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INSIDE

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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,
Larry Sokoloff,
Contributing Editors

Allison Singer,
Circulation Manager

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Country Music Projects Proposed in Tehama, Gilroy

Tehama Approves General Plan Change Despite Vague Proposal

By Morris Newman

Inspired by the success of entertainment theme parks throughout the country, promoters are touting large-scale entertainment-oriented projects in two different locations in California. The promoters of both Celebrity City, a 1,500-acre project in rural Tehama County, and Garlic Country USA, a proposed development in the City of Gilroy in Santa Clara County, are promising huge returns to local government and businesses alike, both in revenue and job creation.

Both projects, however, raise questions about both environmental and fiscal impacts as well as the actual benefit they may bring communities. And the details of the Tehama project in particular remain vague. The county recently approved a general plan amendment and zone change for the project — but a specific plan has not yet been prepared and the developers have not revealed any specifics about what they hope to build.

Still, the mood of boosterism is running high in Tehama County. The proposed $3 billion development, to be located on Interstate 5 about 120 miles north of Sacramento, is modeled after the runaway success of the Country-and-Western entertainment complex in Branson, Mo. The promoters — Leo Urbanski and Nashville-based music promoter Buddy Killen — are envisioning an undetermined number of music-oriented theaters and hotels, as well as supporting retail and restaurants.

A spokesman for the promoters said they are confident that tourist traffic is already in evidence in Tehama County, where more than 10 million people travel on Interstate 5 annually; they claim the majority of those travelers are tourists, and note that the success of Branson is largely viewed on the popularity of existing tourist attractions, such as camping and boating.

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Strong Pro-Growth Trend Seen in Local Elections

Republicans Capture of Assembly May Affect State Policies

By Elizabeth Schilling

Pro-growth forces won almost two-thirds of all land-use issues placed before voters in November — their best showing on a November ballot since *CP&DR* started tabulating results in 1986.

Reflecting national election results, pro-growth advocates won 67% of local land-use issues (10 of 15 issues) a rate that far exceeds the woeful 20% pro-growth victory rate last year. (One local issue did not appear to be either pro- or slow-growth.) Pro-growthers also won a healthy majority of land-use questions on the ballot last June, suggesting the turnaround of a long-standing anti-growth trend.

"In an era when people are considering the local effect of the California recession, they are less tolerant of slow-growth issues," said John Landis, a professor in the UC Berkeley Department of City & Regional Planning who has done extensive research on growth control in California. Landis also suggested that cities and counties are more hospitable to growth because they need impact fees and the other benefits of development.

Planning in California is also likely to be affected by state and national election results. Republicans appear likely to gain control of the state Assembly for the first time in 26 years, ending the 13-year reign of Speaker Willie Brown and probably leading to a more business-oriented approach to land use issues. Among other things, a Republican Assembly would mean the end of Assemblyman Byron Sher's long tenure as chair of the Assembly Natural Resources Committee. Sher, a liberal Democrat from Palo Alto, has been seen as one of the leading protectors of the California Environmental Quality Act.

And the Republican victory in Congress could have profound implications for environmental laws that affect land use in California. While the federal

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Local Planning

William Fulton

Joint Planning for Pleasanton Ridge May Survive Veto

Despite a veto on a critical bill, a consortium of three East Bay jurisdictions plans to move ahead with their agreement to make land-use decisions in the Pleasanton Ridge area jointly via a memorandum of understanding. But landowners in the area are continuing their attempt to overturn the arrangement in court.

At issue is whether Pleasanton, Hayward, and Alameda County can constitutionally cede veto power to each other over the Pleasanton Ridge property. In an MOU last year, the three jurisdictions agreed not to permit any general plan amendments in the 13,000-acre area unless all three agreed to the changes. The MOU ended years of dispute about who will control development of the property, located in the hills east of Hayward and west of Pleasanton. Some of the property was annexed to Hayward in the 1960s, while Pleasanton later claimed much of the same land as part of its sphere of influence.

Last January, however, an Attorney General's Opinion concluded that there was "no statutory basis" for the joint land-use authority, adding that the MOU "would impair the future exercise of legislative authority." (AG Opinion No. 93-904, January 13, 1994.)

In response, Assembly Member Johan Klehs, D-San Leandro, introduced AB 1877, which would have given the three jurisdictions express statutory authority to enter into the MOU. However, the bill ran into opposition from Assembly Member Richard Rainey, R-Walnut Creek, who took up the cause of property owners opposed to the agreement. At Rainey's urging, Wilson vetoed the bill, calling it "an unwarranted interference and intervention by the State into local and regional matters" and suggesting that the jurisdictions could establish a joint powers authority to achieve the same goal.

Despite the veto, "we're going with what we've done," said Pleasanton Mayor Ben Tarver, a strong proponent of the agreement and an advocate of more land preservation in Pleasanton Ridge. Tarver said that despite the AG's Opinion and the veto, the jurisdictions still believe they have the power to proceed with the MOU. Tarver said the jurisdictions would also seek legislation again next year.

However, landowners in the area have taken a legal challenge to the case to the First District Court of Appeal in San Francisco. Several landowner groups have filed suit, claiming the MOU is a violation of local police powers. Alameda County Superior Court Judge William Dunbar ruled that none of the groups have been damaged by the agreement because none have sought development permits in the area. (*Alameda County Land Use Association v. City of Pleasanton*, No. H174405-5.)

Landowner lawyer Rick Jarvis said the landowner groups discussed the possibility of filing a development application — probably with Alameda County — as the basis of a legal challenge. "But we perceive a lot of potential difficulties with an as-applied challenge," he said. "They could turn us down on any number of grounds, and it might not ever get to the other jurisdictions for approval."

Controversy arose over Pleasanton Ridge in 1992, when the Alameda County Local Agency Formation Commission voted to place a 7,400-acre portion of the area in Pleasanton's sphere of influence, even though part of the land had been annexed to Hayward in the 1960s. (*CP&DR*, April 1992.) The move was seen as a precursor to a proposal by Amador Land and Cattle Co., the chief landowner in the area, to build 2,600 homes.

Hayward objected, claiming that land could not be forcibly removed from its boundaries and placed into Pleasanton's sphere. Amador Land and Cattle then pushed for a bill in the Legislature to permit such a move, but the bill was withdrawn when the controversy became too heated.

■ Contacts:
Assembly Member Johan Klehs, (916) 445-8160.
Assembly Member Richard Rainey, (916) 445-6161.
Ben Tarver, Mayor, Pleasanton, (510) 671-3169.
Michael Roush, Pleasanton City Attorney, (510) 484-8003.
Rick Jarvis, attorney for landowners, (510) 351-4300.

Rocklin Loses Mall to Roseville

A long-standing competition over malls between the Placer County cities of Rocklin and Roseville is over. JMB Retail Properties Co., which was working on a mall in Rocklin, has announced plans to win the mall war by simply buying out its potential competitor in Roseville and building the mall there.

JMB still has not purchased the 94-acre Roseville site. That property is owned by the Balcor Co. Balcor obtained most entitlements for the Roseville property, while JMB struggled against opposition from the Sierra Club and residents of nearby Loomis in trying to gain approval for the Rocklin site.

K-Rat Plan Gets Local Approval

The Riverside County Habitat Conservation Agency has approved a habitat conservation plan for the Stephens' kangaroo rat — a major step in the county's six-year fight to permit development in spite of the rat's listing as endangered. The plan still must be approved by the U.S. Fish & Wildlife Service.

Meanwhile, the first landowner lawsuit involving the rat has been filed. Thomas and Janice Morger of Yorba Linda, who own a 950-acre parcel near Lake Mathews, claim their property was made worthless by inclusion in the K-rat study area.

And in a precedent-setting deal, the Habitat Conservation Agency has made a deal with the federal Bureau of Land Management to add several parcels of BLM land near Lake Elsinore and Moreno Valley to the K-rat preserve, bringing the total preserve to some 40,000 acres.

Simi Valley, Long Beach Equities Make Deal

Simi Valley has settled a longstanding legal dispute by exempting Long Beach Equities from the city's growth control ordinance and permitting construction of 550 homes on the Marr Ranch property.

In return, the city will receive $3.5 million in cash and fees, 1,800 acres of open space, road improvements, and dedication of land for a fire station.

Long Beach Equities sued Simi Valley and Ventura county more than five years ago, claiming a regulatory taking because neither would consider its application. The Second District Court of Appeal ruled that the case was unripe because Long Beach Equities had not sought a variance, and also concluded that both the city's and the county's growth regulations were not unconstitutional on their face. *Long Beach Equities Inc. v. County of Ventura*, 231 Cal.App.3d 1016 (1991). ❑

Town and Gown

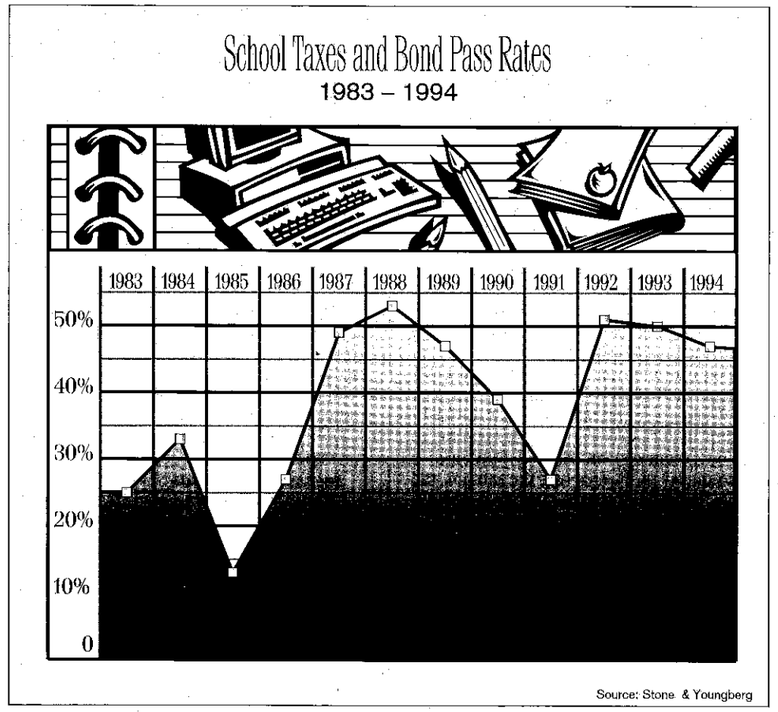
William Fulton

Pass Rate for Bonds and Taxes Approaches 50%

Local voters in California have passed 42% of all school taxes and bonds since 1983 — and they've passed half of all these measures on the ballot in the last three years, according to new figures compiled by the investment banking firm of Stone & Youngberg. The figures seem to confirm the view that local districts are more willing to place bond and tax measures on the ballot — and more able to pass them — than at any time since the passage of Proposition 13 in 1978.

In general, the Stone & Youngberg figures show, general-obligation bonds have a better pass rate than parcel taxes and Mello-Roos taxes. Bond and tax proposals stand a better chance of passage in smaller districts — though pass rates are high among very large districts. And pass rates have bounced around in the past few years, but have been at historic highs since 1992.

The figures include results of 544 local school tax and bond elections in California over the last 11 years, including general-obligation bonds, parcel taxes, and Mello-Roos taxes (in elections where the electorate was made up of registered voters, rather than property owners).



Voters have passed 46% of all general-obligation bonds, which have made up slightly more than half of all local elections since 1986. Parcel taxes passed 42% of the time; they made up a third of all local school elections. Mello-Roos elections involving registered voters showed a pass rate of only 26%. They made up only 10% of all local elections.

General-obligation school bonds were prohibited from appearing on local ballots from 1978, when Proposition 13 passed, until 1986, when Proposition 46 reinstated the power of local districts to increase property taxes for general-obligation bonds with a two-thirds vote. According to Stone & Youngberg's Bruce Kerns, who compiled the figures, the passage of the state School Facilities Act in 1986 also motivated many school districts to begin thinking about local taxes.

For this reason, the number of bond/tax proposals appearing on local ballots grew dramatically beginning in 1987. School districts around the state averaged only 15 measures per year from 1983 to 1986. Since that time, the average annual total has been 68 measures.

The pass rate also rose dramatically starting in 1987, probably because general-obligation bonds are more popular with voters than other kinds of tax measures. The pass rate jumped from 27% in 1986 to 49% in 1987 and has hovered right around 50% ever since, except for a slump in 1990-91, when it dropped to 31%.

About two-thirds of all bond/tax measures have been placed on the ballot at special elections and springtime municipal elections, rather than during regularly scheduled June and November state elections. That's because school officials often follow the conventional wisdom, which suggests that bonds and taxes have a better chance at special elections and springtime municipal elections, when turnout is light. Yet according to the Stone & Youngberg figures, the difference in the pass rate is only 6%: 44% for special and springtime elections versus 38% for June and November state elections. "That's not as big as we expected," Kerns said.

Another piece of conventional wisdom was confirmed: The smaller the district, the better the chances of success.

This trend was generally true in general-obligation bond elections, but there were some interesting wrinkles. The 50% pass rate held steady for districts below 6,000 average daily attendance and districts above 15,000 — but for mid-sized districts in between those extremes, the G.O. pass rate dropped to only 36%.

But the trend is especially true with parcel taxes. In that category, very small districts — below 1,000 students — pass parcel taxes at a rate of 63%. The rate hovers consistently around 40% for districts of 1,000 to 10,000 students. And in districts above 10,000 students, the parcel-tax pass rate drops precipitously — to around 11%. ❑

■ Contacts: Bruce Kerns, Stone & Youngberg, (415) 981-1314.

Base Reuse

Morris Newman

Orange County Tries to Go It Alone on El Toro

Following the passage of a ballot initiative calling for a commercial airport on the site, the Orange County Board of Supervisors has withdrawn the county from the El Toro Reuse Planning Authority (ETRPA) and asked the Navy to set aside 2,000 acres of the El Toro Marine Air Station for a commercial airport.

If the supervisors succeed in scuttling ETRPA, it would mark the first time that a county has invalidated a planning agency formed for base re-use purposes and usurped base-conversion powers for itself. But it's questionable whether the Pentagon will go along with this latest development.

In November Orange County voters approved Measure A by 51%-49% vote — a move that amended the county's general plan to require that part of El Toro's property be rezoned for commercial aviation purposes. The measure had been placed on the ballot by a group of Orange County business leaders, including developer George Agyros, in order to circumvent the ETRPA process, which they viewed as stacked against an airport. "I would take it at face value that an initiative that has passed creates an obligation on the part of the public body that does the county's business to implement what voters have passed," said Bruce Nestande, a former supervisor and current employee of Agyros's development company who served as coordinator of Let's Pass Measure A.

The ETRPA structure was created earlier this year only after many months of bitter controversy between the county and cities in the north county, who generally favored an airport, and south county cities that do not want an airport in their immediate area. As finally constituted, ETRPA — a joint-powers authority — included all five county supervisors, three representatives from Irvine, and one from Lake Forest. After Measure A was placed on the ballot, Lake Forest and several other cities joined together to hire their own planning consultants to devise land-use alternatives for El Toro — a step designed to counter the pro-Measure A campaign.

County supervisors passed a motion on November 15 to withdraw from ETRPA by the end of the year. The supervisors also asked the Navy to formally designate 2,000 acres of the 4,700-acre base for commercial aviation, and instructed the county staff to prepare recommendations by January 31 on the constitution of a new base re-use advisory commission. In enacting the motion, the supervisors cited language in Measure A which calls for a new 13-member advisory commission.

Much disagreement remains on the meaning of the language, however. Supervisor-elect Marian Bergeson, who will represent the El Toro area when she takes office in January, said she viewed the measure as "leaving the options open" to supervisors to take any number of possible actions. She also acknowledged, however, that the action "may mean different things to different people."

Mark Pulone, assistant city manager of Lake Forest, said the language is "unclear," and that there is nothing in the language of the initiative that specifically calls for the dismantlement of ETRPA, which is not mentioned by name in the ballot measure. "There is no reason why ETRPA could not be expanded from its current nine members to 13 members, as the initiative requires," or that ETRPA be reconstituted by combining it with the board members of another group, he said.

Nestande, the pro-Measure A activist, disagreed. "The bottom line is that the initiative is very specific about the planning process. There is no ambiguous language," he said. Indeed, Supervisor Thomas Riley, who spearheaded the motion, said that he and his fellow supervisors were obliged to dissolve ETRPA and create a new board with only advisory powers. Under this scenario, the supervisors themselves would serve as the local base reuse authority — an arrangement which would be unique in California and very likely unacceptable to federal authorities, who require local representation on base re-use commissions.

While Riley did not cite the composition of the ETRPA board as a reason for deep-sixing the base reuse group, Nestande was unambiguous, pointing to the four votes from Irvine and Lake Forest as an impediment. "Both of those cities have expressed a desire for no commercial airport at El Toro. We happen to feel that a countywide asset driven by those immediately adjacent, such as a second airport, should be decided countywide and not by the adjacent constituencies."

Riley said he and fellow supervisors are aware of resistance to the county's withdrawal from ETRPA, and acknowledged that supervisors received letters from El Toro's military command, both before and after the election, stating that the ETRPA structure would be the only one acceptable to the Pentagon. In an attempt to make peace with military authorities, Riley said the supervisors plan to continue using the same executive director of ETRPA as well as the same planning consultant hired by the El Toro base conversion commission.

But that compromise is unlikely to satisfy South County cities, because the commission has only an advisory status. Laguna Niguel City Manager Tim Casey hinted that lawsuits were coming, since the death of ETRPA could disfranchise the south county cities from a decision-making role in the future of El Toro. "A prudent man argument would be that litigation is inevitable, and since the validity of Measure A may be stricken (in a court decision,) why not continue with the federally approved planning process?" Casey said.

Supervisor-elect Bergeson said that litigation would be "wasteful" and hopes to avoid it. But Laguna Niguel's Casey predicted that the present squall regarding the future of El Toro could "have a life span that could well outlive a lot of remaining tenures of county supervisors and city councillors" alike.

■ Contact:
Bruce Nestande, organizer, Let's Pass Measure A, (714) 640-1137.
Marian Bergeson, Orange County supervisor, (714) 834-3100.
Mark Pulone, assistant city manager, City of Lake Forest, (714) 707-5583.
Tim Casey, city manager, City of Laguna Niguel, (714) 362-4300.
Thomas Riley, Orange County Supervisor, (714) 834-3100.

Base Briefs

The much-heralded plans to bring a Pentagon accounting office to the former Norton Air Force Base in San Bernardino County were delayed at least two years in October, and then put back on track a few weeks later after political pressure from California's congressional contingent. Last spring, the Defense Accounting and Finance Service selected Norton as the location of a regional center that could employ up to 750 people. On October 21, the Pentagon apparently bowed to pressure from U.S. Rep. Jerry Lewis (R-Apple Valley) and other leaders. About 100 jobs will become available in the summer of 1995....

Senate Republicans defeated in October a $150 million bill that would have funded improvements at the Presidio in San Francisco, but U.S. Rep. Nancy Pelosi said that park still had enough money to meet its short-term needs. Converting the Presidio to peacetime uses will cost between $850 million and $1.2 billion. Congress approved $35 million for the Presidio conversion earlier this year....

George Air Force Base near Victorville started a new life as Southern California International Airport in late October. The 2,300-acre facility will be open only to small aircraft during daylight hours, prior to construction of a commercial terminal. ❑

CP&DR LEGAL DIGEST

Two Courts Overturn No-EIR Decisions

San Diego Appellate Court Applies Unusual Standard of Review

Two Courts of Appeal have recently kicked out negative declarations on subdivisions and ordered the local government involved to prepare an environmental impact report. The Fourth District Court of Appeal issued such a ruling in a published case from Encinitas, while the Second District made its ruling in an unpublished case from Malibu.

In both cases, the appellate court ruled that the situation met the "fair argument" standard for preparation of an EIR under the California Environmental Quality Act. But in the Encinitas case, the Fourth District backed off of a previous standard of review granting deference to local government decisions and appeared to create a new standard calling for some independent review by the court.

Encinitas Subdivision

The Encinitas case involved a proposal by Beck Properties Inc. to subdivide a 12.6-acre agricultural parcel into 40 residential lots. The Encinitas Planning Commission approved the tentative map with a mitigated negative declaration, but the decision was appealed by the Quail Botanical Gardens, a 27-acre park owned by San Diego County which contains many types of rare and endangered plants and also some wildlife. The Encinitas City Council upheld the Planning Commission's decision. Quail Botanical Gardens subsequently sued, saying the city should have prepared an EIR on the project.

A central issue in the case was the standard of review to be used in determining whether an EIR should have been prepared. The established standard of review is that an EIR should be prepared if there is a fair argument that substantial evidence exists that a significant impact on the environment may occur. The question, however, was how much deference the court should give to the local government and how much independent review of this question should be undertaken by the courts.

The Fourth Appellate District, Division One, chose to adopt the standard of review contained in *Sierra Club v. County of Sonoma*, 6 Cal.App.3d 1307 (1992), which stated that "deference to the agency's determination is not appropriate" and a no-EIR decision can be upheld "only when there is no credible evidence to the contrary."

However, in order to adopt this standard, the Fourth District had to abandon the standard of review it used in *Uhler v. City of Encinitas*, 227 Cal.App.3d 795 (1991), which stated that the court may not substitute its own judgment for the agency's.

Thus, the court stated its new standard of review which it called "hybrid" and "quasi-independent," reviewing the record but giving the city "the benefit of the doubt on any legitimate, disputed issues of credibility."

Having established this standard of review, the court then concluded that an EIR should have been prepared in the *Encinitas* case.

Though Quail Botanical Gardens made several arguments, the court focused mostly on aesthetic issues such as views and beauty. The court noted that many changes were made to the proposed subdivision during the review process, but stated: "We do not judge compliance based on how many changes were made from the original proposal, but rather on the status of the proposed subdivision at the time of approval by the city together with any specific mitigation measures adopted by the city at that time."

Noting that Quail's surveyor said 60-90% of the view would be destroyed, the court said: "The record clearly shows Quail presented substantial evidence there may be a significant impact on the Gardens' views and contrary evidence is not adequate to support a decision to dispense with an EIR."

Justice Vincent DiFiglia wrote a separate opinion concurring with the majority but rejecting the standard of review. Tracing the fair argument standard back to *No Oil v. City of Los Angeles*, 13 Cal.3d 68 (1974), DiFiglia said: "I find nothing in this pronouncement to suggest that in an environmental case, an appellate court is free to engraft 'a certain degree of independent review of the record' onto the substantial evidence standard."

DiFiglia said he would reverse the city's decision on a narrower issue: The city's decision to defer mitigation of view issues to the design stage, a decision he said violated the CEQA Guidelines requirement (Guidelines §15070(b)(1)) that all potentially significant environmental effects should be mitigated prior to the negative declaration.

■ The Case:
Quail Botanical Gardens Foundation Inc. v. City of Encinitas, No. D020059, 94 Daily Journal D.A.R. 15812 (November 10, 1994).
■ The Lawyers:
For Quail Botanical Gardens: Kevin K. Johnson, Johnson, O'Connell & McCarthy, (619) 696-6211.
For City of Encinitas: Mark A. Potter, Luce, Forward, Hamilton & Scripps, (619) 236-1414.

Malibu Subdivision

The Malibu case involved an attempt by Primrose Park Co. to develop 126 acres of ridgetop land near Solstice Canyon in Malibu. The entire site has a slope of at least 25%, while a good portion of it has a slope of at least 50%. The houses would be built on a 20-acre plateau graded by the Army during World War II. According to the court's opinion, the land carries a high potential for landslides and rock slides; it includes a major active earthquake fault near the home sites; the property is designated by the county as a high fire risk; and a portion of the property is designated as a significant watershed with exceptional riparian and oak woodlands.

County planners required a number of mitigation measures, including adherence to fire and water ordinances, and told Primrose to consult with various state and federal agencies such as the National Park Service and the Water Quality Control Board. Primrose then produced several reports addressing these issues and revised its application three times to change the design of the project. However, the county never ordered an EIR prepared on the project.

In 1990, the county planning department recommended a mitigated negative declaration on the project. Several agencies, including the state parks department, the Santa Monica Mountains Conservancy, and the newly formed City of Malibu, requested an EIR. The Conservancy submitted several reports rebutting Primrose's reports on geotechnical and seismic issues.

Apparently based on this information, the county Regional Planning Commission chose not to issue the negative declaration.

Primrose appealed to the county Board of Supervisors, arguing that it had presented all information that would ordinarily be contained in an EIR. The board reversed the Planning Commission's ruling and approved the negative declaration. The county was then sued by the Santa Monica Mountains Conservancy and by Malibu Coastal and Mountains Alliance.

L.A. County Superior Court Judge Robert O'Brien ruled that an EIR should have been prepared. The rebuttal reports from the Conservancy, O'Brien said, showed that the "fair argument" test for preparation of an EIR could be met. The county and Primrose appealed.

The Second District Court of Appeal, Division 4, affirmed O'Brien's ruling. Writing for the panel, Justice Arleigh Woods said that the county's and Primrose's argument "is simply that they provided evidence contrary to that of respondents' experts and that the Board's determination should have been upheld on the ground that it was supported by substantial evidence. As we have pointed out, however, the substantial evidence standard is not satisfied in these cases simply by looking at the evidence to determine if the adoption of a negative impact declaration is supported by substantial evidence. Rather, the issue is whether substantial evidence supports a fair argument that there may be significant environmental impact."

The court also rejected the county's argument that Judge O'Brien erred in treating natural geological conditions as an impact of the project. "The principal object of this proceeding," wrote Justice Woods, "is to decide whether there is danger that Primrose's proposed development of the property would convert what may well be natural geological conditions into potential hazards for the people who may someday inhabit the residences it proposes to build."

Judge O'Brien had also found the county's initial study inadequate, but the Court of Appeal ruled that since an EIR must be prepared, this question was now moot.

Finally, the appellate court affirmed Judge O'Brien's decision to award $107,000 in attorneys fees and expenses to Frank Angel of Barash & Hill, lawyer for Malibu Coastal and Mountains Alliance. The award was made under Code of Civil Procedure §1021.5, which permits such awards to private litigants whose actions result in the enforcement of an important right affecting the public interest.

On appeal, the county argued that Angel should not be granted the fees and expenses because the lawsuit was also pursued aggressively by the Santa Monica Mountains Conservancy, a public agency. But the appellate court rejected that argument. "The fact that a private party cooperates with a government agency in litigation does not bar the private party from recovering attorneys fees under §1021.5," Justice Woods wrote. "MCMA was not merely riding the coattails of the public entity litigant but shouldering a significant aspect of the litigation." ❑

■ The Case:
Malibu Coastal and Mountains Alliance v. County of Los Angeles, No. B068297, and State of California v. County of Los Angeles, No. B070560, October 18, 1994 (unpublished).

■ The Lawyers:
For Malibu Coastal and Mountains Alliance: Frank Angel, Barash & Hill, (310) 470-9897.
For Santa Monica Mountains Conservancy: Ann Rushton, Attorney General's Office, (213) 897-2607.
For Los Angeles County: Richard Weiss, Deputy County Counsel, (213) 974-1823.
For Primrose Park Co.: Robert O. Smylie, Robert Smylie & Associates, (310) 553-3758.

TRANSPORTATION

Caltrans Needed Agreement With South Pasadena, Court Rules

By Larry Sokoloff

The city of South Pasadena has won a round in its 30-year fight with Caltrans over the proposed extension of the Long Beach Freeway through the city.

A three-judge panel of the Third District Court of Appeal has ruled that Caltrans failed to abide by a state law that made it easier for the agency to build a 6.2 mile, eight-lane extension of Route 710 through the community.

The panel, however, refused to grant the city a broader injunction against the project, and Governor Pete Wilson recently signed a bill intended to clear the way for the freeway's construction. However, the city has not lost hope that the freeway will still be blocked in the state legislature or Congress.

The Court of Appeal, in an opinion by Justice George Nicholson, upheld a lower court ruling that prevented Caltrans from building the freeway extension without an agreement with South Pasadena. The city has refused to enter into a freeway agreement with Caltrans.

Under §100.2 of the Streets and Highway Code, Caltrans must first obtain a freeway agreement with every city in which a freeway will permanently close a street.

Caltrans had gained a legislative exemption from the law in 1982, with passage of §100.4 of the Streets and Highway Code. Under the new section, Caltrans and the California Transportation Commission were given a timeline to complete the steps related to the environmental impact report for the project and to select the route for the freeway.

The court said that the California Transportation Commission had six months after the final environmental impact report was prepared and distributed in September 1984 to select the route. The CTC adopted the Meridian Alternative route, but later abandoned it. In 1985 the Federal Highway Administration requested that Caltrans re-examine alternative routes with less impact on historic sites.

Caltrans told the court that it had approved the so-called Meridian Variation route on September 14, 1994.

South Pasadena argued that the CTC met the deadline in §100.4 in adopting the Meridian Alternative Route, but not in selecting the Meridian Variation route. The court agreed.

The CTC, the court said, "had six months after the final environmental impact report was prepared and distributed on September 14, 1984, to select the route. It did so by selecting the Meridian Alternative Route, but later abandoned that route. Now, 10 years after completion of the final environmental impact report, there is no valid basis for continued application of §100.4 as a way to avoid obtaining a freeway agreement from the City."

Examining the question of whether legislative intent had been met, the court noted that there were two goals when the legislature adopted the law:

"(1) building the freeway without further obstruction by the City and (2) doing so in a fraction of the time already consumed by the project."

"Caltrans," the court noted, "frustrated legislative intent by not strictly adhering to either goal."

The appellate court's ruling came after Wilson signed a bill into law on September 28 which amends §100.4 on January 1, by extending the timeline for Caltrans.

Caltrans attorney Robert Vidor argued that the new law renders a court decision moot. But the panel noted that since the city may challenge the amendment as unconstitutional, "if we were to rely on the amendment as if it were effective now, we would implicitly sustain its constitutionality before the City has any opportunity to challenge it."

Vidor said he has asked the court to reconsider its decision, a first step in the appeal process.

In its decision, the appellate court also upheld a ruling by Sacramento County Superior Court Judge Earl Warren Jr. refusing to issue an injunction sought by South Pasadena. The court also rejected the city's request to broaden the injunction to force Caltrans to obtain a freeway agreement with the city even if building the freeway will not permanently close any streets.

Even though South Pasadena failed to win a broader injunction, Antonio Rossmann, the attorney for the city, sounded optimistic about the city's longterm chances to defeat the freeway extension project.

Rossmann said that changes in the Assembly after the November elections may bode well for the city's fight. Repeal of the new law "is not an improbability," he said, since the measure was pushed by Democrats in the Assembly, who appear to have lost control of that body after the November election.

The California court's ruling against Caltrans may also hinder the agency's efforts to get the go-ahead for the project from the Federal Highway Administration in Washington, D.C., which is being asked to provide 80% of the funding for the $670 million project. The Federal Highway Administration is supposed to decide on the freeway in the next six months, Rossmann said.

Rossmann said the project was reviewed by the federal government in 1964, 1977 and 1984, and each time it was rejected. If the freeway is approved by the FHWA, Caltrans plans to begin building it no sooner than 2005, Rossmann said. The state will have no money for property acquisition on the route until 1999.

In place of the freeway extension, which would destroy historic homes in the community, South Pasadena officials prefer that Caltrans support the Blue Line light rail project, improve street arterials and create better connections to existing freeways. Rossmann said that Caltrans' analysis has shown that the alternatives for South Pasadena show that they would come within five percent of the freeway's capacity, while costing only $100 million.

Rossmann said the recent departure of Jerry Baxter as Caltrans director in the Los Angeles region may also help in the fight against the freeway, since Baxter was an important supporter of the project. ❑

■ The Case:
City of South Pasadena v. Department of Transportation, California Court of Appeal, Third Appellate District, No. C017135, 94 Daily Journal D.A.R. 15293.

■ The Lawyers:
For South Pasadena: Antonio Rossmann, (415) 861-1401.
For Caltrans: Robert W. Vidor, (213) 620-2442.

VESTED RIGHTS

Permit Required for Expansion Of Non-Conforming Mine

In a split decision, the Third District Court of Appeal has ruled that a mining company does not have a vested right to expand the size and geographical scope of its operation when it has been declared a non-conforming use under the county's zoning ordinance.

The ruling means Hansen Brothers Enterprises will need a Nevada County use permit to expand its gravel-mining operation along the Bear River from 1,300 cubic yards per year to 250,000 cubic yards. In dissent, Presiding Justice Robert Puglia wrote that Hansen Brothers "has a constitutional right to pursue its mining operation on any part of its property, and to increase production as desired, consistent with the law of nuisance."

The Bear's Elbow Mine has been a non-conforming use since 1954. (A portion of the mine lies in Placer County; this portion was not in dispute in the litigation.) Between 1955 and 1989, the company excavated and produced 209,000 cubic yards of gravel, including 44,000 from the Nevada County side. All of the mining occurred in the riverbed, and only a small amount of quarrying took place in the adjacent hillsides, which Hansen Brothers also owned.

In 1989, Hansen Brothers submitted a reclamation plan under the Surface Mining Reclamation Act as part of a proposal to expand mining operations. Claiming a vested right to mine both the riverbed and the hillside, Hansen proposed mining 250,000 cubic yards of gravel per year across the entire parcel for 60 to 100 years. This proposal included mining the hillsides to a depth of 350 feet.

This plan was rejected by the Nevada County Board of Supervisors, which concluded that Hansen Brothers would need a conditional use permit. The board found that the reclamation plan involved an enlargement of the mining operation beyond the company's vested rights under its status as a non-conforming use. The board also found that because Hansen had abandoned hillside quarrying for more than 180 days, the company had essentially stopped mining the hillside area, meaning it had no vested right to do so under the non-conforming use.

Hansen Brothers sued, but Nevada County Superior Court Judge Reginald Littrell ruled in favor of the county, agreeing that the hillside mining operation had been halted and the reclamation plan constituted an expansion of operations beyond the non-conforming use.

On appeal, the Third District distinguished this case from the leading case in the area, *McCaslin v. City of Monterey Park*, 163 Cal.App.2d 339. In that case, the Court of Appeal ruled that a city ordinance prohibiting mining and creating a non-conforming use was unconstitutional. In the Nevada County case, the Third District noted that McCaslin, unlike Hansen Brothers, indicated no interest in expanding mining operations.

"Although there may exist a logical argument extending McCaslin to give Hansen Brothers the right to mine over the next 100 years as planned, this argument extends logic beyond the limits of common sense," wrote Justice George Nicholson for the majority. "Simply put, due process requires the government to allow the company to continue in its prior beneficial use of land, no more."

Nicholson rejected Hansen Brothers' argument that the company has a vested right to expand mining at will because of fluctuation in market demand.

In his dissent, Justice Puglia wrote: "An increase in production in an extractive business is not a change in the basic nature of the business. The nature of the business is to extract as much of the available minerals as may profitably be marketed and as surrounding circumstances will permit. Whether all of the available minerals are extracted in one year or one hundred years is immaterial."

Puglia also disagreed with the majority's conclusion that the hillside could not be mined. He said the conclusion permits the Board of Supervisors to apply the same reasoning in preventing mining anywhere mining had not previously occurred ."In effect, the mining operation would have to cease immediately because only property previously used, i.e., where the ore had already been extracted, could be mined," he wrote. "The absurdity of such a result is self-evident." ❑

■ The Case:
Hansen Brothers Enterprises v. Board of Supervisors, No. C017070, 94 Daily Journal D.A.R. 16118 (November 17, 1994).

■ The Lawyers:
For Hansen Brothers: Mark D. Harrison, Diepenbrock Law Firm, (916) 444-3910.
For Nevada County: Harold E. Degraw, Office of County Counsel, (916) 265-1319.

CEQA

Otay Ranch Program EIR Upheld By San Diego Judge

The environmental impact report for the

23,000-acre Otay Ranch project in San Diego County has been upheld by a Superior Court judge. However, the case is sure to be appealed and could provide the basis for the first significant appellate ruling dealing with program EIRs.

In November, San Diego County Superior Court Judge Judith McConnell denied a writ of mandate requested by Chaparral Greens, a citizen group, which claimed that the environmental review process was flawed in many respects. The ruling affirmed the environmental documents prepared by the City of Chula Vista and San Diego County on the project, which is being developed by the Baldwin Co. The project was jointly planned by the city and the county.

In her statement of intended decision, McConnell dealt with a number of questions on how regional issues were analyzed in the EIR — questions that could form the basis of an important ruling on program EIRs.

Though Chaparral Greens filed 13 causes of action in the case, McConnell narrowed the scope of her inquiry to four issues. Perhaps the most unusual was the question of whether Chula Vista exercised independent judgment in reviewing the EIR.

Baldwin paid the cost of the EIR, which came to more than $1 million. Because Baldwin fell behind in the EIR payments at one point, the city briefly took a security interest in a piece of Baldwin land in Del Mar as collateral. The land returned to Baldwin's hands after the developer paid up. However, Chaparral Greens used this financial relationship as the basis of its argument that Chula Vista was compromised in its review of the project.

McConnell rejected the claim. "There was nothing 'hidden' in the fact that the City and County obtained the security interests," she wrote. "There is no evidence to suggest the Respondents' consideration of the project was influenced by the temporary security arrangement nor is there any legal prohibition to the arrangement."

On regional issues, McConnell rejected Chaparral Greens' argument that the EIR failed to analyze the regional implications of annexing part of the property to Chula Vista, especially the question of a water source. McConnell said program EIRs inevitably focus on broad issues, adding: "Petitioners' argument fails to acknowledge that jurisdictional issues within LAFCO's purview will be examined in a supplement to the program EIR, specifically addressing sphere of influence issues as they relate to water sources." As Tina Thomas, attorney for the city, put it: "We're not LAFCO."

McConnell also rejected Chaparral Greens' argument that the EIR should have relied on regional endangered species programs — San Diego County's Multiple Species Conservation Program (MCSP) and the state's Natural Communities Conservation Program (NCCP). McConnell said that the CEQA Guidelines (§15125) do not require consideration of plans that are still in draft form. She also noted that the EIR contained an "enormous amount" of regional data and that Ogden Environmental, which prepared the EIR, also prepared the MCSP.

Finally, McConnell rejected Chaparral Greens' claim that the statement of overriding consideration on the EIR was not supported by substantial evidence. Chaparral Greens had expert witnesses who argued that the fiscal impact analysis was faulty. McConnell noted that Chaparral Greens could have presented alternative methods during public review and failed to do so. She rejected the plaintiffs' contention that the analytical methods were "buried" in the record. ❑

■ The Case:
Chaparral Greens v. Baldwin Builders, San Diego County Superior Court No. 671181.

■ The Lawyers:
For Chapparal Greens: Charles Crandall, (619) 233-4787.
For City of Chula Vista: Tina Thomas, (916) 443-2745.
For San Diego County: Mark Mead, Deputy County Counsel, (619) 531-4887.
For Baldwin Builders: Mark Dillon, Gatzke, Mispagelq & Dillon, (619) 431-9501.

FYI

The U.S. Supreme Court has agreed to hear *City of Edmonds, Wash., v. Washington State Building Code Council*, 94-23, a case involving the question of whether an ordinance limiting the number of unrelated persons in a single-family house violates the federal Fair Housing Act amendments of 1990. Last spring the Ninth U.S. Circuit Court of Appeals ruled that local zoning ordinances were not exempt from the law; the 11th Circuit had previously ruled otherwise. Meanwhile, the Supreme Court declined to hear *Duncan v. Blinebery*, 94-335, a regulatory takings case involving a denied variance....

The absence of legal advice from administrative proceedings does not excuse a citizen group from the requirement that administrative remedies be exhausted before going to court, the First District Court of Appeal has ruled. The case involved a neighborhood group opposed to a development in Fairfax (Marin County), which was not represented by a lawyer at the planning commission meeting and then relied on erroneous information from a commissioner about how to appeal the decision. The neighborhood group did not file an application for an appeal but rather submitted a petition. Later, the group asked for — but was denied — a re-hearing before the town council, claiming its members had been misinformed.

After the project was approved, the neighbors filed a lawsuit alleging violations of the California Environmental Quality Act and the town code, but ran into trouble on the exhaustion of administrative remedies issue. *Park Area Neighbors v. Town of Fairfax*, No. A063152, 94 Daily Journal D.A.R. 15549 (November 4, 1994)....

Covenants can't be enforced if they are not included in the deed, even if the original developers intended for them to be followed, the First District Court of Appeal has ruled. The case came from the Town of Woodside, where a family owning two adjacent parcels received a town permit to plant a vineyard and later also raised llamas on their property. Nearby residents argued that CC&Rs on the property prohibited anything other than residential uses. In the case of one parcel, the original deed from the developer to the first buyer of the lot did not make any express reference to the CC&Rs, nor did any other deed in the chain of title. In the case of the second title, CC&Rs were recorded and included in the first deed after subdivision but not in any subsequent deeds. *Citizens for Covenant Enforcement v. Anderson*, No. A062032, 94 Daily Journal D.A.R. 14802 (October 24, 1994). ❑

County-By-County Results of November Ballot Issues

Contra Costa County

Walnut Creek

Walnut Creek voters rejected Measure K, a growth control measure that would have imposed tighter restrictions on commercial development in Walnut Creek, including annual caps and an eight-year maximum limit. It was placed on the ballot after the City Council approved a less restrictive growth control ordinance last year.

Measure K: No, 61.8%.

Madera County

Madera County voters rejected an advisory measure on whether to pursue completion of study to construct airport.

Measure 2: No, 63.1%.

Orange County

Orange County voters narrowly approved an initiative sponsored by the business community to change the county general plan to require aviation uses when El Toro Marine Air Base closes. The initiative circumvents a broad-based planning process now in progress.

Measure A: Yes, 51.2%.

Dana Point

Dana Point residents rejected two measures to amend the city's general plan to permit development of the Headlands property, the last major undeveloped parcel of land in the city.

Measure G (general plan amendment): No, 55.0%.

Measure D (Headlands specific plan): No, 55.5%.

San Bernardino County

Adelanto

Adelanto voters adopted a general plan update that promotes industrial and manufacturing uses located under the flight pattern of now-closed George Air Force Base.

Measure R (revised general plan): Yes, 59.0%.

Measure S (zoning map): Yes, 58.3%.

San Diego County

San Diego County voters approved a general plan amendment to permit construction of a private landfill and recycling center on a 270-acre site in Gregory Canyon.

Measure A: Yes, 67.6%.

Encinitas

Encinitas voters favored growth. They soundly rejected Measure K, which would have required a vote for general plan amendments on projects above a certain size. The vote clears the way for construction of the Encinitas Ranch project. Voters also passed a referendum on a city council decision to rezone a one-acre parcel.

Measure K (vote requirement on general plan amendments): No, 67.4%.

Measure L (rezone one-acre parcel): Yes, 59.7%.

Santee

Santee voters approved an advisory measure on whether to permit a private water park recreation facility.

Measure M: Yes, 56.1%.

City and County of San Francisco

Voters approved a measure to transfer building inspections from the Public Works Department to an independent agency governed by a seven-member commission with authority to grant variances.

Measure G: Yes, 53.5%

San Mateo County

County voters approved an amendment to the local coastal plan by changing the way density is calculated in rural areas. It will likely result in about 60 new homes on individual parcels.

Measure A: Yes, 53.6%.

Brisbane

Voters approved a referendum on the city's new general plan.

Measure H: Yes, 64.8%.

Half Moon Bay

Voters in Half Moon Bay voted on an advisory measure on two similar options for development of the Wavecrest project. The approved option includes 750 homes, 200-400 foot coastal bluff setbacks, and a golf course.

Measure D: 66.0%.

Pacifica

Pacifica voters rejected an advisory measure on rezoning of three properties, totaling less than two acres, from agricultural use to commercial use to allow for a fine arts and music club.

Measure C: Yes, 58.5%.

Santa Barbara County

Solvang

Solvang voters rejected a proposal from a local developer who wanted to include a large Ferris wheel in a Tivoli Gardens-type project in this Santa Ynez Valley tourist community.

Measure G94: Yes, 55.3%. ❑

November Elections Show Strong Slow Growth Trend

Continued from page 1

Endangered Species Act is up for renewal, Republican House leader Newt Gingrich indicated that the House committee that handles species legislation, is likely to be abolished.

On the local front, a conservative sentiment also appeared to lie behind the defeat of cityhood in Sacramento County's Elk Grove, where voters expressed concern about the city's ability to honor its promise to pay the county $2.4 million per year after incorporation. Cityhood was also defeated in Elk Grove in 1987; no new city has been formed in Sacramento County in almost 50 years, despite rapid growth.

The statewide total of 15 land-use questions on local ballots is up from last November but down from historic highs. In the 1990 gubernatorial election, for example, 51 land-use questions appeared on local ballots.

In many cases, voters said "yes" to growth by voting "no" on proposals that would have closed the door on development options. Perhaps the most dramatic victory came in Walnut Creek, where a slow-growth initiative in 1985 helped create the subsequent boom in ballot-box zoning. Walnut Creek voters rejected a slow-growth initiative that had been placed on the ballot in opposition to the city council's updated general plan. The measure would have *limited* new developments and tied their approval to an intricate traffic-flow formula.

In Walnut Creek, the council used a special committee to prepare a new growth limitations element, said city planner Paul Richardson. After two years of consensus-building the council adopted the element as part of the general plan last year. However, slow-growth citizens placed a measure on the ballot that would have strictly rationed houses and office space over the next eight years.

Two Southern California measures that encourage growth dealt with the impact of military base closures. In Orange County, voters said they favor converting the El Toro Marine Air Base to commercial aviation uses. The vote tables a regional planning effort that explored other options. (See *Base Reuse*, Page 4.) A similar act-now sentiment was expressed by Adelanto voters in San Bernardino County. There, voters confirmed a new city general plan that seeks to fill economic gaps of the closed George Air Force Base with new industrial and manufacturing businesses.

Among slow-growth victories, perhaps the most notable was a referendum in Orange County's Dana Point, where voters repealed the city council's decision to develop the Headlands property.

The council had approved a $550 million development on a 121-acre oceanfront site — the last major undeveloped beach property in the city. More than 25 public hearings had been held on the proposal. "The vote reflects a failure of the process," said Community Development Director Ed Knight. "It is regretful that the details of this complex plan had to be reduced to a 'yes' or 'no' vote." Knight said the property owner, M.H. Sherman Co., is considering its options, including a lawsuit and a new development plan.

In Brisbane, voters approved a referendum that confirmed a council-adopted general plan update. The update contains more than 1,000 policies and programs that will control growth in this San Francisco Peninsula community.

In San Francisco — always a center of innovative planning policies — voters approved an odd charter amendment to restructure building inspections. A homeless coalition *Continued on page 10*

Country Music Projects Proposed in Tehama, Gilroy

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The promoters claim the complex will provide 7,000 jobs.

Those kinds of numbers turn heads in Tehama County, a largely rural county with an agriculture and timber-based economy that has a population of only 50,000 people and an unemployment rate of 14%. "I've got a stack of letters a foot high" in favor of the project, said county supervisor JoAnn Landingham. Supervisor Barbara McIver, who represents the Celebrity City area, said she remains "officially neutral" about Celebrity City, because no project has yet been presented to the supervisors; she voted for the general-plan amendment "to keep the door open," she said.

Even though the general plan amendment and zone change have been approved, however, the Celebrity City developers have not yet prepared a specific plan, meaning the county has no information on particulars of the project. The general plan amendment was approved with a supplemental environmental impact report (the area was previously zoned rural residential) and the county has not yet indicated whether a new EIR will be required at the project level.

Such vagueness has raised concerns, especially among some local residents, neighboring Shasta County, and Caltrans. A lawsuit seems probable, either from the neighbors or from Shasta County.

Erik Mathisen, a local resident who belongs to an anti-Celebrity City group called Citizens for Common Sense, said he fears that Celebrity City's proponents are little more than undercapitalized land speculators simply hoping to drive up the price of land. (Currently worth about $500 per acre, it could be sold for $8,000 per acre with the new zoning, according to one estimate.

Mathisen also faults the county's decision to approve the general plan amendment without seeing the specific plan. "Our quarrel is with the county as much as with the developer," he said. "This is not a good way to proceed — we don't think it's even a legal way." Mathisen claimed that "if this project is ever built it will completely change the nature of two or three counties up here. It will be the spur that converts them from rural to urban counties."

Brandon Adams, assistant project manager for Celebrity City, said the specific plan is in progress but indicated that most development decisions have not been made. "We are working with a huge team of consultants that we are in the process of retaining right now. We'll decide on the right direction to go in, how many theaters we want in the first phase," he said.

Shasta County has faulted the use of a supplemental EIR on the general plan amendment and called for an entirely new EIR. "The land was originally zoned as rural residential and this represents a whole new project," county planner Paul Bolton said in an interview. Bolton also said that he would like to see a new EIR for the specific plan as well, since the developers have promised that a set of issues that were inadequately or incompletely addressed in the general plan amendment EIR would be addressed in the specific plan. Tehama County appears undecided on this issue. Some observers speculate that Tehama County may seek to avoid preparing a full EIR on the project by giving a "negative declaration" on the Celebrity City specific plan and its various mitigation measures.

Brandon Adams, Celebrity City assistant project manager, acknowledged that the EIR had received a number of criticisms, but promised to address all environmental concerns, including new hydrology studies, in the upcoming specific plan. "All the things they were for — a water study, wetlands, traffic mitigation — all that will be part of the specific plan," he said.

Though officially neutral on the project, Caltrans has raised concerns about traffic, noise, glare, drainage, and the inadequacy of analysis about the number of lanes needed on Interstate 5 leading into and out of the project area. Caltrans also faulted the EIR for lacking a trip generation analysis for the 800-1,000 houses planned as part of the project.

In Gilroy, promoters are proposing Garlic Country USA, where 12 music-oriented theaters, 200 retail stores and a 250-room hotel are proposed on 250 acres. If approved, the $500 million project would break ground next year, and reach completion in 1999. The same group of developers — Kimball Small, Grant Sedgwick and Brad Blackman — had earlier filed an EIR on a different project for the same site and may try to modify the existing EIR to reflect the current project. Local support for Garlic Country USA seems more divided than that for Celebrity City. Gilroy Mayor Don Gage says he likes the idea of a "visitor-serving industry," but adds that he is waiting to see the solutions the developers propose to anticipated traffic impacts. In terms of local support, "I think it's split about 50-50," he said.

Small said that Garlic Country USA will require "only a few small amendments" to the existing EIR, because "it is a refinement of the same project." He acknowledged that he had not secured financing but said it was "close." Still needed is a Caltrans encroachment permit, because the project is proposed near State Highway 152, as well as an architectural site review which the city would conduct as part of its planned unit development process. Added Gilroy planner Melissa Durkin, "There is some concern among residents of the community because we have never before developed a regional use that is so far reaching." ❑

■ Contacts:

JoAnn Landingham, supervisor, Tehama County, (916) 527-4655.
Barbara McIver, supervisor, Tehama County, (916) 527-4655.
Brandon Adams, assistant project manager, Celebrity City, (916) 528-1040.
Don Gage, Mayor, City of Gilroy, (408) 848-0400; (408) 848-9258.
Kimball Small, development partner, Garlic Country USA, (408) 998-1411.

November Elections Show Strong Slow Growth Trend

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and the Residential Building Contractors Association worked together to have building inspections moved out of the public works department into its own department ruled by a seven-member appointed commission.

"This is a very unusual approach to code enforcement," said John Cribbs, director of public works in San Francisco. "Especially since the commission will be made up of the very people it must regulate."

The measure requires that the commission include an architect, a structural engineer, a contractor, a homeowner, a tenant, a representative from a low-income tenant association, and one at-large member. The San Francisco commission has limited authority to grant exceptions to the state Uniform Building Code and could potentially lower seismic and safety standards, according to the many contractor associations which opposed the measure. ❑

■ Contacts:

Paul Richardson, Chief of Planning, Walnut Creek, (510) 943-5834.
John Cribbs, Public Works Director, City and County of San Francisco, (415) 554-6920.
Ed Knight, Community Development Director, Dana Point, (714) 248-3560.

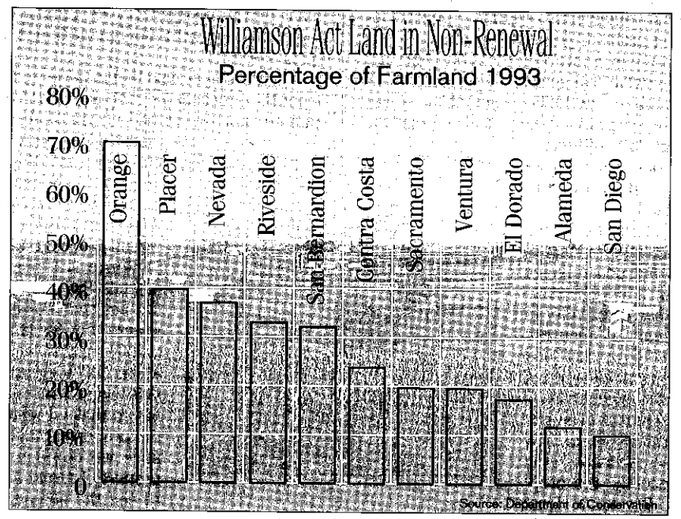
NUMBERS

Stephen Svete

Saving Farmland — Or Just Tracking It?

By all measures, the loss of rich agricultural land in California is continuing at a steady clip — even though the amount of farmland enrolled in the state's strongest farmland protection law has stayed constant for the last decade. Why don't we seem to care? Maybe it's because even with the loss, actual agricultural yields are at record highs, as are net returns on investment in farming.

The Williamson Act was first created almost 30 years ago to safeguard agricultural land, providing property tax breaks to landowners in exchange for maintaining agricultural land uses. Today, open space preservation and control of urban growth patterns have also become explicit goals of the legislation. In the 47 counties that participate in the state program, owners enroll their lands for a 10-year period. They typically withdraw the land through a process called "non-renewal" — a nine-year phase-out period in which property returns to a market tax rate and land use restrictions are ended, opening the door to development.



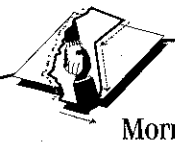
According to the state Department of Conservation's most recent status report, the Williamson Act protects just over half of California's 30 million agricultural acres, and affects nearly one-third of private property in the state. The 15.9 million acres currently enrolled in the Williamson Act is a figure that has held fairly steady since the peak year of 1979. (In fact, the total rose slightly last year.)

But as a measure of agricultural land protection, this statistic is misleading, for three reasons. First, the proportion of prime agricultural land under protection has declined as a percentage of the total, while more marginal non-prime and open space lands have grown. This is consistent with the popular knowledge that urban sprawl continues to gobble up the best farmlands. Second, the total amount of land undergoing contract phase-out through the non-renewal process is at a record high, representing over 4% of the total Williamson Act land. The 692,000 acres involved in non-renewal in 1993 is a 33% increase from the 540,000 acres in non-renewal phase-out in 1988. And finally, even though acreage additions to Williamson Act surpassed non-renewal acreages in the latest statistical reporting year, additions (that is, newly enrolled properties) were at their lowest in seven years.

In counties where agriculture and urban development butt heads, the Williamson Act has become little more than a good indicator of pending development. Not surprisingly, Orange County — a place synonymous with land development — is at the top of the indicator list, with nearly 70% of its Williamson Act land in some phase of non-renewal. The Sacramento ex-urban counties of Placer and Nevada are second and third, with 40% and 37% of their contracted lands in non-renewal, respectively. In raw acreage, Kern has the highest amount of contract land in non-renewal — over 96,000 acres. And other Central Valley counties with sizable cities follow immediately: Stanislaus (50,000 acres) and Sacramento itself (45,500 acres). This data is consistent with the American Farmland Trust reports, which last year announced that the Central Valley's population grew by 33% during the 1980s, while farmland acreage declined by over 600,000 acres. Meanwhile, formerly agriculture-dependent cities like Fresno and Clovis proceeded to adopt General Plans calling for even more conversion of farms (one draft of Fresno's plan envisions one million people upon buildout).

Despite these figures, the topic of vanishing farmland is not a compelling issue in California today. The reason can be summed up in one word: abundance. California's agribusiness is more efficient and productive than ever. The 1992 special federal census of farm lands shows that even though total acreage in the state has declined by over 5% between 1987 and 1992, market value of products shot up 22% during the same period, while net return on investment in farming rose 8.6%. Though farmland acreage dropped by 5% in five years according to the federal census, the amount of irrigated farmland dropped by only 0.3%, indicating an increase in intensive agriculture in more marginal lands. Like other industries, agriculture is producing more with less.

All of which suggests that the arguments for protecting farmland with tax breaks or regulation will become less compelling unless they can be re-fashioned for an urban constituency. If such a re-fashioning does not occur, the Williamson Act may become nothing more than an interesting inventory of California land lost to urban development. ❑



DEALS

Morris Newman

Try This in Santa Fe Springs — But Not At Home

"Don't try this at home, kids!" says the man on the television set as he attempts to do something questionable, such as ride a bicycle across a tightrope or stick his head in the mouth of a yawning rhinoceros. A similar thrill of danger came to my mind when I learned of a recent purchase of 75 acres of industrial land by the City of Santa Fe Springs.

On its face, this deal appears to be exactly the kind of thing I have warned against many times in this column: a redevelopment agency, faced with a problem property, decides to buy it in the hope that the market may improve in the future and that a new owner can be found who can spin flax into gold or raw dirt into property tax revenues. And I have to admit that I was ready to deliver a blast of indignation when I learned that the city was spending about $10 million — not just to buy the land but also to make the payroll of a private developer in charge of selling off the land.

Yet a closer glance at the purchase shows that Santa Fe Springs, a city of 15,000 people in southeast Los Angeles County with a reputation for aggressive pursuit of business, is that rare entity in California: a city that has an accurate sense of the local real estate market, and knows how to take a reasonable risk — even when that risk involves high stakes.

> *"While the pricetag is large, the planning director defends the purchase as a bargain."*

The property in question is a commercial-industrial park formerly owned by Oldstone Bank, which became insolvent in the early 1990s. Until recently, the property was an asset of the Resolution Trust Corp. As one of the last remaining undeveloped commercial areas in what is essentially a city of industrial parks, the well-being and availability of the property was an important issue to the city.

Oldstone's former partner on the industrial park was McGranahan Carlson & Co., currently the most active developer in the city. Managing partner Christopher W. McGranahan, until recently a consultant to the RTC, attempted to find a new financial partner on the park, only to find that the poor reputation of the market had preceded him. After striking out with 140 potential financial institutions, McGranahan turned to the city.

The city was responsive because it did not want potentially profitable commercial land lying fallow. According to Bob Orpin, director of planning and development, the city's anxiety about the RTC was that it would bundle the property into a portfolio of RTC deadwood and sell it to an absentee investor who would do nothing with the property, depriving the city of a potential source of new tax increment. But the city had enough money to play in real estate. Although small in population, Santa Fe Springs is large in revenues, collecting $13 million annually in tax increment.

Taking advantage of the federal provision that gives public agencies first crack at buying RTC properties, the city spent $9.38 million to buy 75 acres. Of that amount, $7.5 million came from a subordinated tax allocation note, which is essentially a loan secured by tax increment. The $1.86 million remainder, which was the down-payment on the property, came directly out of the redevelopment operating funds. In addition, the redevelopment agency also reached into its operating funds for $400,000 annually, to pay the developer's salaries and expenses. For its part, McGranahan is held to a stringent set of performance goals: the developer must sell at least one property every 18 months to stay in the arrangement, and a new 18-month deadline is set upon the conclusion of each sale.

The developer also had to agree to stringent financial terms from the proceeds of each sale. The city subtracts a "proportionate" amount to pay off the note, then it subtracts some more to pay back a portion of the down-payment. After that, the city subtracts still more to repay itself the operating expenses that were advanced to the developer. Whatever is left over is split 60% for the city and 40% for McGranahan.

While the pricetag is large, Orpin defends the purchase as a bargain, pointing out that the city paid about $3.30 a square foot for land with infrastructure in place at a time when investors are paying $8 to $12 a square foot for comparable land elsewhere in the city. "Our goal was not to make a killing. Our goal was to get the property away from the RTC and make sure we could have the control of the property," Orpin said. If the city manages to sell the acreage at its present market value, it will reap a three-fold profit. If the deal goes to hell, however, the city still has the resources under its present tax-increment to pay off the note.

Fortunately, indications are favorable that the city may not have to wait long to recoup its stake. McGranahan says he is finalizing a deal to sell nine acres to an import-export firm for about $3.2 million. And local industrial vacancy rates have dropped from about 9% to about 6% in the past year.

Purists may fume about the city's use of redevelopment powers to enter the land-development game. RTC ownership does not, by itself, qualify a property as a victim of "blight," the term that justifies redevelopment activity. And $10 million is a very large public investment in the name of promoting development in a city where development is already a going concern. Still, the city's strategy seems defensible: its investment seems a good way of converting fallow land into tax-yielding development, without leaving its economic interests to the whims of an investor who may or may not be motivated to develop the land.

The only danger in the scheme, of course, is that other cities will learn of Santa Fe Springs' boldness and attempt to do something similar without that city's sure grasp of local market economics. So if any other redevelopment agencies are reading this article, be forewarned: Do not attempt to do this in your own city. It could blow up in your face. ❑