CP&DR
CALIFORNIA PLANNING & DEVELOPMENT REPORT
Vol. 9, No. 9 — September 1994

INSIDE

CP&DR
is published monthly by
Torf Fulton Associates
1275 Sunnycrest Avenue
Ventura, CA 93003-1212
805/642-7838

William Fulton,
Editor & Publisher

Morris Newman,
Senior Editor

Stephen Svete,
Elizabeth Schilling,
Contributing Editors

Allison Singer,
Circulation Manager

Subscription Price:
$199 per year

ISSN No. 0891-382X

We can also be accessed electronically on
NEWSNET
For online access information call 800/345-1301

Alameda County Plan Draws Fire From Livermore Ranchers

But Environmental Groups Endorse East Area Proposal

Alameda County's sweeping land-use plan for 400 square miles in the eastern part of the county has come under attack by farmers, some landowners, and the City of Livermore — all of whom have sued to try to block its implementation.

When it was passed last spring, the East County Area Plan was hailed by environmentalists and many urban developers as a visionary document. While permitting the area's population to double by 2010, the plan also establishes firm urban growth boundaries in most of the east county and creates 320-acre minimum parcel sizes in many agricultural areas. The plan also calls for a mitigation fee system on new development to finance the acquisition of open space.

The plan covers the entire eastern half of Alameda County, stretching from Hayward on the west to the San Joaquin County line on the east. Much of the controversy surrounding the plan involved development and preservation along the *Continued on page 9*

Disasters Bring New Life to L.A. CRA

Agency Considers New Areas for Earthquake, Riots

By William Fulton

Thanks to recent disasters, redevelopment is making a comeback in Los Angeles.

New redevelopment project areas are in the works all over the city as a result of the 1992 civil unrest and last January's Northridge-based earthquake. These two disasters could result in more than a dozen new project areas, encompassing virtually all of the City of L.A.'s 15 city council districts.

The first two post-riot redevelopment plans — for the Broadway-Manchester area and a portion of the Crenshaw district — are scheduled for L.A. City Council approval late this year. Moving even faster under the state's special post-disaster redevelopment law, the city's Community Redevelopment Agency is also drawing up plans for several earthquake-damaged areas and hopes to present those plans to the council by the end of October.

Both sets of project areas are designed with limited purposes in mind. The "recovery area zones," located mostly in South-Central Los Angeles, *Continued on page 10*

Oceanside Growth Limits Overturned by Appellate Court

In a landmark ruling, the Fourth District Court of Appeal has struck down an initiative restricting residential growth, concluding that state planning and housing law pre-empts a city's ability to restrict housing if it impedes state policy in doing so.

The Fourth District's ruling in *Building Industry Association of San Diego v. City of Oceanside* places a legal cloud over all of the state's approximately 60 jurisdictions with numerical restrictions on housing development.

Land-use law experts throughout the state called the ruling an important one, and some predicted more lawsuits challenging numerical caps. Other lawyers suggested that the caps will not be challenged immediately because building permit levels are so low. But they warned that litigation is likely when the housing market, which is already coming back, improves more.

For a detailed analysis of the *Oceanside* case, please turn to *CP&DR Legal Digest* on page 5.

Local Planning
William Fulton

Final K-Rat Plan Scheduled for Approval in October

Walking a tightrope between local landowners and federal wildlife biologists, the Riverside County Habitat Conservation Agency has released the final draft of their plan to save the Stephens' kangaroo rat. Local officials hope the agency's board will vote on the plan in October.

The agency's short-term permit with the U.S. Fish & Wildlife Service, which allows development on K-rat habitat, expires in September and the RCHCA has asked for an extension.

Replacing a draft issued last November, the new plan accommodates several concerns among local landowners. The plan drops a half-mile buffer zone around K-rat habitat, a requirement that would have permitted wildlife officials to participate in the local land use process for those areas. The plan also gives more leeway to some landowners. For example, "discing" of land for fire prevention purposes is permitted in the immediate vicinity of structures.

The biggest remaining issue, however, is likely to be the question of how much additional land the RCHCA must acquire for the U.S. Fish & Wildlife Service to approve the plan. Both sides agree that approximately 2,500 additional acres are required. But Fish & Wildlife wants 2,500 acres of occupied K-rat habitat — which would require acquisition of between 6,000 and 10,000 gross acres — while the RCHCA wants to place a limit at 2,500 gross acres, occupied or not. "The main issue is that they want those areas to be bigger than we can afford," said Brian Loew, executive director of the RCHCA.

It is difficult for the RCHCA to purchase occupied K-rat habitat only. The agency must purchase land on a parcel-by-parcel basis. But each parcel typically includes some occupied habitat and some land that K-rats do not occupy.

Approval of the county's long-term habitat conservation plan for the K-rat would end a six-year period of turmoil for the county. The Fish & Wildlife Service listed the K-rat as endangered in 1988, a move that brought development in Riverside County to a halt and heightened the awareness of all local governments in California to the agency's potential power over land use.

Subsequently, Fish & Wildlife approved an interim habitat conservation plan that imposed a $1,950 per acre mitigation fee on new development. For each acre of K-rat habitat that was developed, an acre of habitat had to be purchased with mitigation fee money on more or less the same timetable. The RCHCA was formed to prepare the long-term plan and to buy K-rat habitat with the mitigation money.

So far, RCHCA has purchased more than 6,000 acres with mitigation money, and according to Fish & Wildlife the agency is more than 800 acres "ahead of schedule." "They've done a great job of getting the bang for their buck," said John Bradley of the Fish & Wildlife Service's Carlsbad office. In addition, RCHCA has arranged thousands of acres in donations from public agencies such as the Metropolitan Water District. (*CP&DR*, March 1993.)

For several years, Riverside County appeared to be working toward a multi-species habitat conservation plan that would already be in place when other species are listed as endangered, as is expected. Amid complaints from landowners, however, the RCHCA chose instead to prepare a long-term HCP only for the K-rat. "People are desperate to be free of this," said Loew. Instead, the final K-rat plan, once approved, will form the starting point for a multi-species preserve.

The final K-rat preserve could approach 40,000 acres in size. However, the "core reserve area" — that is, the area actually occupied by kangaroo rats — currently totals around 12,500 acres. In a letter last January, Fish & Wildlife indicated it would not approve the county's plan unless the plan called for eventual acquisition of 15,000 acres of land actually occupied by kangaroo rats. (The county now has approximately 31,000 acres of occupied K-rat habitat.)

Loew said the new plan provides detailed financial analysis estimating the financial limitations imposed by the mitigation fee and the future real estate market in Riverside County. He said the financial projections suggest that the RCHCA will be able to purchase only about 2,500 additional gross acres.

Bradley, however, said Fish & Wildlife is not likely to approve the plan unless 6,000 to 10,000 additional gross acres are acquired. "They've done very well at raising money through the mitigation fee," he said. "The Service doesn't agree with their economic analysis."

The RCHCA is a joint-powers authority that includes Riverside County and seven cities also affected by K-rat habitat.

■ Contacts:
Brian Loew, Riverside County Habitat Conservation Agency, (909) 275-1100.
John Bradley, U.S. Fish & Wildlife Service, (619) 431-9440.

North Natomas Financing Plan Approved

A $700 million financing plan for North Natomas has been approved by the Sacramento City Council, clearing away one of the few remaining obstacles for the area's development.

North Natomas is a mostly undeveloped area along Interstate 80 north of downtown Sacramento. It is considered prime real estate because it is so close to downtown, but it has suffered from environmental problems — especially flood control — and busted development plans in the past. An earlier plan resulted in the Arco Arena and a Raley's distribution center but little else.

Under the new plan, about half of the North Natomas acreage will be developed, and developers will pay more than $600 million of the $700 million plan for financing public infrastructure.

Flood control issues are still pending, however. A draft of a federal floodplain regulation would prohibit commercial development for two years. Natomas levee improvements could be completed in 1996, which would allow development to commence.

Hindu Temple Will Be Mission-Style

A controversial Hindu temple was approved by the City of Norwalk after the architect redesigned it as a Mission-style building. The city rejected a conditional use permit for a more traditional Hindu structure in 1992.

The project was opposed by neighbors who were concerned about traffic and said the building was incompatible with their neighborhood. Architect Natoo Patel also reduced the building's size by 20% and its capacity by 40%. The Hindu congregation is made up of 28 families who are part of the International Swaminarayan Satsang Organization. They have met in private homes since the congregation's formation in 1982. ❑

Town and Gown
Morris Newman

Modesto Does Redevelopment Deal for School Offices

Schools typically take money from redevelopment agencies, but rarely give money back in return. In an unusual about-face, two public school agencies in Stanislaus County appear ready to help finance a new administrative building in the City of Modesto in exchange for a rich flow of subsidies and tax increment. The agencies, in fact, will become anchor tenants in the building, which in turn will help anchor a $160 million redevelopment project in the city's downtown area.

The deal is a textbook case of how public agencies assist redevelopment efforts in downtown areas. The proposed building is a five-story, 163,000-square-foot structure that will serve as headquarters for both the Modesto City School District and the Stanislaus County Office of Education, which together employ about 350 people.

Under the proposed deal, the Modesto Redevelopment Agency would contribute $5 million toward construction, while each school agency would contribute between $5.7 million and $6 million. Modesto City Schools plans to recoup its investment during the 40-year life of the redevelopment area from tax increment. The school board does not expect tax increment to cover debt service for the first five years, so it expects income from existing participation agreements with four other redevelopment areas in the county — Stanislaus County, City of Ceres, Turlock and an agency in the unincorporated sphere of influence of Ceres, run jointly by that city and the county — to make up the difference.

The county's Office of Education does not have a finalized plan to recoup its investment, although local officials expect the county to cover its costs through existing pass-through agreements with other redevelopment agencies throughout the county.

The plan enables the school district and county agency to finance the administrative building with tax increment, which otherwise can only be used for school facilities and school-related improvements. "Clearly, we were going to have to pass money through to the schools," said Mike Herrero, assistant city manager. "The question was, could we do something in which the schools were the beneficiary of that money," he said.

The agencies will own the building, with the exception of some street-level retail space, which will be "condominiumized" to the developers, Wilmore Development of Costa Mesa and Regent Partners of Atlanta, Ga. The developers are responsible for the ambitious redevelopment plans that include a 12-screen multiplex theater, a parking structure, retail and restaurants. The staff of the school district and county agency will provide the necessary foot traffic to support the first phases of the project. "The city told us they would make it more financially attractive, if we were to locate in the redevelopment area. It accomplishes not only our goal, but their goal as well," said Debbe Bailey, Modesto schools planning director.

Bailey said she was confident that tax increment can not only cover the school district's debt service on the project, but provide additional income for such projects as a new parking lot and air conditioners for the antiquated Modesto High School. Projections show that the school district should receive $150,000 in the first year that the administrative building is in use, and that amount increases to $1.5 million in the year 2014. Those projections assume annual growth in assessed valuation of 3%, which Bailey described as "the most conservative case," because valuation has grown about 6% annually during the past decade.

While a $16 million building may look extravagant at first glance for several hundred employees, Bailey said it was necessary: "People may complain (about the deal) and say you shouldn't do this, but when they walk into our building, they say, this is outrageous." Currently, the school district is operating out of a small elementary school building, which lacks earthquake reinforcements, supplemented by a dozen temporary structures in the parking lot. "Our board room is an old classroom, which fills up with 10 people," she said. Local growth has also led to an expanding school system, which currently has 35 schools and 30,000 students in several Stanislaus County cities. The staff has grown to 125 people.

The Modesto School Board approved the concept in July, and is "a month or two away from adoption" of the Development and Disposition Agreement with the redevelopment agency, according to Bailey.

LAFCO Approves Santa Maria Schools Deal

After months of wrangling, school districts, developers, and city officials in Santa Maria have finally agreed on a school mitigation plan for some 1,700 acres of land now planned for development. And the Santa Barbara County Local Agency Formation Commission, which brokered the deal, has approved the annexations.

Under the final plan, the developers will pay $2.72 per square foot on new homes as long as there is capacity in the local school systems. When capacity runs out, the developers' share will rise to $3.97 per square foot, or approximately 75% of what the school districts wanted. All sides are committed to supporting a local bond issue. If a bond issue passes or state funds are forthcoming, the developer share will drop to $2.72 per square foot. Santa Maria's elementary school district will receive most of the funds. The LAFCO approved four of the six annexations on August 18 and was expected to approve the other two on September 1.

The annexations had been held up because the local school districts wanted full mitigation on approximately 5,000 new homes proposed in the annexation area. The city, which was already in litigation with the school districts on five other development projects, took the position that it was not legally required to require more than $1.72 per square foot from the developer for schools. (*CP&DR Town & Gown*, June 1994.) Under the state School Facilities Act, $1.72 is the current legal limit on development fees imposed by schools. An extra $1 per square foot lapsed last November with the failure of Proposition 170, which would have allowed passage of local school bonds with a simple majority vote.

In an innovative move, all sides were forced into negotiations by the LAFCO. LAFCOs do not have the power to place conditions on annexation. In this case, however, the LAFCO chose to withhold approval of the annexations until a mitigation plan was agreed upon by all sides. ❑

Base Reuse
Morris Newman

California Politicians Oppose Homeless Priority

Local officials around the state don't like the fact that homeless organizations have priority in base reuse efforts — and don't have to get local approval to operate on closed bases. Now Gov. Pete Wilson and the state's congressional delegation appear to be making some headway on the issue.

Troubled by the aggressive efforts of homeless care providers to lay claim to entire military bases, Wilson went to Washington in July to meet with a delegation of state Congressmen — including Reps. George E. Brown Jr., D-San Bernardino; Jerry Lewis, R-Redlands; and Ron Packard, R-Oceanside — and lobby for changes to the Stewart B. McKinney Act, under which homeless care providers are given first right of refusal to take title to "underutilized" federal property.

On July 21, the House of Representatives passed, by voice vote, an amendment to the McKinney Act. Sponsored by Rep. Douglas K. Bereuter, R-Nebraska, the amendment would give local officials the power to choose which parts of bases could be used for homeless housing. (Bereuter is one of the few members of Congress with a professional background in urban planning.) Those officials would then forward the requests to the Department of Housing & Urban Development, which would have the responsibility of evaluating applications from homeless groups. HUD would replace the Department of Health and Human Services, which has been criticized by Wilson and some Congressmen for taking too long to process the housing requests. The Bereuter amendment is now pending in the Senate.

"Economic development should be our number one concern and this amendment will provide a reasonable balance between economic redevelopment and homeless assistance," Wilson said in a statement after the July 21 vote in Congress.

The McKinney Act had rankled local base-reuse authorities because homeless advocates can apply directly to the federal government with requests for land and/or buildings, regardless of commitments or plans of local officials. The housing providers must make the request within 60 days following the announcement that a base is to be closed. The bill was enacted in 1987, prior to the recent cycle of base closures. While HHS reviewed the requests, all other reuse plans were delayed. The most notorious case involving the McKinney Act was that of Norton Air Force Base last year, which had to wait nine months to create a new international airport on the former military base until HHS denied the request from a homeless group from outside the area which wanted the entire base.

Other bases affected by the McKinney Act include an 18-acre parcel near Long Beach Naval Station. Some community members protested when HHS approved the entire site, formerly a housing compound for naval personnel, as a homeless shelter.

Tempers are also hitting the flashpoint in the City of Alameda, where at least 17 separate groups have requested use of up to 800 housing units on Alameda Naval Air Station. Some local observers have complained that if HHS grants all the applications, the area would be useless for development, although it is unlikely that the federal agency would approve all of them. Causing particular panic among local officials is a coordinated plan prepared by Emergency Services Network of Alameda County, which envisioned the naval air station almost blanketed in homeless shelters and services. Alameda Mayor Bill Withrow complained that the city would become a "dumping ground" for homeless people from the entire Bay Area, which is believed to have 20,000 homeless people. Officials of the Emergency Services Network say the plan is preliminary and that they are willing to negotiate.

March Air Force Base in Riverside County faces a similar quandary. At least 21 homeless groups have expressed interest in building and/or land on the base, although "only one group has asked for the entire base," said Shari McTiver, site manager for the Air Force Base Conversion Agency at March. "Most of the agencies that are requesting properties are ones that we have been working with through Riverside County Action Office," she said. The most popular property is a 24-unit temporary lodging facility, because most of the existing barracks on the base are too large, at 150 units with 300 beds, for most small housing agencies to manage, according to McTiver. She declined to comment on the amendments to the McKinney Act, saying, "It's too soon for anything to have trickled down."

Opposition to Base Campuses

Higher education may be a boon in the minds of some people, but it's a NIMBY for some Northern California residents, who appear disgruntled about plans to install campuses and research facilities on disused bases. Plans to build the new California State University at Monterey Bay on a portion of Fort Ord is meeting opposition among some local residents in one of the state's most environmentally protective communities. A spokesman for a group called Common Sense Ford Ord has described the project as an urbanizing "monster." The school is expected to open in fall 1995 with 700 to 1,000 students, increasing to 13,000 students by 2010.

Meanwhile, at the Presidio in San Francisco, plans by UCSF to acquire the 60-acre site of the Letterman Army Institute for Research and the Letterman Army Hospital and convert them to a medical research center is also encountering static from neighborhood groups like the Marina Civic Improvement and Property Owners Association, which says the university will generate too much traffic.

Point Mugu Puts Up Defenses

The Naval Air Warfare Center, Weapons Division, at Point Mugu in Ventura County has mounted a campaign to keep the facility open. While Mugu is not currently slated for closing, the Pentagon has announced that it will close one of its two sea test ranges, either Mugu or Eglin Air Force Base in Florida, in the 1995 round of base closures. In response, base officials and Ventura County politicians have formed the "BRAC '95 Task Force," with the hopes of raising $350,000 to help rally support for the threatened base. The 3,500-acre base has 2,250 military personnel and 3,776 civilian employees.

NASA Takes Over Moffett

NASA assumed control of the Moffett Field Naval Air Station near Sunnyvale; the space agency has shared the facility with the military for many years. The Navy built Moffett in 1933 for dirigibles. Most recently, the naval air station was the West Coast headquarters for airborne submarine observation. ❑

CP&DR
LEGAL DIGEST

Court Overturns Oceanside Growth Limits

Conflict With State Law Cited; Ruling Leaves Housing Caps Vulnerable

By William Fulton

In a landmark ruling, the Fourth District Court of Appeal has struck down an Oceanside initiative restricting residential growth, concluding that state planning and housing law pre-empts a city's ability to restrict housing if it impedes state policy in doing so.

The Fourth District's ruling in *Building Industry Association of San Diego v. City of Oceanside* places a legal cloud over all of the state's approximately 60 jurisdictions with numerical restrictions on housing development. The provisions of state housing law "clearly show an important state policy to promote the construction of low income housing and to remove impediments to the same," wrote Acting Presiding Justice Richard D. Huffman for the unanimous three-judge Division One panel. "Prop. A [Oceanside's 1987 initiative] is such an impediment, and cannot survive a conflict."

The court also ruled that the initiative was invalid because it conflicts with the city's pre-existing general plan. However, the court did not reach the question of what the appropriate burden of proof should be under Evidence Code §669.5 That code section places the burden of proof on the city in any lawsuit challenging the validity of a numerical housing cap.

Land-use law experts throughout the state called the ruling an important one, and some predicted more lawsuits challenging numerical caps. "Theoretically, all caps are at risk," said Donald Worley, the winning lawyer in the case.

Other lawyers suggested that the caps will not be challenged immediately because building permit levels are so low. But they warned that litigation is likely when the housing market, which is already coming back, improves more. "As projects start to get reactivated, we'll see some action," said attorney D. Barton Doyle, formerly general counsel to the Southern California BIA. "But it won't be until next year."

Numerical caps on residential growth were commonly imposed by fast-growing residential suburbs throughout California during the 1980s. According to a statewide survey by UCLA researchers Ned Levine and Madelyn Glickfeld, about 12% of the state's local governments have numerical caps on residential development — 51 of 470 cities and eight of 58 counties.

The Fourth District's ruling in the Oceanside case is the latest twist in a marathon seven-year lawsuit that has already involved two appellate court rulings and a two-year Superior Court trial that cost $2 million to the city. The panel issued the ruling on July 19 and ordered it published four weeks later at the request of the BIA and other developers. Oceanside's lawyer, Katherine Stone, said the city intends to appeal to the state Supreme Court.

In 1989, the Fourth District ruled that the initiative was not facially invalid and that it should proceed to trial. (*BIA v. Superior Court*, 211 Cal.App.3d 277. See CP&DR July 1989.) In 1990, however, the California Supreme Court opened the door to the possibility of state pre-emption of local land-use initiatives in *Lesher Communications Inc. v. City of Walnut Creek*, 52 Cal.3d 531 (*CP&DR*, January 1991). Furthermore, the Supreme Court specifically called out the Fourth District's ruling in the Oceanside case. "A city may not adopt ordinances and regulations which conflict with state Planning and Zoning Law," the Supreme Court wrote. "To the extent that *Building Industry Association v. Superior Court* ... suggests otherwise, it is disapproved."

Proposition A restricts residential buildings permits in Oceanside to 800 per year. The BIA argued that the initiative violated three important provisions in state planning and housing law: Government Code §65008, which prohibits housing discrimination;, Government Code §65913.1, which requires cities to zone sufficient land for affordable housing; and Government Code §65915, the state's density bonus land for affordable housing. The BIA also argued that the initiative violated the Public Facilities Management Element of the city's General Plan, which calls on the city to avoid direct controls on residential development.

Subsequent to the first Court of Appeal ruling, San Diego Superior Court Judge Herbert B. Hoffman presided over a lengthy three-part trial. In the first phase, Hoffman concluded that Oceanside had not rebutted the presumption under Evidence Code §669.5 that Proposition A would have an impact on the supply of affordable housing units in the San Diego region.

In the second phase, Oceanside set out to prove that, Evidence Code notwithstanding, Proposition A was necessary to maintain the city's health, safety, and welfare. Concluding that the allocation mechanism in Prop A was reasonably related to the city's infrastructure deficit and other problems identified by the initiative, Hoffman ruled in favor of the city.

In the third phase, Hoffman rejected the BIA's argument that Prop. A was invalid because it conflicts with the state planning and housing law and with the city's Public Facilities Management Element. In so doing, he stated that he was bound by the appellate court's 1989 ruling that state law did not pre-empt local land-use initiatives.

The BIA then appealed to the Court of Appeal, arguing that Hoffman had used the wrong standard of review in ruling for the city in the second phase of the trial. The city, in turn, argued that Hoffman had wrongly ruled for the BIA in the first phase of the trial. But the appellate court decided to go in a different direction. "Having studied these issues, we decline to base our decision on any of them," the appellate court said. "Rather, the dispositive issue presented is the issue of whether Prop. A impermissibly conflicts with either the city's general plan ... or state law provisions litigated at trial. When we apply the doctrine of law of the case and the rules announced in Lesher ... we conclude that Prop. A was invalid when passed because it is inconsistent with policies established by the general plan, and it is further invalid because it conflicted with state law as of the time of its adoption."

In reaching this conclusion, the appellate court first ruled that its pre-Lesher decision was not binding on Judge Hoffman. Passages in the Lesher ruling, the appellate court said, "undermine the validity of the prior opinion's statements that 'partial inconsistency with portions of a general plan or state law will not alone suffice to render a numerical growth control ordinance invalid' and also suggests that this court erred in stating 'substantial compliance with state law is the test applicable to Prop. A.' Further, it seems our state-

ment that 'no state preemption precluding enactment of [Prop. A] is present in the field' was too broad, as it is now clear that growth control ordinances may not conflict with state planning and zoning laws."

The court also decided that the previous decision did not make any final determination on the question of whether Prop. A was invalid because it was inconsistent with the general plan.

Having reached those conclusions, the court then overturned the bulk of Judge Hoffman's decision.

Regarding the Public Facilities Management Element's apparent prohibition on numerical caps, the court said that Prop. A "is not compatible with the then-existing general plan." In addition, the court noted that the general plan also called for adequate housing for all economic segments. "Prop. A does not promote this policy and accordingly must be deemed inconsistent with it," the court wrote.

Regarding the conflict with the Government Code, the court concluded: "The facial conflict of Prop. A with these three sections stating state housing policy may be determined as a matter of law. Prop. A must be considered invalid as of the date of its adoption." ❑

■ The Case:
Building Industry Association v. City of Oceanside, No. D016581, 94 Daily Journal D.A.R. 11413 (August 18, 1994).

■ The Lawyers:
For Building Industry Association: Donald Worley, Worley, Schwartz, Garfield & Rice, (619) 239-0815.
For City of Oceanside: Katherine E. Stone, Myers, Widders & Gibson, (805) 644-7188.

TAKINGS

Takings Case Filed 3 Years Later Is Time-Barred, State High Court Says

By Larry Sokoloff

In its first ruling in a regulatory takings case in 15 years, a unanimous California Supreme Court has said that landowners must exhaust all administrative and judicial remedies within the statute of limitations period before they can claim a taking.

The court's opinion settles an issue that had been the subject of considerable debate. In five recent cases, California's appellate cases had split on the question of when a takings action must be filed. Additionally, this opinion offered strong support for the current system used to challenge land-use regulations in the state. The Supreme Court said that the purpose of regulations requiring administrative mandamus and short statutes of limitation to attack land-use law "is to permit and promote sound fiscal planning by state and local governmental entities."

The court ruled in a case brought by a developer who filed suit three years after Glendale had refused to allow him to build on 40% of his hillside property. Under the Subdivision Map Act, such challenges are to be brought within 90 days.

Developer R.R. Hensler had claimed that he did not have to first challenge the validity of the ordinance before pursuing a takings action. But the Supreme Court said that based on *U.S. v. Riverside Bayview Homes*, 474 U.S. 121 (1974), "Only when a review process has been completed is it possible to determine whether a taking has occurred."

After citing *Agins v. Tiburon*, 24 Cal.3d 266 (1979), its most recent case on regulatory takings, the court said, "Compensation must be paid for a permanent taking only if there has been a final judicial determination that application of the ordinance or regulation to the property is statutorily permissible and constitutes a compensable taking. Even then the state or local entity has the option of rescinding its action in order to avoid paying compensation for a permanent taking."

Hensler purchased a 300-acre hillside parcel in 1978. In 1981, the city of Glendale enacted an ordinance that prohibited construction on major ridge lines in the city to preserve their scenic qualities. In enacting the ordinance, the city used its authority under the Subdivision Map Act.

In 1986, the city approved construction of 588 homes and condominiums on a portion of the parcel. None of the units were to encroach on the major ridge lines. A high-density development of 540 homes and condominiums was eventually built.

Hensler filed an inverse condemnation action in September 1989, seeking $10 million in damages because development was precluded on 40% of the property. Glendale claimed there was a 90-day limitation period under Government Code §66499.37 and that inverse condemnation was barred because the developer had failed to challenge the conditions placed on developing the land. A trial court sustained Glendale's demurrer and dismissed the action.

The Court of Appeal upheld the dismissal, rejecting Hensler's argument that the longer limitations period under the Code of Civil Procedure should have been applied. The Supreme Court agreed. In an opinion by Justice Marvin Baxter, it said that CCP §§318, 319, and 339 apply only if no "different limitation is prescribed by statute."

The court said: "Plaintiff cannot transform the action into one which does not challenge the validity of the ordinance, regulations, and administrative actions by acquiescing in the taking, assuming the validity of those actions, and seeking only damages."

Hensler argued that pursuing administrative and judicial remedies is unreasonable and unconstitutional because of the costs and delays. But the court said there is no extended delay since an inverse condemnation proceeding may be combined with the petition for a writ of mandate, and because the owner does not pay the costs of a meritorious taking claim.

Hensler also argued that it is unconstitutional to require a landowner to pursue these remedies because a landowner does not have the right to a jury trial in a mandamus proceeding. But the court said that under Article 1, Section 19 of the California Constitution, there is a right to a jury trial in inverse condemnation on the question of damages.

The court expressed doubt that a taking had occurred, noting that development had been permitted on part of the property and that Hensler conceded that the ordinance did not deny him all economically feasible use of his property.

The case attracted strong interest from landowners and from government agencies. An amicus brief in favor of the plaintiffs' position was filed by the Pacific Legal Foundation. Amicus briefs in favor of the defendants' position were filed by the League of California Cities and the state attorney general's office. Hensler's attorneys are seeking reconsideration by the Supreme Court. ❑

■ The Case:
R.R. Hensler v. City of Glendale, 94 Daily Journal D.A.R. 10398 (July 27, 1994).

■ The Lawyers:
For R.R. Hensler: Gideon Kanner, Crosby, Heafey, Roach & May, (213) 896-8000.
For Glendale: Benjamin Kaufman, Freilich, Kaufman, Sohagi & Fox, (310) 444-7805.

CEQA

Appellate Court Overturns Stanislaus County EIR

For the first time in four years, a state appellate court has found an environmental impact report inadequate.

In addition, the Fifth District Court of Appeal in Fresno has enjoined Stanislaus County from permitting the Grayson Park development project from proceeding until the EIR is fixed. "The record demonstrates what only can be characterized as grudging and pro forma compliance with the California Environmental Quality Act," the court said.

Because of direction from the state Supreme Court and judicial turnover, judges around the state have proven less receptive in recent years to CEQA plaintiffs. The result has been a notable turnaround from the 1970s and '80s, when appellate courts often expanded the scope of CEQA's application and the range of subjects included in EIRs. According to the law firm of Remy & Thomas, which produces a legal guide to CEQA, 16 of 18 appellate decisions last year favored CEQA defendants. And, said Remy & Thomas, the last time an appellate court threw out an EIR was in *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692 (1990), which was also a Fifth District case.

However, the Fifth District left no doubt about its opinion of the EIR in the Stanislaus County case. The court faulted the county for its description of the environmental setting, the project description, the alternative sites analysis, and the cumulative impact analysis.

The case involved a proposal by Arambel and Rose Development Inc. to develop 633 single-family homes, a commercial area, and a park on 154 acres in Stanislaus County near the unincorporated community of Grayson. The county planning commission approved the project and certified the environmental impact report in 1990, but was soon sued by the San Joaquin Raptor/Wildlife Rescue Center, which asked that the EIR be set aside. Superior Court Judge David Vander Wall ruled in favor of the county, but the Fifth District reversed.

Writing for a unanimous three-judge panel, Justice Timothy Buckley took the county to task on a wide range of issues, but was especially critical of the EIR's apparent faultiness in dealing with the impact of the project on wetlands and agricultural land.

Justice Buckley first took on the EIR's description of the environmental setting, a requirement imposed by §15125 of the CEQA Guidelines. According to Buckley's description, the EIR "leads one to conclude the site and the surrounding area is rather nondescript farmland." However, Buckley wrote, the site is adjacent to the San Joaquin River and the San Joaquin Wetlands Farm preserve. By ignoring the river and wetlands preserve, Buckley said, the EIR precluded discussion into the possibility that wetlands exist on the site itself. "Careful review of the administrative record demonstrates that the FEIR's description and consideration of the site and surrounding area is so incomplete and misleading that it fails to meet the standard set forth in the State CEQA Guidelines."

Buckley also faulted the EIR's project description for omitting discussion of a sewer expansion that would be required as part of the development project. A separate EIR was prepared for the sewer expansion. Rather than accepting that as sufficient analysis under CEQA, however, Buckley used it to show that the sewer expansion would have environmental effects that should have been dealt with in the project EIR.

"Sewer expansion was recognized by the Draft EIR as necessary to the project, yet was excluded from the description of the development project and its effects ignored in the Final EIR," Buckley wrote. "The FEIR was thus premised on an improperly curtailed and distorted project description." Buckley also found fault with the growth-inducing analysis, which stated that the sewer expansion would serve only the project in question. Buckley said this conclusion was contradicted by the sewer expansion EIR.

Buckley said this problem was compounded by a lack of attention to cumulative issues. The project EIR "makes much of the fact" that only 11 acres of prime farmland would be lost as a result of the project, but does not mention that the sewer expansion would eliminate 12 additional acres of prime farmland.

Buckley was extremely critical of the EIR's treatment of alternative sites. "The Draft EIR states that there are 'numerous alternative sites' available for the project, but does not identify any of these sites, discuss their attributes or indicate why these sites would or would not be feasible. In fact," he added, "it is not clear from the record whether any specific alternative sites were actually identified, much less seriously considered by the lead agency." Furthermore, "the Final EIR ... did not adequately identify and analyze the feasibility of admittedly available alternative sites." Buckley rejected the county's argument that it was up to the Raptor Center to show that reasonable alternatives exist.

In addition to the sewer expansion issue, Buckley criticized the EIR for failing to include other development projects in the immediate area in the cumulative impact analysis. Indeed, he noted that the EIR failed to deal with several neighboring subdivisions being considered by the Board of Supervisors at the same meeting as the one in question. ❑

■ The Case:
San Joaquin Raptor/Wildlife Rescue Center v. Stanislaus County, No. F019841, 94 Daily Journal D.A.R. 11306 (August 16, 1994).

■ The Lawyers:
For San Joaquin Raptor/Wildlife Rescue Center: Roger Beers, (415) 391-2710.
For Stanislaus County: Vernon Seeley, Deputy County Counsel, (209) 525-6376.
For Arambel and Rose Development Inc. (Real Party in Interest): Sandi L. Nichols, Washburn, Briscoe & McCarthy, (415) 421-3200.

CIVIL RIGHTS LAW

Jury Awards $1.2 Million to Owner After S. Pasadena Revokes Permit

A former mayor of South Pasadena has won a $1.2 million judgment against the city and several council members for conspiring to violate his civil rights by revoking a permit to expand his house.

A Los Angeles Superior Court jury awarded Lee D. Prentiss $1.06 million for actual losses, $150,000 for emotional distress, and $7,500 in punitive damages against three city officials. Prentiss had filed a lawsuit alleging a wide range of abuses, including civil rights violations under §1983 of the federal civil rights law (42 U.S.C. 1983).

Prentiss had sought to increase the height of his 90-year-old home in the Oaklawn District from two to three stories. The Oaklawn District is eligible for listing on the National Register of Historic Places, though it has not been placed on the list. The district, and the Prentiss's home, were included in the state's Historic Resources Inventory. In 1990, South Pasadena granted Prentiss a building permit but then issued a stop order one month later.

The city claimed that environmental review under CEQA was required because the state Historic Building Code gave building officials discretion to review the project and attach conditions to the building permit, thereby converting the building permit from a ministerial action into a discretionary action. Last year the Court of Appeal ruled that nothing contained in the Historic Building Code could be used to convert the city's building permit from a ministerial process to a discretionary action and therefore make it subject to the CEQA process. (*CP&DR Legal Digest*, June 1993.)

In the subsequent trial, Prentiss, a conservative Republican, argued that more liberal members of the city council decided to revoke his building permit for political reasons. The Superior Court jury voted 11-1 that the three council members acted with "malice or oppression" against Prentiss. After winning the large award from the city itself, Prentiss asked only for nominal punitive damages against the individual council members. ❑

■ The Case:
Prentiss v. City of South Pasadena, Nos. GC005208 and GC000620.
■ The Lawyers:
For Prentiss: David King, DiJulio & King, (818) 502-1700.
For South Pasadena: David Lawrence, (818) 304-7830.

TAKINGS

Developer Must Seek to Overturn City Action Before Making Claim

A Tustin landowner who objects to conditions imposed on his development must first seek to overturn those conditions in court before filing a damages claim, the Fourth District Court of Appeal has ruled.

Feridoun Rezai filed the damages claim after Tustin revoked his original conditional use permit because of a noticing problem and then imposed more restrictions on his project. But the appellate court ruled that Rezai must first file a writ of administrative mandamus seeking to overturn the city's action.

Rezai initially received a CUP for an 11-unit apartment building from the Tustin Planning Commission in 1989. After he pulled the building permit and began construction, several neighbors complained that they had not been notified about the planning commission hearing. Tustin concluded that even though Rezai had submitted a noticing list to the city that he had personally checked for accuracy, the labels he subsequently provided contained some inaccuracies.

As a result, Tustin reopened the public hearing after proper notice to neighboring property owners. Eventually, Rezai appealed to the city council, which approved a CUP that significantly scaled back the project.

Rezai then filed a damages claim under Government Code §910, seeking damages arising from revocation of the building permit and the CUP. Tustin rejected the claim and Rezai then filed suit, claiming breach of contract, promissory estoppel, violation of statutes and ordinances, and declaratory relief.

Orange County Superior Court Judge Thomas Thrasher granted judgment on the pleadings for Tustin. Thrasher said Rezai had not exhausted his administrative remedies because he had failed to seek administrative mandamus before suing for damages.

Rezai argued that his situation was exempt from the general rule that administrative mandamus is the proper method to challenge the validity of permit conditions. In particular, he pointed to *Laguna Village Inc. v. County of Orange*, 166 Cal.App.3d 125 (1985), which stated that the mandamus rule can be waived in situations where a new fee is imposed on a permit obtained after the project has begun. (The *Laguna Village case*, in turn, relied on *McLain Western #1 v. County of San Diego*, 146 Cal.App.3d 772 (1983).)

While acknowledging similarities between the cases, the appellate court declined to extend the administrative mandamus rule to Rezai's case. First, the court said, in the other cases the landowners said that the time required for administrative mandamus would cause them economic harm. Rezai stated that the delay caused economic harm but did not make the same claim regarding the time required for administrative mandamus.

Second, the court said, "we do not believe the exception should be applied where the landowner does not seek the refund of a fee, but seeks damages arising from conditions restricting the development or requiring additional amenities." A fee controversy involves a fixed sum, the court noted, whereas "the claimed damages are uncertain and become irrevocable when the project is built." ❑

■ The Case:
Feridoun Rezai v. City of Tustin, No. G013648, 94 Daily Journal D.A.R. 9310 (Daily Journal D.A.R., July 1, 1994).
■ The Lawyers:
For Feridoun Rezai: Joel M. Ward and Gregory B. Byberg, (310) 655-6644.
For City of Tustin: Stanley R. Jones, Layman Jones & Dye, (714) 261-2345.

SUBDIVISION MAP ACT

Pre-1893 Parcels Are Legal, Court of Appeals Rules

Three parcels of land in Santa Clara County were lawfully created prior to 1893 — including one created by federal patent — and therefore must be issued certificates of compliance under the Subdivision Map Act, an appellate court has ruled.

Lakeview Meadows Ranch v. County of Santa Clara is the latest case to deal with the difficult issue of whether parcels were legally created if they pre-dated the first state subdivision law in 1893. The issue has not been decided definitively, and in fact the state Supreme Court recently "punted" on the issue in *Morehart v. Santa Barbara County*.

The case began in 1991, when Lakeview Meadows Ranch asked for certificates of compliance under the Subdivision Map Act for three parcels — 4903, 4909, and 4911 — the company had purchased in 1965. Certificates of compliance simply certify that a particular parcel meets the provisions of the local subdivision regulations. The county denied the certificates of compliance and Lakeview Meadows sued.

In court, Santa Clara County argued that parcels created prior to 1893 are not exempt from the provisions of the Subdivision Map Act. The law exempts any parcel that is "in compliance with or exempt from any law ... regulating the design and improvement of subdivisions in effect at the time the subdivision was established." The county argued that since there were no laws regulating the subdivision of lots prior to 1893, the three parcels in question could not possibly have been in compliance with or exempt from those laws.

The California Supreme Court faced a somewhat similar issue a few months ago in *Morehart v. Santa Barbara County*. The Supreme Court struck down the county's forced merger of lots subdivided prior to 1893 and rejected the county's argument that the Map Act didn't apply because the creation of the lots predated its passage. In the Lakeview Meadows decision, the court ruled that Santa Clara County's argument "is at odds with the California Supreme Court's interpretation" in *Morehart*. The appellate court ruled that the parcels had been legally created and therefore were exempt from the Map Act.

The court also ruled that one parcel was legally created even though its creation stemmed only from a federal land patent, not from a property transfer.

Lakeview Meadows argued that parcel 4903 had been legally created via an 1891 federal patent to Southern Pacific.

The county argued that as a matter of law, parcel 4903 could not have been created by the 1891 federal patent. In arguing the point, the county relied on *John Taft Corp. v. Advisory Agency*, 161 Cal.App.3d (1984), a case in which lots were supposedly identified on federal survey maps from 1878. In the *Lakeview Meadows* case, the Court of Appeal ruled that *Taft* does not apply because the issue was a federal patent, not a federal survey map. Thus, the court ruled, the federal patent did, in fact, create a lawful parcel in 1891. ❑

■ The Case:
Lakeview Meadows Ranch v. County of Santa Clara, No. H011152, 94 Daily Journal D.A.R. 11189 (August 12, 1994).
■ The Lawyers:
For Santa Clara County: James E. Lewis, Deputy County Counsel, (408) 299-2111.
For Lakeview Meadow Ranch: James P. Corn, Nossaman Guthner Knox & Elliott, (916) 442-8888.

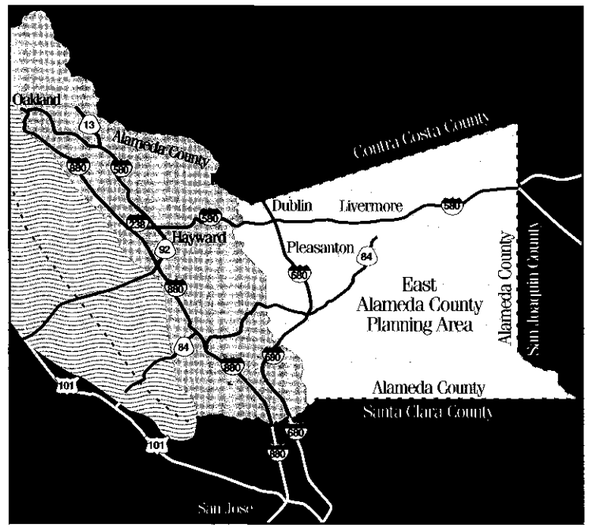
Alameda County Plan Draws Fire From Livermore, Ranchers

Continued from page 1

fast-growing I-580 corridor around the cities of Dublin, Pleasanton, and Livermore.

Overall, the plan permits new urban development on only 5,200 acres — less than 2% of the entire land area in eastern Alameda County. Ranchette grape-growing will be permitted on another 5,000 acres, while the rest will remain in large-lot agricultural zoning. (Existing cities already account for 28,500 acres, or about 11% of the total land area.)

The county had not drawn up a plan for the area since 1977, prior to the current wave of urban development. "We wanted to look at the big picture," said Assistant Planning Director Deborah Stein. While setting urban growth boundaries, the plan also seeks to rectify an existing imbalance of jobs and housing in the area. The plan permits population to grow from 133,000 today to 250,000 in 2010. But it also calls for a double of jobs, from 76,000 to 150,000, during that period of time.



The Alameda County Board of Supervisors approved the plan in May after a lengthy battle involving environmentalists, landowners and farmers, and neighboring cities. Key environmental groups held out for strict policies — even injecting the plan into the Oakland mayor's race to put political pressure on Supervisor Mary King, who was a mayoral candidate.

The biggest surprise came when the supervisors, under pressure from environmentalists, agreed at the last minute to impose 320-acre minimum parcel sizes on more than 100,000 acres, or about 40% of the entire east county area. The move won the support of the Greenbelt Alliance and the Sierra Club. "The 320 can't be underestimated," said Owen Byrd, Greenbelt's policy director. "It was an amazing victory."

Farmers and ranchers immediately complained that the rezoning — down from the current 100-acre minimums — will have a devastating economic impact on their business. In June, the Alameda County Farm Bureau, the Alameda-Contra Costa County Cattlemen's Association, and the Alameda County Rural Property Owners Association sued, claiming that the change should have been sent back to the county planning commission for review.

But perhaps the biggest controversy over urban development issues involves a 2,000-acre swath of land north of Livermore, which has long been one of the east county's leading battlegrounds for growth.

To accommodate urban development, the county plan calls out two areas for new growth — east Dublin and north Livermore. (The two areas are divided by hilly terrain slated for open-space acquisition under the plan; the owners of this buffer land are suing the county.) Stein said the county took all the cities' existing plans for unincorporated areas into account — and, indeed, the county plan coincides with Dublin's growth policies.

Livermore, however, was a different story. Both Livermore and the county agreed in general terms on development plans for most of the area in question — approximately 15,000 unincorporated acres just north of the present Livermore city line. However, the city and the county disagreed from the beginning over the eventual buildout of the area — and especially over where the northern limit of urban growth should be.

Last year, Livermore approved its own plan for the area, which called for an eventual population of 30,000 people and a hard northern boundary at a road called May School Road. Livermore planner Susan Frost said the city's politicians had long supported the May School Road boundary, and retaining it was also on the Greenbelt Alliance's list of important issues.

The county, however, proposed pushing the urban growth boundary further north to encompass another 2,000 acres and increasing the ultimate population of the area. According to Stein, this boundary made sense from the county's point of view because north Livermore was more easily developed — and more expensive to purchase — than the adjoining hilly land slated for acquisition as open space. Acquiring the north Livermore land as open space, she said, would disrupt the plan's financial calculations regarding open-space acquisition countywide.

But Livermore stood firm. "We want them to acknowledge our plan, as they did with east Dublin," said Frost. She also claimed that the county is skeptical about Livermore's commitment to permitting development in north Livermore, given the city's slow-growth history.

Rather than reject the county staff's recommendation, the Board of Supervisors punted on the issue. At its meeting in May, the board removed the county staff's proposed urban growth boundary for North Livermore. But the board did not move the boundary down to May School Road, as Livermore had requested. Instead, the board left the boundary open and initiated a two-year study with the city to determine where the boundary should be.

Believing that they had gained as much as possible, Greenbelt Alliance supported the plan despite losing on the urban growth boundary. Livermore, however, took a different approach. In June, the city filed a lawsuit challenging the adequacy of the East County Area Plan's environmental impact report.❑

■ Contacts:
Deborah Stein, Assistant Planning Director, Alameda County, (510) 670-5400.
Susan Frost, Planner, City of Livermore, (510) 373-5200.
Owen Byrd, Greenbelt Alliance, (415) 543-4291.
Fred Jacobsen, attorney for ranchers, (415) 375-8991.

Riots, Earthquake Give New Life to L.A. CRA

Continued from page 1

are focused along the commercial strips decimated in the riots and include very few housing areas. The earthquake areas will deal with housing — most of the earthquake damage occurred in residential neighborhoods — but use of eminent domain may be restricted only to uninhabited buildings.

The proposed new redevelopment areas reflect the city council's strengthened role in redevelopment affairs. The riot recovery zones are the result of a council directive in 1993 to explore the use of redevelopment in helping South-Central rebuild from the riots. (Some of these areas were already under study by the CRA prior to the riots.) The earthquake zones cover nine council districts and are moving forward with council approval.

These council-directed moves are a stark contrast to the CRA's autonomous nature during the 20-year tenure of Mayor Tom Bradley. Richard Riordan, Bradley's successor, has proposed folding the CRA into a larger Community Development Commission — a move some say is meant to recapture mayoral control over redevelopment. (*CP&DR*, May 1994.) Riordan's proposal is still pending.

The CRA has a history of troubled relations with homeowner groups around the city, especially in South-Central. To forestall conflict this time, council members appointed citizen advisory committees, which must recommend approval of a project area before the council moves forward. "There is still some dissent, and some people are skeptical," said Renata Smith, redevelopment aide to Council Member Mark Ridley-Thomas, whose district covers much of the riot area. But in general, Smith claimed, the citizen committee process has healed some of the old wounds.

The CRA faces a similar challenge in the San Fernando Valley, traditionally a hotbed of anti-redevelopment sentiment. But early indications suggest that homeowner groups there may also be receptive to limited redevelopment help focused on earthquake recovery. Council Member Zev Yaroslavsky, a longtime CRA critic whose district includes much of the Valley, supports the use of redevelopment in hard-hit earthquake areas such as Sherman Oaks. State Sen. Tom Hayden, D-Santa Monica, another longtime redevelopment critic, has also expressed support for the Sherman Oaks redevelopment effort.

Veteran Valley activist Bobbi Fiedler, a Riordan appointee to the CRA commission, said she supports the concept but is skeptical whether it will work. "The pattern of the CRA is to try to expand and extend project areas to keep the revenue coming in," said Fiedler, whose Northridge home was heavily damaged in the earthquake. Asked if she believed enough controls could be placed on CRA involvement to win her over, she said: "I would like to say I thought it was possible. But this is the ultimate boondoggle potential."

The impetus for the earthquake-related redevelopment effort is a desire to generate more funds for reconstruction. According to John Spalding, CRA's director of policy planning and head of the earthquake team, the city currently has a $200 million gap between what is needed to rebuild and what the federal government has provided in grants and loans. The CRA's goal would be to bridge that gap. "What we're really bringing to the table is a long-term cashflow [of property tax increment] to bond against," Spalding said.

Although study area maps have not been finalized, the CRA is looking at six parts of the city that sustained considerable damage: the West Valley including Northridge and Reseda, Sherman Oaks, the East Valley around Pacoima, an area along Hollywood Boulevard in eastern Hollywood, a portion of West Adams south of Adams and west of Crenshaw, and an east-west strip of land in South-Central along King Boulevard. The earthquake study areas in South-Central overlap only slightly with the post-riot recovery zones. Spalding said funds would be used only to rebuild buildings damaged or destroyed in the earthquake, and that eminent domain would be restricted to abandoned buildings.

Unlike the post-earthquake effort, the post-riot effort is focused on improving decimated neighborhoods, rather than simply rebuilding what existed before. "The residents did not want to go back and recreate what was there," said Roy Willis, CRA's co-director of operations. "That is part of the reason why nothing has been built."

The post-riot redevelopment effort includes 17 different study areas all over the south side of Los Angeles, including Watts, the Westlake district, portions of the Crenshaw district located in three different council districts, and most commercial corridors in South-Central, including corridors along Broadway, Vermont, and Western. At the council's direction, virtually all of these proposed project areas are limited to commercial corridors and industrial districts. Citizen committees in 12 of these areas have recommended the creation of redevelopment project areas. Under the CRA's timetable, most of these project areas will established in 1995.

According to both CRA officials and council aides, much of the redevelopment effort will be focused on new retail activity. According to CRA officials, purchasing power in many South-Central neighborhoods is strong but residents must drive to other parts of the city for most retail amenities. Both the CRA's Willis and Ridley-Thomas aide Smith said redevelopment efforts will focus on small-scale homegrown businesses. "It's the opposite of the Rebuild L.A. approach," Willis said. ❑

■ Contacts:

John Spalding, Donald Spivack, and Roy Willis, Los Angeles Community Redevelopment Agency, (213) 977-1600.

Renata Smith, office of Council Member Mark Ridley-Thomas, (213) 237-1085.

Redevelopment Reform Suggested

The Los Angeles County Grand Jury has recommended a sweeping set of reforms to restrict redevelopment agency powers and increase oversight of them.

In a 17-page section of its final 1993-1994 report, the Grand Jury noted that property-tax increment for L.A. County's 186 redevelopment project areas grew from $51 million in 1978-79, when Proposition 13 passed, to $483 million in 1991-92, the last year before the state trimmed tax increment in order to balance the state budget.

The Grand Jury recommended the creation of an oversight agency in each county to monitor redevelopment agency activities. These monitoring agencies would be given the power to sue projects that appear to violate the law.

The Grand Jury also recommended:

- The creation of objective blight criteria at the state level.
- Redistribution of sales-tax revenue to discourage cities from using redevelopment to compete for sales-tax generators.
- A mandatory two-thirds voter approval for all new redevelopment project areas.
- A review process to examine the progress redevelopment agencies are making in alleviating blight.
- A ban on the issuance of more debt once blight has been substantially alleviated.

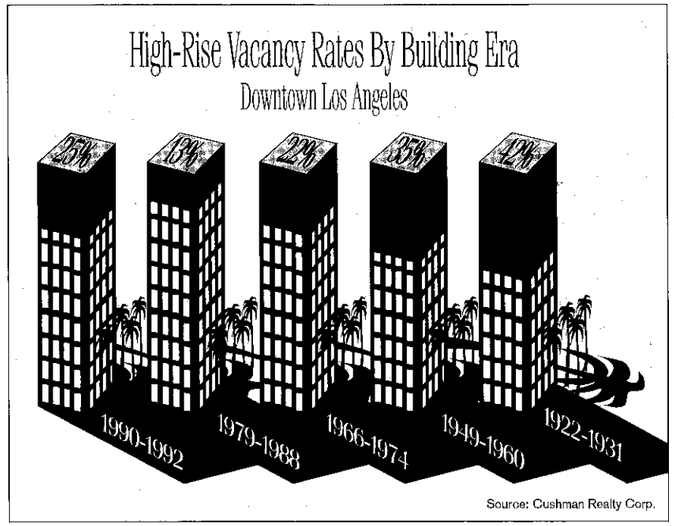
NUMBERS

Stephen Svete

High-Rise Ghost Towns

How would you use an empty downtown high-rise? How about an entire district of older high-rises? It's a specter that skyscraper leasing agents — and urban planners — may need to start considering these days. A range of emerging trends, from the cyberspace home-based workspace to corporate downsizing, is affecting office leasing in California's traditional big-city downtowns. The result: a complete halt in new construction and lease rates that are 25% lower than 10 years ago.

The national office market overall is still strong. A report by CB Commercial released earlier this summer cites that overall vacancy rates are at their lowest since 1985. But the report also points out that the suburban markets are much stronger than the downtown areas. Probably more troublesome for downtowners are claims that the strength in suburban markets is being fueled by changes in technology, which has allowed tenants to "flee" urban areas.



In a second recent report, the Associated Press claims that fully one-third of Wall Street's office space is vacant, and that since the 1987 stock-market crash lower Manhattan has lost 100,000 jobs which show no signs of returning. The report cites both corporate consolidation and spatial dispersion of the financial industry. The trend has developed to such a degree that Wall Street — like Hollywood — has become an adjective to describe an enterprise rather than a place where the enterprise concentrates.

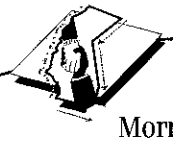
The bruised office market of Wall Street and other central cities also relates to the aged condition of the building stock. Older space typically carries environmental liabilities (asbestos, fire hazards) and modification obstacles (difficulty in wiring, inflexibility of space arrangements). Like older residential neighborhoods in most American cities, older office neighborhoods are generally being abandoned for newer digs.

Changing corporate cultural preferences have also fueled the strength of suburban markets to the detriment of downtowns. As the suburbs have become more mature and diverse in function, they have grown more competitive with downtowns in providing amenities such as quality restaurants, lodging, and cultural facilities. According to Michelle Auerbach at Cushman Realty Corporation in downtown L.A., lease rates in some suburban locations of Los Angeles actually surpassed downtown in the 1990s. This is partly due to the glut effect of 8 million square feet of space that came on line downtown between 1990 and 1992.

"This has also fueled a reverse trend," she says. "With prices now lower here than in Warner Center [in the San Fernando Valley], certain tenants are being attracted downtown. We have very high-quality Class-A space at relatively low prices." Still, she concedes, there is enough new, sublease, and re-lease space to supply demand in the downtown LA market until at least the end of the century.

Auerbach concedes that the emerging digital world may be affecting demand, but that it is too early to tell how intense the impact will be. "The senior statesmen in this industry say that the current slump is simply part of a cyclical market correction. But time will tell. I hear a lot about telecommuting, but I also deal with clients who would not be anywhere other than downtown. There are very prestigious addresses here." She also suggests that people remain social animals, and that being together to work and share ideas is an important human function. But the trends are clear: downtown — at a national level — is less in demand than suburban locations for office space.

If the downtown office slump becomes structural, the ramifications are stupefying — and ironic. Consider that in Los Angeles, billions have been and are being spent on a rail transit system focused on the high-rise center downtown. Millions more have been spent on cultural facilities and urban design projects — the recent Central Library renovation and the Disney Concert Hall are examples. These investments will take on an ever-more important role in defining downtown as a functioning district. With the specter of empty office towers as a backdrop — and prisons and waste management facilities as the state's only growth industry — the high-rise downtowns of California may shortly become monuments to an economy and culture that we are about to leave behind. ❑



DEALS

Morris Newman

Real Estate Market Turns Against Thousand Oaks

Civic Arts Plaza in the City of Thousand Oaks is a splendid new building. Designed by world-renowned architect Antoine Predock, the highly sculptural building looks like a group of ancient towers, while its sloping walls artfully echo the hilly country surrounding this city on the eastern boundary of Ventura County.

But if the new city hall and performing arts center in Thousand Oaks is a castle, the city budget threatens to become something of a dungeon. In June, the city council authorized the withdrawal of nearly $13 million from seven different reserve funds to pay the remaining costs of this $63 million monument. This has left the city somewhat short of reserves. The fund for computers, for example, lost $4 million and has only $800,000 left in the reserve till.

The city hopes to replenish these funds shortly by selling off various bits of property that it owns throughout the city. That means, of course, that the city is rolling the dice in the hope of finding buyers for undeveloped property at a time when the real estate recession is still very much a reality in Southern California. The possibility remains, of course, that the city could find itself caught short, if a natural disaster or some other emergency intervenes in the meantime.

Real estate speculation is a sport that has largely died out in California, but Thousand Oaks seems not to have heard about its demise. In its thinking, the city seems stuck in the 1980s, believing that it can confidently finance major projects by relying on the upside in real estate. That raises questions about the good judgment of a high-risk method of financing public works projects. It also raises the question of whether the city is putting its redevelopment properties to best use by using them to pay short-term bills rather than to build long-term projects.

> *"The city hopes to replenish the funds used for the Civic Arts Plaza by selling off various pieces of property."*

The precarious position of Thousand Oaks, a city with an annual budget of $65 million, is all the more interesting because it was not an accident; it was planned. In an apparent attempt to minimize bonded indebtedness in this conservative city, Thousand Oaks used $28 million of a $40 million tax-allocation bond issue to build the performing-arts portion of Civic Arts Plaza, and then raised another $22 million from the sale of buildings and property, including an interim city hall. "The only thing we didn't have funding for was the final $13 million," said finance director Bob Biery.

That money was originally expected to come from the sale proceeds of the former city hall, built in the early 1970s, and that's where the deal starts to founder. The city spent only $3 million at that time to build the old city hall on donated land, so the $13 million pricetag is probably not an unreasonable markup. But can the former city hall, which was designed for a specific user, be adapted to a new tenant? And how competitive is it now that it is located in a landscape full of half-empty office buildings?

The city correctly recognized that the old city hall was a hard sell, and fell back on Plan B: to raise the funds by selling off developable land elsewhere the city, including a 14-acre parcel right next to Civic Arts Plaza. This plan is neither foolhardy nor a sure thing. The city is correct that undeveloped land is probably more marketable than an empty office building (although an office building with tenants would be more marketable than either.) And the land parcels are large enough to attract large retailers. Further, Thousand Oaks, situated roughly halfway between the San Fernando Valley and Ventura on the busy Ventura Freeway, might well be attractive to retailers. Some of the parcels, including the lot next to Civic Arts Plaza, are redevelopment sites.

Even with all that, the strategy involves some risk, though that risk is hard to calculate. More troublesome yet — if anybody cared — is that the city is cashing in some redevelopment parcels that might have been better used in developing an urban master plan to support the Civic Arts Plaza. It would be a shame if the Civic Arts Plaza wound up with a Wal-Mart (and a Wal-Mart-sized parking lot) as its next-door neighbor.

In this regard, the dilemma of Thousand Oaks is reminiscent of that of the city of Chula Vista, which is considering selling off its redevelopment parcels just to pay off its redevelopment bonds — an act that somehow reminds me of a mother devouring her young, or a serpent swallowing its own tail. In both cases, similar anxieties arise regarding both cities' short-sell strategy that seems to contradict the purposes of redevelopment.

The change in strategy did not seem to worry the city council. Only one member, Councilwoman Jaime Zukowski, who had opposed the project when first proposed, seemed troubled that the depleted capital fund might leave the city in a vulnerable position in the event of an emergency.

At this point, it would be easy to berate the city for taking such big risks to finance such a big building. To do so, however, I risk contradicting myself, because I have written elsewhere that cities should indeed spend a premium on public buildings, because such buildings symbolize the city and will be used for generations. And the city council may have the last laugh if the city-owned parcels sell at a profit to developers.

Actually, I hope that turns out to be the case, because I like the building, and I admire Thousand Oaks, which has very little else to recommend it architecturally, for having the guts to build the thing. Still, the real estate-based finance strategy must be acknowledged as an act of brinksmanship. Having a conservative streak myself, I might have advised the city to rely more on bonding and less on the caprices of a soft real estate market. If something goes wrong, the proud battlements of Antoine Predock's Civic Arts Plaza could find itself looking over a bleak fiscal landscape. ❑