an analogy between this case and a line of car-towing cases striking down the required payment of towing and storage charges in order to recover the car.

Boochever went on to say that since Harris's ATV operation gave him a "protected property interest," he was entitled to procedural due process before the county changed the General Plan designation. And since the county did not notify Harris specifically about the change in the General Plan designation, Boochever wrote, the county violated his procedural due process rights.

In seeking a broader General Plan Amendment, the county circulated a general notice telling people how to find out more about the specific changes the amendment included. In response to that general notice, one neighboring developer wrote and proposed a change in the General Plan designation on Harris's property. The county did not send a notice specifically to Harris, however, telling him about the proposed General Plan Amendment.

The full text of Harris v. County of Riverside, No. 88-6498, appeared in the Los Angeles Daily Journal Appellate Report on June 1, beginning on page 6000.



Central City West: Tail Wags Dog

At first glance, the proposal for Central City West in downtown Los Angeles looks like a rape of the planning process. A small group of affluent developers decides to transform a barrio immediately west of downtown into a high-rise office center. The developers pay for their own land-use plan, which is quickly rubber-stamped by City Hall. Then they build traffic improvements that turn the area into marketable downtown-style real estate. And finally they build 25 million square feet of office space — virtually an entirely new downtown. Everybody gets rich. End of story. It's Chinatown, Jake.

But wait. Champions of Central City West say the proposal, which covers 325 acres west of the Harbor Freeway — and west of the traditional boundary for downtown — is far from an assault on sound public policy. In fact, they say, the plan may represent the next step in the evolution of land-use politics in California. Developers have negotiated face-to-face with residents and are willing to reach deeply into their pockets — not only for traffic mitigation, but for social amenities like housing and open space.

If the plan succeeds both in commercial and social terms, the experience at Central City West may demonstrate that the public sector "can tap the energy of the private sector" (to quote Los Angeles Planning Director Ken Topping) to advance planning processes more more quickly — and maybe more effectively — than bureaucrats. So much for redevelopment!

Who's right? Is Central City West a breakthrough in urban planning or a subversion of the planning process itself? Have the developers simply commandeered planning for their own purposes? In other words, is the tail wagging the dog? The answer depends partly on the integrity of the process itself (which holds some promise, based on the Central City West experience) and partly on how Central City West actually plays out in the years ahead.

The Central City West Specific Plan appears to be more than a token effort at "mitigating negative impacts." The developers, known collectively as Central City West Associates, have agreed to substantial exactions, including \$16,500 — the highest in the city — for each automobile trip generated by projects and up to \$15 a square foot on new construction for fees both to replace existing housing and provide another 10,000 units in the specific plan area. Also, the developers plan to tax themselves, using the mechanism of a Mello-Roos district, to pay for \$350 million in traffic improvements, to build new freeway ramps and widen streets. (Contingency planning seems unclear, however, if costs run over budget.)

Although the plan is far from approved, the proposal already has friends in high places, including onetime critic Gloria Molina, the city council member who represents the area, and Planning Director Ken Topping, who has described Central City West as "integral part of an emerging Greater Downtown." Meanwhile, a number of Los Angeles property owners and developers, who contemplate similar large-scale plans, are watching closely.

Land is the attraction of Central City West for developers, With sites becoming more dear east of the freeway, the area's abundant parcels — including the 11-acre Unocal site, the Star of India among downtown land assemblages — have become more tantalizing. Local conditions, however, thwart high-rise development. The west side of the freeway is largely lacking in off-ramps, while surface streets are narrow and discontinuous. What's more, the area is currently a low-income, mostly Hispanic residential neighborhood.

The process began three years ago when a group of key landowners formed Central City West Associates and went to Topping with a proposal for traffic improvements. Topping instead encouraged CCWA to pursue a specific plan privately. By organizing and paying for the specific plan themselves, CCWA's members leapfrogged ahead of dozens of other districts in the planning process.

But from the beginning, Molina made it clear that she did want another large-scale displacement of working-class Hispanics, such as had been seen in Bunker Hill of the 1960s (to make room for downtown office buildings) and in Chavez Ravine during the 1950s (to make room for Dodger Stadium). Molina's office organized a neighborhood group to meet with the developers on housing and traffic issues. Ultimately, the developers agreed to boost the area's housing stock by 235%. They also accepted downzoning from 42 million square feet of commercial space to 25 million square feet. New construction would be phased in over 20 years in four stages; a future steering committee would determine whether Central City West had the traffic infrastructure to support new development.

But if developers made some big concessions, they also enjoyed some big advantages over competitors on the other side of the freeway. Such as parking.

The CCW plan offers developers a generous onsite parking ratio of 1.7 parking spaces for every 1,000 square feet of floor area in office buildings. That's three times more onsite parking than developers are permitted across the freeway in the Central Business District. CCW advocates say it's only fair to let developers there have more parking, since they have poor access to transit and they're spending hundreds of millions of dollars on traffic improvements. But downtown developers cried foul. They gave up parking — a chief marketing tool to attract tenants — to promote ride sharing and mass transit. Why, they asked, should new buildings only a stone's throw away have a market advantage?

The parking fracas illuminates a larger problem with Central City West. The plan runs counter to the interests of regional planning. Rather than funneling development into areas with adequate infrastructure, the CCW process permits developers to choose where they want to build and then import planning and infrastructure after the fact. In other words, the tail is wagging the dog.

As a result of the fragmented planning system, two entirely separate entitlement systems are at work, respectively, in Central City West and the Central Business District. Property owners in the rival areas are subject not only to different parking ratios, but also different development fees, different transit taxes, and different costs of selling air rights. Says a dissident planning consultant: "Nobody is looking at the overall picture and saying, 'Is this fair?'"

Not all the blame lies with the Central City West developers. Los Angeles has long since been carved into fiefdoms by councilmen, the redevelopment agency, and development interests. Somehow, those fiefdoms must be phased out if some kind of comprehensive planning can take place.

Still, Central City West has been an intriguing — if not fully tested — experiment in public-private cooperation. As CCWA consultant Clif Allen points out, the public sector was able to sit at the bargaining table from the beginning, "instead of being in a defensive or reactive position." And the developers who took charge of the process succeeded in drafting a plan and winning approval within two years (assuming, of course, that the city council votes yes for a Greater Downtown.) A public agency would have required 10 years to do a comparable job, claims CCWA's executive director, David Grannis. It may well turn out that the "rent-a-planner" approach was proper, since otherwise the area would have remained low on the public priority list even while it was ravaged by land speculation.

Even if this effort remains troubling, the process created by Central City West still holds promise. The new public-private process may work better still if the planners decide beforehand who is the dog and who is the tail.

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