CP&DR
CALIFORNIA PLANNING & DEVELOPMENT REPORT
Vol. 10, No. 6 — June 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:
$209 per year

ISSN No. 0891-382X

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

Most Cities Aren't Revising Growth Control Policies

Oceanside Case Has Little Impact So Far

By Morris Newman

Few cities around the state are revising their growth-control ordinances, even though a recent court ruling called many of them into question.

Last fall, an appellate court ruling struck down Oceanside's annual numerical limit on housing units as being in conflict with state housing and planning law. (*CP&DR* Legal Digest, September 1994.) At least in theory, the case raised legal questions about similar numerical caps in some 60 jurisdictions around the state.

But most cities say that there has been so little development activity in recent years that they are not bumping up against their caps. And lawyers for Building Industry Association chapters around the state say they are not planning any immediate action against other cities, although the BIA might lobby and sue some cities if the homebuilding market heats up.

"I think the significant impact may be a chilling effect in the future," said D. Barton Doyle, a Los Angeles developers' lawyer and former general counsel to the Southern California Building Industry Association. "Many of these ordinances *Continued on page 9*

Regents Choose Merced for New UC Campus

Planning Issues Play Key Role In Section

By Morris Newman

Culminating a seven-year search for the University of California's coveted new campus in the San Joaquin Valley, UC Regents voted on May 18 to choose Lake Yosemite near Merced over Table Mountain in Madera County. To a significant degree, the choice revolved around planning issues, particularly the availability of water and future development trends in the Valley.

In making their decision, the Regents seemed fully aware that the choice of a campus was effectively a decision to build a new town. "We knew whatever site was chosen would not simply be the 10th campus, but would be an entire community," said UC spokesman Mark Aydelotte, who cited a UC-commissioned study by Bechtel that indicated that a campus of 20,000 students would eventually grow to a community of 100,000 people. Despite intense politicking, the decision seems largely symbolic for the time being, however, because UC officials said they have no immediate plans to start building the $750 million campus.

The Merced site will *Continued on page 10*

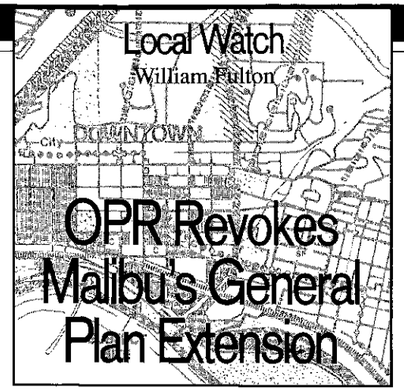
Group Home Zoning Restricted

A U.S. Supreme Court decision will make it harder for municipalities in California and elsewhere to block the establishment of group homes for recovering alcoholics and drug addicts in single-family neighborhoods.

The high court ruled that local zoning ordinances limiting the number of unrelated persons living together may violate the federal Fair Housing Act if used to restrict group homes for disabled persons. Federal law defines alcoholism and drug addiction as disabilities for purposes of the law.

The ruling reinforces both case law and legislation in California that cast doubt on local governments' ability to regulate group homes

*See **CP&DR Legal Digest**, Page 5*



In an unprecedented move, the Governor's Office of Planning and Research has revoked a time extension for the City of Malibu to complete its general plan. Malibu has asked for an appeal of the decision to the state's Planning Advisory and Assistance Council, as provided under law. However, the council has not been seated in almost 15 years and OPR Director Lee Grissom may not permit the appeal to move forward.

Relations between Malibu and OPR have deteriorated in recent months, as city officials have charged that Grissom has been influenced by landowners in the city with close political ties to Gov. Pete Wilson. In December, City Attorney Christi Hogin wrote a letter to Grissom complaining of "a systematic lobbying campaign" to influence OPR and other state agencies regarding the Malibu plan. In response, Grissom said he was "offended" by the implication.

Malibu has been rife with conflict on land-use planning issues since the city incorporated in March of 1991. The city is in litigation with several property owners on planning issues, including the Malibu Bay Co., which is challenging the interim zoning ordinance adopted after incorporation.

After the initial 30-month time period to prepare a general plan expired in September of 1993, the city obtained an automatic one-year extension from OPR. Then, in the fall of 1994, Grissom granted a second one-year extension but conditioned that extension on Malibu making progress in its plan toward providing affordable housing, as required under the housing element law. In a letter to the city, Grissom wrote: "I am very concerned that the draft general plan does not appear to provide sufficient low- and moderate-income housing opportunities to comply with state law."

According to Terry Rivasplata, a planner at OPR, Malibu's draft general plan did not identify any sites for affordable housing and did not permit densities anywhere in the city higher than six units per acre. "The city did make a lot of progress," Rivasplata said. "But they didn't make any progress on the housing issue." OPR also criticized the city for moving slowly in adopting its general plan.

Hogin said Grissom had dealt with Malibu unfairly. The city was still on a schedule to adopt the general plan by fall, she said. And she added that Grissom should not have decided Malibu was going to violate the housing element law even before the general plan was adopted. "He declared us losers at halftime," she said.

Hogin also pointed to a March 20 letter from HCD to Rivasplata, which said that the city "has worked cooperatively with the Department and has made some progress in preparing a draft element which addresses many of the requirements of State law." However, Rivasplata said the letter was similar to standard letters sent by OPR to cities whose housing elements are not in compliance. Under state law, OPR must consult with HCD on extensions but need not take HCD's advice.

Malibu has asked that Grissom's decision be appealed to the Planning Advisory and Assistance Council, an advisory committee that includes representatives of cities and counties that is supposed to meet twice a year and make recommendations on the governor's "environmental goals and policies report." However, it is questionable whether Grissom will convene the council to consider the appeal. The council has not met since 1981, and no environmental goals and policies report has been issued since 1978.

Malibu officials have charged that Grissom's action was politically motivated. Grissom received letters from the Malibu Bay Co. and other property owners complaining about the Malibu general plan. The Los Angeles Times reported that A. Jerrold Perenchio, the father of Malibu Bay president John Perenchio, was among Gov. Wilson's top campaign contributors last year. OPR's Rivasplata acknowledged that the office received such letters but added: "We hear from lots of people."

■ Contacts:
Lee Grissom, Director, Governor's Office of Planning & Research, (916) 322-3218.
Terry Rivasplata, Planner, Governor's Office of Planning & Research, (916) 445-4831.
Christi Hogin, City Attorney, City of Malibu, (310) 456-2489.

Little Hoover Commission Looks At Land Use

The Little Hoover Commission is examining land use and growth management issues, and is expected to make recommendations to the governor and the legislature sometime within the next few months.

Commission staffer Jim Mayer said the land-use inquiry grew out of the commission's own concerns with economic competitiveness, the possible fiscal restructuring of state and local governments, and lingering questions that remained after the debate over a state growth management law died.

The commission held a hearing in Los Angeles in late April. Mayer said much of the testimony there focused on conflicting incentives for local governments in the land-use arena. The commission's record remains open to those who wish to submit material, he said.

The Little Hoover Commission is a bipartisan body that makes recommendations to the governor and the legislature on how to improve the state's economy and efficiency in government.

■ Contact:
Jim Mayer, Little Hoover Commission, (916) 445-2125.

Portola Looks At Disincorporation

Residents of Portola, the only incorporated city in Plumas County, have petitioned the county's Local Agency Formation Commission to consider disincorporating the city.

A petition bearing the names of 25% of the registered voters in Portola has already been submitted, as required by law, and the LAFCO appears likely to consider the issue this summer. The disincorporation attempt is apparently the result of some political discontent in Portola with the city government. A recall of council members was also recently attempted.

One issue which has held up consideration of the disincorporation involved the transfer of property taxes to the county. LAFCO cannot accept an application as complete until a property tax transfer agreement is in place. Plumas County passed a resolution to accept the taxes and provide services, but Portola passed a resolution specifying that all the tax money collected in Portola should be spent there.

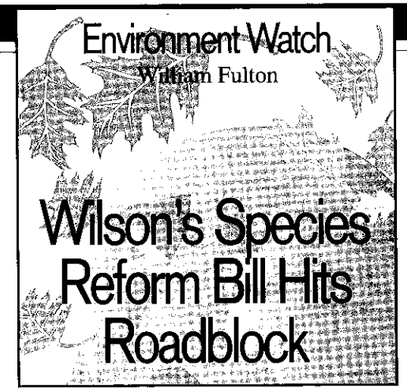
According to LAFCO staffer Rebecca Herrin, the LAFCO attorney concluded that these resolutions were similar enough to constitute an agreement, clearing the way for the application to be accepted.

Herrin said the staff is preparing a negative declaration under the California Environmental Quality Act. But both Herrin and Robert Braitman, a consultant to the Portola city government, said there is likely to be pressure from the city and some citizens to prepare an environmental impact report on the disincorporation.

The LAFCO, which is staffed by the Plumas County Planning Department, has already issued a negative declaration. However, the city claims some environmental issues may arise because of differing environmental policies between the city and the county.

Portola is two square miles in size with a population of 2,250 people. It was incorporated in 1946. A previous disincorporation attempt in 1983 failed. ❑

■ Contacts:
Robert Braitman, consultant to Portola, (805) 647-7612.
Rebecca Herrin, Plumas County LAFCO, (916) 283-6210.



Gov. Pete Wilson's proposal to reform the California Endangered Species Act has been defeated in a key legislative committee and may be dead. Meanwhile, however, other species reform bills continue to move forward in Sacramento.

Wilson's proposal, contained in SB 131, by Sen. Ken Maddy, R-Fresno, was defeated in the Senate Natural Resources Committee in early May. The committee is chaired by Sen. Tom Hayden, D-Los Angeles.

Wilson's controversial proposal would have promoted multi-species conservation and planning. But it also would have narrowed the definition of when an endangered species is "taken" to include some, but not all, habitat modifications. Environmentalists opposed the bill.

Two potentially significant bills are moving forward in the Assembly. The Assembly Natural Resources Committee has passed two potentially significant bills sponsored by leading advocates of reforming the Endangered Species Act.

AB 137, introduced by Assembly Natural Resources Vice Chair Keith Olberg, R-Victorville, would take authority to list species away from the Fish & Game Commission and give it to the Legislature instead. Olberg's bill would also require an economic assessment prior to the listing of any species.

AB 350, by Assemblyman Cruz Bustamante, D-Fresno, would allow the Fish & Game Commission to retain listing authority. But it would change the procedures for listing and speed up the process of creating recovery plans for species already listed. Bustamante tried to broker an endangered species reform last year and just narrowly failed.

Meanwhile, the endangered species task force in the U.S. House of Representatives has begun the process of drafting a bill. The task force, chaired by Rep. Richard Pombo, R-Tracy, held several highly publicized hearings in California in April before returning to Washington.

The task force held a hearing in Bakersfield on April 17 before an audience estimated at 800 people. The group then met in Riverside on April 26 before some 500 people, and in Stockton — Pombo's home turf — on April 28, when more than 1,000 people turned out. Pombo has stated that he intends to have a bill ready for the House Natural Resources Committee by June.

A Senate bill was introduced in early May by Sen. Slade Gorton, R-Wash. The bill would remove the requirement that a recovery plan be devised for all species and replace it with a system that would give the Interior Secretary broad discretion in determining which species should be saved and which should be allowed to become extinct.

At the same time, Interior Secretary Bruce Babbitt announced at a meeting of the Urban Land Institute that he will implement a regulation to exempt small landowners from the provisions of the law. The proposal was the Clinton Administration's response to Republican attacks that the bill is unworkable.

Clean Water Act Revisions Pass House

The House of Representatives has passed the proposed revisions to the Clean Water Act promoted by Rep. Bud Shuster, R-Pennsylvania, chairman of the House Transportation Committee.

The bill passed the House on May 15 by a vote of 240-185. Although the vote was split along mostly partisan lines, 45 Democrats voted for it and 34 Republicans voted against it.

Among the leading opponents of the bill was Rep. Norman Mineta, D-San Jose. Mineta said he was pleased that the margin of victory would not be sufficient to override a veto by President Clinton. The clean water issue now moves to the Senate.

As passed by the House, the bill includes a less liberal definition of wetlands and major changes in the urban stormwater runoff regulations, so that local governments would no longer be required to obtain stormwater runoff permits. The bill also contains property-owner compensation provisions similar to those contained in the Republican contact With America (*CP&DR*, May 1995). However, the House did vote (224-199) to remove a section that would have done away with coastal zone management programs. The bill still would give states more flexibility on how coastal programs are administered.

The bill was debated on the House floor for a week. Rhetoric on the wetlands issue was heavy because the National Academy of Sciences issued a report on May 9, the day the House started debating the bill, stating that federal regulation of wetlands is "scientifically sound and effective in most respects." The report recommended that wetland definitions should be different for different parts of the country depending on climate.

Carole Browner, administrator of the Environmental Protection Agency, said the NAS report should provide the impetus for a less sweeping reform of wetlands regulation. Republicans said the study's issuance was timed to try to affect the House debate.

First Conservation Bank Established

The state and the Bank of America have established the state's first "conservation bank" in northern San Diego County.

The 180-acre parcel near Carlsbad will provide a mitigation area for developers in San Diego County when they must deal with endangered species issues. Under the arrangement, the developers will buy conservation credits from the bank in order to meet mitigation requirements.

The Carlsbad Highlands conservation bank is the first established under new state guidelines created by the Resources Agency and the California Environmental Protection Agency. The property was part of a 263-acre parcel originally obtained by BofA in a foreclosure action. The bank previously sold 83 acres for $1.1 million (about $13,250 per acre) to Caltrans, which used the land as mitigation for the Highway 76 project, which runs through the habitat of the California gnatcatcher.

Eagle Mountain Landfill Proposal Returns

The Eagle Mountain landfill proposal in Riverside County has returned to life.

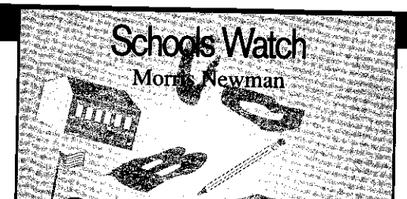
Mine Reclamation Corp. has paid $227,000 in planning fees to Riverside County and dropped its appeal of a court challenge to the project in order to begin processing the application through the county again.

The Riverside County Board of Supervisors approved the landfill by a 3-2 vote in 1992, but a judge struck down the county's environmental impact report last year. (*CP&DR* Legal Digest, November 1994.)

Since then, however, three new supervisors have been seated, and Kaiser Resources Corp. has purchased a controlling interest in Mine Reclamation Corp.

The proposed landfill, located on the former site of a Kaiser iron-ore mine near Interstate 10 east of Indio, could accommodate up to 20,000 tons of trash per day. ❑

Schools Watch
Morris Newman



Orange County Districts Get 76¢ On the Dollar

Although most other creditors that have money trapped in the bankrupt Orange County investment fund may still have to wait weeks or months before pulling out their money, the county's school districts had an early reprieve on May 19, when they were allowed to withdraw about $750 million from the infamous pool. The fund contained the school construction money for many districts, including proceeds from Mello-Roos bonds and assessment bonds, as well as other money that was routinely "banked" in the county general fund.

"All the school districts in Orange County feel relieved, because we know what we can plan for," said Mike Vail, senior director of facilities planning at Santa Ana Unified. "Now we can move onward with the 1995-96 budget planning process."

The county investment fund went into bankruptcy in December, creating financial uncertainty for the school districts and many other public agencies in the county. The school districts had a total of $46 million in Mello-Roos proceeds in the fund.

Under the cash-out arrangement known as Plan A, which was widely supported by the county's school districts, the districts can pull out about 76 cents on the dollar of their assets in the pool. In addition, the districts are expecting another 13 or 14 cents on the dollar from so-called "recovery notes" that the county is issuing to pool participants in June, giving them a comparatively healthy recapture of 90 or 91 cents on the dollar. The recovery notes are debt instruments that the county is providing to pool participants, which can be either cashed in or held to maturity.

The cash-out is a welcome event for the school districts, which had no access to their funds, except for "interim distributions" to meet payroll and bond payments. Those requests had to be filed with the federal bankruptcy court, which sent them along to two committees of creditors for approval.

The schools were not speculators in Robert Citron's wild ride. County regulations required the districts to "park" the proceeds of Mello Roos bonds, state school-building funds, and other money in the fund. "We used the fund as a bank," said Wendy Margarita, director of business services for the county's education department.

The mood is good at Saddleback Unified, which was able to pull out about $45 million of the $62 million it had in the fund; the district had earlier made withdrawals under the "interim" basis. Of the money withdrawn in May, $23 million was earmarked for the school district's general fund, while about $12 million was intended for construction. "We're pleased that we've gotten it as quickly as possible, considering the size and the scope of the bankruptcy," said Robert Cornelius, assistant superintendent of business. But Saddleback's Cornelius is still holding out for the final 10 cents, which the county has promised to the school districts, and which may hinge on a controversial quarter-cent sales tax increase to be decided by county voters in June. "We still have major needs for the remaining 10 cents," he said.

Santa Ana Unified had no construction funds locked up, although it did have about $12 million in site acquisition funds in the fund. Even so, the school district did not delay its building program, according to Vail. "We were able to get money rapidly from the state school building program, because our staff knows how to work the system," said Vail. In this case, working the system meant doing a cash-flow analysis that indicated that funds from the state building program would carry the district through its short term construction needs, including a $14 million high school and a $6 million elementary school. "We got our requests to the state program in early, which allowed a lot of our construction program to move forward," he said. Vail acknowledged that Santa Ana was about to reach its limit in state funds. If the funds had not been released by the county fund, "we would have hit a wall."

In late May, however, the county had not yet sold the bonds, although the deadline for the issuance of the bonds was fast approaching a June 5 deadline. The county had promised school districts that the bonds would be cashable by June 13. As of late May, "We are still very anxious about our recovery notes," said Margarita of the county education department.

> *"We're pleased that we've gotten it as quickly as possible, considering the size and the scope of the bankruptcy."*

■ Contacts:
Wendy Margarita, director of business services, Orange County Office of Education, (714) 966-4084.
Robert Cornelius, assistant superintendent for business, Saddleback Unified School District, (714) 586-1234.
Dave Doomey, Capistrano Unified School District, (714) 489-7264.
Dean Waldfogel, interim superintendent, Irvine Unified School District, (714) 651-0444.
Mike Vail, senior director of facilities planning, Santa Ana Unified School District, (714) 558-5501.
Raeleen Simons, director of facilities planning and use of facilities, Orange Unified School District, (714) 997-6100.

Local Districts Settle on Fees

Several local school districts have reached agreements or settlements regarding fees on new development in recent months.

In Kern County, developers, city and county governments, and some 30 school districts have reached a broad agreement at about $3.80 per square foot — a figure that is comparable to several similar settlements around the state. The Kern County Plan for Adequate Schools and Affordable Housing was the result of a broad-ranging negotiation among all parties involved in the process.

In Stanislaus County, the city of Patterson and local school districts settled a lawsuit resulting from the city's approval of the 67-home Walnut Square project proposed by Del Mar Investment Group. Fees will range from $1,650 to $2,408 per house.

And in Ventura County, Rio School District settled with prominent Oxnard developer Martin V. "Bud" Smith — but for only slightly more than state law permits. The school district had sued Smith, who is proposing a large office, residential, and entertainment complex along Highway 101. Rio settled for $1.75 per square foot for residential and 16.5 cents per square foot for commercial development. ❑

CP&DR
LEGAL DIGEST

Group Home Zoning Restricted

May Violate Fair Housing Act, U.S. Supreme Court Rules

By Kenneth Jost

A U.S. Supreme Court decision will make it harder for municipalities to block the establishment of group homes for recovering alcoholics and drug addicts in single-family neighborhoods. The ruling reinforces both case law and legislation in California that cast doubt on local governments' ability to regulate group homes.

The high court ruled that local zoning ordinances limiting the number of unrelated persons living together may violate the federal Fair Housing Act if used to restrict group homes for disabled persons. Federal law defines alcoholism and drug addiction as disabilities for purposes of the law.

The 6-3 decision set back an effort by the small coastal community of Edmonds, Wash., outside Seattle, to block the national organization Oxford House from operating a group home for 12 recovering alcohol and drug abusers in single-family neighborhoods. The city's zoning ordinance barred more than six unrelated persons from living together in single-family areas.

Jim Morales, a staff attorney with the National Youth Law Center in San Francisco, said many California cities have similar restrictions, even though they have been "suspect if not illegal" in California since a California Supreme Court ruling in 1980. In *Adamson v. City of Santa Barbara*, 27 Cal.3d 123,the court ruled that such ordinances violated the right of privacy under the state constitution if they were enforced against a group acting as a functional equivalent of a family.

In addition, Morales said that the state fair housing law, enacted in 1993, contains no exemption for local ordinances restricting the number of unrelated individuals living together.

"Given the California privacy rights and the statutory framework of California law, cities in California have been vulnerable to litigation if they try to use restrictive definitions of families to exclude group houses," Morales said.

The high court's decision rejected the city's argument that its zoning ordinance was exempt from the federal fair housing law, which provides that it does not apply to "reasonable" restrictions "regarding the maximum number of occupants permitted to occupy a dwelling." But the court said the ordinance was really a "family composition rule" that was not exempt from the act.

"Family living, not living space per occupant, is what [the ordinance] describes," Justice Ruth Bader Ginsburg wrote for the majority. Chief Justice William H. Rehnquist and Associate Justices John Paul Stevens, Sandra Day O'Connor, David Souter, and Stephen Breyer concurred.

In a dissent, Justice Clarence Thomas said the ruling "fails to give effect to the plain language of the statute." Justices Antonin Scalia and Anthony M. Kennedy joined the dissent.

The ruling returned the case to lower federal courts to determine whether the city violated the fair housing law by seeking to bar the group home. Officials in Edmonds had no immediate decision on their next move. The group home opened in 1990 and has been operating during the litigation.

William Sheehan, the Washington, D.C., attorney who represented Oxford House before the Supreme Court, said the court's decision was narrow but significant.

"The ruling applies only to group homes for people who are handicapped under the fair housing law," Sheehan said. "Group homes for college kids or newspaper reporters can still be restricted."

But Sheehan said a different ruling would have been "very troublesome" because it "would have resulted in many other municipalities trying to exclude group homes" for the disabled."

Anthony Caso, a lawyer with the conservative Pacific Legal Foundation, which filed a brief supporting the city's position, said the ruling would limit municipalities' power to protect neighborhoods. "This is necessarily a much more intensive use of the land than the neighborhood is designed for," Caso said. "I can't imagine a situation where a dozen adult males can live together and not create problems for the neighborhood."

But Dan Lauber, a former president of the American Planning Association who also filed a brief in the case, said numerous studies have found no adverse impacts from group homes for recovering alcoholics and drug users. "The studies show that the homes do not cause property values to go down, do not cause neighborhood turnover, and do not lead to an increase in crime," Lauber said.

City officials in Edmonds said the cost of more litigation could be a factor in deciding what further steps to take in the dispute. "If the city wanted to do so, it could try to argue the merits of the case. But it's a very expensive proposition, so that's one of the factors the city council will have to consider," said planning manager Rob Chave.

Sheehan said he hoped the ruling would end the fight over the operation of the home. He noted that the city stipulated in the court record that there had been no community complaints about the house since it opened in 1990. "Oxford House may be the only house in the neighborhood," the lawyer added, "in which it can be said with certainty that no resident drinks or takes drugs."

Kenneth Jost is the author of the Supreme Court Yearbook (Congressional Quarterly Books). ❑

■ The Case:
City of Edmonds v. Oxford House Inc., 94-23.
■ The Lawyers:
For Edmonds: W. Scott Snyder, Seattle, (206) 447-7000.
William Sheehan, Washington, D.C., (202) 828-2000.

CIVIL RIGHTS

Developer to Appeal Decision To Overturn Big Jury Verdict

A San Bernardino developer plans to appeal to the U.S. Supreme Court in hopes of overturning a Court of Appeal's decision that the company should not receive $11 million in damages awarded by a jury.

Stubblefield Construction Co. had obtained the damage award after a trial in 1991 in which a jury found that the City of San Bernardino had violated the developer's substantive due process rights. (*CP&DR*, June 1991.) The case involved a series of events that decreased Stubblefield's zoning on a 30-acre hillside property from 630 units to four.

In January, the Fourth District Court of Appeal ordered that the trial judge should have granted San Bernardino's motion for a

judgment notwithstanding the verdict — essentially a judicial reversal of the jury's verdict. The California Supreme Court chose not to accept the case, but Stubblefield's lawyer, Darlene Phillips, said she will ask the U.S. Supreme Court to take the case.

Phillips said she hopes the court will be drawn to the case by the substantive due process issues — issues that are similar, she said, to those contained in *PFZ Properties v. Rodriguez*, a case the U.S. Supreme Court heard in 1992 but did not issue an opinion in.

The case arose from a series of events that began in 1986, when Stubblefield filed an application to build 492 apartments on a 30-acre hillside site in northeastern San Bernardino. At the time, the property was zoned to permit 630 units. However, when neighborhood homeowners objected to the project, the city took a series of steps to delay the project's approval just prior to a three-year moratorium during which the city's general plan was revised. The new general plan restricted development on steep hillsides, and Stubblefield's allowable density was reduced from 630 units to only four.

Stubblefield first filed suit after the project's delay in 1986, alleging a taking of property without compensation and a violation of the developer's civil rights under §1983 of the U.S. Civil Rights Act. After the general plan revision in 1989, Stubblefield filed a second suit challenging its validity.

At the trial on the first lawsuit in 1991, Phillips argued that city officials "manipulated the law for their own purposes" during a two-month period in 1986. Despite a "history of assurances" that the apartment complex would be permitted, Phillips alleged, then-City Councilman Steve Marks — responding to neighborhood unrest about the project — bullied other city officials into delaying the project. Among others, former city planning director Frank Shuma testified that Marks threatened him with his job if the project was approved. As a result, Phillips said, the city took a series of stalling measures, including an urgency ordinance abandoning the city's longstanding policy that projects should be processed under the ordinances in effect at the time an application was filed.

After the $11.5 million verdict was returned, Superior Court Judge Don A. Turner called for a new trial, claiming the judgment was "grossly excessive." Turner rejected the city's request for a judgment notwithstanding the verdict. Both sides then appealed. The city appealed Turner's denial of the judgment notwithstanding the verdict and his award of attorneys fees to Stubblefield. Stubblefield appealed Turner's decision to grant a new trial.

On appeal, the appellate court agreed with the city that Stubblefield did not have a vested right to built the project because the company had not applied for or received a building permit, as required under *Avco Community Builders Inc v. South Coast Regional Commission*, 17 Cal.3d 785 (1976).

More importantly, the appellate court also agreed with the city that Stubblefield failed to prove a deprivation of substantive due process as a matter of law. "In our view, plaintiffs have not, as a matter of law, shown arbitrary or irrational government action," the Court of Appeal wrote. The court went on to state that the actions of Councilman Marks did not constitute a vendetta but rather represented a legislator responding to constituent concerns.

"Whether their concerns were proper or justified is not the issue here," the court wrote. "The point is that their elected representatives decided to oppose the project, and did so vigorously."

In reaching this conclusion, the court relied on a series of rulings by the First U.S. Circuit Court of Appeals, including the First Circuit ruling in *PFZ Properties Inc. v. Rodriguez*, 928 F.2d 28, and *Creative Environments Inc. v. Estabrook*, 680 F. 2d 822 (1982). The Supreme Court heard the *PFZ* case but decided it was "improvidentially granted" and dismissed the appeal. (*CP&DR* Legal Digest, April 1992.)

In an interview, Phillips said she will argue in her request for *certiorari* that the *PFZ* and *Creative Environments* cases from the First Circuit are inconsistent with rulings in other federal circuits and question whether the Fourth District Court of Appeal should have been permitted to apply them in this case.

The Court of Appeal also rejected Stubblefield's argument that it had been denied equal protection under the law, as required by the federal constitution. "Having reviewed the city instances, we find them insufficient to support a denial of equal protection claim," the court wrote. "While it may fairly be said that certain actions of the City Council, specifically including certain actions of Councilman Marks, were taken with the Stubblefield project in mind, and were taken for the purpose of blocking the project, the motive of the legislators is generally irrelevant." The court further added: "None of the actions taken by the City Council, on their face, applied to this project."

On its own initiative, the court also considered the question of whether the lower court proceedings were private under the California Supreme Court ruling in *Morehart v. County of Santa Barbara*, 7 Cal.4th 725 (1994). Only some of the causes of action had been subject to the jury trial and the parties had stipulated that other causes of action would be tried by the court after conclusion of the jury trial. For this reason, the appellate court found that the proceedings had been final. ❑

■ The Case:
Stubblefield Construction Co. v. City of San Bernardino, No. E009749, No. E010088, 38 Cal. Rptr.2d 413).

■ The Lawyers:
For Stubblefield: Darlene Phillips, (213) 620-0460.
For City of San Bernardino: Henry Empeno Jr., Deputy City Attorney, (909) 384-5355.

DEVELOPMENT

Judge Upholds Sutter County In Rescinding Development Agreements

In the latest round of a long-running battle, a judge has ruled that Sutter County acted properly in rescinding 19 development agreements and declaring that a vesting tentative map was no longer valid for the Sutter Bay development project.

The ruling by Visiting Sutter County Superior Court Judge Winslow Christian was a sweeping victory for the county in its long-running battle to deny approval for development plans in a 25,000-acre area in the southern part of the county. Greg Thatch, lawyer for Sutter Bay Associates, one of the developers involved in the case, said he would appeal.

Development of south Sutter County was approved in 1992, when the Board of Supervisors adopted a general plan amendment. Two supervisors who supported the project then lost their seats in the November 1992 election. However, the lame-duck board approved the 19 development agreements — and a vesting tentative map and specific plan for a 1,000-acre individual project, Sutter Bay — in December of 1992.

The new board rescinded the development agreements in January of 1993 — during a 30-day waiting period that holds up the actual legal enforceability of the DAs — and a referendum on some of the general plan changes regarding the southern part of the county was defeated on the ballot in June of 1993. (*CP&DR* December 1992, January 1993, July 1993).

Sutter Bay Associates and several landowners, then filed several lawsuits against the county. One was a sweeping challenge to the development agreement rescissions, which argued that the board did not have the power to rescind the DAs and also alleged Brown Act violations by the supervisors. The second was a declaratory relief lawsuit, seeking to force the county to process the vesting tentative map and consider the specific plan valid. In return, the county sued Sutter Bay Associates seeking declaratory relief that the vesting tentative map was invalid.

Judge Christian, a retired visiting judge, ruled in favor of the county on all counts. On the development agreement issue, the landowners had argued that the 30-day waiting period in effect is meant to allow citizens to mount a referendum campaign, not to allow the supervisors to change their minds. But Judge Christian ruled the supervisors had acted properly.

The landowners had also argued that the Brown Act had been violated when two supervisors-elect and one sitting supervisor met with a private attorney in December 1992 to plan the rescissions. Christian ruled that the supervisors-elect were not subject to the Brown Act at the time. Thatch, attorney for the landowners, said the Brown Act has since been changed to cover such situations.

In the vesting tentative map dispute, Sutter Bay Associates had argued that its map was valid because no legal challenge had been issued within the 90-day statute of limitations contained in the Subdivision Map Act. But Judge Christian ruled that the statute of limitations doesn't apply to the county's actions. The county concluded that measure the June 1993 ballot measure had rescinded the general plan amendment permitting the Sutter Bay project, therefore Sutter Bay did not have a valid specific plan or a valid vesting tentative map. ❑

■ The Cases:
Brennan v. County of Sutter; Sutter Bay Associates v. County of Sutter; County of Sutter v. Sutter Bay Associates, all filed in Sutter County Superior Court.

■ The Lawyers:
For Sutter Bay Associates: Greg Thatch, (916) 443-6956.
For Sutter County: Darrell Larsen, County Counsel, (916) 741-7110.

CEQA

No Preliminary Injunction Case Seeking to Halt Colton Hospital

A San Bernardino County taxpayer group has failed in its attempt to use the California Environmental Quality Act to obtain a preliminary injunction to stop the county from building a hospital in Colton.

However, hospital opponents are mounting a referendum campaign against the hospital, and some members of the taxpayer association have now sued the City of Colton.

Meanwhile, the plaintiffs have agreed to drop a potentially significant cause of action in the same lawsuit which could have required the Office of Statewide Health Planning and Development to conduct CEQA review of hospital projects.

The San Bernardino County Taxpayers Association sued OSHPD and San Bernardino County over the proposed construction of the San Bernardino County Medical Center in Colton. The county is issuing $300 million or more in certificates of deposit to pay for the hospital's construction.

The county's approval of the project in 1991 assumed that Colton would pay for an electrical substation, a wastewater treatment system, and street improvements. But the county's statement of overriding considerations under CEQA did not specifically state that there was some possibility Colton, as a "responsible agency" under the environmental law, might not complete all the improvements.

Colton has since run into financial difficulty and has laid off employees in order to avoid a budget deficit.

The taxpayers association then sued in Sacramento Superior Court, saying that Colton's financial situation should have been reflected in the CEQA documentation. Taxpayers' lawyer James Moose said the possibility that Colton might not have cooperated by constructing all the improvements made the hospital a project under CEQA that differed significantly from the one considered by the county. Moose then asked Sacramento Superior Court Judge Thomas H. Cecil for a preliminary injunction to halt construction of the hospital.

However, prior to the hearing before Judge Cecil, the county negotiated a memorandum of understanding with Colton on the financial arrangements. The county agreed to pay for its fair share of the infrastructure improvements and loan the city the remainder of the money, which would be paid back by development fees and other city sources of funds. On May 12, Cecil ruled that "there is no evidence to indicate that the off-site mitigation improvements which are the subject of controversy will not be built as stated in the project Environmental Impact Report," and he denied the preliminary injunction.

The Taxpayers Association also sued OSHPD, the state agency that reviews hospital projects for compliance with state building codes and seismic safety standards. The taxpayers sought to make OSHPD a responsible agency under CEQA, thus requiring the agency to conduct its own environmental review. Cecil said "it does not appear that OSHPD had, or exercised, the power to shape the project with regard to identified environmental concerns, particularly the ones at issue here." ❑

■ The Case:
San Bernardino County Taxpayers Association v. Office of Statewide Health Planning and Development, Sacramento Superior Court No. 95CS00578.

■ The Lawyers:
For San Bernardino County Taxpayers Association: James Moose, Remy & Thomas, (916) 443-2745.
For San Bernardino County: Richard Brandt, McDonough, Holland & Allen, (916) 444-3900.

Late Attempt to Add Plaintiff Rejected by Appellate Court

The Second District Court of Appeal has rejected an attempt by two citizens to add a new and supposedly indispensible party to a lawsuit filed under the California Environmental Quality Act after the 30-day statute of limitations for CEQA filings had run out.

In so doing, the Division Six of the Second District affirmed a lower court's decision to dismiss a case by the citizens against the United Water Conservation District, which challenged United's compliance with CEQA in a project using gravel pits near the Santa Clara River in Ventura County's percolation basins and eventually to water reservoirs.

The Fox Canyon Seawater Intrusion Abatement Project began with a proposed pilot project to convert one pit, known as Noble Pit, to a percolation basin. United's initial study found that the project would not have a substantial impact on the environment and therefore an environmental impact report was not necessary.

The Noble Pit hearings were attended by citizen John Garrison and his lawyer, Richard Francis, a former mayor of Ventura. Garrison did not speak at the hearings. But Francis, speaking as an individual, made numerous objections to the CEQA process, including unlawful segmentation of the Fox Canyon project, cumulative impacts, and the contention that United failed to assert the basis on which it considered itself the lead agency on the project.

However, United adopted a negative declaration on the Noble Pit in June of 1993.

Garrison then sued within 30 days, claiming an EIR should have been prepared. But United filed a demurrer, arguing that Garrison had not exhausted his administrative remedies because he had not commented at the public hearings. Judge Edwin N. Osborne then granted United's demurrer but granted Garrison permission to amend his complaint. In November, Garrison filed an amended complaint indicating he was suing as a member of the Coalition for Aquifer Honesty, a group whose members included both Garri-

son and Francis. United argued that the Coalition for Aquifer Honesty had been created merely as a device to get around the question of Garrison's exhaustion of administrative remedies. Judge Osborne agreed and dismissed the case.

On appeal, the Second District concluded that the belated creation of Coalition for Aquifer Honesty actually did allow Garrison and Francis to meet the exhaustion of administrative remedies test. However, the court concluded, the Coalition for Aquifer Honesty could not be added to the complaint after the 30-day statute of limitations on CEQA lawsuits had run out in July of 1993.

Garrison argued that a new party had not really been added. Rather, he said, the only change made was a change in the capacity in which he was suing — as a member of the Coalition for Aquifer Honesty, not as an individual. But the court rejected this argument.

"The Legislature has determined pursuant to §21167 [of the Public Resources Code, which sets the 30-day rule] and other provisions that the public interest is not served unless challenges under CEQA are promptly filed," wrote Presiding Justice Steven Stone. "This legislative intent compels us to hold as a public policy matter that any amendments adding indispensable parties to CEQA lawsuits must be filed within the pertinent limitation periods contained in §21167."

Echoing recent edicts by the California Supreme Court, which has called for reining in CEQA's use as a stalling tactic, Stone concluded: "The public's interest in CEQA compliance does not conflict with the public's other interest in avoiding bureaucratic morass and delay. Violation of this later policy could actually interfere with environmental protection goals." ❑

■ The Case:
Garrison v. Board of Directors of the United Water Conservation District, No. B0819999, 95 Daily Journal D.A.R. 5762 (May 8, 1995).

■ The Lawyers:
For Garrison: Richard Francis, (805) 485-8888.
For United Water Conservation District: Philip C. Drescher, Drescher, McConica, Onstot, Schuck & Young, (805) 650-5271.

GENERAL PLANS

Golf Course on Open Space Conforms With County Plan

Ventura County's approval of a golf course and associated restaurant in an open space zone did not violate the county's general plan, the Second District Court of Appeal has ruled in an unpublished opinion.

The Environmental Coalition of Ventura County had challenged the county's conditional use permit on water-supply grounds, even though the golf course is projected to use less water than the agricultural uses that have historically been located on the site. But writing a unanimous opinion for Division Six of the Second District, Presiding Justice Steven Stone stated: "Essentially, the Coalition's argument is one of politics and philosophy. It argues that the purpose of the water policy in the general plan is to elevate and preserve agricultural uses in the Ojai area over golf courses, which the Coalition regards as an inferior use....The record supports the factual findings made and the conclusion that the project, as conditioned, is consistent with the general plan."

The case began when the county approved a conditional use permit to allow Farmont Corp. to build a private golf course on 204 acres of a 2,000-acre tract the company owns near Ojai. The county's approval limits the course to 35 golfers per day and a 60-seat restaurant that will not open until 7 p.m.

In order to obtain a CUP, the Farmont project had to comply with a county general plan policy (passed after Farmont's application was filed) that new golf courses must use reclaimed water unless existing and planned water supplies will meet all of the area's water needs. The golf course project would use 238 acre-feet of water per year. Though the property is currently used for grazing, requiring no water, average water use over the last decade for farming has been 407 acre-feet per year. Under the CUP, Farmont is limited to using 407 acre-feet of water on the entire property. The company also must construct its water system to accommodate reclaimed water eventually. In addition, the CUP required Farmont to pursue reclaimed water sources or else provide additional data showing that there is no impact on the area's water supplies.

The Environmental Coalition sued, claiming that the Farmont CUP violates the county's general plan policy. Specifically, the Coalition argued that no additional studies or information had been gathered to show that other water supplies were adequate to serve the area's needs. Ventura County Superior Court Judge William Peck ruled in favor of the county, saying: "To deny a project which is using less water than the present use because of an ordinance that was enacted to save domestic water seems to me to be a result which makes no sense."

The Court of Appeal agreed. "To interpret literally a policy adopted as part of a water-saving plan to preclude a project which is in keeping with the purpose of that policy is nonsensical," Stone wrote. "The Coalition takes issue with the factual basis for the administrative conclusion that a net saving in domestic water use would result from the project. Substantial evidence, however, supports the conclusions drawn from the records of water use."

The Environmental Coalition also argued that the clubhouse and restaurant were so large that they did not constitute "accessory structures" as allowed under the zoning ordinance. But the Court of Appeal rejected this argument as well. ❑

■ The Case:
Environmental Coalition of Ventura County v. County of Ventura, No. B084088 (May 16, 1995).

■ The Lawyers:
For Environmental Coalition of Ventura County: Philip A. Seymour, (805) 965-5981.
For Ventura County: Robert R. Orellana, Assistant County Counsel, (805) 654-2580.
For Farmont Corp. (Real Party in Interest): Lindsay F. Nielson, Nielson, Wedding & Viele, (805) 658-0977.

Most Cities Aren't Revising Growth Control Policies

Continued from page 1

are set to expire reasonably soon."

Unless the U.S. Supreme Court agrees to hear an appeal, the *Oceanside* case has become final. In late April, the California Supreme Court declined to hear the case and also rejected a request to decertify it. Only two justices voted to hear the case — Armand Arabian and Stanley Mosk, who are often on opposite sides of land-use issues. The Building Industry Association and developers in *Oceanside* may try to appeal the case to the U.S. Supreme Court.

According to a statewide survey by UCLA researchers Madelyn Glickfeld and Ned Levine, about 12% of the state's local governments have numerical caps on residential development — 51 of the 470 cities and eight of the 58 counties. About two-thirds of these housing caps were passed during the California real estate construction boom of the 1980s. During those years, housing entitlements were a scarce resource in many of these communities and developers competed heavily to obtain them.

But . (This trend confirms the research conclusions of UC Berkeley professor John Landis, who observed during the 1980s that caps are established at high levels in response to construction booms.) Thus, few city attorneys are raising the *Oceanside* issue as a problem and few planning directors are re-examining their policies at this time. Indeed, many planners administering growth control ordinances told *CP&DR* they were not even aware of the *Oceanside* ruling — especially those who work for jurisdictions in Northern California.

Although the Building Industry Association helped bring the *Oceanside* case and has bird-dogged the issue statewide, spokesmen for BIA chapters around the state say they plan no immediate action. Paul Campos, counsel to the BIA of Northern California, said his organization was concerned about other housing policies, such as inclusionary housing requirements, as well as numerical housing caps. "A lot of projects that would have been built just don't pencil out as a result."

> *"Because real estate construction levels have been so low in recent years, almost none of these cities have bumped up against their caps in recent years."*

In addition, the state Department of Housing and Community Development has not initiated any new survey or action as a result of the *Oceanside* case. Cathy Creswell, head of the Housing Policy Division, which administers the housing element law, said housing caps is just one of many factors her division examines in reviewing housing elements. "It depends," she said. "Some cities are in compliance even though they have caps, because they take other measures. Others are not in compliance exclusively because of the cap."

Several factors, however, could make the *Oceanside* case an important factor in California growth management in the future. For one thing, many housing caps were imposed for a five- or 10-year period during the 1980s and will be coming up for renewal in the next few years. For another, interest in housing caps may be renewed if the real estate development market picks up and some cities begin bumping up against the caps again. Campos and other BIA representatives said the chapters are keeping tabs on individual cities and will likely sue or take other action when the housing market comes back.

One city where the *Oceanside* case has become an issue is in Moorpark, a fast-growing city near Simi Valley and Thousand Oaks in eastern Ventura County. Incorporated in 1983, Moorpark imposed a housing cap of 250-275 units per year in 1986, when the city was receiving thousands of requests for building permits per year.

Now, two developers — who are exempt from the growth ordinance because of litigation settlements (*CP&DR*, April, June 1988) — are getting ready to begin building large housing tracts. Moorpark is expected to be the fastest-growing city in heavily growth-controlled Ventura County over the next 20 years. And the city is reviewing the ordinance, which will have to be renewed soon.

After the *Oceanside* case, City Attorney Sheryl Kane advised the City Council that the housing cap question may have to be revisited. "We are close to a conclusion that there is no way to have a numerical growth limit and comply with case law," said Community Development Director Jaime Aguilera. The issue is still before a city committee, which is expected to bring recommendations back to the City Council soon.

Another city which has been examining the impact of the *Oceanside* case is Redlands, in San Bernardino County, which has had a numerical cap on housing units in place since the 1970s as a result of two ballot initiatives. The city is revising its general plan and is considering how to incorporate the provisions of its more recent initiative (Measure N in 1987), which limited new homes to 400 per year. (*CP&DR*, December 1987.) However, Planning Director Jeffrey Shaw said that the housing cap hasn't been an issue in recent years because the city has been processing only 30-40 building permits per year.

In the *Oceanside* case, the Fourth District Court of Appeal wrote that state housing laws "clearly show an important state policy to promote the construction of low-income housing and to remove impediments to same." The court concluded that the city's 1987 initiative, which limits residential building permits in the city to 800 per year, is such an impediment and cannot survive a conflict." (*Building Industry Association of San Diego v. City of Oceanside*, 27 Cal.App.4th 744. See *CP&DR*, September 1994.)

In 1989, the Fourth District ruled that the initiative was not facially invalid and that it should proceed to trial. (*BIA v. Superior Court*, 211 Cal.App. 3d 277. See *CP&DR*, July 1989). In 1990, however, the California Supreme Court opened the door to the possibility of state preemption of local land-use initiatives in Lesher Communications v. *City of Walnut Creek*, 52 Cal.3d 531 (*CP&DR*, January 1991).

In the Lesher case, the Supreme Court specifically called out the Fourth District's ruling in the *Oceanside* case. "A city may not adopt ordinances and regulations which conflict with state Planning and Zoning Law," the Supreme Court wrote. "To the extent that *Building Industry Association v. Superior Court* ... suggests otherwise, it is disapproved." This language led the Fourth District to reconsider its earlier ruling. ❑

■ Contacts:
D. Barton Doyle, Brobeck Phleger & Harrison, (213) 489-4060.
Paul Campos, Building Industry Association of Northern California, (510) 820-7626.
Jaime Aguilera, Community Development Director, City of Moorpark, (805) 529-6864.
Jeffrey Shaw, Planning Director, City of Redlands, (909) 798-7555.

Regents Choose Merced for New UC Campus

Continued from page 1

be only the third UC campus in inland California. Seven of the other nine campuses are in coastal areas, with only Davis and Riverside serving the state's interior. The site is only about 100 miles from the Davis and Berkeley campuses. Proponents of the Madera site and a third location in Fresno had argued that the campus should be farther south in the Valley.

Although the choice between the two finalists was originally considered too close to call, the Merced location won because both water and land were readily available. The 2,000-acre Lake Yosemite site, which is located six miles north of Merced, is entirely owned by an educational trust, the Virginia Smith Trust, which was established to benefit Merced high school students, and will be donated free of charge to UC. (The trust also controls 10,000 acres to the immediate north of the site.) Table Mountain, on the other hand, was owned by several different private property owners, adding a note of "uncertainty" to the site, according to UC's Aydelotte. Although the Madera site was not assembled, county officials insisted that they could deliver the site, citing an earlier experience with the State Center Community College District, in which the county was able to purchase land from several landowners and convey it to the college district.

"I look at it as a contest between the best deal and the best site, and they took the best deal," said Leonard Garoupa, Madera County planning director. He claimed Table Mountain bested Lake Yosemite in its proximity to a major airport and major medical facilities, among other criteria.

Water, the turning point in so many planning decisions in the state, was pivotal in the decision for Merced. "We knew that water would be a central concern of any we would be developing, right up there with the availability of the property or the profile of neighboring communities," Aydelotte said. Table Mountain's water supply was the subject of controversy and became the target of criticism from farmers and others as a potential abuse of federal water contracts intended for agriculture. Madera County disputed the Regents stand on its water supply. "There are contracts for water rights along the river, and the contracts say the water is for agricultural and domestic use," said Garoupa. The county has already approved Rio Mesa, a new town near the campus site that has projected build out of 30,000 homes and a population of 100,000 people.

UC's Aydelotte observed that both the Merced and Madera County sites had already been master-planned for development. "Both were in known development corridors, and that's a plus, because we are not provoking growth in areas that were not already slated for development," said Aydelotte. A third runner-up — the Academy site, located 20 miles northeast of Fresno — was ruled out, in part, because the site was not in the path of development.

Phil Block, a Merced city planner, said the Regents were impressed by the city's 40-year growth study, which envisions growth from a city of about 60,000 people to one of 250,000. "This process began before 1990, even before there was a possibility of a UC Merced," he said. Subsequently, in 1991, the city hired Peter Calthorpe, the San Francisco-based architect, to prepare design guidelines for future growth and transit for 8,000 acres on the city's north end. The plan envisions a linear city that would eventually reach the campus, which is five miles away from the city. The campus area would fit inside another master plan, that of the Bellevue Ranch new town; the Merced City Council approved the Bellevue Ranch plan this past month, in an apparent gesture to the UC Regents to demonstrate that the area would have an adequate water supply.

> *"Water, the turning point in so many planning decisions in the state, was pivotal in the decision for Merced."*

Fresno was a strong candidate because it is the largest city in the Valley and sixth-largest in the state. (The city just passed 400,000 population last year, according to state estimates.) One Fresno advocate, UC Regent Dan Simmons, who represents faculty on the board of regents, had argued that Fresno would be the easiest site on which to assemble a faculty. Merced, with a population of 62,000 people, is 60 miles northwest of Fresno. But in addition to a more isolated location, Fresno was disqualified because the environmental impact report shows revealed at least 115 Native American archaeological sites. To mitigate those findings, the campus had to design around the sites, although more sites could crop up during construction.

Even so, Fresno City Councilman Robert Lung criticized the decision as showing "a lack of sensitivity to the size of the Valley and where the central part of the Valley is located." Lung was one of a number of Fresno council members who supported an in-town alternative to the Academy site. He argued that the in-town alternative would have been the most economical, since it could have used existing buildings. He said the concept of an urban campus in Fresno had both political and financial support. "We had a majority of the council to produce about $100 million in cash for them (i.e. the Regents) to help build the campus, throwing in our CDBG money and bonds and other things." In fact, the campus EIR indicated that downtown Fresno, although not a finalist, would have the least environmental impact. Said Councilman Lung: "The only endangered species in Fresno is asphalt." He added that an urban campus would provide a contrast to semi-rural UC Davis, and disputed the usefulness of locating the new campus comparatively near to UC Davis, UC Berkeley and UC San Francisco.

Ironically, after the seven-year build-up, construction of the new campus could be years or even decades away, due to UC's very limited finances. The university and other state sources would be expected to pay half of the campus' $750 million construction cost. UC president Jack Peltason has said he will not even begin fundraising for the new campus, and will concentrate on repairing and building the infrastructure of UC's nine existing campuses. ❑

■ Contacts:

Mark Aydelotte, regional director of information, University of California, (209) 225-5611.

Phil Block, planner, City of Merced (209) 385-6858.

Robert Lung, city councilman, City of Fresno, (209) 498-1560.

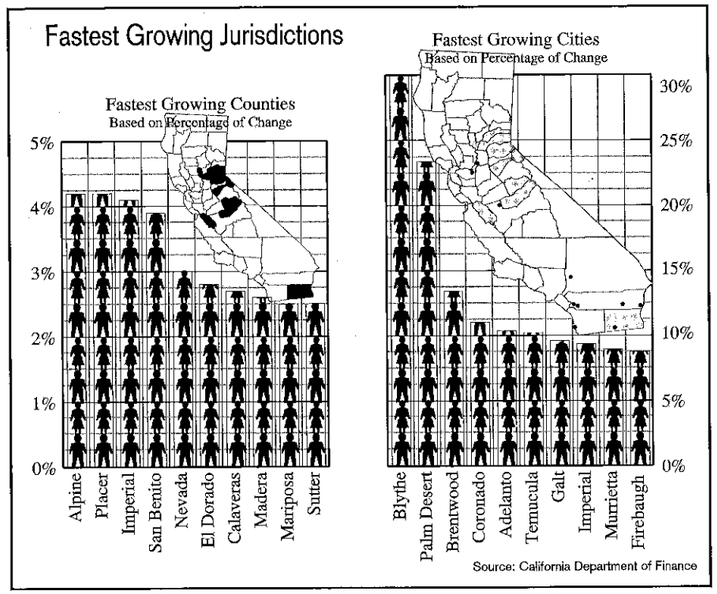
Leonard Garoupa, planning director, Madera County, (209) 675- 7821.

NUMBERS

Stephen Svete

Even Slow Years Are Big In California

Some time after the mid-term census in the 1960s, I first became intrigued with the steadily growing population of my hometown. It was about the same time that Governor Pat Brown was toasting California's accomplishment in surpassing New York as the nation's most populous state. Then, public money was plentiful, the country had not yet lost a war, and the University of California was about to inaugurate three new campuses. Then, more people meant more money and more new facilities.



I originally viewed the Caltrans signs as a kind of civic box score: "Riverside City Limit...Pop. 135,000, elev. 850" vs., for example, "Santa Ana City Limit...pop 213,000...elev. 35" I reveled in the fact that my town had passed its poor but historically larger rival San Bernardino, and was headed into the top 10 in the state. (In fact, it's been stuck in the number 11 slot for about 20 years). As a kid in the 1960s, I thought population growth was like runs in baseball: the more the better.

How things change. Today, I feel badly about the fact that my adopted town of Ventura has topped the 100,000 mark. Now, I get a sinking feeling about the fact that California has 12 million more people more than any other state. Because in California of the 1990s, more no longer means better. And in fact, it may clearly mean worse. Just look at libraries and school teachers per capita, if you are wondering how.

So when the state Department of Finance announces that we've gained another 392,000 souls in 1994, I don't think there are many out there celebrating. In one year, we've added the population equivalent of another City of Sacramento. But we haven't added a Cal State Sacramento, an American River Parkway, or Business 80 Freeway. Ironically, the growth rate has tied with the record low rate of 1.2% annual which was posted in 1971 and 1972.

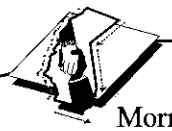
And growth patterns are not noticeably different than in recent years: large counties continue to post the largest numerical gains. Of the top 10 gainers, eight are in metropolitan southern California or the Bay Area. (Fresno and Sacramento are the exceptions.) The south state continues to out-pace the north, with Orange, San Diego, and Riverside holding the top three slots.

In percentage terms, Sierra Nevada counties out-paced all others. On the top ten percentage growers, only Imperial (2nd) and San Benito (4th) were not located in the mountains or foothills of the Sierra. These counties were either captured in a metropolitan area's commute shed, like Placer (#2), San Benito, or El Dorado (#6), or have developed as a magnet for retirement-aged migrants, like Nevada (#5) or Calaveras (#7). Tiny Alpine (with fewer than 2,000 people) was the fastest-paced grower.

Cities showed more anomalies in growth. For example, the state's gotham, Los Angeles, lost 23,500 residents. And, though the 1994 Northridge quake may account for some of this drop, the figure is surprising. Meanwhile, San Francisco gained nearly 9,000, placing it at number 4 in numerical growth in a top-ten list along with unlikely company such as Palmdale (#5) and Chula Vista (#10). Prisons influenced the percentage-growth pacers, placing Blythe at the top of the heap with a 28% growth rate through its annexation of the Palo Verde prison. Sister desert towns showed up in this category as well, such as #2 Palm Desert (a 23% growth rate), #5 Adelanto (11% growth rate), and #8 Imperial (a 9% growth rate).

Other than the San Francisco statistic, there is little evidence in the data that current population growth has, in any way, altered the pattern of sprawl. For example, absent from the percentage change list is any new town, and a glance at the list of numerically fast growers shows a list rife with suburban developments (San Diego, Bakersfield, Fresno, Stockton).

So, undaunted by floods, riots, fires, and earthquakes, the state continues its relentless growth. And our growth has taken a life of its own, placing us at a size that even when our rate slows, we add new Sacramentos or Oaklands every year. As Caltrans changes the green and white scoreboards at the border to our towns, we can ponder what high scores in population mean — are we winning or losing? ❑



DEALS

Morris Newman

Bakersfield's Miracle Hotel Baby

The Convention Center Hotel in the City of Bakersfield is a miracle baby. For nearly six years, the project was a classic case of a redevelopment project gone wrong: The developer and its lender had both failed. The city had sunk millions of dollars into the project that seemed unrecoverable. And the real estate market could make dead donkeys appear lively. (*CP&DR* Deals, October 1991.) Yet Bakersfield officials beat some very long odds, and the project reaches completion this month, with a new developer, a new design, and an unusual federal subsidy.

The keys to the success in Bakersfield were at least three unusual factors: a favorable location for the hotel, the extraordinary financial strength of the developer, and the city's willingness to take the long view on the losses it incurred in the earlier stages of the project. Dumb luck must also be factored in.

The project looked like a winner when it started in the late 1980s. Bakersfield was losing bookings at its convention center because it lacked a hotel to support the facility. A group led by Denver-based Aircoa spent $4 million to build the Clarion Hotel, when its lender, Mercury Savings & Loan, was declared insolvent by federal banking regulators. To prevent the hotel from becoming an asset of the Resolution Trust Corporation, the redevelopment agency exercised its right to foreclose and began looking for a new buyer. One promising deal with Hallmark Ventures of Santa Rosa fell through in June 1991, when the developer chose not to renew its option.

> *"Bakersfield's success in completing the hotel also gives them the last laugh to skeptics, including this writer, who suggested the project would be difficult to impossible to pull off."*

The unfinished skeleton of the hotel was threatening to become a permanent part of the downtown skyline when developer John Q. Hammons entered the picture. Formerly a major stockholder of Holiday Inn and the largest franchisee of Holiday Inn hotels, Hammons already had experience in running hotels in "middle market" locations like Bakersfield. He was also listed on Fortune Magazine's list of the country's richest men. Best of all, Hammons was willing to provide completion guarantee to the city, even if his company abandoned the project. He began negotiating with the city in April 1993.

Initially, the financing was complicated. The city promised to raise $13 million for hotel construction from the sale of Marks-Roos bonds, which essentially allow cities to obtain financing for a variety of projects through a single underwriting. In the end, however, Hammons chose to go directly to Wall Street, and obtained financing through a $113 million bond underwritten by Kidder Peabody, that financed or refinanced a group of his hotels. Another delicate part of the financing was a $2.5 million loan from federal government, under the Section 108 program, which allows cities to borrow against their community development block grants. To pay off that loan, the city has earmarked $375,000 annually of its CDBG funds for the next 10 years. One condition for the loan is the city's assurance that the developer will hire at least 51% of the hotel work force from people who are in the low- and moderate-income range. With 1,500 people applying for 150 hotel positions, those hiring goals may not have been difficult to reach. Finally, the city put $1 million into the project, which it will repay to itself out of tax increment money and bed tax. Hammons also had the political good grace to choose local people to fill most of the hotel's top management posts.

Hammons' major concession to the city was to hand over the profits from the meeting rooms and ballrooms, traditionally a profit center for hotels. The city expects about $200,000 annually from those facilities, as well as about $550,000 annually in tax increment, bed tax, and sales tax.

Hammons began negotiating with the city in April 1993. The city then spent several months soliciting support from federal officials, including U.S. Senators Barbara Boxer and Dianne Feinstein, among others, to win the Section 108 grant. The grant came through in December 1993, and the Bakersfield City Council approved the deal the same month. Construction began in April 1994. The hotel officially opened for business on June 1 of this year.

Hammons had to show some creativity in architecture, as well as finance. The hotel developer likes dramatic atriums, but the existing structural skeleton of the hotel did not permit such a space. Hammons had the hotel redesigned with a three-story entrance lobby that satisfied his taste for grand spaces, while adding something notable to the profile of Truxtun Avenue.

Interestingly, Bakersfield's arid climate also played a constructive role, according to Jake Wager, the city's economic development director. "If we had been on the coast, we would have had to demolish the structure," he said. "Being in a dry area with very little moisture or salt, the structure was in excellent condition, which was a miracle in some respects."

Even before the hotel's doors open, the benefits of the hotel are showing themselves, according to Wager, who reported that the city has already booked a number of conventions that would have been unthinkable without the hotel. "The prediction that we could fill the convention center hotel with sufficient business to spill over to the city's hospitality industry is already bearing out," he added.

Bakersfield's success in completing the hotel also gives them the last laugh to skeptics, including this writer, who suggested the project would be difficult to impossible to pull off. After all, the project was exactly the kind of long shot that we shake our heads at in these pages. I still don't think cities should get involved in the hotel business, and I believe that most cities would be better advised to tear down the existing structure and start all over again. Bakersfield's good fortune was to find a developer with both financial depth and experience in the hotel industry. The city also showed wise restraint in taking the long view in recovering its own costs. And, unlike some other failed hotels, the Bakersfield Convention Center had arguably the best location in town. So miracles can happen, and skeptical journalists can stand in the hot Bakersfield sun at the opening festivities, sipping a glass of champagne while wiping some egg off their faces. Just don't expect such miracles every day. ❑