CP&DR
California Planning & Development Report
Vol. 10, No. 3 — March 1995

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,
Larry Sokoloff,
Contributing Editors

Allison Singer,
Circulation Manager

Subscription Price:
$199 per year

ISSN No. 0891-382X

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

Lack of Funds Causes Problems For Conservancies

Six State Agencies Reconsider Plans

By Elizabeth Schilling

Squeezed by a lack of bond money, California's six state-sponsored land conservancies are scaling back their activities in the areas of land acquisition and habitat restoration. Though they are hopeful that the legislature will provide them with new mechanisms, the money crunch surely means more modest plans for the conservancies, and it may even force them to consider the sales or development of some holdings in order to preserve others.

When created, most more than 20 years ago, the non-profit state agencies were meant to move quickly to acquire threatened open space and public access trails until permanent protection could be arranged. However, the defeat of Proposition 180, a $2 billion park bond issue on last June's ballot, scotched many plans for land acquisition. And cutbacks at state agencies such as the Department of Parks and Recreation has made it more difficult for the conservancies to sell property to those agencies which are supposed to maintain them.

"To a large degree, the original formula is falling apart," said Neil Fishman, legislative coordinator for the Coastal Conservancy. "When state parks don't even have money to clean their existing campgrounds, they aren't in the position to buy the land we originally bought on their behalf."

This loss meant the state's newest conservancies, the San Joaquin Parkway and the Coachella Valley Mountains conservancies, couldn't even get off the ground. Both depend on volunteer activity, such as fees from golf tournaments, to accomplish anything.

The conservancies do have one steady source of funds in the form of the $30 million annual appropriation guaranteed by Proposition 117, the so-called "Mountain Lion Initiative" passed in 1990. And conservation advocates, led by the Planning & Conservation League, are proposing new sources of funding.

Continued on page 10

New Report Is Critical Of Sprawl

BofA Co-Sponsors Study, But Builders Object

By Morris Newman

In a move that surprised many observers in the development, the Bank of America joined forces with the state Resources Agency, together with affordable housing and environmental activists, and issued a report in February that strongly condemns urban sprawl and recommends a new patterns of development in a rapidly growing California.

The unusual coalition has been touted as a sign of an emerging consensus on growth-related and environmental issues. At the same time, the report, "Beyond Sprawl: New Patterns of Growth to Fit the New California," has drawn the ire of the real estate community and some conservative thinkers who have slammed the report as simplistic and as scapegoating the housing industry for a host of ills ranging from the loss of wetlands to inadequate infrastructure financing.

Presented to the Little Hoover Commission, "Beyond Sprawl" is strongly critical of postwar suburban development patterns. The report is doubly remarkable that it has been issued, in part, by a major financial institution with a deep stake in the construction industry, at a time when California's housing market has just begun to recover from the state's worst recession in 60 years. In addition to BofA and Resources Agency, the report was sponsored by Greenbelt Alliance, and the Low Income Housing Fund.

"This the first time that a major financial institution has participated in such a report, and that has given it more attention than it may otherwise have received," said Andy McLeod, Resources Agency assistant secretary, who added that the agency has received many requests for copies of the report from local government officials, non-profit home builders, and private business people.

According to the report, unchecked growth has "shifted from an engine of California's growth to a force that now threatens to inhibit growth and degrade the quality of our life."

While encouraged by the perception of cheap land and

Continued on page 9

Local Planning

William Fulton

The City of Los Angeles is undergoing a major reform of its planning and development policies. The city's long-awaited General Plan Framework is now being reviewed by the Planning Commission, while a blue-ribbon task force appointed by Mayor Richard Riordan has recommended streamlined development review and permit processing.

The General Plan Framework anticipates a 23% population increase — from 3.4 million to 4.3 million — between now and 2010. Perhaps more important, however, the city anticipates that an economic development strategy will boost job growth in the City of Los Angeles far above the level forecast by the Southern California Association of Governments. Whereas SCAG predicts only an 11% increase in jobs, the Framework predicts a 20% increase — from 1.9 million to 2.3 million — by 2010.

Building on concepts in the city's 1974 General Plan, the General Plan Framework emphasizes intense development in the city's commercial centers and along transit lines while maintaining low-density residential development in many parts of the city. The framework also calls for streamlined development permitting and environmental review as part of an aggressive strategy of providing more housing in the city.

"The politics of the city have contributed to protecting existing neighborhoods and I think this plan reifies that," said USC Law Professor George Lefcoe, who is president of the city Planning Commission. But Lefcoe expressed skepticism that a transit- and density-oriented plan will work in such a sprawling city.

City Planning Director Con Howe said that the Framework moves beyond the widely publicized "centers concept" in the 1974 plan by distinguishing among different types of centers and corridors and by emphasizing mixed-use development along the corridors.

Economic development is a major component of the Framework, which proposes reorganizing local economic development functions, creating a more pro-active approach to marketing the city, revising local fee structures, establishing incentives for industrial development at ports and along rail corridors, and ensuring an ample land supply for economic development efforts.

Lefcoe said he believes L.A.'s most important task will be to capture job growth that would otherwise go to fringe suburbs. "The city is heroically determined to increase its jobs base," Lefcoe said.

The 1974 plan was widely hailed for its centers concept — the idea of channeling new growth into dense centers connected by transit, while maintaining low-density neighborhoods in between. However, the transit system was not even begun until the late 1980s, and the City Council proved reluctant to change the city's generous zoning to reflect the plan's goals.

The General Plan Framework began as an attempt to grapple with constraints in the city's infrastructure, especially the sewer system. Its scope was expanded after the 1992 riots. Though it has already cost several million dollars, the Framework merely provides policy guidance for a general plan revision, most of which will occur at the community plan level. The Planning Commission is conducting a series of workshops on the Framework during March and April and will likely vote on the document in May, Lefcoe said.

Meanwhile, the recommendations of Mayor Riordan's Development Reform Committee have received a great deal of publicity. In a cover letter to Riordan, Committee Chairman Dan Garcia, a former president of the Planning Commission, called the city's land-use approval system "a complex, erratic, unpredictable, multi-layered discretionary process." He added: "Almost every aspect of the system imposes unnecessary costs and sometimes arbitrary conditions on any proposed project without regard to its financial impact." Garcia, who is now head of the L.A. Community Redevelopment Agency board, said a reform is necessary to keep Los Angeles competitive in the region and the nation.

Among other things, the Development Reform Committee suggested:

- Assigning "case managers" in the Planning Department to shepherd projects through.
- Abandoning the bewildering array of discretionary review processes and interim control ordinances and replace them with "objective development standards and criteria."
- Streamlining CEQA procedures and guidelines.
- Expediting community plan updates.
- Reviewing all fees to ensure that they are fair and "comply with recent Supreme Court decisions," such as *Dolan v. City of Tigard*.

Many of these goals are also contained in the Framework's proposals. Planning Director Howe said that limiting discretionary review on individual projects would be important in achieving the goal of targeting growth into centers and corridors.

The long-awaited report, part of Riordan's effort to make L.A. friendlier to business, was greeted with hostility by the city's strong coalition of homeowner groups. The homeowners said they fear the reforms will threaten the high quality of life in single-family neighborhoods that the Framework seeks to maintain.

■ Contacts:
George Lefcoe, President, L.A. City Planning Commission, (213) 740-7331.
Con Howe, L.A. City Planning Director, (213) 237-1987.
Dan Garcia, chair, Development Reform Committee, (818) 954-6465.

Delta Plan Approved

The Delta Protection Commission voted on February 23 to approved a regional plan for the Sacramento-San Joaquin Delta. Now it will be up to the five Delta-area counties to implement the plan in their own general plans.

The commission was created by the Legislature in 1992, the first new regional land-use planning commission created in California in almost 20 years. The plan covers an 800-square-mile area in Solano, Yolo, Sacramento, San Joaquin, and Contra Costa counties. The commission estimates that 1,000 acres per year or more is being lost to urban development in the Delta area.

The commission does not have any direct enforcement power, meaning the five counties must enforce the plan. However, land-use decisions in the area can be appealed to the Delta commission.

■ Contact:
Margit Aramburu, director, Delta Protection Commission, (916) 776-2292.

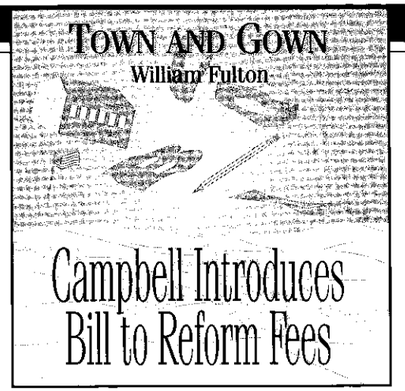
Oxnard Eliminates Planning Commission

Oxnard has become the largest city in the state to eliminate its planning commission. Permit applications will be reviewed by a hearing officer and policy issues will be handled by a new land-use committee that will include the hearing officer and four residents.

City Council members criticized the old planning commission for what they viewed as unnecessary delays on developers' applications. The new system was criticized by some observers because of the possibility of truncating public review. ❑

Town and Gown

William Fulton



Now that the Legislature is getting down to business, it appears that the school fees issue will resurface this year. What will happen, however, is anybody's guess.

At the request of the California Building Industry Association, Senate Housing and Land Use Chair Tom Campbell has introduced a wide-ranging exactions bill that would increase allowable school fees but eliminate Mira-style mitigation.

At the same time, Sen. Leroy Greene, chair of the Joint Committee on School Facilities, has introduced both a revenue bond bill — intended to counter Gov. Wilson's revenue bond proposal — and a general-obligation bond bill.

In general, however, it may be difficult to pass bills that encourage more state involvement in local school facilities issues. This will be particularly true in the Assembly, where one-quarter of the 80 members are newly elected Republicans. "A lot of the members that will be voting on these issues will be from high-growth areas like Riverside County," said Mark Sektnan, an Assembly Education Committee staffer, in addressing a recent conference of the Coalition for Adequate School Housing. But, he added: "This is going to be a very tough committee to get anything through. There's going to be a move toward more local responsibility and to keep the state out of everything, including, probably, facilities."

The Campbell bill, SB 1066, holds the potential to be an important revision of all exactions issues, not just school fees. Campbell, a moderate Republican from Stanford, listed impact fees as one of the three top issues on his agenda when he took over the new committee in January. Although many provisions of the bill remain up in the air, it currently includes the following items:

- A tightening up of AB 1600, the 1987 law that required more accountability from cities and school districts in collecting and using impact fees.
- An increase in the allowable fee imposed on new development by school districts, from $1.72 per square foot on residential development to an unspecified amount.
- An elimination of the *Mira* loophole in the school facilities law. Under this loophole — named for the court case that established it — the school fee limitation applies to quasi-judicial actions, such as conditional use permits and tentative map approvals, but not to legislative actions, such as general plan amendments and zone changes.

The *Mira* loophole has been heavily exploited by school districts throughout the state. Many districts have sued or threatened to sue cities and counties on *Mira* grounds and subsequently settled for $4-6 per square foot.

CBIA lobbyist Dwight Hansen said his organization's goal is to force school districts to pursue local general-obligation bond issues more heavily. "The districts are doing everything except going to the local voters," Hansen said. "They're going to LAFCOs, opposing annexations, that kind of thing."

According to figures recently compiled by Stone & Youngberg, an investment banking house, local school districts win bond elections about 40% of the time. (A two-thirds vote is required for passage because a property-tax increase is involved. See *CP&DR Town & Gown*, December 1994.)

Although specifics remain to be worked out, several other ideas are also being discussed. Hansen said CBIA might push the notion that developers should be 100% responsible for financing construction of neighborhood elementary schools, while middle and high schools should be paid for entirely by district-wide funds, such as local bond proceeds or state school construction money.

Regarding exactions generally, Senate Housing Committee staffer Howard Yee said Campbell may also consider the possibility of linking exactions to an identified geographical area of benefit, thus increasing the required nexus between a project and an exaction.

The Campbell bill is not likely to be heard in the Senate Housing Committee until sometime in April.

Meanwhile, the Legislature has begun to grapple with the question of whether the state will issue any kind of bonds for state school construction this year or next. Sen. Greene, the guru of school facilities in the Legislature, has introduced SB 96, which would place a $2 billion school bond on either the May or November 1996 state ballot. It is questionable whether the Legislature and Gov. Pete Wilson will allow such a bond on the ballot, however. The last school bond (June 1994) was narrowly defeated and the Legislature chose not to put any bonds on the November 1994 ballot. The Greene bond proposal would include about $1 billion for new growth, $900 million for modernization, and $100 million for seismic retrofit.

Greene has also introduced SB 95, a proposed revenue bond for $1 billion. This bill is Greene's response to Wilson's proposal for a $400 million revenue bond. (*CP&DR Town & Gown*, February 1995.)

Under Wilson's proposal, the state would float $400 million in revenue bonds and then make the money available to local school districts as loans. (The state school bond program has traditionally provided grant money, though a local match was required.) Most school districts would have to repay the loans out of their own funds. But some school districts meeting hardship criteria could have their loans repaid out of state money allocated for school operating funds under Proposition 98.

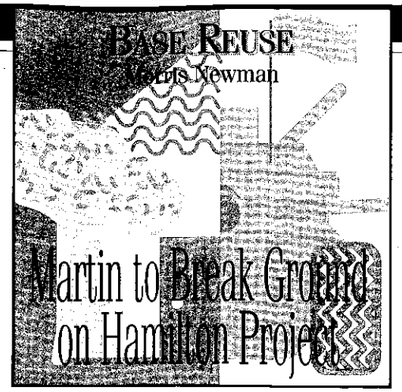
The Wilson proposal would provide a low level of construction funding, based on the cost of providing portable classrooms. (Under state law, portable classrooms may be paid for out of operating funds.) However, school districts could use the money to provide any type of facilities, not just portable classrooms.

Greene's bill is similar to Wilson's proposal, except that the money to repay the bonds would come out of the state general fund, not out of Proposition 98 money. Sacramento insiders generally agree that the California Teachers Association will oppose a revenue bond if the money to repay the bonds would come from Proposition 98 funds.

In financial terms, there is little difference between a general-obligation bond and a revenue bond. Both would be repaid out of the state's general fund. However, a general-obligation bond requires a two-thirds vote in the Legislature and a majority vote from the voters. A G.O. bond would also probably carry a lower interest rate on Wall Street.

Greene has also introduced SB 94, a proposed tax credit for developers who pay for the cost of school construction. As currently written, the bill would permit developers to take a tax credit on 50% of the cost of a school. ❑

■ Contacts:
Dwight Hansen, California Building Industry Association, (916) 443-7933.
Howard Yee, Senate Housing & Land Use Committee, (916) 445-8740.
Amy Dean, Joint Committee on School Facilities, (916) 323-0135.



Martin Group of San Francisco starts construction in March on a $500 million residential and commercial project on the site of the former Hamilton Air Force base in Marin County. The developer claims the project has been described as the first full-scale redevelopment of any closed military base.

The project is a hard-won victory for developer David Martin, who took over the project from a previous developer. Novato voters in 1989 rejected a plan by local developer Skip Berg to build 3,550 homes and 3 million square feet of commercial space on the base, which closed in the 1970s. Current plans call for 900 single-family homes and 550,000 square feet of offices and retail space. Martin also plans to rehab existing hangars on the base and lease them to industrial and "creative" tenants. The developer is donating 200 acres to the City of Novato for parks and playfields. In all, the project is believed to be the largest-ever commercial project in slow-growth Marin County.

Among Martin's pragmatic successes were a renegotiation of the base's sale price, justified by the reduced number of homes planned for the base. The developer is expected to pay $16 million for the 400-acre airfield, far less than the $35 million originally bid by Berg for the right to develop the base. Another sign of Martin's pragmatism was his decision to voluntarily undertake the remediation of a 46-acre toxic dump on the base site. Pentagon officials said remediation would cost $100 million and would require 10 years; Martin did the job for $12 million in a year's time.

Castle Readies for Closure

The last of the KC-135 Stratotankers that had been stationed at Castle Air Force Base departed the Merced County facility on February 10, in anticipation of the closure of the 2,777-acre base in September.

Since 1991, the base has diminished in size from 7,000 military personnel to about 2,500. The City of Atwater seems ill-prepared for the loss of the military, which had infused $200 million yearly into the local economy. According to the Modesto Bee, most local economic development efforts have centered on big-box retailers, including Wal-Mart. The base offers some promise, of which the most ambitious is a proposal to convert 1,580 acres into a general aviation airport. Other proposed uses are a federal post office sorting center and new federal prison, which together could provide 1,000 jobs.

While the big plans remain hazy, tenants are already setting up shop on the base. Worldwide Aeros, which makes weather balloons and hopes to manufacture cargo-carrying blimps has signed a lease at Castle, and anticipates employing 1,500 people, if blimps go into full production. Also planned at Castle are a Challenger Learning Center and U.S. Space Camp Aviation Challenge Program. A Catholic high school and a military school are also negotiating for space on the base.

Castle's 20-acre collection of historic aircraft is being transferred to the Castle Air Museum Foundation in April, to be operated by Merced Community College's vocational department.

Norton Rezoned

The City of San Bernardino rezoned the site of the former Norton Air Force Base as a civilian airfield in January. The area was previously zoned for "public facilities."

A 1990 report says the airfield could handle up to 51 flights a day, although the San Bernardino International Airport Authority has not yet attracted any airlines to use the former base.

Efforts to create an airport on the site are being resisted by a citizens group known as Right to Know, which has promised to file a lawsuit on possible noise and congestion impacts of an airport.

Separately, toxics problems continue to be a concern at Norton. A 40-acre parcel at the northeast corner of the airport must be capped and cannot be used for any kind of development, even a parking lot, Air Force engineer Gary Jungwirth told the San Bernardino International Airport Authority in January. The Air Force is currently budgeting $120 million to clean up Norton during the next 15 years.

Joint Use at Mugu?

Signals are hard to read about the advisability of converting Point Mugu Navy base into a joint-use airport. The County Supervisors apparently kicked off the process on January 31 by voting 4-1 to establish an authority to operate the proposed joint military-civilian airport; the dissenter was Supervisor Maggie Kildee, who cited the need for studies on the impact of an airport on the nearby City of Camarillo.

The supervisors' action apparently ignores a study on the feasibility of an airport at Point Mugu, prepared for the Southern California Association of Governments (SCAG) by Landrum & Brown, an Ohio-based consulting firm. The consultants reported that commercial airlines have shown little interest in establishing a stopover in Ventura County. Michael Armstrong, senior aviation analyst for SCAG, criticized the report's conclusion; he pointed out that two commuter airlines already operate in Ventura County out of the Oxnard Airport. The report has been sent back for further work.

Mare Island Attracts Tenants

Mare Island Naval Shipyards, the beneficiary of intense marketing efforts by City of Vallejo, expects to attract 11 new tenants in 1995, according to city officials. Gil Hollingsworth, the city's base conversion manager, said more than 100 businesses, institutions, and churches have expressed interest in using part of the 5,000-acre Naval base, which officially closes in April 1996. Currently, California Northern Railroad is using part of the 5,000-acre base for train repair, and Myriad Industries is reportedly finalizing a lease to build and repair boats.

Among the would-be tenants are the U.S. Forest Service and a consortium of 12 colleges and universities, including UC Davis and Vallejo-based California Maritime Academy. The city, however, has rejected offers for an IRS detention center for the IRS and a federal prison.

7 More Installations May Close

Seven military installations are slated for closure or consolidation under the latest round of recommendations to the Base Realignment and Closure Commission, released February 28 by the Pentagon. Those recommended for closure include Long Beach Naval Shipyard, Onizuka Air Station in San Jose, Ontario Airport Air National Guard station, and North Highlands Air National Guard station in Sacramento. Realigned into fewer units would be Fort Hunter Liggett, Sierra Army Depot, and McClelland Air Force Base. Completely spared: Point Mugu Navy base. ❑

CP&DR
LEGAL DIGEST

Supreme Court Tightens Up CEQA

Writ of Mandate Ruling Will Limit Discovery, Admission of Evidence

Overturning a Court of Appeal decision, the California Supreme Court has ruled that evidence not contained in the administrative record should not be admissible in a traditional writ of mandate challenge to an Air Resources Board regulation under the California Environmental Quality Act.

The ruling clarifies a longstanding point of confusion in CEQA law by limiting discovery and evidence proceedings in CEQA cases that involve a traditional writ of mandate — an action that may streamline the CEQA process.

The opinion, written by Justice Stanley Mosk, contains strong language reaffirming that California courts should give great deference to agencies such as the ARB in reviewing quasi-legislative actions such as the adoption of regulations.

"A court's task is not to weigh conflicting evidence and determine who has the better argument when the dispute is whether adverse effects have been mitigated or could have been better mitigated," Mosk wrote. "We have neither the resources nor scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review permitted us to do so. Our limited function is consistent with the principle [contained in the *Laurel Heights* ruling] that 'The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind....'"

The case is especially significant because it explicitly repudiates dictum in the 20-year-old CEQA case of *No Oil Inc. v. City of Los Angeles*, 13 Cal.3d 68, which stated that evidence outside the administrative record may be admitted in a traditional mandamus action but not in an administrative mandamus action. (Administrative mandamus actions challenge quasi-judicial government rulings, while traditional mandamus actions — which can be more far-reaching in scope — challenge quasi-legislative actions.)

"Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum," Mosk wrote. "Accordingly, we do not follow the dictum in *No Oil*, footnote 6, and we hold that extra-record evidence is generally not admissible on the ground that the agency 'has not proceeded in a manner required by law' within the meaning of Public Resources Code §21168.5. However, we will continue to allow admission of extra-record evidence in traditional mandamus actions challenging ministerial or informal administrative actions if facts are in dispute."

Mosk is the only current member of the California Supreme Court who was also on the court at the time of the *No Oil* ruling.

The case of *Western States Petroleum Association v. Superior Court* grew out of an attempt by Western States, a coalition of oil companies, to use CEQA as a means of overturning one of ARB's regulations associated with the low-emission vehicle/clean fuel program. This is the regulatory program that will require the sale of electric vehicles in California starting in 1998 and also encourages sales of methanol vehicles. The particular regulation in question establishes an adjustment factor applied to some methanol vehicles which emit uncombusted methanol, which does not contribute appreciably to air pollution.

WSPA sued, claiming that the regulations were based on inaccurate and unsound data and that the ARB had abused its discretion in adopting the regulation. When WSPA asked for discovery, ARB filed a motion limiting the evidence to the administrative record. WSPA subsequently sought to introduce eight items outside the administrative record into evidence. A trial judge declined to allow the eight items into evidence, but the Court of Appeal overturned the judge's ruling.

On appeal to the Supreme Court, the Air Resources Board argued that evidence outside the record is not admissible to challenge the substantiality of evidence under CEQA, and that the *No Oil* dictum and several Court of Appeal rulings that relied on it are incorrect. The Supreme Court agreed with the ARB's interpretation.

Writing for the court, Justice Mosk noted that because the ARB is vested with quasi-judicial powers, "excessive judicial interference with the ARB's quasi-legislative actions would conflict with the well-settled principle that the legislative branch is entitled to deference from the courts because of the constitutional separation of powers." Mosk added: "Were we to hold that courts could freely consider extra-record evidence in these circumstances, we would in effect transform the highly deferential substantial evidence standard of review in Public Resources Code §21168.5 into a *de novo* standard, and under that standard the issue would be not whether the administrative decision was rational in light of the evidence before the agency but whether it was the wisest decision given all the available scientific data. The propriety or impropriety of a particular legislative decision is a matter for the Legislature and the administrative agencies to which it has lawfully delegated quasi-legislative authority; such matters are not appropriate for the judiciary."

Mosk also noted that administrative agencies that regulate a particular area of law "often develop a high degree of expertise in those areas and the body of law that governs them," thus reinforcing the idea that they deserve deference.

Mosk brushed aside the *No Oil* dictum by noting that other areas of law do not have a similar provision. "It is well settled," he said, "that extra-record evidence is generally not admissible in non-CEQA traditional mandamus actions challenging quasi-legislative administrative decisions." The only difference between a CEQA and a non-CEQA case, he noted, is that CEQA cases are governed by the "prejudicial abuse of discretion" standard contained in CEQA, while other cases are governed by the "arbitrary and capricious" standard. Although the standards of review are not identical, Mosk said, "there is no sound reason that CEQA and non-CEQA cases should be governed by different evidentiary rules."

Mosk also said that exceptions to this new doctrine may be made when administrative regulations are challenged "under unusual circumstances or for very limited purposes not presented in the case now before us." However, he concluded, "extra-record evidence can never be admitted merely to contradict the evidence the administrative agency relied on in making a quasi-legislative decision or to raise a question regarding the wisdom of that

decision." ❑

■ The Case:
Western States Petroleum Association v. Superior Court, No. S038067, 95 Daily Journal D.A.R. 2085 (February 17, 1995).

■ The Lawyers:
For Western States Petroleum Association: Donna R. Black, Baker & Hostetler, (213) 976-1632.
For Air Resources Board: M. Anne Jennings, Deputy Attorney General, (415) 557-2544.

ZONING

Adult Zoning Cases Continue To Cause Controversy Statewide

By Larry Sokoloff

The zoning of adult businesses is becoming a heavily litigated area in California, with counties and cities using their zoning powers as a shield against the strong constitutional protections of the pornography industry.

Both the California and U.S. Supreme Courts have given cities additional ammunition in their fight in recent years, with favorable decisions in *City of National City v. Wiener*, 3 Cal.4th 832 (1992), and *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986). Both cases permitted restrictive zoning schemes — such as distance requirements from residential neighborhoods — that ban adult zoning from most areas of a city or county, so long as some sites remain available.

But much new litigation has been spawned by the Ninth Circuit's 1993 ruling in *Topanga Press, Inc. v. City of Los Angeles*, 989 F2d 1524. In that case, the Ninth Circuit found that there were not enough adequate sites for relocating adult businesses in Los Angeles. *Topanga* has led many adult business operators to file cases in federal courts, where they can expect a more favorable ruling than state courts which follow *National City*.

"There's a lot going on," said Deborah J. Fox, a Los Angeles attorney who represents cities and counties. "It's a litigation minefield."

Orange County is one of the busiest battlegrounds over the opening of adult businesses, but the issue has sprung up in other areas of the state as well. Some cities, such as Santa Maria and Morgan Hill, have acted pre-emptively by adopting new ordinances before adult businesses sought to open.

In Orange County, the number of adult businesses has increased dramatically in the past two years, according to Ron Talmo, an attorney who represents Paddy Murphy's, a topless bar in Santa Ana. Talmo said the businesses opened after the U.S. District Court declared unconstitutional an ordinance in the city of Anaheim which prohibited operation of an adult business without a conditional use permit, in *Dease v. City of Anaheim*, 826 F. Supp. 336 (C.D. Cal. 1993). Other local cities, he said, had modeled their ordinances after Anaheim's.

In the adult zoning battle, both sides claim unfairness on the part of the other side. Jan LaRue, an attorney with the National Center for Children and Families in Santa Ana, said that adult businesses often target cities without ordinances on the subject, or cities with out-of-date ordinances. But Roger Jon Diamond of Santa Monica said that cities often refuse to accept applications by adult businesses, and force the litigation.

Diamond, one of the leading attorneys for adult businesses in the state, said he currently has 15 cases in federal district court. He said many of the cases involve whether enough areas are zoned for adult businesses.

In a case that involves similar issues to *Topanga*, Diamond and Fox are representing opposing parties in a federal court case, *Kohl v. County of San Bernardino*. Two existing adult business owners forced to relocate by a new county ordinance are claiming that the county has not zoned enough space for such businesses. Diamond argues that the businesses will be forced to move to isolated areas near Joshua Tree National Park, while Fox contends that 127 sites have been identified in five subareas of the county.

While many neighborhood video stores rent X-rated movies and liquor stores sell adult magazines, much of the opposition to adult businesses stems from fears that the entertainment at the nude bars and theaters and video arcades will attract prostitutes, criminals and problems such as public urination and used condoms littering the area.

But John Shaw, who represented the city of Garden Grove in a recent court battle over a nude theater and juice bar, said he focussed the city's argument more on concrete planning issues rather than First Amendment free speech issues or on secondary impacts of adult businesses.

The city was victorious in the case, *Welty v. City of Garden Grove*. Welty sued after the city refused to grant him a conditional use permit and a variance to build the theater and juice bar. In an unpublished opinion, the Fourth District Court of Appeal found that although the city's adult business zoning ordinance was unconstitutional, the denial of the CUP was upheld because the site did not have enough parking.

In a unanimous opinion by Justice Edward J. Wallin, the court said that the Garden Grove ordinance was unconstitutional under both *Dease* and *Smith v. County of Los Angeles,* 24 Cal.App4th 990 (1994) , where the Second District Court of Appeal ruled in 1994 that Los Angeles County's ordinance regulating adult businesses was unconstitutional. The *Smith* court said the ordinance was unconstitutional because the standards used for awarding CUPs were not narrow, objective, and definite as required by earlier decisions of the U.S. Supreme Court.

Shaw, the attorney for Garden Grove, said he is struggling to come up with strong use permit criteria that will meet a court test after Smith.

LaRue, who helped the city of Oxnard draft an adult business zoning ordinance in 1993, suggests that cities allow adult businesses in light industrial zones and scatter them 1,000 feet from each other, so a red light district is not created. Other cities, like Hawaiian Gardens in Los Angeles County, have ordinances which require adult businesses to be at least 500 feet from a place of worship.

The city of Hawaiian Gardens is awaiting a ruling by the Ninth U.S. Circuit Court of Appeals in a case brought by a man who wants to open a nude theater there. The theater was open a short time before a federal judge shut it down in 1994. Thomas Shelley, the owner of the theater, claims that he has a vested right to operate it based upon an ordinance which did not prohibit such activity. The city claims the ordinance covers nude dancing establishments.

Adult businesses represented by Diamond have had recent victories against the city of Westminster, where his client won the right to open a nude theater, and the city of Long Beach, where an injunction was issued in July 1994 to allow a nightclub to go topless. In issuing the injunction, U.S. District Court Judge Mariana Pfaelzer followed *Topanga* and allowed the club to go topless because not enough areas in the city were zoned to allow such adult businesses, Diamond said. The city had originally opposed the change because the site was located across from a residential area navy housing for the Long Beach Naval Station.

After the injunction was issued, the city amended its ordinance to open additional areas of the city to adult businesses. Angel's nightclub was not included in those areas, Diamond said, noting that type of selective rezoning occurs frequently when adult businesses are involved.

In this case, Angel's nightclub is

expected to endure due to a planned rezoning of the residential property to industrial property this spring. The military housing was closed due to defense cutbacks, and the property is no longer as close to residential areas." ❑

■ The case:
Thomas Shelley v. City of Hawaiian Gardens, No. 94-55664, Ninth U.S. Circuit Court of Appeals.

■ The lawyers:
For Hawaiian Gardens: Richard R. Terzian, Adams, Duque and Hazeltine, (213) 620-1240.
For Shelley: Roger Diamond, (310) 399-3259.

■ The case:
Gilbert Kohl v. County of San Bernardino, ED CV 94-0241-RT, and Jule Roach v. County of San Bernardino ED CV 94-266-RT, U.S. District Court.

■ The lawyers:
For San Bernardino County: Deborah Fox, Freilich, Kaufman, Fox & Sohagi, (310)444-7805.
For Kohl and Roach: Roger Diamond, (310) 399-3259.

■ The case:
Renee Vacary and Angels Nightclub v. City of Long Beach, CV 94 1401 MRP.

■ The lawyers:
For Vacary: Roger Diamond, (310) 399-3259.
For City of Long Beach: Heather Mahood, Principal Deputy City Attorney (310) 570-2210.

■ The case:
Welty v. City of Garden Grove G013460, Fourth Appellate District, Division Three, September 30, 1994 (unpublished)

■ The lawyers:
For Garden Grove: John Shaw, Rourke, Woodruff & Spradlin, (714) 564-2603.
For Welty: Roger Diamond

■ Other lawyers:
Jan LaRue, National Center for Children and Families (714) 435-9090.
Ron Talmo, (714) 543-1294.

ENVIRONMENTAL LAW

Habitat Designation Not Subject To NEPA, Ninth Circuit Rules

In the latest court ruling arising from the listing of the spotted owl as endangered, the Ninth U.S. Circuit Court of Appeals has ruled that the National Environmental Policy Act does not apply to the Interior Department's decision to designate a habitat for the owl.

"The old growth forests and the species that inhabit them are unique resources that deserve protection," wrote Judge Harry Pregerson for a unanimous three-judge panel. "We are reluctant ... to make NEPA more of an 'obstructionist tactic' to prevent environmental protection than it may already have become."

Partly reversing a decision by U.S. District Court Judge James M. Fitzgerald, the Ninth Circuit ruled that:

• Congress intended the federal Endangered Species Act's critical habitat procedures to displace NEPA requirements;

• NEPA does not apply to actions that seek to preserve the natural environment, such as a species listing; and

• The Endangered Species Act furthers the goals of NEPA without requiring an environmental impact statement.

The Ninth Circuit also ruled that Douglas County, Oregon, had standing to bring the lawsuit because the county has a "concrete interest" in the designation of the owl habitat.

The listing of the spotted owl, which is found in the forests of the Northwest, is perhaps the most controversial decision ever made by the U.S. Fish & Wildlife Service under the federal Endangered Species Act. After listing the owl in 1990, the Interior Department proposed listing 11.6 million acres of land as critical habitat in mid-1991. At that time, Interior stated that it would not follow National Environmental Policy Act procedures in the listing. In early 1992, the Interior Department issued the final designation of 6.9 million acres of federally owned land as critical habitat for the owl.

Even before this action, Douglas County had filed a lawsuit challenging the decision not to apply NEPA to the designation of the owl's habitat. The Interior Department, in turn, challenged Douglas County's standing to sue. In 1992, Judge Fitzgerald ruled in favor of Douglas County and set aside the final designation of critical habitat until the Interior Department complied with NEPA. The Interior Department appealed to the Ninth Circuit.

On appeal, the Ninth Circuit agreed with Judge Fitzgerald that Douglas County had standing to sue but reversed his decision that the Interior Department had to comply with NEPA.

First, the Ninth Circuit ruled that procedures under the Endangered Species Act could be used to displace NEPA requirements. Pregerson found a similarity between the species law and the Federal Insecticide, Fungicide, and Rodenticide Act. The Environmental Protection Agency does not apply NEPA when pesticides are registered under the law — an action which the Ninth Circuit previously upheld in *Merrell v. Thomas*, 807 F.2d 776 (1986), and which Congress has not chosen to challenge since.

"The legislative history of the ESA at issue in the instant case follows a similar pattern and convinces us that Congress intended that the ESA procedures for designating a critical habitat replace the NEPA requirements," Pregerson wrote. In particular, Pregerson noted that a critical habitat designation is subject to expansive public review, including public hearings, publication in the Federal Register, and publication in newspapers. "This carefully crafted congressional mandate for public participation in the designation process, like the FIFRA procedures reviewed in *Merrell*, displaces NEPA's procedural and informational requirements," Pregerson wrote.

Pregerson also noted that the Interior Department's policy of not using NEPA in critical habitat designations has been in place since 1983, and Congress has not chosen to change it by legislation.

Second, the Ninth Circuit ruled that NEPA should not come into play because a critical habitat listing is an action intended to preserve the physical environment. "If the purpose of NEPA is to protect the physical environment, and the purpose of preparing an EIS is to alert agencies and the public to potential adverse consequences to the land, sea, or air, then an EIS is unnecessary when the action at issue does not alter the natural, untouched physical environment at all."

Judge Fitzpatrick had ruled the other way on this issue because he believed the fact that the environment would remain unchanged under the critical habitat was a fact not in evidence in the case. He noted that an area's environmental characteristics could change or be degraded of their own accord even if the area were designated at critical habitat. "[W]hen a federal agency takes an action that prevents human interference with the environment, it need not prepare an EIS," Pregerson wrote. "The environment, of its own accord, will shift, change, and evolve as its does naturally."

Finally, the Ninth Circuit ruled that the Endangered Species Act furthers the goals of NEPA even if an environmental impact statement is not prepared. Quoting the Sixth Circuit's ruling in *Pacific Legal Foundation v. Andrus*, 657 F.2d 829 (1981), the Ninth Circuit panel said that requiring the federal government to prepare an EIS "would only hinder its efforts at attaining the goal of improving the environment.

Among other things, the Ninth Circuit disagreed with Judge Fitzgerald's opinion that NEPA would not frustrate the Endangered Species Act because the Interior Department can consider "economic impact and any other relevant impact," meaning that a wide range of impacts could be analyzed.

"The district court did not explain how it decided that the words of the statute were to be given such a broad meaning, and we think its interpretation is misguided," the Ninth Circuit wrote. "The purpose of the ESA is to prevent extinction of species, and Congress has allowed the Secretary to consider economic consequences of actions that further that purpose. But Congress has not given the Secretary the discretion to consider other environmental factors, other than those related directly to the preservation of the species. The Secretary cannot engage in the very broad analysis NEPA requires when designating a critical habitat under the ESA. ❑

■ The Case:
Douglas County v. Babbitt, No. 93-36013, 95 Daily Journal D.A.R. 2438 (February 27, 1995).

■ The Lawyers:
For Interior Department: Albert M. Ferlo Jr., Environmental and Natural Resources Division, U.S. Department of Justice, Washington, D.C.
For Douglas County: Ronald S. Yockim, Cegavske, Johnston, Yockim & Associates, Roseburg, Oregon.

CEQA

EIR Not Required to Deal With Existing Environmental Problem

A pre-existing environmental problem doesn't trigger the need for an environmental impact report on a new project, the First District Court of Appeal has ruled.

Reversing a Superior Court judge's ruling, the First District, Division Five, ruled that Contra Costa County had acted properly in issuing a conditional use permit and a negative declaration for an addition to an addiction treatment center in an agricultural area in the Diablo Valley.

The case involved Diablo Valley Ranch, a 56-bed treatment center operated by the Bi-Bett Corp. Bi-Bett sought a 20-bed expansion and was originally granted grading and building permits by the county under the existing conditional use permit.

However, a group of neighboring landowners sued, saying that a new CUP was required. Bi-Bett then applied for a new CUP. In hearings before both the Planning Commission and the Board of Supervisors, the landowners complained that the expansion would have a negative impact on their property. They claimed Bi-Bett had violated the terms of the original CUP by treating people addicted to substances other than alcohol, by purchasing property adjacent to the ranch, and by performing construction on the ranch.

The property owners also claimed an environmental impact report should be prepared because the Diablo Valley Ranch property had been contaminated by oil stored in open ponds by Shell Oil Co. decades before by a 1975 spill from a mercury mine that had been abandoned in the 1890s.

Contra Costa County Superior Court Judge William O'Malley ruled in favor of the property owners. O'Malley ruled that there was substantial evidence supporting a fair argument that the ranch may be contaminated by oil, that the Board of Supervisors had been incorrectly advised on the standard for determining whether an environmental impact report was required, and that the county had denied the neighboring property owners a fair hearing because the county had not permitted evidence to be presented about prior permit violations and prior environmental contamination. O'Malley ordered the county to set aside approval of the project.

The appellate court reversed O'Malley on all counts. Regarding the environmental impact report, the court ruled that because the contamination had occurred previously an EIR was not required. "Baird's [the neighboring property owner] complaint is not that the facility will cause an adverse change in the environment," wrote Justice Donald B. King for a unanimous three-judge panel. "Rather, Baird's point is that preexisting physical conditions, consisting of the various form of purported contamination, will have an adverse effect on the proposed facility and its residents." However, King added: "Any such effect is beyond the scope of CEQA and its requirement of an EIR. The purpose of CEQA is to protect the environment from proposed projects, not to protect proposed projects from the existing environment."

The appellate court also ruled that the county was not required to consider evidence of prior permit violations when considering an application for a new conditional use permit. The applicable ordinance, the court found, "does not require a finding that the applicant has not violated the terms of a previously issued conditional use permit." In addition, the court concluded that under *Bakman v. Department of Transportation*, 99 Cal.App.3d 665 (1979), the county could have revoked Bi-Bett's existing CUP if the permit were violated but that such violations were "unrelated to the application for a permit to add the youth facility." ❑

■ The Case:
Baird v. Contra Costa County, No. A063082, 95 Daily Journal D.A.R. 1269 (January 31, 1995)

■ The Lawyers:
For Baird: David Goldman, Wendel, Rosen, Black & Dean, (510) 834-6600.
For Contra Costa County: Diane J. Silver, Deputy County Counsel, (510) 646-2063.
For Bi-Bett Corp.: Ezra Hendon, Crosby Heafey Roach & May, (510) 763-2000.

EXACTIONS

Roseville Quimby Act Case De-Certified by Supreme Court

The California Supreme Court has depublished a Court of Appeal decision from last year that ruled a residential construction tax violated the Quimby Act.

Roseville's tax was not a traditional park fee in that it was not imposed as a condition of approval on a tentative subdivision map. Instead, it was imposed at the building permit stage and relied on Roseville's home rule powers rather than the Quimby Act for its legal authority. But in a ruling notable for an expansive discussion of community responsibility, the Third District concluded that the Quimby Act preempted the tax anyway. (*CP&DR Legal Digest*, November 1994.)

Roseville passed the tax in 1972 after specifically rejecting a proposal to require land dedications for parks under the Subdivision Map Act, as called for by the Quimby Act. The city then adopted the residential tax to pay for new public facilities, specifically stating that the tax was being adopted under the city's power to levy taxes, not the police power. Auburn Manor Holding Corp., developer of a senior citizen housing complex in Roseville, sued the city. ❑

■ The Case:
Auburn Manor Housing Corp. v. City of Roseville, No. S043541.

■ The Lawyers:
For Auburn Manor: James K. Norman, Norman & Eames, (916) 885-8336.
For Roseville: Steve Bruckman, Deputy City Attorney, (916) 568-3042.

Bank of America Sprawl Report Causes Controversy

Continued from page 1

low real estate prices, sprawl carries real costs to both home owners and businesses, the report asserted. "Continued sprawl may seem inexpensive for a new home buyer or a growing business on the suburban fringe, but the ultimate cost — to those home owners, to the government, and to society at large — is potentially crippling," the report said. Businesses, the report claims, "suffer from higher costs, a loss in worker productivity and underutilized investments in older communities," such as roads and housing. The report also says such development is socially undesirable, because it further isolates the state's aging urban centers from suburban communities.

Other "typical effects of sprawl," according to the report, are the decentralization of employment centers, intrusion of housing into agricultural and environmentally sensitive lands, increased dependency on cars, and isolation of older communities, including center cities and "first-wave suburbs built in the 1940s and 1950s."

In a possible bridge-building gesture to the development community, the report also endorses streamlining of the permit process and other means to simplify development.

The report stops short of endorsing specific policies, but offers four broad recommendations: to provide "more certainty in determining where new development should and should not occur"; to "make more efficient use of land that has already been developed"; to "create certainty for developers and investors, encouraging them to put their money into environmentally appropriate developments"; and to "forge a constituency to build sustainable communities."

> *"The home-building industry reacted swiftly and negatively to the 'Beyond Sprawl' report, lampooning it as 'Beyond Belief'"*

The report's strong language makes BofA's willingness to back the report all the more remarkable. The report, however, carries a disclaimer that "all of the report's conclusions may not be endorsed in their entirety by each of the four sponsors." One report says that BofA asked for softening of language in certain places, and that the final version of the report omitted recommendations of urban growth boundaries. Nor has Bank of America indicated that it will stop financing sprawl-related projects.

Despite the brouhaha among builders and some conservative thinkers, BofA vice president Russ Yarrow said that the positive response to the report has been "overwhelming." He described the report as "prompting a dialogue" with builders rather than a last word. "We have been talking with them, trying to make them understand this is a strong pro-growth statement. (The report) is talking about growing in a different way, but it's (still) about growth and making California economically competitive."

Also reporting a positive response is Jim Sayer, a spokesman for the Greenbelt Alliance, who suggested that BofA's participation in the report was evidence of an "expansion of the consensus," adding that "a number of different interests have begun to see the light" on environmental issues. (BofA, in fact, has publicized its pro-environmental principals for several years.) He praised the report as evidence that there were environmentalists who are "willing to look at all sides of issues rather than being a single-issue interest group."

The home-building industry seemed to disagree, however, and reacted swiftly and negatively to the report. In a February 8 letter to Douglas Wheeler, Resources Agency secretary, Robert Rivinius, CEO of the California Building Industry Association, and Cliff Allenby, the group's government affairs vice president, took issue with nearly every major point in "Beyond Sprawl," which they lampooned as "Beyond Belief." The report, they wrote, is "clearly biased against suburban development." They said the report's authors had failed to demonstrate a causal link between environmental problems and suburban development, and had not discussed other "contributing factors" to environmental problems. The BIA officials also asserted that growth does indeed pay for itself "over the lifetime of a suburban region."

Rivinius and Allenby added that they disagreed with the report's conclusion that state policies should be established to determine where growth and development should occur, and they rejected the concept of "urban limit lines," although the policy is not explicitly recommended in the report. Similar policies have been adopted in the states of Washington and Oregon, however, and California homebuilders seem vigilant about preventing similar policies in the state.

Another critical opinion came in a letter from eight real estate trade groups, including the Realtors and the BIA, who criticized "Beyond Sprawl" in a letter to "Little Hoover" Commission Chairman Richard Terzian. "Falling far short of an objective analysis, one would find these hysterical allegations laughable if they had not been designed to totally impede any progress on the reform agenda that California so desperately needs to enact if we are ever going to recover economically," the trade groups wrote collectively.

The report is a hot potato for the Wilson administration, even though a state agency is a sponsor of the report. The notion of further regulatory constraints may not be popular with a governor who is trying to promote business development. "Just because the Resources Department was one of the authors of the report does not mean that the Governor endorses all of the conclusions wholeheartedly," said spokesman Paul Kranhold.

Less equivocal was Housing and Community Development director Tim Coyle. "The problem with the report is that it sets up a straw man, and seems to indict growth as having entirely bad consequences, and of course growth has had more good consequences in California than bad." He criticized the report for suggesting that the state "cannot have future growth centers or job centers," adding, "State regulatory schemes run into trouble when they violate market economics."

Editor's Note: William Fulton, editor of California Planning & Development Report, participated in drafting the "Beyond Sprawl" report. He did not participate in writing or editing this article.

■ Contacts:
Russ Yarrow, vice president corporate communications, Bank of America, (415) 953-1411.
Steve Hayward, Pacific Research Institute, (415) 989-0833.
Andy McLeod, California Resources Agency (916) 653-5656.
Jim Sayer, communications director, Greenbelt Alliance, (415) 543-4291.
Anne Bishop, The Low Income Housing Fund, (415) 777-9804.
Tim Coyle, director, Housing and Community Development Department, (916) 445-4775.

Financial Woes Cause Problems for State Conservancies

Continued from page 1

Assembly Parks Committee Chair Dominic Cortese, D-San Jose, has proposed a $490 million bond issue. But the Legislature may choose not to place it on the ballot, especially if prison and school bonds go forward.

Meanwhile, PCL — the state's major lobbying group on land conservation issues — is also proposing a tax credit for land donated to a public agency. The bill, carried by Sen. Ken Maddy, R-Fresno, would place particular emphasis on farmland easements and endangered species. "The credit would be most useful on lands that would otherwise be hard to develop because of those restraints," said Lynn Sadler, PCL's director of natural resources. She said the bill would allow a full tax deduction for the land, but may have a $200 million cap statewide.

The conservancies may have to look even harder for creative ways to raise money. "Nationally, our conservancies stand out, but we can still learn from other states," said Michael Mantell, undersecretary of the state Resources Agency, which oversees the conservancies. "One thing to learn is how we can develop a political climate that will lead to more long-term dedication to public lands." He pointed to the example of other states. In Colorado, lottery funds are used for land conservation. Missouri uses a soil tax and Florida uses a real estate transaction tax.

Mantell also emphasized the conservancies' entrepreneurial spirit. "If anyone will succeed in these tough fiscal times, it's the conservancies," he said. "They are talent pools with flexibility and reputations for getting things done."

The conservancies got a huge financial boost in 1988, when voters passed Proposition 70, a $770 million bond issue for land acquisition. PCL placed the measure on the ballot via initiative, the first time a bond issue had succeeded via initiative in more than 70 years. As for the Proposition 117 money, two-thirds of it goes to the Wildlife Conservation Board, which acquires land for the Department of Fish & Game. And one conservancy, the Santa Monica Mountains Conservancy, won't receive any more Prop. 117 money; because of immediate land-use pressures, Santa Monica received all 30 years' worth of Prop. 117 funds in the first five years of the program.

The Santa Monica situation illustrates how the conservancies can lose negotiating power when they have no resources to back them up. Banking on the passage of Proposition 180, SMMC boldly sought to use eminent domain to acquire land in Calabasas owned by Soka University, which plans a major expansion. (*CP&DR Deals*, March 1993.) As collateral, SMMC has put up $20 million of its existing parkland, some of which may have to be sold in order to buy the Soka property. With Soka putting up an expensive fight in court, SMMC's legal fees alone will run into the millions of dollars.

At the same time, however, SMMC has a local source of funds in the form of Los Angeles County's Proposition A, a local bond measure approved by the voters. Proposition A created a lighting and landscaping assessment district providing the conservancy with some $43 million.

More generally, the conservancies will apparently have to re-examine their role if no new financial resources emerge. Fishman of the Coastal Conservancy, for example, says the agency will simply "become more creative and use expertise to technically assist others." He said the conservancy's budget, which often topped $25 million a year in the 1980s, is now less than $7 million.

■ Contacts:
Neil Fishman, Coastal Conservancy, (510) 286-1015.
Liz Cheadle, Santa Monica Mountains Conservancy, (310) 456-5046.
Lynn Sadler, Planning & Conservation League, (916) 444-8726.
Corey Brown, Trust for Public Land, (916) 557-1673.
Michael Mantell, Resources Agency, (916) 653-5656.

The Six State Conservancies

The six state conservancies are:

1. The California Tahoe Conservancy in the Lake Tahoe area, which was originally established in 1984 to administer an $85 million bond issue for the Tahoe area passed by the voters in 1982. The California Tahoe Conservancy serves as a stellar example, having preserved more than 7,000 acres around Lake Tahoe, implemented crucial erosion control programs and pioneered use of transfer of development rights.

2. The Coastal Conservancy, which deals with land conservation along the California coast. This conservancy's jurisdiction is the same as the Coastal Commission's, but also includes the San Francisco Bay and Suisun Marsh.

3. The Santa Monica Mountains Conservancy, which operates in and around Santa Monica Mountains National Recreation area near Los Angeles, which was created in 1978. Established in 1980 as the successor to the advisory Santa Monica Mountains Regional Planning Commission, this conservancy frequently engages in land transactions with both state agencies and the National Park Service.

4. The Wildlife Conservation Board, which acquires land for the state Department of Fish & Game with both bond funds and state horse-racing revenues.

5. The Coachella Valley Mountains Conservancy, which operates in the Coachella Valley portion of Riverside County, near Palm Springs.

6. The San Joaquin Parkway Conservancy, which seeks to acquire land along the San Joaquin River, especially near Fresno.

NUMBERS

Stephen Svete

Who's Right on Redevelopment Reform?

What if the legislature passed a massive redevelopment reform law, and it didn't change anything? That's what a white paper from the Legislative Analyst's Office concludes. Despite the reform, according to the LAO, the amount of acreage placed in redevelopment project areas didn't go down.

But do the numbers support the thesis? The California Redevelopment Association doesn't think so. The CRA has issued a rebuttal to the LAO's report, backed by a different interpretation. The high acreage figure can be explained mostly by the Northridge earthquake and military base closures, the CRA contends.

The emerging policy debate places in question the effectiveness of the Community Redevelopment Law Reform Act of 1993, commonly known as AB 1290. The bill has been characterized as the most sweeping reform of redevelopment laws in recent years. Specifically, it tightens blight requirements, creates statutory tax-sharing formulae, links expenditures to blight-identification, tightens time limits, eliminates sales tax subsidies to certain retailers, and modifies low/mod housing rules. The broad revisions to the legislation went into effect on January 1, 1994. But the LAO reports that state oversight of the process remains weak, allowing local agencies to approve plans and adopt project areas that still do not meet the intent of urban revitalization.

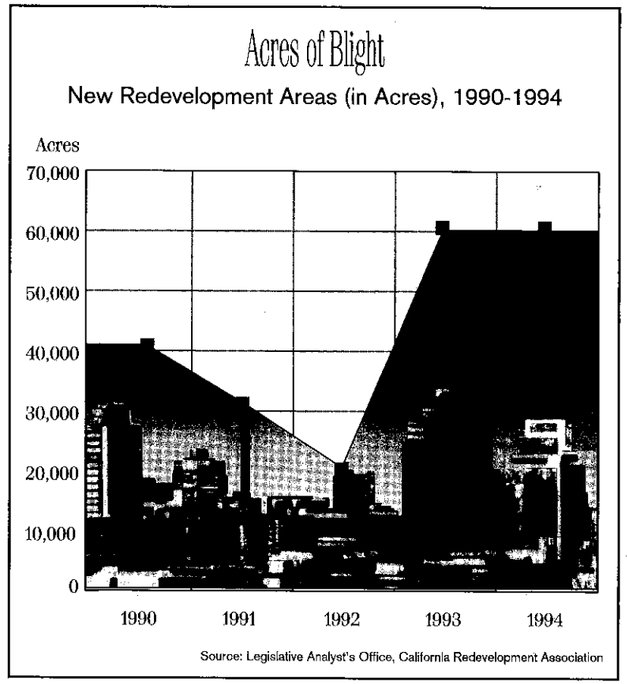
As evidence of the ineffectiveness of the overall redevelopment controls, the LAO notes the rush by local agencies to process redevelopment plan adoptions in 1993, creating a notable increase in the acreage placed under redevelopment. In 1993, 63,000 acres of land were placed under redevelopment in 34 project areas, as compared to a three-year average of 32,000 acres in 26 project areas adopted from 1990 through 1992. The LAO report further notes a significant increase in the adoption of large project areas, defined as greater than 3,000 acres.

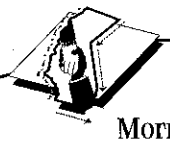
Finally, the LAO notes a decrease in the amount of time local agencies took to adopt or expand redevelopment plans in 1993 — seven months as compared to an average of nine in the preceding three years. The LAO concludes that much of the 1993 activity "appear(s) inconsistent with the spirit — or perhaps even the letter — of the 1993 law."

Au contraire, rebuts the CRA, which blasts the report's "selective use of facts, inaccurate assumptions, and distorted logic." For one thing, the association points out, the expansion of activity in 1993 should illustrate that most local agencies perceived an inevitable tightening of the plan adoption process, thereby proving its effectiveness. And the CRA points out that most of the proposed or finalized project areas fall under Special Purpose categories, allowing local agencies to take advantage of the 1964 Disaster Project Law.

In fact, the total acreage proposed for redevelopment since January 1994 is slightly higher than the pre-AB 1290 rush year of 1993 — 63,330 acres. But according to CRA data, 62% of that acreage is under the special purpose redevelopment category. Of the approximately 39,000 acres of special purpose projects, 72% were enacted to address rebuilding areas damaged by the Northridge earthquake, 26% is related to base closures, and 2% are associated with the 1992 civil unrest in Los Angeles. All these categories, CRA contends, lie at the heart of redevelopment's goal of relieving urban blight. Setting aside these special purpose project areas, there were only 24,352 acres of new areas proposed, of which only 1,400 acres are finalized. Even if all 24,000 made it through the plan adoption process, this level is in line with the lowest number of new areas in the last five years.

Whereas the LAO's report contained some valid critique of the ongoing process, the CRA has managed to draw their statistical data into serious question. In the meantime, we can all rest assured that AB 1290 did little to settle the controversy surrounding planning's *bete noir*, redevelopment. ❑





DEALS

Morris Newman

Taking the Bad With the Good

I think it was Karl Marx (don't overreact!) who said that there was "no Greek culture without Greek slavery." Marx was arguing, in the most pointed way possible, that historians had failed to acknowledge the high price paid for the glories of ancient Athens. Sometimes the price of something really worthwhile may be something onerous, or at least something that some people may find onerous.

Obviously, present-day Huntington Beach is a far cry from Fifth-Century Athens, but the principle remains intact that you don't get something for nothing. Or, in the case of the Bolsa Chica project, the aphorism could be updated as, "No wetlands mitigation without coastal development." That is to say, in the absence of public money to buy and restore wetlands, the only player is the developer and the self-appointed environmental lobby that cuts a deal with the developer.

Bolsa Chica is not a rape of the environment, but it's not a soft caress, either. The coastal area of northern Orange County contains about 1,700 acres of coastal wetlands, believed the largest mass of this particular habitat in Southern California; about 170 acres were restored in the 1970s by a state agency. The project, which has been proposed in various versions for nearly 20 years, has been significantly downsized in the past five years, down from the original proposal of 5,700 homes, a marina and a group of hotels, to its current version of 3,300 homes. One of the prices for this downscaling has been an agreement between a local environmental group, Amigos de Bolsa Chica and the developer, Koll Real Estate Group, to fill in about 35 acres of federally designated wetlands. In exchange, Koll has promised to spend $48 million to restore nearly 1,000 acres of degraded wetlands.

> *"Something of value is going to be lost forever. So then the question is: Is the deal worth it?"*

In certain ways, the Bolsa Chica deal resembles the much-debated Playa Vista project in the coastal area of Los Angeles, in which the developers agreed in 1992 to restore about 200 acres of degraded wetlands to settle a lawsuit with the Friends of the Ballona Wetlands. The settlement cleared the way for the development project, which is one of the last open stretches of coastline in the L.A. area. In both cases, the environmentalists achieved significant victories, but at the price of losing another resource — an open coastline and clear views to the ocean.

Now, the Amigos de Bolsa Chica have made a number of enemies, including the Surfrider Foundation, which claims that the Amigos have been co-opted by the developer. (Some Koll officials are members of the Amigos and Koll sponsors some group events, such as a 10K run.) The Surfriders oppose all development at Bolsa Chica, which is admittedly a pretty romantic notion — unless there is public money to condemn the land and buy it from the developer.

The Surfriders are probably naive. The property has been in private hands for a long time, and development has been contemplated since 1976. And with approval of the project by the Orange County Board of Supervisors, the land has probably soared in value.

Both Bolsa Chica and Playa Vista are difficult issues for me to come to terms with. On one hand, a resource is being lost, and, in the case of Bolsa Chica, some wetlands are being filled in. On the other hand, the coastal habitats are in poor shape, and the only entity which has the money and the will to protect the environment are the developers. Also in the case of Bolsa Chica, the developer has had the savvy to realize that the local wetlands provide a very rare opportunity to preserve a large, existing habitat, rather than tiny pieces here and there. It is exactly this kind of deal — allowing large-scale development in exchange for large-scale habitat preservation — that has been one of the guiding philosophies of EPA director Carol Browner, who came to fame in Florida for brokering just these kinds of deals.

So, is enlightened private business the environment's best friend? This question seems particularly pertinent at the present moment, when House Speaker Newt Gingrich, among others, is encouraging a revamping of environmental policy that would promote environmental repair primarily in the form of incentives, rather than punitive regulations. If Bolsa Chica and Playa Vista can be accounted successes, they could become examples of successful cooperation between developers and environmentalists. And with few resources on either the state or national level to either pay for wetlands restoration or to buy such lands, maybe we should hope for the success of such projects.

So why am I still uncomfortable? It's not my job, in this column, to determine whether or not Bolsa Chica and Playa Vista are good projects. The point is that both projects make us lie down on a bed of nettles. Yes, it is very desirable for private entities to perform environmental cleanup on behalf of the public. But everything has a price, and both these projects, despite downsizing, are rather intensive developments of a coastline. Something of value is going to be lost forever. So then the question is: Is the deal worth it? Is good mitigation worth the development?

In the absence of any other choice, I guess the answer is yes. I wish both projects were much smaller and covered a smaller area. I wish more coastline were preserved in both cases. But I also recognize that, given the lack of public will and wealth to buy such areas before they become entitled, that there are only two choices: (1) a project with some environmental mitigation thrown in, or (2) a project without any environmental mitigation. So, I reluctantly endorse Bolsa Chica as the best possible deal, because the public did not make its play 20 years ago, as it should have. (It's the same spirit in which Sen. Joseph Biden endorsed the Balanced Budget Amendment: not because it is the ideal choice, but because it is the only choice under the circumstances.)

What's important to remember, however, is that the only choice, in this case, does not represent the best of all possible choices. Greek slavery was an ugly event, but it left us some pretty good buildings and some pretty good plays. So, I hope Bolsa Chica turns out to be a superb project, in which the loss does not seem greater than the gain. ❑