CALIFORNIA PLANNING & DEVELOPMENT REPORT

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Real Estate Downturn May Help, Hinder Plans

California's real estate development bubble has burst.

The volume of new construction has dropped precipitously from the heights of the mid-1980s, plunging the development industry into a deep recession. According to the Construction Industry Research Board, new private development in the state dropped 46% in 1990. In particular, residential construction dropped quickly during 1990 and now stands at its lowest point since the recession of 1982. Housing starts in most of the biggest homebuilding markets — Inland Empire, Los Angeles, Orange County, San Diego — fell off by 35-50% in 1990. And many of the state's leading developers, including the Irvine Co., the Santa Margarita Co., and Newhall Land & Farming Co., have laid off approximately 10-15% of their staff.

It remains to be seen, however, what impact the dropoff in development will have on slow-growth politics throughout the state, or on the fiscal health of communities that have come to depend on impact fees and other revenue from new development. Local planners around the state say that a slowdown creates the opportunity to work more thoughtfully on planning issues without the intense pressure — and political friction — that comes with a hot market. On the other hand, the slowdown may mean that cities and counties will forget about growth issues and concentrate on other things instead. "If things slow down, the pressure's off and you can avoid a lot of knee-jerk solutions," says

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Court Favors Developers In Two Important Cases

In the two most significant land-use cases heard in recent years, the California Supreme Court has invalidated a Walnut Creek growth-control initiative and struck down an environmentalist challenge to a Santa Barbara-area beachfront hotel.

In *Lesher v. Walnut Creek*, S012604, the Supreme Court ruled that Walnut Creek's Measure H was invalid because it was inconsistent with the city's general plan. Though the case involved the unusual question of whether Measure H was a general plan amendment even though it was not labelled as such, it may give more ammunition to building industry opponents of "ballot-box zoning," who have repeatedly tried to use the inconsistency argument in attempts to overturn land-use initiatives.

In *Citizens of Goleta Valley v. Board of Supervisors*, S013629, the court ruled that in the case of a proposed hotel, Santa Barbara County's environmental impact report did not have to include discussion of alternative sites not owned by the property owner. The court stopped short of creating an iron-clad rule saying that alternative sites never need to be considered in EIRs on private projects. Rather, the court said, "there may be cases involving proposed development of an alternative site is necessary and proper."

The two cases suggest a new, more hard-nosed attitude toward land-use cases on the part of the Supreme Court, now dominated by Deukmejian-era appointees. In particular, the rulings strongly reflect the viewpoints of Justice Armand Arabian,

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INSIDE

Washington Governor Proposes Growth Management Legislation

Despite the overwhelming defeat of a growth initiative on the November ballot, Gov. Booth Gardner of Washington has introduced tougher growth management legislation for next year.

In mid-December, Gardner proposed legislation that would give the state a more specific oversight role and establish an appeals board to resolve planning disputes between the state and local governments. He also proposed that the state withhold funds from localities that do not comply with the planning rules. The legislation would beef up a bill passed in 1990 that establishes a California-style system — requiring local governments to engage in planning, but providing little state oversight. The new bill closely follows the recommendations of Gardner's Growth Strategies Commission, which issued a report last July.

Initiative 547 would have required Washington's local governments, like those in Oregon and Florida, to conform to statewide planning goals. Two regional growth commissions would have been established to review plans. (CP&DR, August 1990.) However, the measure was defeated by a 3-to-1 ratio on the November ballot.

In leading opposition to the initiative, Gardner promised that he would introduce new growth legislation in 1991 and even lead another initiative drive if the legislature did not pass his legislation. In introducing his new bill he said he was keeping his promise to environmentalists. The growth-management bill was part of a larger environmental package that also include tougher air-quality standards, restrictions on wood-burning stoves, and a 5-cent-per-barrel tax on crude oil.

Last year, the Washington state legislature passed the state's first growth bill. At the time, legislative leaders were still waiting for the recommendations of Gardner's Growth Strategies Commission, with the expectation that those recommendations would be introduced as legislation in 1991. When the commission's report came out in July, it recommended that the state establish growth goals but give local governments some leeway in meeting those goals.

The state legislation and the commission report were not enough to dissuade Washington's environmentalists from mounting a petition drive for Initiative 547. Environmentalist leaders said they did not believe a good growth bill could pass the state legislature. That was why Gardner's promise to lead another initiative campaign so instrumental in defeating Initiative 547. The governor was trying to undercut the environmentalist campaign by assuring voters that growth issues would be dealt with, one way or another, in 1991.

In his new bill, Gardner proposed expanding on the state planning goals established in last year's legislation. The actions of both state agencies and local governments would have to conform to those goals. Unlike Initiative 547, Gardner's bill would presume that local plans are in compliance with state goals.

Gardner also proposed the creation of a state appeals board to resolve three different types of disputes: those between local governments and the state; those between neighboring local governments; and those between a local government and any interested third party that has been involved in drawing up local plans.

According to Richard Ford, chairman of the Growth Strategies Commission, the commission had recommended that such disputes be referred to an arbitrator. With that exception, however, Ford said the bill was "a good interpretation of our recommendations," and maintained the commission's goal of maximizing local control within a state framework. This is a major contrast to Initiative 547, which would have given the state far more power.

The initial reaction among environmentalists was positive, but Ford said he predicts an ongoing dispute between environmentalists and the governor's forces over the question of how much power the state should take away from local governments.

As far as the bill's chances in the legislature next year, opponents of growth management are expected to point to Initiative 547's overwhelming defeat as evidence that Washingtonians don't want a tougher bill. However, Gardner's commitment to leading an initiative drive may serve as a countervailing force in the legislative debate.

NATIONAL BRIEFS

Maryland Considers State Growth Control

A governor's task force in Maryland has proposed giving the state government extensive land-use control in order to protect the Chesapeake Bay.

Under the proposal delivered by the Governor's Commission on Growth in the Chesapeake Bay Region, all localities in Maryland would have to submit plans to a state agency, which would measure the plans against state goals.

Under the commission's proposal, densities in growing areas would be increased, construction would be banned on sensitive land, and development in farmland areas would be limited to one house per 20 acres.

Anticipating local opposition, Gov. William Donald Schaefer said the proposal wouldn't intrude on local powers but, rather, "help them organize some of their growth."

First World Urban Standard Rates High

American cities rank high in "urban living standards," according to the Population Crisis Committee, a Washington-based organization dedication to limits on population growth.

Melbourne was ranked No. 1, followed by Montreal, Seattle, Atlanta, the German metropolis of Essen-Dortmund-Duisburg, and the bi-national Detroit-Windsor area. Rankings were based on such criteria as murders per 100,000 people, food cost, living space, housing standards, telephones per 100 people, public health, traffic flow, and clean air.

The Bay Area ranked 13th, between the Japanese cities of Osaka and Tokyo. Los Angeles ranked 29th, in between London and Milan. San Diego and Tijuana, combined like Detroit and Windsor as one metropolitan area for the purposes of this study, was ranked 37th, in between Barcelona and Warsaw.

The Population Crisis Committee tried to point out the correlation between low population growth and high urban living standards. However, the libertarian-oriented Orange County *Register* was unable to resist comparing the PCC's index to relative levels of individual freedoms, noting that Ho Chi Minh City rated low even though its growth rate was below that of Seattle.

Wetlands Tops Concerns of Builders

Wetlands again ranks No. 1 as a "critical issue" in the development community, according to a recent survey from the National Association of Home Builders.

However, infrastructure finance ranked No. 2, up from No. 6 last year. Also in the top ten: construction financing, impact fees, development costs, affordable housing, workers' compensation, slow-growth attitudes, property taxes, and the development approval process.

BRIEFS

Pleasanton Mulls S. F. Development Proposal

The City of San Francisco has proposed building 3,000 luxury homes and a commercial center on land it owns in the City of Pleasanton.

San Francisco bought a 525-acre parcel in Pleasanton 60 years ago. Rather than sell it at a price approaching $50 million, Mayor Art Agnos hopes to enter into a joint venture with a private developer. San Francisco officials estimate that the project, which will be oriented around a golf course, will reap $6-8 million a year for the city.

Pleasanton city officials are said to be pleased with the proposal, though housing advocates have criticized San Francisco for not pursuing a higher-density project on the site.

Sacramento Project Redesigned for Transit

Sacramento's city planners have forced developers of a major business park to make several site-planning changes in order to improve the pedestrian- and transit-orientation of the project.

After meeting with city officials, Coca-Cola Co. and Raley's Supermarkets agreed to rearrange their North Natomas site so that their office complex will be close to the Sacramento light-rail line, while warehouses will be further away. Transit officials are planning to run a line through the site to the Arco Arena.

Coke and Raley's will build the site as a regional distribution center. Some members of the city council were critical of Mayor Anne Rudin for taking the step, especially since the route of the rail line has not been finalized.

Hollywood Project to Get $48 Million Subsidy

Los Angeles city officials have proposed a $48-million subsidy for the Melvin Simon Co.'s Hollywood Promenade project — the long-delayed cornerstone of Hollywood's billion-dollar redevelopment plan.

Though the Hollywood redevelopment plan has moved slowly for many reasons — including legal challenges from small merchants — the Promenade delay has been a high-profile embarrassment for the L.A. Community Redevelopment Agency. At 1.1 million square feet, it would essentially be a shopping mall/entertainment center, combining retail uses with a hotel, restaurants, nightclubs, and two movie museums, all wrapping around the Chinese Theater on Hollywood Boulevard.

Other landowners and developers have said they will not take a risk on Hollywood unless the Promenade project moves forward, but Simon, the nation's largest shopping-center developer, has been unable to obtain financing.

Under the proposed deal, the CRA would contribute $4 million a year to the project's revenues. In exchange, the agency would receive 25% of the project's operating profit. The deal must be approved by the L.A. City Council.

Art for Art's Sake

Roseville officials were pleased that developer Angelo Tsakopoulos donated a large red sculpture called "Cosmos" as part of his Olympus Point project. Until they discovered that Tsakopoulos will recoup the sculpture's million-dollar cost through a Mello-Roos district.

Like all of the business park's physical infrastructure — sewers, roads, sidewalks, etc. — the cost of the sculpture was fronted by Tsakopoulos and his fellow developers. They will recoup the money from a $12 million Mello-Roos bond issue approved by Roseville city officials in November. The bonds will be paid off by taxes from landowners within the business park.

Tsakopoulos claims, however, that the sculpture is still a gift because he discounts the price of land in an amount equal to the Mello-Roos debt.

Preservationists End Santa Cruz Fight

Historic preservation groups have surrendered in their fight to save the St. George Hotel in downtown Santa Cruz from demolition.

Preservationists fought for a year after the October 1989 Loma Prieta earthquake to keep the hotel from being razed. It was one of the largest and most significant structures on the Pacific Garden Mall in downtown Santa Cruz. (*CP&DR*, May 1990; *Deals* column, October 1990).

Preservationists had argued that an environmental impact report should be prepared before the hotel was razed. However, a local judge ruled against them and the Sixth District Court of Appeal declined to hear the case.

Thousand Oaks Settles Price of Land

After several years of litigation, the City of Thousand Oaks has agreed to pay $17.9 million for a 22-acre parcel of land for a civic center and revitalization project. But the project still faces opposition.

The settlement with the owner of the former Jungleland amusement park site ends a long condemnation. The city hopes to use the civic center to revitalize the area.

Thousand Oaks has contracted with Lowe Development Co. to lease the rest of the site for private development. Local opponents have been threatening a ballot initiative to stop the civic center project.

Roundup

Continuing its fight for approval, **Catellus Development Co. has agreed** to lower the amount of office space and build housing sooner in the Mission Bay project....Despite a successful year, **the Oakland Coliseum winds up in the red** because of $4 million spent pursuing the Raiders football team....**Lancaster Mayor William Pursley acknowledges** that he introduced an easement change that helped his business partner's property interests....In a return to pre-Prop. 13 ways, **San Francisco assigns a planner** to work in the Mission District....**Gene Autry's Melody Ranch** in Santa Clarita is sold to a film production company, which promises to produce movies, not subdivisions.

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SPECIAL REPORT: HARD TIMES IN REAL ESTATE

Real Estate Downturn May Help Planning or Hinder It

Impact on Planning

Though the volume of building has dropped sharply, city officials in fast-growing areas of the state report that their planning work has fallen only slightly. "There are a lot of landowners that are stuck with the land who are mapping lots right now," says Tim McGowan, a land broker with Grubb & Ellis in San Diego County who works with many landowner/developers. "They figure, 'What the hell, let's go ahead and get them ready'."

In the City of San Diego, Assistant Planning Director George Arimes confirms that planning activity is off by only 10-15%. "There's generally a lag," says Arimes, who survived boom-and-bust periods as a planner in Austin, Texas. "Building permits are the first to go. If they see a downturn, developers generally continue to plan." If the downturn continues, developers are likely to slow their land planning activities as well.

Many planning experts say that the real estate downturn is a welcome relief after the go-go real estate market of the '80s. In theory, the slow market should take the edge off of the slow-growth fervor that swept California during the 1980s. According to land-use researcher Madelyn Glickfeld, a real estate downturn usually leads to a drop in the number of growth-control measures. But, Glickfeld says, typically there's a three-year time lag between the two. Therefore, slow-growth fervor may continue for a while, especially if land developers continue to plan large projects even though little construction is occurring.

A bigger question is whether developers, slow-growthers, and local politicians will use the slowdown as an opportunity to engage in meaningful planning efforts together. "The shopping center developers and residential subdivision developers aren't hammering on City Hall doors to get their permits approved," says Lawrence Mintier, a Sacramento general plan consultant. "In that kind of situation they're more willing to ride out the general plan program as opposed to trying to force their application through."

Instead of being patient, however, some communities may move in the other direction — changing their plans quickly to solicit growth because they need it to survive. "The other side of the coin," says Al Bell of The Planning Center in Newport Beach, "is there's a different kind of pressure for communities which are very dependent on growth and development for their fiscal health. There's sometimes an increasing internal pressure to get on with it and make things happen." The result is sometimes a loosening of development standards.

Fearful of putting the damper on new construction, the council has changed its mind, putting the fees on hold while more studies are done. Ron Roberts, chairman of the Transportation and Land Use Committee, said his colleagues "don't want to be responsible for a recession." Even Linda Bernhardt, elected to the council on a slow-growth platform, voted to delay implementation of the fees.

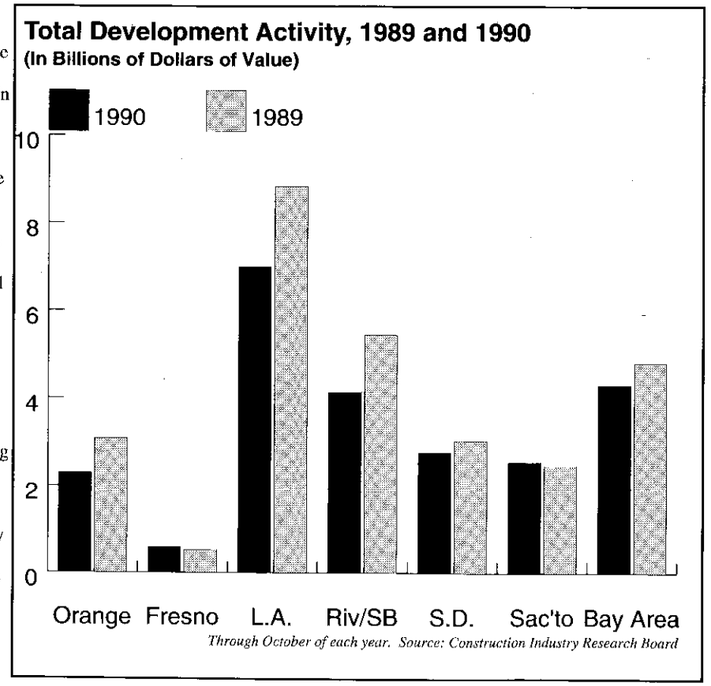
The council also rejected a staff proposal to make it more difficult to build in currently undeveloped areas — the "future urbanizing area" set aside under the Pete Wilson-era growth management plan.

In general, development in the 12,000-acre undeveloped area in the northern part of the city is limited to one unit per 10 acres. Under certain conditions, however, developers may build cluster developments at one unit per four acres. With 15 development proposals being made for two-thirds of the land, the planning staff recommended jettisoning the four-acre option as a way of buying time while a comprehensive plan for the area is developed.

The council declined to take the step, though it did impose other conditions, such as a 20% affordable housing requirement. Staff planner Bob Brocadoce said that, among other things, council members felt that "changing the rules in the middle of the game" would be unfair to landowners who waited many years to develop their property.

But slow-growthers say that this move, like the move on impact fees, indicates that the council will not be willing to grapple with growth issues during the real estate downturn.

Buoyed by their recent defeat of building-industry ballot measures, the slow-growthers are now threatening to bring their own initiative to deal with growth. Such an initiative would provide an important test of the public's interest in growth control at a time when most developers can't get a loan.



The Case of San Diego

A good test case regarding the planning responses to the development slowdown may be coming in the City of San Diego, which was a hotbed of slow-growth sentiment throughout the 1980s. As recently as last summer, city officials were moving ahead full-throttle with a growth-management policy that the building industry didn't like. In October, the city council voted to impose a broad schedule of new fees on development as the first step.

Since that time, however, things have changed. "They've essentially turned their back on it," complains Linda Michael, a Sierra Club activist.

SPECIAL REPORT: HARD TIMES IN REAL ESTATE

Real Estate Downturn May Help Planning or Hinder It

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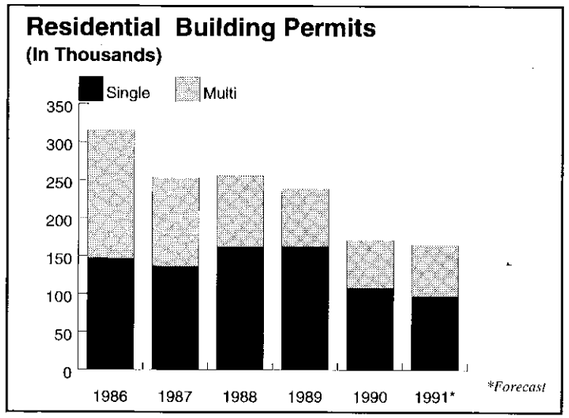
San Diego City Architect Michael Stepner. "But the hard part is convincing decision-makers that it's time to really take a good look at what your plans are doing and try to develop solutions, but not under pressure."

Even if planning issues recede into the background during the development downturn, economists say California will continue growing during the 1990s at close to the breakneck pace of the 1980s. Stephen Levy, director of the Continuing Center for the Study of the California Economy in Palo Alto, sees no major change in the state's growth dynamics over the next decade. "Nineteen ninety-one could go anywhere in the sense that permit levels and job creation levels can vary dramatically from the long-term trend for a year," he says. "But the California economy looks to be (expanding by) about 300,000 jobs per year and between 500,000 and 600,000 folks per year. Ninety-one looks like the low year, and not the beginning of a decline."

Because California's underlying economy remains strong — especially compared to the rest of the country — many real estate experts are predicting that the state's real estate recession will be short.



"The conventional wisdom ... is that the state will pop up quickly about the middle of 1991 or so and go on growing into the next century," reported real estate economist Michael Sumichrast of Arthur Andersen Co. in a recent issue of his newsletter, *Real Estate Perspectives*.

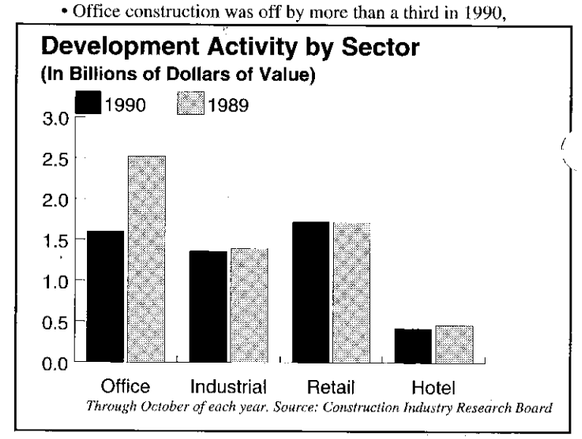
To a great extent, the current downturn in real estate development has been caused by the so-called "credit crunch" — the unwillingness of financial institutions to loan money on real estate projects. With real estate values dropping, vacancy rates still high, and the savings-and-loan debacle still fresh in everyone's mind, developers say real estate has become a "suspect category" for lenders, no matter what the merits of the project. "The U.S. commercial banks are out of the real estate business," says Sacramento developer Peter McKuen, who is subsisting on Asian and European money these days. Indeed, a recent survey of developers by the International Conference of Shopping Centers found 19% of their lenders refused to renew or extend their loans, and a quarter had stopped making shopping center loans altogether.

For this reason, loans may be hard to come by over the next few years even when real estate projects are justified by market demand. Thus, in the early '90s, California may be characterized by a growing population and economy — but very little real estate development, relatively speaking.

Bursting the Bubble

Fueled by the state's continuing growth and an influx of investment capital from Japanese investors and savings and loans, California developers enjoyed an long and unparalleled "party" during the 1980s. But the party is clearly over. According to the Burbank-based Construction Industry Research Board:

- Overall, the volume of new development in the state dropped 46% during the first 10 months of 1990, from $50 billion through October of 1989 to only $27 billion at the end of October 1990.
- The state will wind up with only 171,000 housing starts (single-family and multifamily) in 1990. That's a 28% decrease from the 1989 total of 237,000, and a drop of almost 46% from the decade's high of 314,000 units in 1986.
- In 1991, single-family home construction will fall below the 100,000 mark for the first time since 1982. Though multifamily construction fell off sharply after the Tax Reform Act of 1986 was passed, single-family construction continued to grow until 1989, when it reached a high of 162,000 units.
- Office construction was off by more than a third in 1990, totalling only about $1.6 billion through October, compared with $2.5 billion through October of 1989.
- Industrial development in 1990 ran at almost the same level as 1989, but it was dramatically redistributed around the state. Industrial construction in Southern California was off 18% through October of 1990, while the Central Valley and the East Bay showed significant gains.



Anecdotal evidence from around the state confirms the research board's figures. Officials in Folsom, near Sacramento, reported a 90% drop in building permits from August to September. The Antelope Valley home market, one of the state's hottest throughout the '80s, is said to be virtually dead. In Rancho Cucamonga, also one of the state's fast-growing areas during the last decade, the volume of building permits has fell by half in 1990 — from $332 million through November of 1989 to only $151 million through November of 1990. Land developers say they cannot sell their finished lots to homebuilders because the homebuilders cannot get loans on the land. As a result, brokers say that the price of finished lots in Rancho California, near Riverside, has fallen from around $80,000 to around $55,000 since last year.

COURT CASES

Court Upholds Denial of El Dorado Gold-Mining Permit

The Third District Court of Appeal has upheld an El Dorado County decision to deny a gold-mining permit on environmental grounds. In a split decision, the court agreed to environmentalists' request to have the case published.

In Oro Fino Gold Mining Corp. v. County of El Dorado, a three-judge panel concluded that there was substantial evidence that the Oro Fino mining operation may have a significant environmental impact. For that reason, the court affirmed El Dorado County Judge Hilary Cook's decision not to set aside the county's denial of Oro Fino's permit.

The case began in 1987, when Oro Fino asked for a special-use permit to do exploratory mining in the Big Canyon Creek area near Placerville. Four years before, the county had granted a similar permit — subject to 37 conditions — to the Gold Fields Mining Corp. The El Dorado County Planning Department recommended approval of the Oro Fino permit, subject to a set of conditions similar to the Gold Fields conditions, as part of a mitigated negative declaration under the California Environmental Quality Act. However, both the county planning commission and the Board of Supervisors rejected the staff's recommendation and called for an EIR.

On appeal, Oro Fino made two arguments. First, the mining company said that under the legal doctrine of collateral estoppel, the county and the Motherlode Alliance, an environmental group, were prohibited from litigating the issues in the case because of the Motherlode Alliance's unsuccessful attempt to use similar issues to stop the Gold Fields permit in 1984. Second, Oro claimed that there was no fair argument that the company's project — as mitigated by the county staff's proposal — may have a significant environmental impact.

But the Court of Appeal ruled against Oro on both issues. First, the court distinguished the facts of Oro's projects from those of Gold Fields — pointing out, in particular, that Oro would drill closer to fast-growing residential areas. And second, the court found that even with mitigations, Oro's project may have a significant environmental impact — a precondition under CEQA for the preparation of an EIR. In particular, the court pointed to complaints of noise during the Gold Fields project.

Justice Rodney Davis wrote that although Oro Fino downplayed the noise issue by saying county officials were not aware of problems when the Gold Fields project was in progress, neighboring residents did make noise complaints at the time. "The public's concern about Oro's project therefore was not merely subjective speculation," he added.

At first the court did not publish the Oro Fino case. However, the Motherlode Alliance requested publication. The Alliance said the case was of broader interest because mining conflicts were arising frequently in the foothills and also because it was the first Third District case to cite *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296 (1988), which questioned the use of mitigated negative declarations. The court then ordered the case to be published over the objection of Justice Arthur G. Scotland.

The full text of Oro Fino Gold Mining Corp. v. County of El Dorado, C007190, appeared in the Los Angeles Daily Journal Daily Appellate Report on November 20, beginning on page 12945.

Elderly Couple's Taking Claim Is Unripe, Appellate Court Says

Fifteen years after beginning their efforts to develop a one-acre parcel of land, a retired couple has lost an inverse condemnation suit brought against the City and County of San Francisco.

Ernest and Alice Smith had accused the city government of pursuing a "secret scheme" to keep them from developing their property, located on a wooded hillside with an ocean view. Though they agreed to sell part of the lot to the city for $307,000 as the result of an eminent domain action, they continued to press the inverse condemnation case regarding the rest of the parcel. But the First District Court of Appeal in San Francisco found that the inverse condemnation claim — among others — was not ripe for judicial review.

"The allegations do not show the city has in any manner rendered the lots permanently 'unbuildable'," wrote Justice John E. Benson for the three-judge appellate panel. "They merely indicate that the city has applied its land-use regulations pursuant to its police powers, and that the property has not yet been developed because of an apparent dispute over setback and other requirements."

The Smiths alleged that while they were in the midst of planning a small development, the city designated their property for open-space use only. After a series of other maneuvers, the city agreed to buy half the land for $307,000 and — according to the Smiths — declared the rest of the property unbuildable because of setback requirements. After many amended complaints in court, Superior Court Judge Stuart R. Pollak ruled in favor of the city.

On the inverse condemnation action, the Court of Appeal said the city had made no "final determination" regarding the Smiths' property. Noting that the Smiths say they have been unable to develop their property because of technical objections to the lot descriptions and setback requirements, Benson wrote. "(T)he dispute over lot descriptions and setback requirements indicates the situation remains in flux and the permitted use of the property has not been finally decided. The cross-complaint does not state a ripe claim for a regulatory taking."

The court also found no merit in a variety of related claims, including unreasonable condemnation activities, promissory estoppel, breach of implied covenant, and the breach of a special relationship.

The full text of City and County of San Francisco v. Smith, AO46622, appeared in the Los Angeles Daily Journal Daily Appellate Report on November 16, beginning on page 12861.

Fremont Nightspot Owner's Civil Rights Claim Rejected

The Ninth U.S. Circuit Court of Appeals has rejected a Fremont business owner's claim that the city violated his civil rights by failing to amend a conditional-use permit.

The dispute began in 1986, when Samuel Conti moved his Stargaze nightspot from one part of the city to another. At his former location, Conti had a conditional-use permit allowing him to admit people between the ages of 18 and 21 to his premises, although they could not drink. (According to the Ninth Circuit, Stargaze's patrons were mostly members of racial minority groups.) The existing use permit in his new location, however, prohibited the admission of people under age 21.

Conti claimed that before he moved, city officials assured him that the use permit would be amended. Prior to city action, Conti opened Stargaze to the public and did not enforce the age restrictions. Neighboring homeowners complained of traffic, crowd, and vandalism problems and the city council denied Conti's request to change age restrictions.

Writing for a three-judge panel of the Ninth Circuit, Judge Thomas Tang said that given the city's experience during the four nights Stargaze was open, "the city's decision thereafter to deny Conti a variance from the age restrictions was at least logical and not irrational." The Ninth Circuit also rejected a taking claim, saying the age restriction did not deny him an economically viable use of the new location.

The full text of Conti v. City of Fremont, 88-15781, appeared in the Los Angeles Daily Journal on November 29, beginning on page 13387.

COURT CASES

State Supreme Court Rules for Landowners in Two Important Cases

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who wrote the *Goleta* decision and was active in questioning during both oral arguments. As recently as 1988, in *Laurel Heights Improvement Association v. Regents of the University of California*, 47 Cal.3d 376, the court showed a more deferential attitude toward government agencies in land-use matters.

The *Lesher* ruling did not definitively resolve the enduring conflict between local initiatives and state planning law, as many legal experts hoped it would. Nevertheless, it punched a hole in the argument that local initiatives are unencumbered by state law.

In passing Measure H in 1985, argued lawyers for *Contra Costa Times* newspaper publisher Dean Lesher, the voters of Walnut Creek created an inconsistent general plan, which is not permitted under state planning law. The initiative restricted development if traffic congestion at certain intersections would result, and Lesher's lawyers argued that these limitations on development were inconsistent with the general plan's broad policies encouraging growth and seeking to make Walnut Creek a regional center. (For the complete background on the *Lesher* case and the *Goleta* case, see *CP&DR*, February 1990.)

Under the state constitution, local initiatives are supposed to be free of procedural entanglements; but under state planning law, local planning efforts are supposed to follow a detailed set of procedures. The First District Court of Appeal ruled that because Measure H was an expression of the public's will, the city had no choice but to treat it as a general plan amendment (even though it was not labelled as such) and revise the general plan in accordance with it (*Lesher Communications Inc. v. City of Walnut Creek*, 217 Cal.App.3d 187 (1989)). This, in fact, is what Walnut Creek did after the legal challenge was filed.

But the Supreme Court overturned the appellate ruling. Writing for a six-judge majority, Justice David N. Eagleson specifically rejected the opportunity to address the broad question of whether state planning law pre-empts local initiative powers. Measure H, he said, was not a general plan amendment but a kind of zoning ordinance because of its "self-executing" provisions. For this reason, he said, Measure H's passage did not create a titanic legal battle between a general plan adopted under state planning procedures and a general plan amendment passed via initiative; rather, it simply enacted a zoning ordinance in violation of the general plan. "The Planning and Zoning Law itself precludes consideration of a zoning ordinance which conflicts with a general plan as a *pro tanto* repeal or implied amendment of the general plan," he wrote. "The general plan stands. A zoning ordinances that is inconsistent with the general plan is invalid when passed."

The lone dissenting vote in the case came from Justice Stanley Mosk, a longtime champion of initiative and referendum powers. Mosk argued that the case was moot because, just prior to the Court of Appeal's ruling in 1989, Walnut Creek amended its general plan to bring it into conformance with Measure H. He also castigated his fellow justices for "the undemocratic tenor" of the decision, which he said "runs athwart the will of the citizens of Walnut Creek."

The *Goleta* case involves a longstanding battle by Hyatt Hotels to build a beachfront hotel in Goleta, near Santa Barbara. Buoyed by the Supreme Court's ruling in *Laurel Heights*, which concluded environmental impact reports must consider alternative locations for projects proposed by public agencies, Santa Barbara environmentalists argued that alternative-sites analysis should be required in the case of large private projects such as the Hyatt Hotel. In two rulings (commonly known as *Goleta I* and *Goleta II*), the Court of Appeal agreed.

But the Supreme Court did not. Writing for a unanimous court, Arabian concluded that Santa Barbara County correctly rejected alternative sites for the Hyatt without first-hand research because all but one were "infeasible" because Hyatt was unlikely to be able to purchase any of them. Santa Barbara environmentalists had argued that these alternative sites should be considered feasible even if Hyatt didn't own them, saying that the California Environmental Quality Act is designed to protect the public, not landowners. But the Supreme Court ruled that a broad-based discussion of which locations are suitable for large projects belongs to the planning process, not to the environmental review process. "The county's general plan and local coastal program address the very issues which Citizens of the Goleta Valley claims should have been addressed in the Hyatt EIR," Arabian wrote for the court.

However, the ruling was not a complete victory for landowners. Arabian noted that "there may be cases involving proposed development by a private entity in which the consideration of alternative sites is necessary and proper," as when a project proponent owns alternative sites, has "the ability to purchase or lease such properties," or otherwise has "access" to "suitable alternatives."

Because the Lesher and Goleta cases were handed down on Dec. 31, after CP&DR's normal deadline, our coverage this month is incomplete. Coverage of these two important cases will continue next month.

Religious Institutions Cause Land-Use Disputes in Bay Area

Land-use controversies involving religious institutions has erupted in two parts of the Bay Area.

In Marin County, a Jewish congregation plans to appeal a judge's decision to overturn the county's approval of a use permit for the synagogue.

And in the southern part of the Bay Area, environmentalists are opposing the Roman Catholic Church's plans to build a luxury housing development in the pristine foothills of Cupertino.

Neighboring citizens in Lucas Valley filed suit in 1989 to close Chabad of the North Bay, a Hasidic synagogue. The neighbors complained that the temple is noisy and creates traffic problems. According to the *San Francisco Chronicle*, the controversy has divided the Jewish community in the Bay Area. Chabad recently placed an advertisement in a Jewish newspaper characterizing the neighborhood as anti-Semitic, and neighborhood residents who are Jewish objected. Marin County Superior Court Judge William Stephens overturned the county's decision to grant Chabad a use permit. Chabad officials say they will appeal, claiming the congregation's First Amendment rights have been violated.

The controversy over development in Cupertino arose when the Roman Catholic Church announced plans to use the former St. Joseph's Seminary property for private development. Claiming that the Diocese of San Jose has few assets other than its real estate, church officials say they must development properties like the St. Joseph's land in order to fund programs for the poor. The diocese could make as much as $80 million from its development plan, which calls for construction of about 300 million-dollar homes.

But Santa Clara County environmentalists claim the 200-acre parcel should be developed less intensely — perhaps with a golf course or a smaller development that leaves more open space. The land is adjacent to the popular Rancho San Antonio Park and is therefore heavily used by county residents.

DEALS

Where, Oh Where, Will the Giants Play Next Year?

People who believe that the ballot box is a good way to build sports stadiums should probably cross the street if they see Bob Lurie coming the other way. In November, the owner of the San Francisco Giants baseball team watched the defeat of the third straight ballot measure in the Bay Area designed to build a new baseball stadium for his franchise.

But what really happened on election night in Santa Clara County was a rejection of taxes, not baseball. The Giants enjoy wide support in the Bay area. A host of other factors threw a curve into this election: bad timing, resentment of sports franchises, economic uncertainty, anger with government, and disgust with the endless initiatives on the California ballot. But taxes, more than anything else, killed the stadium in a close election. More specifically, stadium supporters proved to be politically maladroit in selecting an unpopular form of taxation — a utility users' tax — in order to finance the stadium.

The defeat is probably exasperating to Giants owner Lurie, who demonstrated his commitment to the Bay Area in 1976 by buying the Giants just before they were about to relocate to Toronto. Lurie has little commitment, however, to Candlestick Park, the current home of the Giants. Chilly and windswept, the park is believed to discourage sports fans from attending games. An inner-city location probably does not warm Giants fans, either.

In the mid 1980s, Lurie decided that he wanted a new stadium and that he wanted voters in the City and County of San Francisco to pay for it. In 1986, Dianne Feinstein, in fact, lobbied — and won — the right to use tax-free municipal bonds for the express purpose of building a baseball stadium for the Giants, even though such bonds were largely phased out by tax reform. The following year, Feinstein sponsored an initiative for a new stadium at Seventh and Townsend, in a corner of the Mission Bay redevelopment project; the proposal was defeated at the polls. In 1989, Feinstein's successor, Art Agnos, proposed a stadium-arena complex in Mission Bay, with the ballpark to be located in China Basin and a baseketball-hockey arena at the Townsend site. This time, the package lost by only one percentage point. With the election coming only three weeks after the Loma Prieta earthquake, some voters may have viewed the ballpark as a needless extravagance. (The majority of election-day voters actually approved the measure, but a large absentee ballot killed it.)

Disenchanted with San Francisco, Luried let himself by lured by the siren song of redevelopment agencies in search of money-making projects. In June 1990, Lurie said he was willing to relocate to Santa Clara, a city of 60,000, if the city could provide a stadium of up to 45,000 seats and a 15,000-space parking lot. "It was a short time frame to get to the voters," acknowledged Tom Goulding, Santa Clara assistant city manager.

To transform the San Francisco franchise into the Santa Clara Giants, the city formed a Joint Powers Authority with the county and four neighboring cities — Milpitas, Sunnyvale, San Jose and Mountain View — with the idea of forming an assessment district that would finance the ballpark. Other Santa Clara cities, including Cupertino, Palo Alto, Los Gatos and Saratoga opted out, making the map of the assessment district resemble a piece of Swiss cheese.

The proposed $153 million stadium was to stand on 148 acres, (mostly former landfill) near the southern tip of San Francisco Bay. The project would require upgrading an already bumper-to-bumper Highway 237 from a six-lane expressway to six-lane freeway.

Members of the JPA debated a variety of funding mechanisms, including revenue bonds, a sales-tax increase, a conventional mortgage repaid from gate proceeds, and the sale of shares to season ticket holders. A major sticking point in stadium finances was that the sorts venue could expect only light attendance (20,000 or so fans per game) and wasn't likely to throw off enough cash to pay off either a mortgage or a revenue bond. The JPA also dismissed an added sales tax as politically sensitive. In the end, the combined cities chose a 1% utility tax, in the belief that the utility tax would be politically the most acceptable, since 70% of the burden will fall on business.

Campaigning was low key. Supports of the stadium raised about $350,000, which was too little for a media blitz. Instead, the proponents obtained celebrity endorsements. In the last few weeks before the election, a campaign manager from Detroit and a staff of 30 made 14,000 phone calls. Campaign slogans included: "If We Build It, They Will Come!!!" and "Ballpark = Job$." Among the benefits promised to voters were $88 million in unspecified economic spillover.

Big business, however, hated the stadium. Opponents include the powerful Santa Clara County Manufacturers' Group, whose members include Lockheed, Hewlett-Packard, Pacific Bell, and the San Jose *Mercury News*. "Not one member wanted to support it," said John Hassell, chairman of the Santa Clara Chamber of Commerce and a member of the trade group. Thus, the manufacturers of Silicon Valley stood by silently while Lurie's Folly wheeled slowly to defeat. "We didn't lift a finger," said Hassell.

Altogether, the organized opposition raised little more than $3,000, according to Lorne Smythe, treasurer of Citizens Against the Stadium, who publicized his personal opposition to the stadium mega-project at gooths in trade shows and educational fairs.

Political support for the stadium was lukewarm. The Santa Clara Chamber of Commerce sat on the fence, endorsing Measure N to authorize a stadium while opposing Measure G, the tax initiative. San Jose Mayor Tom McEnery said he would vote for the stadium, but he would not campaign for it. San Jose mayoral candidate Frank Fiscalini also endorsed the stadium but not the tax.

In the end, the City of Santa Clara, which had seen the most active opposition to the stadium, approved local Measure N by 51%-49%; all the other cities defeated separate initiatives to authorize the stadium.

"It was an anti-tax electorate," said Santa Clara Chamber's Hassell, who pointed out that Congress had enacted a gas tax shortly before election as part of the budget debacle.

But then again, there may have been more to the defeat of the Santa Clara stadium than tax rebellion. After all, California voters approved Propositions 108 and 111 only five months before. Californians have proven that they are willing to tax themselves if the initiative promises to solve problems or improve the quality of life.

But Santa Clara County voters appeared unwilling to tax themselves for the purpose of baseball or boosterism alone. Instead, the election simply highlighted the fact that the hucksterism of Raiders owner Al Davis has soured Bay Area residents on the notion of subsidizing stadiums. Even Raider fans have probably had a bellyful of Davis's attempts to shake down Los Angeles, Oakland, and Irwindale. And politicians wary of endorsing the stadium may have been thinking about the fate of longtime Oakland mayor Lionel Wilson, who was resoundingly defeated after supporting a $600 million package to lure the Raiders back. California voters might be willing to lend the money to build stadiums — in the form of revenue bonds — but they won't act as angels on behalf of rich sports franchises that won't assume any risk themselves.

Still, nobody needs to shed tears for Bob Lurie, who is likely to get a stadium eventually. San Jose Mayor-elect Susan Hammer has promised to make some kind of offer to Lurie, while rumors point to renewed efforts in both Santa Clara and San Francisco. If the ballot box failed Lurie, his commitment to the Bay Area may win him the kind of support that Al Davis lost by threatening to move so many times. Nice guys don't win ball games. Nice owners, however, may sometimes win stadiums.

Morris Newman