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Inside

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San Jose Decides To Subsidize Redevelopment

$56 Million To Be Obtained From General Fund, Other Sources

In a reversal of traditional roles, the San Jose Redevelopment Agency is being bailed out by the city's general fund.

The San Jose City Council has tentatively approved a $56 million financing package that will preserve a scaled-down construction program for the redevelopment agency, mostly with money from the city's general fund. The city may increase the local bed tax from 10% to 12% to help pay for the new projects.

A finance committee on the council is still examining alternatives to the proposed plan. But if no alternatives emerge, the financing package will go into place in January.

The Redevelopment Agency required a bailout because property tax assessments and revenues have been dropping in San Jose, wiping out all of the agency's tax increment. "We don't have tax increment," said Jim Forsberg, the agency's deputy executive director. "We have tax de-crement."

The situation is a big change from the 1980s, when redevelopment agencies all over the state became "cash cows" for cities that were otherwise strapped for funds. Even in recent years, as tax increment funds were declining, cities still used redevelopment agencies to assist with financial problems. For example, Los Angeles has shifted several expenditures to its redevelopment agency to help balance the budget in recent years.

Apparently, however, the San Jose situation is a sign of the times. According to David DeRuis, deputy director of the California Redevelopment Association, property tax increment is on the decline all over the state. A recent association survey found that tax increment decline has been experienced or is anticipated in more than 200 different redevelopment project areas around the state. "The San Jose experience is not unique," DeRuis said.

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Stadium Fever Hits Towns Across State

By Morris Newman

Stadium fever has seized California. Nearly every major city in the state, and several small towns, are either mulling new sports facilities or the expansion of existing venues. The list of cities includes, but is not limited to: Anaheim, San Bernardino, Los Angeles, San Francisco, San Diego, Fresno, Bakersfield, Lancaster, Rancho Cucamonga, Adelanto, and Lake Elsinore. Stadium promoters advance wildly different rationales for the projects, including community boosterism, economic development and, in some cases, little more than a misty-eyed belief in the inherent goodness and desirability of baseball.

Stadium fever seems ironic, at best, in an era when public investment in infrastructure and education are running low. Communities that sometimes plead poverty in the case of building schools or affordable housing suddenly show great ingenuity when it comes to raising tens or hundreds of millions of dollars for stadiums. Consultants help stoke the enthusiasm by preparing reports that promise great economic benefits to the surrounding community in "multipliers" of sales tax and bed tax. Notwithstanding, stadiums are often costly projects that require big public subsidies. "There is not a stadium around that can pay back its debt service on its gate receipts," said Ray Salvador, spokesman for Mayor Tom Minor of the City of San Bernardino. The city recently approved $10 million in bond financing toward a $13 million baseball stadium, although Minor is standing firm on the need for private contributions to make up the difference.

Much of the enthusiasm for minor-league stadiums appears to come from the recent success of new stadiums for Class-A California League baseball teams in the Inland Empire. Adelanto, Rancho Cucamonga, and Lake Elsinore have all built stadiums for California League teams in the last four years. Although not all of them have proven to be economic successes

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The San Jose plan calls for a reduced construction program and an infusion of cash from several sources, including the city general fund, to pay for that new construction. The components of the financing package include:

- A $10 million loan from the city's workers compensation fund, to be paid back over five years.
- A $15 million loan from the Section 108 program of the U.S. Department of Housing & Urban Development.
- An $11 million loan from an unspecified corporation. Adobe Systems has been mentioned as a possible source, but Forsberg says Adobe has not made a formal offer.
- Approximately $20 million from the city's general fund — money that would probably be generated by an increase in the bed tax.

Forsberg said most of this money would be paid back over a five- to six-year period. He said that although San Jose has not taken such steps in the past, it has been common for other redevelopment agencies to borrow money from their city treasuries.

The financing package will permit construction of three major downtown San Jose projects: the San Jose Repertory Theater, the Tech Museum, and the Mexican Cultural Heritage Gardens. Off the list because of budget problems are a renovation of the Jose Theater and a mid-sized theater for Opera San Jose. In addition, the agency has earmarked only $1 million for renovation of the Fox Theater, a 1920s movie palace expected to need as much as $20 million. The agency also plans to lay off 20 of its 100 employees, the first steps toward a dramatic decrease in staff size.

The financing plan, which was put together by Mayor Susan Hammer and longtime Redevelopment Director Frank Taylor, has received considerable criticism from some council members. Council member Pat Dando, for example, called it an "appeasement program" for special interests.

Indeed, the plan was approved only after lengthy negotiation between Hammer and Councilman Frank Fiscalini, which led to a compromise to approve the plan — but hold off on the financial arrangement for now. Under the agreement, the council committed to spending the extra $56 million from outside redevelopment agency revenues. But the question of where to find the money was referred to a council committee, which has six months to look at alternatives.

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Mayor Susan Hammer, (408) 277-5800.
David DeRuis, deputy director, California Redevelopment Association, (916) 448-8760.

Ex-Planner Pleads Guilty to Extortion Charge

A one-time Fresno County planner who now represents developers has pleaded guilty to a charge of helping a Clovis city councilman extort a $10,000 campaign contribution from a developer. The guilty plea from Jeffrey T. Roberts came as part of a probe of political corruption being conducted by the FBI and the Internal Revenue Service.

The case began more than a year ago, when Fresno developer William Tatham Jr. turned over secret tape recordings of a meeting he had with Roberts and Clovis City Councilman Leif Sorenson. Tatham had hired Roberts as a consultant to help win approval for a 152-unit subdivision. Roberts admitted that Sorenson asked for $10,000 before voting to approve Tatham's zoning request.

According to the Sacramento Bee, Roberts is expected to receive a reduced prison term, perhaps two years, if he testifies against Sorenson and other Clovis-area developers he has implicated.

With the help of Roberts and others, the FBI is now investigating development corruption throughout the Fresno-Clovis area. In an unusual move, FBI Agent James Wedick went on a Fresno radio talk show to ask the public for tips in the case. The FBI rarely comments in public on ongoing investigations. Wedick made his appearance the day after Roberts' plea bargain was announced.

Roberts was the leading developer's consultant in the Fresno area. After studying planning at Cal State Fresno, he worked as a Fresno County planner until he was laid off in 1980.

Ventura, Oxnard in Mall War

Ventura has pulled ahead of Oxnard in their long-running battle to determine which coastal Ventura County city will retain its regional mall.

Both cities have malls dating back some 20 years — Buenaventura Mall in Ventura and The Esplanade in Oxnard. In recent weeks, however, the owners of the Buenaventura Mall have secured a financial arrangement with the City of Ventura to expand the mall — and also obtained commitments from The Esplanade's two major tenants, Robinson-May and Sears.

Under an agreement reached in late May, LaSalle Partners, the developer of the Buenaventura Mall expansion, agreed to front the cost of $6.5 million in infrastructure improvements in the vicinity of the mall, while the city committed most of its increased sales-tax revenues over the next 20 years to pay LaSalle back.

The expanded mall would contain four anchor stores: Broadway, J.C. Penney, Robinson-May, and Sears.

Oxnard city officials indicated that they will not go down without a fight, however. Shortly after the financial deal was approved by Ventura, Oxnard threatened to file a lawsuit charging Brown Act violations. Ventura immediately rescinded its approval and rescheduled consideration of the financial arrangement with proper notification. But Ventura still must approve the actual expansion of the Mall, and Oxnard officials are still hopeful that they will be able to retain at least one of the two major anchors.

Oxnard, Ventura, and Camarillo have been engaged in intense competition for retailers over the past several years. Both Oxnard and Ventura have constructed auto centers, while both Oxnard and Camarillo have built outlet malls. Oxnard's outlet mall opened first, partly because a member of the Oxnard Chamber of Commerce filed suit in an attempt to block construction of Camarillo's mall.

Citrus Heights Back, Isleton Still There

After 10 years, the proposed incorporation of Citrus Heights in suburban Sacramento is back before the Sacramento County Local Agency Formation Commission.

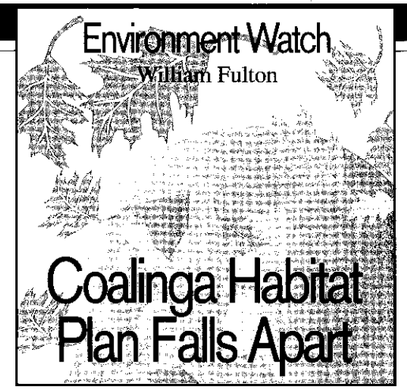
LAFCO approved a cityhood election seven years ago. But the election was delayed by a protracted lawsuit brought by the Sacramento County Board of Supervisors and the Sacramento Deputy Sheriffs' Association. Fearful of a loss of revenue to the county, the board and the sheriffs challenged the constitutionality of the LAFCO process, saying residents in other unincorporated areas should also be permitted to vote because they had a stake in the outcome. The county and the sheriffs won at the Court of Appeal but lost at the California Supreme Court .

Now, cityhood advocates have returned to the LAFCO. An environmental impact report on incorporation is under way, and hearings are scheduled for this fall.

Meanwhile, members of the Isleton City Council are trying to fend off a proposal by the Sacramento County Grand Jury that the Delta community be disincorporated as a city.

While Citrus Heights is part of a large unincorporated suburban ring that contains some 600,000 residents, Isleton is one of only four incorporated cities in Sacramento County, even though it has about 850 residents. Isleton was incorporated in 1923.

The grand jury investigation into Isleton arose out of anonymous complaints that the city government was engaged in improprieties. Among other things, the grand jury criticized Isleton for not having a mechanism to discipline or fire the police chief if such action should become necessary. ❑



A habitat conservation plan in the Coalinga area has fallen apart because of opposition from the Fresno County Farm Bureau and a decision by the Fresno County Board of Supervisors not to implement a mitigation fee.

The City of Coalinga had taken the lead on a 250-square-mile HCP in western Fresno County along Interstate 5 that also included areas near Avenal. The area has several endangered species, including the blunt-nosed leopard lizard and the San Joaquin kit fox. According to Coalinga Planning Director David Bugher, the city had been working with state and federal wildlife agencies on the plan for almost five years and had completed a draft when farmer opposition killed it in June.

The defeat of the Coalinga plan may be bad news for habitat efforts in Fresno County, where resistance to the Endangered Species Act is high. "We were adamant about cracking the whip on this one because we don't want any more of them here," said Phil Larson, the first vice president of the Fresno County Farm Bureau, who spearheaded opposition to the plan.

Bugher said the city and the wildlife agencies met with several farmers and farm groups in putting the plan together. Like most HCPs, it called for property owners to pay a mitigation fee when altering their land in a manner adverse to endangered species. But the plan apparently failed when the Fresno County Farm Bureau registered formal opposition and farmers began complaining to the county Board of Supervisors about the mitigation fees. (Though Coalinga took the lead in drawing up the plan, much of the land contained in the plan is located in unincorporated Fresno County.)

In particular, County Supervisor Tom Perch, who was elected to represent the area last November, criticized the plan publicly when a farmer in his district complained about having to pay a $40,000 mitigation fee in order to do a pistachio planting. The supervisors then chose not to implement the fee.

Larson, a farmer and crop consultant, said that the Farm Bureau had not been involved in the drafting of the plan and became involved late in the process when Coalinga-area farmers began complaining about it. "We were never in on the start of this thing," he said.

He also said that the Farm Bureau had two basic problems with the plan. First was the 250-square-mile area of the plan, which he called "too large." Second was the plan's requirement that biologists from state and federal wildlife agencies have access to the property. "You just can't have people walking on your property without your permission," he said.

Bugher said Coalinga will now proceed with implementing a plan covering Coalinga's territory and its sphere of influence, an area covering approximately 10 square miles. But he said the city is unhappy with the outcome of the situation. Coalinga will have to pay mitigation fees for its own projects, he said, while farmers in Fresno County near Coalinga will not.

■ Contacts:
Dave Bugher, Coalinga Planning Director, (209) 935-1533.
Phil Larson, Fresno County Farm Bureau, (209) 237-0263.

Poor Oversight of HCP Reported

An audit by the U.S. Fish & Wildlife Service has revealed sloppy bookkeeping and poor oversight of the Coachella Valley habitat conservation plan designed to protect the fringe-toed lizard.

The Coachella Valley HCP was among the first set up in Southern California. The Fish & Wildlife Audit said that although the lizard has not been further endangered by the administrative problems, some cities in the Coachella Valley have not turned over $600-per-acre mitigation fees to The Nature Conservancy on a timely basis. (Under the HCP agreement, the Nature Conservancy purchases the land and administers the preserve.) According to the audit, some cities have "manipulated the timing" of the mitigation fee payments "to create a source of income for the city by earning interest on unremitted funds."

"They were undoubtedly making money off this," Cameron Barrows, Southern California director of The Nature Conservancy, told the Riverside Press-Enterprise. "They have held onto the money a little longer than they should have."

Garamendi Named as Aide to Babbitt

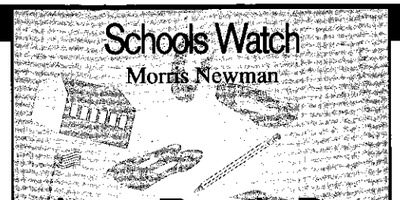
In a move that could have significant implications for natural resource protection in California, former state Insurance Commissioner John Garamendi has been nominated as deputy Interior secretary, the No. 2 job in the Interior Department under Bruce Babbitt.

If confirmed by the Senate, Garamendi would have to straddle an unusual array of political interests. A liberal Democrat and former gubernatorial candidate, Garamendi is also a cattle rancher in Calaveras County. He assumes the position at a time when California ranchers are playing an important role in a potential rewrite of the federal Endangered Species Act. In fact, the appointment of the politically ambitious Garamendi is viewed in some circles as an attempt by the Clinton Administration to improve relations with farming and ranching interests in the West, and especially in California.

Since he took over the Interior Department, Babbitt, a former Arizona governor well-liked by environmentalists, has sought to use conservation plans and other negotiation methods to make the case that the Endangered Species Act can work as it is currently written. He has also used California's Natural Communities Conservation Planning program as a model to make the same case.

However, Republicans in the House of Representatives are now pushing aggressively for reforms to the law, and the change is being led by California ranchers. Rep. Richard Pombo, R-Tracy, who is chairman of the House Endangered Species Task Force, is a Central Valley rancher. Rep. Don Young, R-Alaska, chairman of the House Natural Resources Committee, is also from a Central Valley ranching family. Young's committee is in charge of preparing the House version of the bill — as well as Garamendi's confirmation. ❑

Schools Watch
Morris Newman



June Bonds Do Well in North, Poorly in South

Voters provided surprising support to local school bonds in June, giving the green light for the issuance of more than $400 million in school bonds around the state for capital improvements. But even school bond experts say they are not sure what the high rate of passage means — or how it will play in the Legislature, where the school construction lobby is trying to win support for another large state bond issue.

According to the Coalition for Adequate School Housing, local school bonds received voter approval in 15 of 23 elections in June (65.2%) — a remarkable figure considering that school bonds require a two-thirds vote under Proposition 13. The June results were a big change from March, when only 7 of 22 local bonds passed (31.8%). (The historical pass rate for local school bonds is 46%. For more historical information, see the *CP&DR Special Report on School Mitigation*.)

Failure in March and success in June is a reversal of traditional trends. "The June ballot is traditionally one of the worst ballots to be on," says Paul Holmes of Murdoch, Walrath & Holmes, which tracks local bond pass rates and lobbies in Sacramento for the school construction lobby.

However, the June pass rate masks dramatic statistical differences between different parts of the state. The Bay Area approved all nine school bonds on the ballot, ranging from a $143 million proposal in Palo Alto (which received 81% of the vote) to a $2.6 million proposal in Lagunitas Elementary School District in Marin County. Northern California as a whole approved 12 of 15 bond issues (80%), while Southern California approved 3 of 7 (42.9%).

In March, Holmes said, the regional figures were somewhat different. The Southern pass rate was about the same (3 of 8, or 37.5%), but the Northern pass rate was only 28.6%, as only 4 of 14 Northern bond issues passed.

The big question is how increased support for local school bonds will affect the delicate balance in school construction funding among local bonds, state bonds, and contributions from developers. In theory, the state's policy is that school construction funding is a partnership among these three sources of funding. In practice, there has never been enough money to go around, and all players frequently dispute who should bear most of the responsibility.

It is particularly difficult to assess the impact of a high pass rate for local bonds on the prospects for a state school bond next year. The state's voters have approved more than $7 billion in state school bonds since 1982, and several legislative proposals would place a bond of $1 billion or more on the statewide primary ballot next March.

But resistance to statewide bond issues is growing, as many state officials suggest that local districts should produce a greater percentage of the funds for school construction. Among other things, the Legislature is considering a proposal that would drop the required percentage for passage from two-thirds to 58%. (If a lower requirement had been in place in June, five additional bond issues would have passed, meaning the pass rate statewide would have risen to 87.0%.) "Passing 15 out of 23 on the June ballot did not help" with regard to the Legislature, Holmes said.

At the same time, many local districts rely on the relationship between state and local funding to make their construction programs work. In Fresno, for example, voters approved a $215 million school bond in March on the fourth try. But the bond was sold to the voters as part of a construction package that includes 50% state funds. "Now the school district is going to have to go to Maddy [Sen. Ken Maddy, R-Fresno], who's a no vote on the bond, and tell them that the state bonds are part of the program," Holmes said.

Simi Valley Unified to Sell Land Through Foundation

Simi Valley Unified School District will sell an 1,800-acre tract of land to the Simi Valley Foundation for Educational Excellence, which will be empowered to resell the property.

The school district wound up as the owner of the property as the result of a complicated "workout" deal with a bankrupt developer. (*CP&DR Town and Gown*, May 1994.) The property represents part of the 3,000-acre Wood Ranch development near the Ronald Reagan Presidential Library. The property includes entitlements for 600 homes.

The foundation, which will buy the property from the school district for $7.6 million, solves several problems for the district. First, the foundation will not be subject to the same state restrictions as the school districts on money from the sale of property. Among other things, the foundation could decide that interest from the sale of the property could be used to finance school operations. And second, the foundation's board will include representatives from the Wood Ranch neighborhood, giving them a voice in how to dispose of the property.

Olympia/Roberts Inc. had been developing the property under a 1982 development agreement and specific plan. The developer had a separate agreement with the school districts, in which the developer agreed to donate land for an elementary school and contribute $6 million toward its construction in lieu of paying school fees.

The developer donated the land but ran into financial trouble before it could provide the $6 million. The school district took the land in lieu of the $6 million, and expects to use most of the proceeds to build the new elementary school. But in taking on the property, Wood Ranch also agreed to several additional financial obligations with the City of Simi Valley, which extended its development agreement as a part of the deal to solve the school problem. Among other things, the property owner will be obligated to pay a fee of $6,000 per housing unit into a citywide public facilities fund. A $250,000 road fee and other fees will be due in 1998. These obligations will become the responsibility of the eventual property owner, whoever it may be.

The decision to put Wood Ranch neighbors on the foundation's board was not a unanimous one. Several trustees balked at the idea of giving such control to the neighborhood. One compared it to "allowing your neighbors to decide to whom you should sell your house." ❑

CP&DR
LEGAL DIGEST

High Court May Handle Due Process

U.S. Circuit Court Issue Conflicting Land-Use Opinions

By William Fulton

The U.S. Supreme Court may soon be presented with the opportunity to decide an important emerging question in the property rights area: what type of property interest is required to file a substantive due process claim in federal court.

A New Jersey township and an Ohio property owner are appealing conflicting U.S. circuit court rulings to the Supreme Court, and property owners and local governments all across the country are hoping the court will take at least one of the cases in order to decide the issue. Depending on the outcome, the Supreme Court could considerably broaden or narrow the ability of property owners to challenge local land-use decisions in federal court.

"The Supreme Court's got to decide this," said Gus Bauman, a land-use lawyer in Washington, D.C., who frequently files briefs in front of the court. "The circuits are all over the place on this one."

Property owners often charge local governments with substantive due process violations when they believe the government has acted in an arbitrary or capricious manner or has failed to advance a legitimate governmental interest in denying a land-use permit.

In the Ohio case, the Sixth U.S. Circuit Court of Appeals ruled that property owners can file substantive due process lawsuits only when they have a "claim of entitlement" to a land-use permit or a "justifiable expectation" that the permit would be granted.

But in a split decision in the New Jersey case, the Third U.S. Circuit Court of Appeals ruled that the mere ownership of property is a sufficient basis for a property owner to file such a claim. "Indeed, one would be hard-pressed to find a property interest more worthy of substantive due process protection than ownership," wrote Judge Timothy K. Lewis for the majority.

In dissent, U.S. District Court Judge Roderick McKelvie, who was sitting as a Third Circuit judge in this case, complained that: "This standard opens the doors to the federal courts far wider than the Constitution contemplates, and surely will require the federal courts to sit as 'zoning boards of appeals'."

The issue is a tricky one for the Supreme Court, especially for conservative justices such as Chief Justice William Rehnquist. Rehnquist has been a staunch defender of property rights, but has also sought to discourage the filing of property-rights claims in federal court.

The Supreme Court actually considered the substantive due process standard in a 1992 case, *PFZ Properties v. Rodriguez*. However, the court never ruled on the case, dismissing it by saying only that review had been "improvidentially granted." (*CP&DR Legal Digest*, March 1992.)

The New Jersey case involved a property owner in West Amwell Township, N.J., who challenged the Zoning Board of Adjustment's decisions to cite his property for noncompliance with the local zoning ordinance and to deny him a variance. Alfred DeBlasio's property includes a Quonset hut in a residential zone, where an auto repair shop had been operating as a non-conforming use since 1967. In recent years, however, the Quonset hut had been leased to Peter Holmes, a battery distributor whose business grew rapidly. Beginning in 1989, neighbors complained about the Holmes business and the property was cited in 1990.

In 1988, prior to the complaint, Holmes had had a passing conversation with Werner Hoff, a member of the Zoning Board of Adjustment. One of Hoff's sons owned another property with a Quonset hut on it in the township. Hoff suggested that Holmes consider leasing the Quonset hut on the Hoff property. At the time, Hoff's son was having financial difficulty and Hoff himself was involved in working these problems out.

In 1990, Holmes recused himself from the Zoning Board of Adjustment's decision on the DeBlasio property. Later, however, the property was cited again. This time he participated in the decision because his other son had announced plans to buy the Hoff Quonset hut property, apparently ending Hoff's conflict of interest. Later, DeBlasio requested a variance, which the ZBA — with Hoff participating — denied.

DeBlasio then sued in U.S. District Court in New Jersey under 42 U.S.C. §1983, the federal civil rights law. Among other things, DeBlasio claimed that his substantive and procedural due process rights had been violated by the ZBA's decisions and by Hoff's participation in them. U.S. District Court Judge Clarkston S. Fisher granted summary judgment for the township and DeBlasio appealed.

On appeal, the majority concluded that the mere fact of DeBlasio's property ownership was a substantial enough interest to warrant the filing of a substantive due process claim in federal court.

"We think it consistent with [previous rulings] to conclude that ownership is a property interest worthy of substantive due process protection," wrote Lewis for the two-judge majority.

In dissent, McKelvie called the ownership standard "tantamount to no standard at all." He added: "It invites any land owner into federal court to challenge even the most mundane and routine zoning decisions, ignoring the oft-cited admonition that the role of federal courts 'is not and should not be to sit as a zoning board of appeals'."

McKelvie also said that under the claim of entitlement standard, he did not believe DeBlasio had valid claim.

The Ohio case arose when a property owner, Triomphe Investors, was denied a special use permit to construct a condominium project in the City of Northwood. A special use permit for 200 condominiums on a 10-acre portion of the 60-acre property had been granted in 1973, but only a few units had been constructed and the property had changed hands. After purchasing the property in 1987, Triomphe sought a new special use permit to build 50 condo units on the 10-acre parcel. In 1989, the Northwood City Council denied Triomphe's application, citing several reasons, including a history of problems in the existing condominiums and a fear that the new condos would have too low a value for the neighborhood. Apparently neighbors feared their own property values would decline if the condos were built.

Triomphe challenged the city's action in state court and won a reconsideration in 1992. However, by this time Triomphe was in financial trouble and unable to build the units, so the property owner filed a new lawsuit in U.S. District Court, seeking damages for a taking and violations of substantive and procedural due process. District Court Judge Lawrence P. Zatkoff granted summary judgment in favor of the city, and Triomphe appealed on the substantive due process issue.

On appeal Triomphe made the same

argument that DeBlasio made in the New Jersey case — that the only property interest requirement is the ownership of property. But the Sixth Circuit did not buy the argument. Triomphe attempted to rely on an earlier Sixth Circuit case, *Pearson v. City of Grand Blanc*, 961 F.2d 1211 (1992). But the Sixth Circuit quoted *Pearson* in saying: "The state court scope of review of a decision of a state administrative agency is far broader than the federal scope of review under substantive due process."

The Sixth Circuit ruled that Triomphe had proven neither a claim of entitlement nor a justifiable expectation that the city would issue the permit. No entitlement existed because the special use permit was a discretionary action for the city, and Triomphe could not expect a permit originally granted 15 years before it would be renewed. ❑

■ The Case:
DeBlasio v. Zoning Board of Adjustment for the Township of West Amwell, 53 F.Rptr 3d 592 (May 1, 1995).

■ The Lawyers:
For DeBlasio: Nicholas R. Parrella, Smith & Laquercia, Trenton, N.J.
For West Amwell Township: Mark L. First, Fox, Rothschild, O'Brien & Frankel, Lawrenceville, N.J., (609) 987-0050.

■ The Case:
Triomphe Investors v. City of Northwood, 49 F.Rptr. 198 (March 7, 1995).
For Triomphe: Ralph DeNune II, DeNune & Killam, Sylvania, Ohio, (419) 882-4707.
For Northwood: Jack Zouhary, Robison, Curphey & O'Connell, Toledo, Ohio, (419) 249-7900.

TAKINGS

Oregon Plaintiff May Proceed Straight to Federal Court

In a split decision, a three-judge panel of the Ninth U.S. Circuit Court of Appeals has ruled that an Oregon property owner need not file an inverse condemnation lawsuit in state court before filing suit in federal court.

The case is an important follow-up to the U.S. Supreme Court's ruling in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985). In that case, one of the precursors to the landmark *First English* case in 1987, the Supreme Court ruled that in order for a federal inverse condemnation lawsuit to be ripe, the plaintiff must first follow all legal procedures required by the state in such situations.

In the Oregon case, property owners Thomas and Doris Dodd had seen their request for development rejected by the state Land Use Board of Appeals, but had not filed a taking claim in Oregon state court. The state's lawyers argued that state courts must reject the taking claim before the Dodds file in federal court.

Writing for the majority, Judge Ruggero J. Aldisert said the Dodds' claim was ripe. "Reduced to its essence," wrote Judge Aldisert, "to hold that a taking plaintiff must first present a Fifth Amendment claim to the state court system as a condition precedent to seeking relief in a federal court would be to deny a federal forum to every takings claimant. We are satisfied that *Williamson County* may not be interpreted to command such a revolutionary concept and draconian result."

In dissent, Judge Thomas Tang read *Williamson County* differently. "The state procedure *Williamson County* references is the procedure necessary to raise a federal taking claim in state court," he wrote. "Thus, under *Williamson County*, a taking claimant must litigate the federal constitutional claim through the processes the state provides."

The case began in 1983, when the Dodds purchased 40 acres of land in Hood River County, Oregon, which was zoned for forest use under the state's growth management law.

After the Dodds bought their property, Hood River County adopted an ordinance under the state's growth management ordinance limiting construction of homes in forest areas to dwellings "necessary and accessory" to forest use. Although the Dodds' predecessor property owners had been informed of the pending ordinance, the Dodds themselves were not. In fact, shortly after the ordinance was passed the Dodds received a letter from the county indicating that their proposed single-family house might be built on the property.

Six years later, however, the Dodds' proposed single-family home was rejected by the county. The Dodds appealed from the county planning department to the Planning Commission, then to the Board of County Commissioners, and finally to the Land Use Board of Appeals (LUBA), but were denied in every case.

The Dodds sued unsuccessfully in state court on substantive due process grounds and on a claim of taking under the Oregon state constitution. However, they did not file a federal takings claim in state court. In fact, when appealing to the LUBA, the Dodds specifically stated their intent to reserve the takings claim for federal court. While the state suit was still pending, the Dodds filed in U.S. District Court on federal takings and substantive due process grounds. But District Court Judge Robert Jones ruled in favor of the county and the state.

Judge Aldisert rejected the claim of state and county lawyers that a state lawsuit for a federal takings claim was part of the "state procedure" required to satisfy ripeness requirements under *Williamson County*. In that case, Aldisert said, "the Supreme Court made no reference to the pursuit of the Fifth Amendment claim in state court." Furthermore, he added, the Ninth Circuit has "on countless occasions ... assessed the ripeness of a federal taking claim without mentioning the need to pursue a federal taking action in state court; instead, we have looked exclusively to — and instructed litigants to pursue remedies under — state substantive law."

In addition, Aldisert said that subsequent to *Williamson County*, federal circuit courts "routinely have held that state procedures are considered inadequate only when state law provides no postdeprivation remedy for a taking."

"We acknowledge the [Supreme] Court's unwillingness to have the federal courts become a super appeals board for local zoning decisions," he concluded. "We disagree, however, with the suggestion that *Williamson County* is a thinly-veiled attempt by the Court to eliminate the federal forum for Fifth Amendment taking plaintiffs and that any federal remedy is limited to actions based on inadequate taking procedures in the state."

Aldisert declined to reach the merits of the taking claim even though the issue had been fully briefed.

In his dissent, Tang simply argued that a state lawsuit over a federal takings claim is part of the state procedure called for in *Williamson County*. "Normally, *res judicata* bars a federal claim that could have been brought in the course of state proceedings," he wrote. "However, the state court allowed the Dodds to reserve their federal claim. Therefore, rather than applying a *res judicata* bar, we should dismiss the federal action. The Dodds should be required to seek just compensation in state court." ❑

■ The Case:
Dodd v. Hood River County, No. 93-35207, 95 Daily Journal D.A.R. 8730 (July 5, 1995).

■ The Lawyers:
For Dodd: John Groen, Pacific Legal Foundation, Bellevue, Washington.
For Hood River County: Lisa Lear, Bullivant, Houser, Bailey, Pendergrass & Hoffman, Portland.
For State of Oregon: Stephanie L. Striffer, Assistant Attorney General.

CEQA

Pro-Per Plaintiff Wins Reversal Of Murrieta Project Approval

A plaintiff working without a lawyer has succeeded in persuading an appellate court to throw out approval of a development project in Murrieta and order a new environmental analysis.

While acknowledging that "pro per" plaintiff Rita Gentry raised "every conceivable objection" and rejecting "the vast bulk" of them, the Fourth District Court of Appeal still found that a trial judge should have applied the "fair argument" standard to the question of whether an EIR should have been prepared for the 230-home Adobe Springs II project. Finding a number of other problems with the approval process by the city, the court ordered the city to re-examine the project. However, the court narrowly circumscribed its ruling and even stopped short of ordering an new EIR.

The Adobe Springs project was originally processed by Riverside County prior to the incorporation of the City of Murrieta in 1991. Having prepared an initial study under the California Environmental Quality Act, the county was on the verge of approving the project in June of 1991 when it deferred to the city, whose incorporation became effective in July. After amending the county's initial study and requiring some additional studies, the city approved the project and a negative declaration later that year.

Gentry, who had attended the public hearings and submitted material to the city, filed suit. Riverside County Superior Court Judge Victor Miceli ruled in favor of the city, and Gentry appealed.

Though the appellate court found most of Gentry's claims without merit, it did rule in Gentry's favor on five points. In each case, however, the court noted that it was ruling in Gentry's favor on a more limited basis than Gentry had requested.

Perhaps the most important point had to do with the judicial standard of review for determining whether an environmental impact report was required. Judge Miceli had used the "substantial evidence" test, which he said was the appropriate standard for determining whether an EIR should be prepared on a residential project that is consistent with a general plan for which an EIR has already been prepared.

The appellate court disagreed, saying the city did not rely on any previous EIR. "The [county] Community Plan is not even in the administrative record," wrote Justice Betty A. Richli. "The Plan EIR is in the record, but City staff used it only as a source of mitigation conditions for the new project. The City made no findings with respect to whether the Project constituted a substantial change to the Community Plan, or whether the change was such as to require a supplemental EIR."

Reviewing the project under the fair argument standard, the appellate court found that there was substantial evidence on the record to support a fair argument that significant environmental effects would be created by the project in the areas of wildlife and traffic. The court found no substantial evidence in several other areas. In its directive to the city, the court said the city need not necessarily prepare an EIR, but could consider changing the plan and project EIRs, use a tiering of EIRs, conclude that the project was partially exempt from CEQA, or prepare a new negative declaration.

The court also ruled that the negative declaration impermissibly deferred one particular mitigation measure. The developers were forced by the conditions of approval into participation in future habitat conservation planning efforts for the California gnatcatcher, which the court approved. However, in another condition of approval, the city reserved the option to require a future biological report on the Stephens' kangaroo rat, whose recommendations the developer is required to comply with. This condition, Richli wrote, "is on all fours with the condition in *Sunstrom* [*Sunstrom v. County of Mendocino*, 202 Cal.App.3d 296, 1988, the leading case on this issue] which required the applicant comply with any recommendations of a report that had yet to be performed. It improperly defers the formulation of mitigation."

The court also found that the city improperly added certain mitigation conditions after it released the proposed negative declaration for public review, and also failed to send the proposed negative declaration to the state Department of Fish & Game. ❑

■ The Case:
Gentry v. City of Murrieta, No. E013126, 95 Daily Journal. D.A.R. 9513 (July 20, 1995).

■ The Lawyers:
Rita Gentry, in pro per.
For City of Murrieta and McMillin Communities (Real Party in Interest): Gregory V. Moser, Weissburg and Aronson, (619) 234-6655.

UC Doesn't Have to Pay Fees to Local School District

The University of California does not have to pay mitigation fees to a local school district under the California Environmental Quality Act, an appellate court has ruled.

"We may not require the Regents to make any particular decision on how to mitigate the potential physical effects of its plan, much less socio-economic ones," wrote Justice Arthur Gilbert for the Second District Court of Appeal, Division Six. "We may only require a lead agency to inform the public and responsible officials about the impacts which a project may have on the physical environment and the ways in which these impacts may be mitigated."

The Goleta Union School District had sued UC, claiming $1.6 million in mitigation fees were required under CEQA as a result of the long-range plan adopted for UC Santa Barbara, which would lead to an expanded enrollment in the Goleta district. Santa Barbara Superior Court Judge Bruce Dodds originally found UC's environmental impact report defective because it had not adequately taken school issues into account.

As a result, UC prepared a supplemental EIR concluding that the expansion would add 192 students to the district and cause a shortfall of 172 classroom spaces at an elementary school near the campus. The supplemental EIR proposed a series of mitigation measures, including building new permanent facilities, adding portable classrooms, and instituting a year-round school schedule. In the supplemental EIR, UC said it would negotiate with the school district to provide its fair share of the cost of such measures when they are actually implemented.

The Goleta district then argued in court that UC was required to provide the district with $1.6 million in mitigation fees to cover the cost of constructing new classrooms — the most expensive option specified in the supplemental EIR. Judge Dodds then ruled in favor of UC on this issue, and the school district appealed to the Second District Court of Appeal, Division Six. The district argued that UC had failed to recognize classroom overcrowding as a significant environmental impact, failed to propose adequate mitigation measures, and failed to mitigate the overcrowding problem.

Although the CEQA Guidelines specify that economic and social problems are not significant effects, the district used several pieces of language in the Guidelines and its appendices to argue that school overcrowding is a physical change resulting from a socioeconomic problem, and therefore it should be considered a significant effect. (See, for example, CEQA Guidelines, §15064(f).) But Gilbert did not agree.

"The Guideline merely points out that in some cases socio-economic effects may cause physical changes that significantly affect the environment," he wrote. "An example might be a five-fold increase in student enrollment. Such a large increase would likely necessitate the construction of additional classrooms. This is not the case here. Moreover, classroom overcrowding, per se, does not constitute a significant effect on the environment under CEQA.

"The SEIR was required here only because the trial court believed the project would ultimately require physical changes in the environment such as construction of new school facilities, new bus schedules, and changed traffic patterns....The Regents prop-

erly set forth a wide range of alternatives to mitigate or avoid potential significant effects on the physical environment."

Goleta also tried to invoke the landmark case *Murrieta Valley Unified School District v. County of Riverside*, 228 Cal.App.3d 1212 (1991), a case in which a general plan EIR did not take any account of school facilities. But this didn't work either. "Unlike *Murrieta*," wrote Gilbert, "the instant SEIR provides a range of possible mitigation measures related to potential physical impacts of the plan."

In summary, Gilbert wrote: "The District may be unhappy that the Regents have not agreed to provide classroom funding for permanent state of the art classrooms, but CEQA does not require the Regents to do so." ❑

■ The Case:
Goleta Union School District v. Regents of the University of California, No. B084971, 95 Daily Journal D.A.R. 9499 (July 20, 1995).

■ The Lawyers:
For Goleta Union School District: Stephen L. Hartsell, Fekete, Carton, Hartsell, Grass, Peters, Inman & Herndon, (805) 636-4830.
For UC: Ronald E. Van Buskirk, Pillsbury Madison & Sutro, (415) 983-1000.

PERMIT STREAMLINING

Piedmont Violated Law In Continuance of Home Remodel

Overturning a trial judge's ruling, a split appellate panel has ruled that the City of Piedmont violated the Permit Streamlining Act in continuing a home remodeling item for three months, even though the applicant apparently consented to some sort of continuance.

The case arose from an attempt by Piedmont residents Claudia Cate and Branden Bickel, a real estate lawyer, to add a second story to their single-story home in Piedmont. After several false starts, the Piedmont Planning Commission indicated in April of 1992 that it would reject the Cate-Bickel proposal, but continued the application for six months to permit revision.

Cate and Bickel submitted revised plans in September and the Planning Commission scheduled the matter for October 12, 1992. At Cate and Bickel's suggestion, the commission granted another continuance for up to three months but offered to take the issue up sooner if the Cate and Bickel returned with a revised plan sooner.

The planning commission took up the remodeling again on November 9, 1992. The commission still had concerns about the remodeling project and a continuance was again proposed — though by the applicants or by the commissioners is a question open to dispute. The commissioners asked Bickel if continuance was "what the applicant would like." Bickel replied: "That's what the applicant would like." Subsequently, the commission continued the application for three months, though the staff informed Bickel and Cate that the matter would be brought up again at the first meeting after they submitted revised plans.

The applicants submitted new plans in January of 1993. At a meeting on February 8, the planning commission rejected the application. The Piedmont City Council subsequently affirmed the commission's ruling on appeal.

Bickel and Cate sued, claiming that the city had violated the Permit Streamlining Act The law [Government Code §65956 et seq.) requires that an application be acted upon within six months after it is deemed complete — October 11, 1992, in this case. A one-time extension of 90 days is permitted with the applicant's consent — meaning the Cate-Bickel application's final deadline would have been January 9, 1993.

In this case, the planning commission, with the applicant's consent, extended the deadline from October to January at its meeting on October 12. However, at the November 9 meeting, the planning commission extended the deadline for another three months, pushing it past the January 9 date. It is unclear whether the applicant initiated the request for this continuance, but it is clear that the planning commission, not the applicant, came up with the three-month time period for the second continuance.

Alameda County Superior Court Judge Demetrios P. Agretelis ruled in favor of the city, concluding that the applicants had waived the deadline at the November 9 meeting. In a split ruling, the First District Court of Appeal reversed.

Writing for the majority, Justice Paul Haerle noted that the Permit Streamlining Act is meant to benefit not just applicants but many other parties as well, such as neighboring landowners, other applicants, and taxpayers. "To permit quick and easy circumvention of the time limitations of the Act via the doctrine of 'waiver' would run contrary to all of these interests," Smith wrote. He added that such an interpretation would also run afoul of Civil Code §3513, which restricts waivers to laws that solely benefit the waiving party.

Haerle also argued that the one-time extension limitation, added to the law in 1978, "suggests rather clearly that the Legislature had in mind a 'bright line' rule." To permit a waiving of the one-time extension rule, he said, would lead to local governments "politely requesting" waivers. "Most applicants would, we venture, be under severe pressure to acquiesce in such a 'suggestion'. In no time at all, indeed, perceptive municipal staffs and their attorneys would sure have designed a 'Permit Streamlining Act Waiver' form. We are unwilling to open up the processes under the Act to these possibilities."

Finally, Haerle wrote, the waiver rule should not apply in this case because "under no stretch of the imagination was there such" at the November 9 meeting. "It was simply not a unilateral waiver of rights by the appellants," he said. In addition: "We would be disinclined to find a 'waiver' unless and until an applicant is shown to have knowingly and unmistakably waived the very specific statutory rights at issue."

Justice Jerome A. Smith agreed that the waiver was not shown in this case, but he dissented from the majority on the broader issue that the Permit Streamlining Act does not permit time-limit waivers by the applicants. "Obviously, the commission was saying it was prepared to deny the application outright but was offering to accommodate appellants once more if that was their preference,' he wrote. "Any reasonable person would view Bickel's answer ("That's what the applicant would like") as a waiver of immediate action."

However, Smith said the waiver did not occur in this case because the commission continued the action for three months without asking the applicants how long they wanted. "No clear understanding emerges from the hearing that applicants presently waived the right to have a decision by January 9," he wrote. ❑

■ The Case:
Bickel v. City of Piedmont, No. A062842, 95 Daily Journal D.A.R. 9334 (July 18, 1995).

■ The Lawyers:
For Bickel: Branden E. Bickel, Claudia Cate, and Robert E. Aune, Aune & Associates, (415) 433-1200.
For Piedmont: Robert D. Eassa, Hardin, Cook, Loper, Enger & Bergez, (510) 444-3131.

Stadium Fever Hits Towns Across State

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(the Lake Elsinore stadium cost $24 million), but attendance at the games in all three cities has averaged over 5,000 fans per game — a huge number by minor-league standards.

The concept of stadium-as-economic-engine has found champions in the City of Ventura, where John Hofer, owner/developer of the Ventura Auto Center, has proposed a $100 million Centerplex sports complex. The project would include (minor league) baseball, auto racing and swimming events, as well as a marina, a sports car hall of fame and an aquatic center. Hofer has claimed that there is a public interest in the stadium, as a means to shore up the sagging revenues that have been sliding at the auto center, the city's top sales tax generator. Hofer apparently has taken notice of an $80,000 study commissioned by a group of west Ventura County cities, including Oxnard, Camarillo and Ventura, which identified the area between Ventura and Oxnard — the same location as the auto mall — as the optimal location. Pro baseball is interested in the city, according to Ray DiGuilio, a community college baseball coach and local baseball booster, who reported that the California League "indicated a high level of support to site a team in this area."

> *"There is not a stadium around that can pay back its debt service on its gate receipts," said a spokesman for the City of San Bernardino."*

Developer Hofer wants $45 million in public money to build his brainchild. But Mayor Tom Buford is hedging his bets, saying he is not willing to support the project at a time when the city is contemplating a number of projects competing for the same financial resources, such as a marina aquarium complex and a regional convention center.

Perhaps the purest example of the sports visionary is San Bernardino lawyer Gary Foltz. According to his own account, Foltz, a tax lawyer and business advisor, was driving along the freeway when he was struck by the need of a major sports franchise in the so-called Inland Empire area. "Despite the fact that this is the 10th-largest metropolitan area in the country, we don't have any first-class sports teams," Foltz says.

In April, Foltz formed a limited-liability corporation, and proposes to raise $135 million through the sale of 27,000 ownership units at a cost of $5,000 apiece. The proceeds would go both to buy a team and construct an arena. Pending approval from the California Department of Corporations, "this will be the first fan-owned team in baseball," Foltz said. Currently, the lawyer is reviewing six sites in the San Bernardino-Riverside area, and says that negotiations with teams are preliminary. "Until the offering is complete and we have money in hand, it's hard to negotiate," he said. One possibility is the Pittsburgh Pirates, which are known to be looking for a new owner. Foltz wants to field the team in the 1997 season. (Foltz's effort is separate from stadium efforts operating in the cities of San Bernardino and Riverside.)

Because stadium promoters hold out the possibility of wish fulfillment for many city councils, they enjoy indulgences not normally granted to more prosaic projects. A case in point is a proposal to build a $21 million, 15,000-seat stadium for Triple-A baseball in Fresno. Developer John Carbray of the Diamond Group missed a 1994 deadline to both locate a team and financing. In May, the council honored Carbray's request for a six-month extension on his exclusive right to negotiate with the city. Notwithstanding the lack of a done deal, the city has agreed to spend $5 million to assemble and convey the site, and has already spent $1 million to improve flood drainage in the area. In May, the council approved the purchase of two parcels in downtown Fresno for $1.8 million for a baseball stadium.

Ironically or not, stadium proposals sometimes face competition from rival proposals inside a given city. In Los Angeles, Hollywood Park, a race track, has proposed a $250 million stadium to be built entirely with private funds, with the view of attracting an NFL franchise (The L.A. area recently lost two football teams, and the city is an attractive market for a one or even two football clubs. The Phoenix Cardinals or Cleveland Browns have been mentioned as possible transplants.) That proposal, however, cannot be very pleasing to the commissioners of the Los Angeles Coliseum, a stadium owned and operated jointly by the City of Los Angeles, L.A. County, and the State of California, which is newly bereft of the former Los Angeles Raiders.

In the period following the Northridge earthquake, the commission has spent about $82 million to make seismic repairs and restoration work to the 1930s-era structure, but did not build the luxury spectator boxes and other improvements requested by Al Davis, the brutally manipulative owner of the Los Angeles Raiders. (Davis had threatened to leave Los Angeles if the stadium improvements were not built, largely at public expense; last month, Davis signed a contract with the City of Oakland.)

In addition, the developers of the Los Angeles Center office complex near downtown Los Angeles known as Los Angeles Center have been floating the idea of a stadium in the financial district, that could serve as an alternative project for an office development at a time when there is little demand for new office space in the area. As the Coliseum is only two miles south of downtown Los Angeles, reaction has been lukewarm.

A similar controversy is brewing in San Francisco, where sports teams and city officials are in a tug of war over the best location for a arena-and-stadium complex. The Golden State Warriors basketball franchise wants to move from the Oakland Coliseum to The City, into one of two proposed venues: a 20,000-seat Rincon Hill arena near Sixth and Townsend, or a new arena at Mission Bay, where Catellus Development Corporation plans a new football stadium for the San Francisco Giants.

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Stadium Fever Hits Towns Across State

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The Giants and Mayor Frank Jordan are pulling for the Warriors to go into Mission Bay, the city's largest redevelopment project, although consultants to the basketball team are favoring Rincon Hill, because of its superior access.

In the case of the City of Bakersfield, enthusiasm about urban design has led to a growing tension in that city on the future location of a baseball stadium for the city's Class-A Bakersfield Blaze. The City and Kern County have together hired the architectural firm of Hellmuth Obata Kassabaum — well-known stadium designers — to examine the construction costs at two sites; one is at the edge of downtown Bakersfield, while the second site is in the suburban southwestern area of the city. A consultant to the California League recommended the suburban location, while members of a group known as Bakersfield Future Action Team are hanging tough for the close to downtown location.

Graham Kaye-Eddie, a planning consultant and volunteer leader of the action team said that he favored the downtown site "predicated on the Sprawl report by the Bank of America. We decided we don't need further sprawl in Bakersfield." And although the close-to-downtown site is two miles from the business/civic complex at Truxton and Chester, Kaye-Eddie maintained that keeping the stadium downtown would "heighten some significant changes in the downtown area in the past year," such as a new city hall and the completion of the Clarion Hotel. ❑

■ Contacts

Tom Minor, mayor, San Bernardino, (909) 384-5211 (spokesman: Ray Salvador).
Gary Foltz, attorney and baseball stadium promoter, (909) 784-0244.
John Hofer, developer owner, Centerplex project, (805) 650-0500.
Graham Kaye-Eddie, (805) 589-3300.
John Carbray/The Diamond Group, (209) 442-1994.

Who's Got the Fever? A Stadium Rundown

City of Los Angeles

Hollywood Park football stadium. To be privately developed, with completion anticipated in time for the 1997 NFL season.
Cost: $250 million.

City of San Bernardino

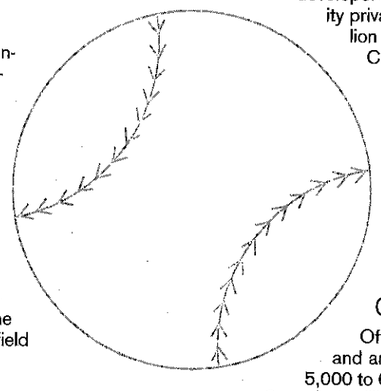
A 5,000-seat baseball stadium for the Class-A Spirit.
Cost: $8.2 million.

City of Ventura

Developer John Hofer wants to build the Centerplex, which would feature a baseball stadium, an aquatic center, road racing, and a Sports Car Hall of Fame.
Cost: $100 million.

Inland Empire

Lawyer Gary Foltz has created a company called Inland Empire Baseball, which has the intent of raising at least $135 million by selling membership units to investors. Units would give investors part ownership of stadium and team and rights to season tickets. The group wants to buy a baseball franchise and field the team in 1997.
Cost: $135 million to $185 million.



City of Anaheim

New hockey stadium, Arrowhead Pond of Anaheim, developed by The Walt Disney Company and designed by architect Frank Gehry. A 17,000-seat arena in the Anaheim Convention Center area for the Disney-owned Mighty Ducks hockey team.
Cost: $121 million, city bonds to be paid back by private operator.

City of Riverside

The City Council approved $25,000 in April to study the feasibility of a 7,500-12,500-seat venue for hockey, concerts and ice shows.
Cost: $20 million to $45 million.

City of Fresno

A 15,000-seat stadium, for Triple A Baseball, high-school dances, football games, concerts and other purposes proposed by developer John Carbray, who proposes to fund the facility privately, although the city is offering up to $5 million in "soft costs."
Cost: $16 million to $21 million.

City of San Francisco

A 20,000-seat basketball arena for the Golden State Warriors. The team favors a site on Rincon Hill, while city officials are pushing for an arena-stadium complex in Mission Bay, where Catellus Development Corporation plans a new stadium for the San Francisco Giants.
Cost: Undetermined.

City of Bakersfield

Officials are studying two sites, one suburban and another in town, for a new baseball stadium of 5,000 to 6,800 seats.
Cost: $11 million to $15 million.

City of Lancaster

The City Council voted, 3-2, on July 25 to approve a 4,500-seat stadium to be built just off the Antelope Valley Freeway. Officials are hoping the stadium, which will be paid for by the city, will be completed for the beginning of the California League season next April.
Cost: $10 million. ❑

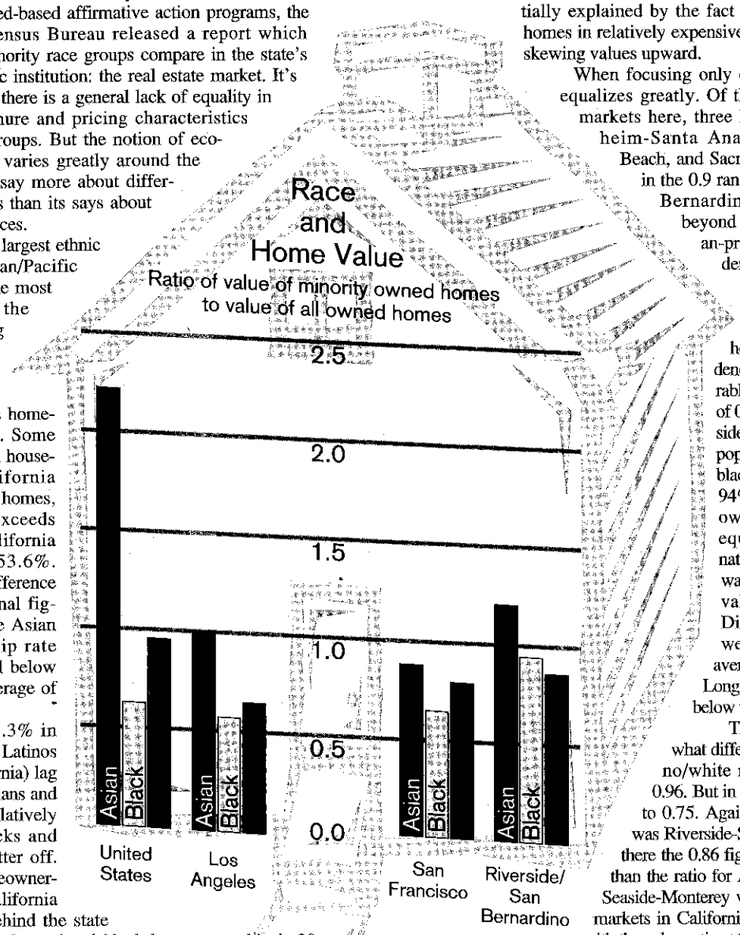
NUMBERS

Stephen Svete

Minority Home Ownership: Ups and Downs

On the eve of the University of California's decision to abandon raced-based affirmative action programs, the U.S. Census Bureau released a report which reveals how minority race groups compare in the state's largest economic institution: the real estate market. It's no surprise that there is a general lack of equality in the housing tenure and pricing characteristics among racial groups. But the notion of economic equality varies greatly around the state, and may say more about differences in regions than its says about differences in races.

Of the three largest ethnic minorities, Asian/Pacific Islanders are the most successful in the state's housing markets. Take, for example, the group's homeownership rate. Some 54.7% of Asian households in California own their own homes, a figure that exceeds the overall California average of 53.6%. That's a big difference from the national figures, where the Asian homeownership rate (52.2%) is well below the national average of 64%.



Blacks (36.3% in California) and Latinos (40% in California) lag well behind Asians and whites. But, relatively speaking, blacks and Latinos are better off. The black homeownership rate in California is 17 points behind the state average — but the national black homeownership is 20 points below the norm. Latinos are 22 points below the national rate, but only 13 points below the California rate. So all three ethnic minorities do better when the California differential is taken into account.

A second statistic may do better at measuring equality within a market: the white/minority home value ratio. In this calculation, the median value of homes of all whites is compared with the values of the minority group within the study area in question. Absolute equality would show as a ration of 1.

Nationally, the Asian/white ratio is 2.22, meaning that the median priced residence owned by Asians is valued at 2.22 times that of the median white-owned residence. This startling statistics, is partially explained by the fact that many Asians own homes in relatively expensive Hawaii and California, skewing values upward.

When focusing only on California, the ratio equalizes greatly. Of the eight biggest Asian markets here, three have ratios of 1 (Anaheim-Santa Ana, Los Angeles-Long Beach, and Sacramento). Two more are in the 0.9 range. In the Riverside-San Bernardino market, Asians are beyond equal: there, the median-priced Asian-owned residence is worth 20% more than the median white-owned house.

Black households who own their residences are generally comparable to the national average of 0.63. But again, the Riverside-San Bernardino market pops up. There, the median black-owned home is worth 94% of the average white-owned home — the most equalized market in the nation. (The Boston market was next, with a black-white value ratio of 0.86.). San Diego and San Francisco were also higher than the average, while Los Angeles-Long Beach and Oakland were below the average.

The Latino story is somewhat different. Nationally, the Latino/white ratio is almost equal at 0.96. But in California, the ratio drops to 0.75. Again the most equal market was Riverside-San Bernardino. But even there the 0.86 figure was noticeably lower than the ratio for Asians or blacks. Salinas-Seaside-Monterey was the least equal of the markets in California included in the survey, with the value ratio at 0.61.

Why is it that some areas are more equal than others? It is doubtful that the Riverside-San Bernardino area — which despite its rapid recent growth has well-established older core areas — is culturally different than the rest of the state. Could it be that one positive aspect of explosive housing construction is to equalize new communities? Only time will tell. But the attack on affirmative action does re-focus our social discussion on the appropriateness of using color and ethnicity as the core of an opportunity-preference system. The new census numbers allow us to scrutinize the system a bit. In general, the market tells us that economic inequities persist. In fact, they are very close to home. ❑

DEALS

Morris Newman

HUD Does Some Good in Stockton

The U.S. Department of Housing & Urban Development is the barn door of federal poverty agencies. Lumbering, overstaffed, a labyrinth of bureaucratic blind alleys, the agency is such an easy target for Washington-bashers that in recent weeks, Congressional Republicans have proposed to emasculate the agency by cutting its budget. Significantly, the proposal gave rise to little protest, other than the anguished voice of Secretary Henry Cisneros. Many people, it seems, would like to demolish HUD with the same sort of satisfying explosion that leveled the infamous Pruitt Igoe project in St. Louis more than 20 years ago.

Nevertheless, if HUD dies, or is downsized into non-importance, something will be lost. Despite its bumbling and poor management, HUD sometimes performs a role that other agencies can't accomplish. A diminished HUD, however refreshing to bureaucracy slayers, would also prevent the kinds of success possible only to a powerful and well-funded agency.

The experience of Park Village, a housing project in the city of Stockton that underwent a transition from slum to owner-occupied cooperative, is a case in point about what HUD can do when its resources are properly focused. In the late 1980s, the 230-unit complex, a privately owned project originally built with HUD mortgage insurance, was a familiar name on police radios. Tenanted primarily by low-income Cambodian refugees, Park Village was a sump of drug dealing and crime. It didn't help that the units were overcrowded, with up to 11 people sharing a single two-bedroom apartment. "The population had become like that of a small city," said Wes Kulm, deputy director of the city's Housing and Redevelopment Department.

> *"Park Village underwent a transition from slum to an owner-occupied cooperative. It is a case in point about what HUD can do when its resources are properly focused."*

As early as 1989, HUD had identified Park Village as a problem project and enlisted Stockton officials to help find a local agency to sort out the problems. In 1990, the previous owner defaulted on $4 million of his $7 million HUD-insured mortgage. Foreclosure looked inevitable, and HUD wanted to work out a strategy to clean up the problems and line up a new owner for the property before taking back the apartment complex. "HUD didn't want to foreclose on the property without a plan for disposing of it," recalled Kulm.

In the early '90s, Jack Kemp was HUD Secretary, and was promoting the concept of encouraging ownership among the residents of HUD-subsidized projects. Following that doctrine, HUD officials indicated to Stockton city officials that Park Village should develop an ownership structure. HUD asked city officials to identify a public agency to help turn the project around. "We shared the same concerns as HUD regarding the substandard conditions and overcrowding, and were willing to help facilitate a solution, but not as the owner," said Kulm.

The residents of Park Village, however, were poorly equipped to take on the responsibility of owning and managing their own property. Most residents were unsophisticated wage earners who spoke little or no English, with comparable experience in home ownership. Clearly, a process of education, tenant organization and consensus building, and creation of a business structure needed to take place before the ownership could be transferred to residents. City officials contacted the California Housing Partnership Corporation, a state-created non-profit agency whose purpose is to assist housing non-profits, and that group started off the process of organizing the tenants and structuring the business deal. The American Friends Service Committee provided the tenants' group with technical support, as well as a staff to negotiate the cultural issues and to develop consensus. "The language barrier alone was pretty substantial," recalled Stockton's Kulm. The city provided grants of $30,000 assistance out of its Community Development Block Grant funds to pay the salaries of staff involved in working with residents, as well as another $220,000 in related costs.

Housing experts considered condominium conversion at Park Village, but ultimately decided that the configuration of the project — two-story "stacked" units — did not lend itself to condo ownership, and opted instead for a housing cooperative. But the California Housing Partnership Corporation at length decided that the tenants did not have the financial strength or technical expertise to own and manage the apartments on their own, and brought Rural California Housing Corporation to the table. Eventually, the parties involved set up a new ownership entity known as Park Village Incorporated, a general partnership between Rural California Housing Corporation and a tenant's group known as Asian Pacific Self-development and Residential Association (APSARA). The corporation hired a property manager.

To deal with overcrowding, the partnership adopted the HUD standard of "two persons per bedroom, plus one," and converted a number of the existing two-bedroom units to four bedrooms to accomplish that purpose, lowering the number of units from 230 to 218.

Eventually, HUD accepted the proposal, and agreed to sell the project to the ownership partnership for $1. As a condition of sale, however, HUD had to be satisfied that the partnership could raise the money to rehab the project — a daunting $7 million. That demand seemed hard to fulfill at first, because most Park Village tenants could not afford market rents, and the project's cash flow would be modest, at best. The Bank of America State Bank, a community development bank which is responsible for the bank's activities under the Community Reinvestment Act, agreed to provide the construction loan, if some safety could be built into the deal. And that's where HUD provided the essential masterstroke: the federal agency made a $24 million commitment in Section 8 assistance to the project, to be available during the next 15 years; the deal was one of HUD's largest single commitments to a particular project in California. California Community Reinvestment Corporation then agreed to be the "permanent" lender, and provide a new mortgage.

While HUD is not known for being flexible, "in this case it was the very opposite. HUD's regional offices had a very cooperative attitude and made every effort to knock down barriers," said Stockton's Kulm.

HUD indeed did overcome a number of barriers with tools that were not otherwise available to the non-profit housing community. The success of Park Village seems to have lain in letting local agencies "carry the ball" and structure the solution, so that HUD could point its enormous cannons in the right direction. With a little bit of help, even HUD can hit a barn door. ❑