CALIFORNIA PLANNING & DEVELOPMENT REPORT

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Drought Spurs Interest In 'Offsets' for Water

The California drought has sparked widespread interest in so-called "offset" or "retrofit" programs, which require developers to find ways to save water elsewhere in a community to make up for increased water use by their projects. Indeed, only few communities have imposed moratoria on new water hook-ups and many, especially in Southern California, are hoping that offset programs will stave off the need for a total ban on hook-ups.

Offset requirements have been used for several years in water-starved Central Coast cities such as Morro Bay, San Luis Obispo, and Santa Barbara, where developers have installed low-flow toilets in public and private buildings to meet the requirement. However, when the Metropolitan Water District announced a 50% cutback to urban Southern California in March, many cities and local water districts began pursuing offset programs.

In the most significant development, the building industry and the San Diego County Water Authority have agreed on a mandatory countywide offset/retrofit program, which will last at least for the duration of the drought. Santa Monica has imposed an offset requirement, and Los Angeles Mayor Tom Bradley has proposed an offset program as an alternative to a cutback in water hookups. Some offset programs require developers to find their own water savings; others require developers to pay a fee to the city or water district, which then does the retrofits; and still others give developers a choice.

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Carolina Beach Law Upheld in Taking Case

The South Carolina Supreme Court has upheld a restrictive beachfront protection law against two "takings" challenges — overturning, in one case a $1.2 million award to a beachfront property owner who cannot build under the law.

In the first ruling, *Lucas v. Coastal Council*, the court ruled that property owner David Lucas was not entitled to $1.2 million in compensation, as a trial judge had ruled, even though he has been unable to build on his property because of the Beachfront Management Act. In the second ruling, *Beard v. Coastal Council*, the court overturned a trial judge's "takings" ruling in favor of property owners who were denied permission to build a wooden sea wall in front of their properties near Myrtle Beach. Under the U.S. Constitution and case law, a landowner's property has been "taken" — and he is entitled to compensation — if regulation has robbed him of all economically viable use of his property.

In both cases, the state Supreme Court upheld the proposition that if a landowner acknowledges that the regulation serves a legitimate public interest, than a taking has not occurred.

The *Lucas* ruling appears likely to stand because Lucas does not plan to appeal the decision to the U.S. Supreme Court. He may soon obtain a special permit to construct a smaller home, which are allowed under 1990 amendments to the beachfront law. But Lucas's lawyer says the property owner may not be able to build because banks are still

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INSIDE

BRIEFS

Fresno Tax-Sharing Agreement Reached

The City and County of Fresno have finally signed a tax-sharing agreement, ending a long stalemate over annexations that had nearly paralyzed development in the area.

Under the deal, the county will receive more sales and property taxes in newly annexed areas, and also more sales tax in redevelopment areas. The city and county also agreed that most development would not occur in the San Joaquin River bottom and that the city would annex those areas where development is imminent. The county also promised to pay the city $1.5 million before the end of this fiscal year, though the payment is dependent on the city paying the county $4 million in jail booking fees and other costs.

The settlement clears the way for 37 pending annexations and will likely clear up four lawsuits. The dispute between in the fall of 1987, when the county cancelled existing tax-sharing agreements because of the money it was losing to annexations. (See *CP&DR Special Report: Annexation and Development*, August 1989.)

Wilson, Lujan Enter Bob Hope Land Dispute

Interior Secretary Manuel Lujan has come out in favor of a controversial land swap between the National Park Service and entertainer Bob Hope, while Governor Pete Wilson appears to be inching toward support.

Hope and the Santa Monica Mountains Conservancy are working on a swap that would trade 59 acres of federal property for 863 acres of Hope's 2,300-acre ranch, which would become part of the Santa Monica Mountains National Recreation Area. Many local environmentalists oppose the deal because the 59-acre parcel would provide access for a controversial development on another piece of land owned by Hope. The environmentalists say the concept of trading away federal land to permit development could set a bad precedent.

On March 7, Wilson attended a negotiation meeting among all the parties involved, and subsequently said he supported the concept of a swap but not necessarily the Hope deal. Just a few days later, Lujan stepped into the fray, calling the deal "an innovative partnership I find personally attractive."

New Law Kills Sacramento Projects

Three proposed projects have already been killed or scaled down because of the City of Sacramento's new rules governing the height of buildings near the State Capitol.

Under the new ordinance, buildings within a half-block of the Capitol can be no taller than 135 feet. The height limit then steps back to 358 feet two blocks away. (*CP&DR*, March 1991.)

A spokesman for developers Richard and Joseph Benvenuti said the project will likely kill their plans for a 32-story skyscraper near the Capitol, which would have to be cut in half. A companion 14-story building would have to be dropped by four stories.

Meanwhile, the project was also reported to have killed Christofer Co.'s 19-story office building, which would have had to be reduced to only 10 stories.

The ordinance was put in effect for one year while the city monitors its impact.

Sylmar Neighborhood Seeks Buyout

Residents of a 40-acre neighborhood in Los Angeles's Sylmar district say they've lost their "rural" lifestyle — and so they are trying to sell out to a shopping-center developer.

Located in the northern San Fernando Valley, Sylmar is known as the city's most rural area. But population grew by 30% during the 1980s, making it the fastest-growing section of Los Angeles. The disgruntled residents say they can no longer ride their horses down the street or back their cattle trailers out of their driveways. Many want to sell their property and retire elsewhere.

A group of 58 residents has asked the Community Plan Advisory Committee to consider permitting a shopping center on the site. Neighborhood buy-outs have been proposed rapidly changing older suburbs around cities such as Washington, Dallas, and Atlanta, but this appears to be the first proposed in California.

Riverside Mayor Rejects College Proposal

Riverside Mayor Terry Frizzel has vetoed a development plan on Riverside Community College land, mostly because of community opposition to apartments.

Long Beach-based IDM Corp. was planning to construct a $250 million project with office, retail, and residential components on the land. The college would receive a share of the profits in a long-term ground lease.

The city council approved the project by a 4-3 vote in spite of angry neighbors who opposed the 600-unit apartment complex. Frizzel, who was elected on a slow-growth platform, said she was reluctant to use the veto and hoped that her action would stimulate a compromise.

Santee Trolley Route Approved

Transit officials in San Diego have approved the Santee trolley extension after an eight-year fight.

The $84 million project, which will extend the trolley line from El Cajon 3.6 miles north to Santee, has been opposed by a variety of El Cajon interests who see at-grade crossings as disruptive.

Roundup

The L.A. City Council **approves a 1% fee** on new development projects for public art projects....Kern County finally gives in and **joins the proposed eight-county Central Valley air quality district**....Ed Avila, an aide to L.A. Mayor Tom Bradley, is named **interim administrator of the Community Redevelopment Agency**....The **Audubon Society sues Riverside County**, challenging the boundaries of the Stephens' kangaroo rat study area.

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REDEVELOPMENT

Redevelopment Plan Rejected in Dana Point; Torrance Projected OKd

Redevelopment projects continue to take their lumps, especially in suburban Southern California cities, where resistance to such projects is high.

In the two-year-old city of Dana Point, the city council abandoned a large redevelopment plan when local residents and merchants both complained. And in Torrance, a downtown redevelopment project was approved after considerable public debate.

The Dana Point City Council killed its own redevelopment project on February 27, after a series of stormy public meetings. The city had targeted several areas for redevelopment, including the Capistrano Beach "bowl," an older commercial area, and two residential neighborhoods.

As has occurred in other Orange County cities, however, local merchants and residents quickly mobilized in opposition to the redevelopment project. Both groups said they feared the eminent domain powers that redevelopment often brings, and some residents said they were simply offended at the idea that the areas where they live would be declared "blighted" under redevelopment law. As one resident told the Los Angeles Times: "We thought we bought into the California dream. Now we find out we live in a blighted area, we live in a slum."

Public opposition to redevelopment projects has grown measurably since the mid-'80s, especially in Orange County, because of fears about eminent domain. In 1987, large redevelopment projects died in both Anaheim and Huntington Beach after bitter fights between residents and city officials. (CP&DR, September 1987.) In Dana Point, the city's decision to drop redevelopment came after a community rally drew 350 people in opposition to the project.

Torrance has several existing redevelopment areas, but that did not stop a considerable amount of public controversy over a downtown project proposed by the Sam Levy Investment Partnership and Gascon Mar Ltd. The proposal called for 179 condominiums, 28,000 square feet of retail space and more than 500 parking spaces on a 3.5-acre parcel in the old downtown Torrance area.

In early February, the Torrance Planning Commission voted 6-0 to reject the project, calling it too large and dense for the area. Downtown merchants and neighborhood residents opposed the project, fearing that it would destroy the small-town flavor of the downtown. One resident criticized the architecture as "looking like Santa Monica."

A month later, however, the city council overturned the planning commission's ruling, voting 6-0 in favor of the $35 million project. The vote came after a nasty public hearing during which one member of the city council alleged that a leading critic of the project had been trying to sell his property to the developers.

Drought Sparks Interest in Water 'Offset' Requirements

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Heavy rain in late February and March brought total rainfall close to normal in some parts of the state. But California's water supplies are still low from four previous drought years. In March, Governor Pete Wilson asked local communities to prepare conservation plans to cut water use in half. Most cities and water districts responded by imposing restrictions on current water users instead of cutting off new development. However, moratoria have been imposed in several communities, including the Marin Municipal Water District north of San Francisco and the Elsinore Valley Water District, which serves a fast-growing area of western Riverside County.

Many communities have also suspended landscaping standards for new development projects during the drought. Such actions may serve as a precursor to the more stringent landscaping standards required next year under a new state law.

Central Coast

With no imported water, the Central Coast has been living under drought-like restrictions longer than the rest of the state. Under the direction of the Coastal Commission, Morro Bay — widely publicized as "the driest place in the state" — imposed an offset requirement on developers in 1985. The cities of San Luis Obispo and Santa Barbara soon followed. However, in some communities, offset programs have now given way to moratoria.

Morro Bay's program originally required a two-to-one offset, meaning developers had to conserve twice as much water as their project was likely to use. According to city official Marcie Laurent, this requirement usually meant developers had to replace toilets in 12 to 15 houses in order to gain enough water savings to build one new home. As the requirement was implemented, plumbing contractors went into the business of brokering these retrofits — accumulating a waiting list of residents who wanted low-flow toilets and then contracting with developers to do the work.

In 1988, Morro Bay amended its program, requiring a 1.5:1 savings but lowering the estimated savings gained from each replaced toilet. This change effectively increased the requirement to about 20 homes retrofitted for each new home built.

Laurent says the program worked well: "We weren't pumping anything more out of the ground than we were in 1984." However, as time went on, it became more difficult to find houses to retrofit. By 1990, half of Morro Bay's 5,000 houses had been retrofitted and the city imposed a full moratorium on new water hookups, which is still in effect.

The neighboring city of San Luis Obispo has a similar program, requiring a 2:1 offset for new development. As in Morro Bay, the San Luis Obispo program has generated a thriving sub-speciality among plumbing contractors who broker the retrofits.

In Santa Barbara, both the city and the county have had retrofit programs since the mid-80s. In 1986 — before the drought began — the City of Santa Barbara passed a development policy based on water use. According to City Planner Donald Olson, the policy had two components. Commercial projects were approved only if they could show no new water use, meaning they had to retrofit or find other water savings on-site. Residential programs were subject to a permit allocation system based on the availability of water.

When drought conditions became severe, however, the city imposed stricter requirements. Residential projects are now required to meet a 2:1 offset requirement (which may be fulfilled by retrofitting off-site facilities), while commercial projects must meet a 3:1 requirement. (New swimming pools were also prohibited.) Developers may meet the offset requirement by paying a $200 fee for each toilet that must be retrofitted. The city then uses the funds

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BY THE NUMBERS

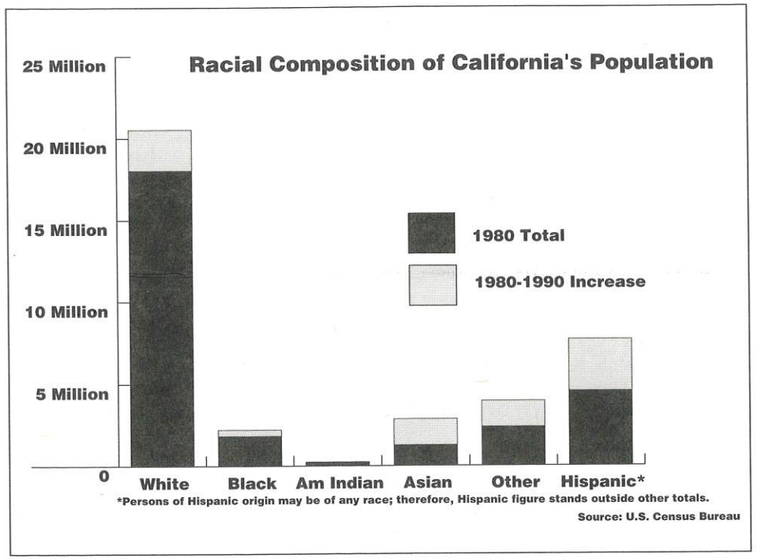
State's Racial Mix Changed Dramatically During 1980s

The racial composition of both California and the nation has changed dramatically in the last 10 years, according to new 1990 census figures released by the Census Bureau.

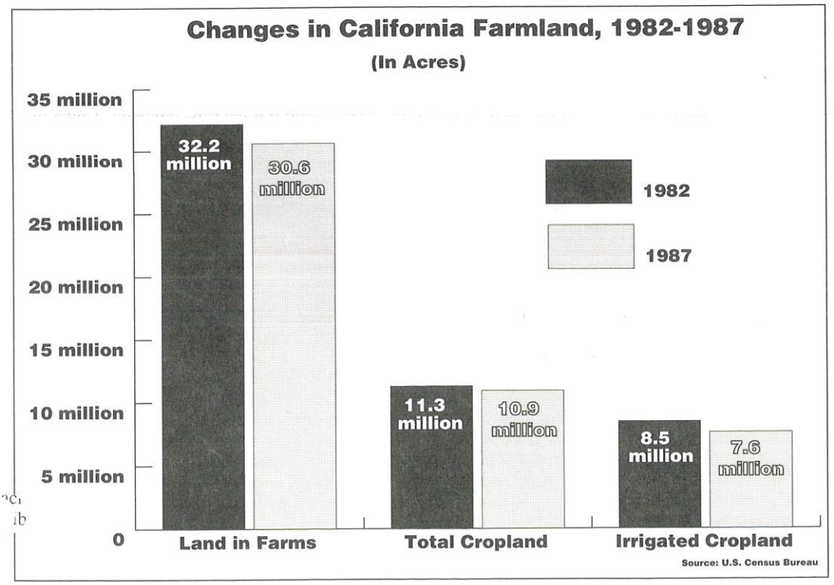
In California, more than half of the state's 6 million new residents during the 1980s were either Asian or Hispanic. Whites still remain the predominant racial group, with 69% of the population, but that figure is down from 76.2% in 1980. Asians grew from 5.3% of the state's population in 1980 to 9.6% in 1990, surpassing the black population, which remained more or less constant at 7.4%.

Hispanics now account for 25.8% of the state's population, up from 19.2% in 1980. The Census Bureau does not classify Hispanics as members of a separate race, resulting in a complete overlap between the Hispanic numbers and the figures for other races.

Nationally, the white population dropped from 83% to 80% of the total population in 1980s. The black population remains constant at about 12%. But, as in California, Hispanic and Asian numbers grew dramatically. The Hispanic population grew from 6.4% to 9%, while the Asian population grew from 1.5% to 2.9%.



California Losing Agricultural Land Twice as Fast as Rest of Nation



California is losing farmland twice as fast as the United States as a whole, according to new figures from the Census Bureau.

According to the most recent Census of Agriculture, total California land in farms dropped 4.9% from 1982 to 1987 — from 32.1 million acres to 30.6 million acres — compared to just 2.3% for the nation as a whole.

Total cropland in California dropped 3.2%, from 11.2 million acres to 10.9 million acres, compared with a 4.6% drop nationally. The most dramatic change came in irrigated cropland. In California, irrigated land showed a 10.2% drop — from 8.5 million acres to 7.6 million acres — though irrigated cropland nationwide dropped only 5.3%.

California agriculture is far more dependent on irrigated land than the rest of the country. Irrigated land makes up 70% of all California cropland, compared with only about 10.4% of the nation's total cropland.

Burbank, San Benito Voters Reject Growth Control Proposals

Voters in Burbank and in San Benito County defeated growth control measures in special elections recently, while voters in Southern California continued their incorporation spree by creating three new cities.

Despite mounting public protest over growth — especially in the so-called Media District, where many entertainment companies are located — Burbank residents rejected three measures to restrict growth.

The most restrictive of the three was also the least popular. Measure A, which would have restricted the city to 250 multifamily units and 350,000 square feet of commercial and industrial space per year, was rejected by 77%-23%. Measure B, which would have imposed height limits of three to 10 stories in various parts of the city, was defeated by 66%-34%. And Measure C, which would have prohibited the sale of school and park land to private developers, lost by 58%-42%.

In San Benito County, south of San Jose, voters rejected two ballot measures that would have restricted growth to 3.2% per year. Measure M, which would have imposed the growth restriction countywide, received only 41.3% of the vote. Measure L, which would have imposed the growth restriction only in the City of Hollister, fared slightly better but still lost, receiving only 44.6% of the vote.

On the cityhood front, the long-awaited incorporation vote in Calabasas won easily, while residents in south Orange County voted to create two new cities.

The Calabasas cityhood effort had been controversial because of a lengthy dispute between cityhood advocates and the Los Angeles County Board of Supervisors, which has opposed many incorporation efforts throughout the county. Calabasas becomes L.A. County's 88th incorporated city.

In Orange County, voters approved cityhood in Laguna Hills and El Toro. However, El Toro voters chose to name their new city Lake Forest, the name of one of the developments in the area, presumably to create a separate identity from the El Toro Marine base. Running a poor third in the name sweepstakes was Rancho Canada, the name of the original Mexican land grant in the area. Orange County now has 31 incorporated cities.

Drought Sparks Interest in Water 'Offset' Requirements

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to retrofit a waiting list of projects including large apartment buildings. However, Olson said, most developers choose to do the retrofitting themselves because it is cheaper — especially if the developer owns an apartment building or commercial project that can yield large savings.

Santa Barbara County has not imposed offset requirements, but development in certain parts of the county must not cause any net increase in extractions from local groundwater basins. Off-site retrofits are acceptable, but on-site retrofits are preferred because they are easier to monitor, according to county planner Tom Utterback.

Contacts: Marcie Laurent, City of Morro Bay, (805) 772-1214.
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Donald Olson, City of Santa Barbara, (805) 564-5470.
Tom Utterback, Santa Barbara County, (805) 568-2068

San Diego

San Diego has been the focus of media attention because of Mayor Maureen O'Connor's refusal to place the city on mandatory water rationing, even though the city overdrew its MWD allocation by 46% during the early part of the year. However, when the MWD cut back on water deliveries, the Construction Industry Federation — hoping to forestall more severe restrictions — proposed an offset plan, which now has the blessing of the San Diego County Water Authority.

Under the agreement, developers will pay the county water authority $662 for each house, and the authority will use the funds to retrofit low-flow toilets around the county. The offset program should make it unnecessary for local water districts to impose a 30% cut in new hookups, as the water authority had requested.

The fee is based on the CIF's calculation that retrofitting of 2.25 houses is required to free up enough water for one new house — a far cry from Morro Bay's required retrofit of 20 houses for each new home. This difference may be partly due to the fact that CIF is counting only indoor water use, not water used for landscaping. The Board of Supervisors has suspended requirements for turf and ground cover on new projects during the drought. "We'd be hard-pressed to support a total offset for interior and exterior," said CIF staffer John Seymour.

The offset program will not apply to projects that can prove no net increase in water use onsite, and important public buildings such as police or fire stations will be exempt. Seymour said CIF does not support a continuation of the offset program after the drought is over.

Contacts: John Seymour, CIF, (619) 587-0292
Bill Jacoby, County Water Authority, (619) 297-3218.

Metropolitan Los Angeles

In the state's largest urban area, the city of Santa Monica has imposed a tough offset requirement and the city of Los Angeles is considering one.

Santa Monica imposed a 2:1 offset requirement on new development in late March. Under the city's requirement, developers must pay a fee of $3 per gallon of daily use they must conserve (that's twice as many gallons as their project will use), which the city will use to fund an existing retrofit program. As an example, Craig Perkins of the city Public Works Department said that a 20,000-square-foot office building could be expected to use 2,000 gallons a day; therefore, the building must offset 4,000 gallons per day, meaning the developer would have to pay a fee of $12,000.

The offset program replaces a "zero net flow" requirement that the city had used previously to deal with sewage flow problems. Under that program, developers were responsible for retrofitting public and/or multi-family buildings on a 1:1 basis prior to construction.

In Los Angeles, Mayor Tom Bradley and the Department of Water and Power have been working on a similar, though more flexible, offset proposal. Bradley hopes the city council will choose his plan over a plan by Councilman Zev Yaroslavsky that would cut new water hook-ups.

According to Bradley aide John Stodder, the mayor's proposal will require developers to offset some, but not all, of the increased water use a new project needs. "We're not San Luis Obispo," Stodder said. "We don't think a 1:1 offset is justified." Developers could pay a fee to the city or do the work themselves. Bradley's aides say they hope that developers who own other properties — apartment buildings, for example — will decide they can do the work cheaply. Fee money would be used to retrofit public buildings and public housing projects.

Yaroslavsky's proposal would call for the city to cut water hook-ups by twice the percentage of the city's water conservation goal. Thus, for example, if the city council decided to cut overall water use by 10%, hook-ups would have to be cut by 20%.

Contacts: Craig Perkins, City of Santa Monica, (213) 458-8737.
John Stodder, L.A. mayor's office, (213) 485-6330.

COURT CASES

Carolina Beachfront Law Upheld Against Takings Challenge

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reluctant to make loans based on such permits.

Meanwhile, lawyers for the South Carolina Coastal Council, which administers the beachfront act, say they hope the two rulings — in combination with the 1990 amendments to the law — will encourage most plaintiffs to settle or drop their cases. The Coastal Council was inundated with lawsuits after Hurricane Hugo destroyed many beachfront buildings in 1989.

The 1988 beachfront law, which is designed mostly to address erosion issues, called on the Coastal Council to establish a baseline on each beach and prohibit construction on the seaward side of the baseline. The "dead zone" must end landward of the crest of the primary oceanfront dune by a distance of 20 feet or 40 times the annual erosion rate, whichever is greater. In 1990, the South Carolina legislature eliminated the dead zone and made several other changes.

Lucas was denied permission to build because, although he owns two lots on the Isle of Palms that are 160 feet deep, the lots are located in the dead zone. The 1989 trial court decision awarding him $1.2 million received considerable publicity because it was one of the largest compensation awards in a "taking by regulation" case since 1987, when the U.S. Supreme Court ruled that landowners who suffered economic losses from land-use regulations could receive such compensation. Also, the decision was handed down at the same time that Hurricane Hugo's destruction was prompting many new lawsuits. (*CP&DR*, November 1989.)

In a split decision on the appeal of Lucas v. Coastal Council, the ate Supreme Court relied heavily on longstanding legal doctrine egarding nuisance law. Lucas's lawyers conceded the legitimacy of governmental involvement in the erosion issue, but argued that because he was unable to build anything, his property had been taken without compensation even though a legitimate governmental interest was being served. But the court majority decided that Lucas's concession about a legitimate governmental interest pushed the case into the area of nuisance law. Relying heavily on the U.S. Supreme Court's ruling in *Keystone Bituminous Coal Association v. DeBenedictis*, 480 U.S. 470 (1987), the court applied the so-called "Mugler rule" — first laid down in the 1887 U.S. Supreme Court case of *Mugler v. Kansas* — that a regulation cannot be deemed a taking if it furthers "the health, morals, or safety of a community." The *Mugler* case dealt with the regulation of a public nuisance — a prohibition on manufacturing and selling liquor. Nuisance law is general regarded as a precursor to but not synonymous with modern land-use law.

Dissenters in the case and property-rights lawyers questioned the Supreme Court's decision that whenever the regulation serves a legitimate governmental interest, a taking cannot occur. "The question is whether a general appeal to the police power can prevent a taking," said Timothy Kassouni, a lawyer with the Sacramento-based Pacific Legal Foundation, a property rights firm that filed an amicus brief in the case.

Lucas's own lawyer, Ellison Smith, said he was "shocked" by the ruling. "Nobody argued nuisance in this case," he said.

Cotton Harness, the Coastal Council lawyer, said that Lucas and several other property owners in litigation with the state are in the process of receiving permits for smaller houses than they originally hoped to build — permits allowed by the 1990 amendments to the law. However, he said Lucas and others are receiving the permits because their beaches are "accreting" — adding sand — rather than eroding. However, Harness said he expects another legal battle in the future. "Sooner or later we will deny a permit" to a property owner on a beach that is eroding, and that will touch off a new round of lawsuits, he said.

In the Beard case, the Supreme Court relied heavily on their own ruling a month earlier in the Lucas case. This case also involved a lower court ruling that a taking had occurred. In this instance, property owners were denied permission to build a seawall 200 feet long along four beachfront lots. At first the property owners claimed they wanted the seawall for erosion control, but — according to the Supreme Court's account of the case — when the Coastal Council found that the beach was accreting rather than eroding, the Beards acknowledged that they wanted to use the sea wall to level off the property and make it more saleable.

As in the Lucas case, the Supreme Court didn't buy the landowners' argument that a taking could occur even if a legitimate public purpose was involved. "Protection against serious public harm justifies strict government regulation of the property, thereby prohibiting the finding that the property has been `taken'," the court wrote.

Contacts: Cotton Harness, lawyer for Coastal Council, (803) 744-5838.
Ellison Smith, lawyer for Lucas, (803) 577-6302.
Tim Kassouni, Pacific Legal Foundation, (916) 641-8888.

High Court Lets Controversial 9th Circuit Wetlands Ruling Stand

The U.S. Supreme Court has let stand a ruling from California that federal wetlands jurisdiction extends to private lands even when the wetlands are seasonal and were created by other governmental actions.

In refusing to take an appeal of the Ninth U.S. Circuit Court of Appeals ruling in *Leslie Salt Co. v. United States*, 896 F.Rptr. 354 (1990), the Supreme Court rejected the pleas of the mining, paper, timber, chemical, and cattle industries, which argued that their activities all over the West could be disrupted by the ruling.

In the *Leslie Salt* ruling, the Ninth Circuit concluded that Section 404 of the Clean Water Act, which gives the Army Corps of Engineers jurisdiction over development of wetlands, should be applied to a 153-cre parcel of land located a quarter-mile from the Newark Slough, a ibutary of San Francisco Bay.

The property includes several excavation pits, but a variety of human actions — including Leslie Salt's own plowing of the property to deal with dust, and construction by Caltrans — connected the pits to the Newark Slough and created ecological activity on the site. When Leslie Salt started digging in a ditch and siltation pond to drain the property, the Corps intervened with a cease-and-desist order. The Ninth Circuit ruled that "the fact that third parties, including the government, are responsible for flooding of Leslie's land is irrelevant. The Corps' jurisdiction does not depend on how the property at issue became a `water of the United States.' Congress intended to regulate local aquatic ecosystems regardless of their origin."

In their appeal to the U.S. Supreme Court, industry lobbying groups said that the Ninth Circuit ruling is "so broad as to subject vast additional areas of this country to Corps permitting requirements." The Justice Department argued that the case was not ripe for the U.S. Supreme Court to review because the Ninth Circuit had remanded it to the trial court.

COURT CASES

State Supreme Court Rules Against West Hollywood Condo Rules

Condominium converters don't have to abide by subsequent changes in conversion laws if they already have obtained a final map under the Subdivision Map Act and approval from the state Department of Real Estate, the California Supreme Court has ruled.

In handing down this ruling in *City of West Hollywood v. Beverly Towers Inc.*, the Supreme Court seemed to contradict part of its ruling in another condominium conversion case, *Santa Monica Pines Ltd. v. Rent Control Board*, 35 Cal.3d, 858 (1984).

In that case, the court ruled that a local ordinance requiring condo converters to receive a permit before taking rental units off the market was not pre-empted by the Subdivision Map Act. In *West Hollywood*, however, the Supreme Court — which has seen a significant change in membership since 1984 — said that the *Santa Monica Pines* case "attributes an inappropriately minor role to the Map Act as it relates to condominium conversion."

Writing for a five-justice majority, Justice Stanley Mosk said that a major purpose of the Subdivision Map Act is to protect condominium buyers from exploitation — even though the court in *Santa Monica Pines* said that this was not the case. "*Santa Monica Pines* should therefore not be followed insofar as it holds that a city may impose conditions on condominiums conversion after a developer has secured all the necessary discretionary approvals and satisfied all the requirements established by state law," Mosk wrote.

Despite the court's decision to overrule part of its own previous decision, Subdivision Map Act expert Daniel J. Curtin Jr. said the impact of the *West Hollywood* case is likely to be minimal. "All it says is, if you're doing a condominium conversion and you have a final map and DRE approval, you're home free," said Curtin, author of the Subdivision Map Act Manual.

The *West Hollywood* case arose after the city incorporated in 1984. Prior to incorporation, several apartment-building owners in the city, including Beverly Towers, had received permission from Los Angeles County to convert their buildings to condominiums. Before any of the Beverly Towers units were actually sold, however, West Hollywood imposed new regulations on condominium conversions and argued that the landowner had to abide by them, since a condominium conversion is not technically completed until the units are sold.

Relying on the Supreme Court's landmark 1976 decision in *Avco Community Developers Inc. v. South Coast Regional Commission*, 17 Cal.3d 785, the city contended that Beverly Towers did not not have a vested right to sell the units because the conversion was not complete. But the Supreme Court rejected this argument, pointing out that in the Avco case — unlike the *West Hollywood* case — the developer had not received all discretionary permits. (In that case, Avco still needed Coastal Commission approval.) In *West Hollywood*, though the units had not been sold, all governmental approvals had been secured. Mosk called the lack of sales "is a trivial factor that has no effect on the city's zoning and planning power."

In a dissent, Justice Allen Broussard, who will retire soon, called Mosk's decision a "flat contradiction of the vested rights doctrine which has been settled in this state for many years." Justice Joyce L. Kennard joined in Broussard's dissent.

Defending *Santa Monica Pines* and also relying on the *Avco* case, Broussard wrote: "Whether or not subdivision map approval is the last application process through which the state regulatory scheme requires the condominium developer (who plans to convert a building) to go, approval of the map should not bar the application of later chances in land use law unless the developer can demonstrate detrimental reliance on the map approval. The developer in this case has not even attempted to demonstrate such detrimental reliance....The majority silently erode the vested rights doctrine when they confer what can only be termed a vested right to develop without requiring any showing of detrimental reliance."

The full text of City of West Hollywood v. Beverly Towers Inc., No. S0011689, appeared in the Los Angeles Daily Journal Daily Appellate Report on March 5, beginning on page 2499.

EIR Not Needed for Street Closure, Court of Appeal Rules

The City of Encinitas doesn't have to prepare an environmental impact report in order to construct a barrier across part of one street, the Fourth District Court of Appeal has ruled. However, the court ruled, the city violated the Vehicle Code in closing the street and ordered the case to return to the trial level.

The lawsuit was filed by several residents of a parallel street who believed that the barrier would increase traffic in their neighborhood. However, the city concluded that this increased traffic did not represent a significant environmental impact, especially after mitigation measures were imposed, and therefore the Court of Appeal ruled in favor of the city's decision not to prepare an EIR.

The issue arose in 1987, when residents of Crest Drive in Encinitas complained to the city about traffic. Traffic consultants hired by the city found that 2,500 of the 3,500 vehicle trips along Crest Drive each day involved "through" traffic. The consultants recommended erecting a barrier to block through traffic in one direction on Crest, saying that while it would increase traffic on Lake Drive, a parallel street, that increased traffic did not represent a "significant" environmental impact. Under the California Environmental Quality Act, an EIR need not be prepared unless the potential exists for a significant environmental impact.

Residents of Lake Drive sued, saying that an EIR should have been prepared; that the street closure violated the local general plan; and that the barrier erected by the city — a traffic barrier with curbs — was not an "approved traffic control device" under the Vehicle Code. Superior Court Judge J. Morgan Lester ruled against the residents on all issues and they appealed.

On the question of an EIR, the Court of Appeal said: "Uncontradicted expert testimony supports the finding that the project's environmental impact would be insignificant," referring to traffic and noise studies conducted for the city. The court also claimed that the Lake Drive residents' opposition to the street closure "did not involve environmental concerns."

But the appellate court reversed Judge Lester on the Vehicle Code issue. Saying that the city's traffic barrier was not authorized by state law, the court said: "Placement of an approved road sign on a traffic barrier does not make the traffic barrier an approved traffic control device." The court said the city has the power to adopt different rules than the state, but had not done so at the time the lawsuit was filed.

The full text of Uhler v. City of Encinitas, D011126, appeared in the Los Angeles Daily Journal Daily Appellate Report on February 20, beginning on page 2009.

DEALS

Thousand Oaks's Civic Center Deal: Facing Up to Civilization

In William Faulkner's novel, *Requiem for a Nun*, a group of settlers in early 19th Century Mississippi decide to rebuild the local jail (it's been dismantled by the most recent set of prisoners). While they're at it, the settlers decide to build a courthouse as well, since a jail seems incomplete without one. When that is done, the settlers create a town around the buildings, since a civic center seems to justify cityhood. The locals watching the process, meanwhile, entertain doubts as to the advantages of creeping civilization.

The real-life city of Thousand Oaks, just west of the San Fernando Valley, bears little resemblance to the fictitious city of Jefferson, yet the two have some things in common. In both cases, the creation of a civic center is an event of symbolic importance in the life of the city; in both, local government is the primary promoter of construction. And in both, local residents seem resistant to the idea.

In Thousand Oaks, a proposed civic center has become the focus of a continuing debate over growth; already it has been the subject of three ballot drives to kill it. But the civic center debate in Thousand Oaks — as with many growth debates in California — is filled with ironies. One is that redevelopment, which was intended to remake the inner cities, has become a vehicle of growth in under-developed suburbs. Another is that local government has become an engine of growth in a community renowned for slow-growth sentiment.

Whether residents like it or not, Thousand Oaks is a growing city. Though voters imposed a cap on residential building permits in 1980, the city was the fastest-growing community in Ventura County in the '80s, increasing its population by 35%. And as the population has expanded, so has the government that serves it. City officials have moved out of their original asbestos-laden building into a makeshift city hall located in an office building. Now they want a new city hall.

Taking advantage of popular support for an arts complex, the city government decided in the mid-1980s to build a civic center. The 90,000-square-foot complex is to include a city hall, an arts center with two theaters, and a five-story parking structure. The site is a 22-acre former theme park called Jungleland, which the city recently acquired for $18 million after a lengthy condemnation.

According to the city council, the project can be funded largely — but not entirely — by funds generated from commercial development on the civic center site. To generate that income, the city turned to Lowe Development Co. of Los Angeles. Lowe then hired well-known New Mexico architect Antoine Predock to design the $63 million Civic Arts Plaza, containing a 229-room Embassy Suites Hotel, 200,000 square feet of office and retail space, a 2,000-seat movie complex, and two free-standing restaurants.

In all, Lowe is expected to provide the city with $490 million during the next 75 years in tax increment, ground lease rent, and bed tax. As an incentive for the developer to build the hotel on a less-than-optimal site, the city is offering a $2 million loan up front, to be repaid within six years of completion. In turn, the developer agreed to an extraordinary request by the city to set aside 40% of the budget for the commercial buildings in cash — about $17.7 million — and put it in an city-administered escrow account.

Citizens in many cities in California have resorted to initiatives and referenda, and Thousand Oaks followed suit. In 1988, a group of dissidents (described by a local developer as "a group of perpetually failed candidates for city office") circulated petitions for a vote on the Jungleland redevelopment. While supporters gathered enough signatures to qualify for the ballot, the city attorney advised the city council not to put the issue on the ballot; instead, he advised more public hearings to encourage community participation in the project.

The most recent petition drive, which ended late in February, attacked the project from a different angle: the proposed initiative would forbid the city from funding redevelopment projects with the sale proceeds of city assets. This would harm the civic center effort, because the city plans to sell two former city halls, a library, and a vacant lot to bridge the gap between Lowe's money and the total needed for the civic center. Again, the petition gatherers (who are rumored to have been hired by a disgruntled local homebuilder who was refused a favorable rezoning) gathered the requisite signatures. The city attorney says the referendum may be unconstitutional. In any event, the ballot question may be moot, since the city council chose not to schedule a special election on the question. The referendum is currently scheduled for the November 1992 ballot, when, as an official of Lowe Development noted, "the project will be two-thirds completed."

Somewhat echoing the sentiments contained in the second petition, slow-growth councilwoman Elois Zeanah says she supports the construction of a performing arts center but does not support the sale of public buildings to pay for it because "the city is liquidating its (real estate) assets at the bottom of the market." Zeanah claims the use of those proceeds toward redevelopment is inconsistent with city policy not to dip into the general fund for the project. "Proceeds from the sales of city properties are general-fund (money). I don't think the city is being honest. I think they are playing with words here," she says.

For Ed Johnduff, the city's project manager, the technical questions seem like a smokescreen for slow-growth sentiment. "Most of the controversy has to do with the fact that people think of the town as semi-rural," he says, and the underlying fear is that the city is on the path of denser development. The civic center, he says, represents "a change of character" for the community. Thousand Oaks residents "have this fear of San Fernando-ization," says Johnduff, referring to the rapid urbanization in the 1960s and '70s of the San Fernando Valley.

But he says the people of Thousand Oaks are going to have to get past their fears. "People think they are still in the country," he says. "We (in government) recognize that, in the future, that is not how people are going to live; we don't have that luxury any more."

The tension in Thousand Oaks between a city government bent on development and a local culture opposing it points out a growing tension in post-Prop 13 California. Many communities incorporate these days to get a handle on growth; recent examples in Southern California include Malibu, Calabasas, and Santa Clarita. Yet local governments, hurting for cash, are increasingly driven to find new sources of revenue — particularly commercial real estate. Cityhood takes on a political and economical momentum that is hard to predict or control. Those settlers in fictional Jefferson discovered as much when they sought to build a new jail. The settlers of Thousand Oaks may yet discover the same — if the commercial project they allowed to pay for a new civic center turns out to be a wild success

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