CP&DR

is published monthly by

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Subscription Price:
$221 per year

ISSN No. 0891-382X

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CALIFORNIA PLANNING & DEVELOPMENT REPORT

Vol. 12, No. 7 — July 1997

Court Rulings Mean Uncertainty For Species Plans

But Legislature May 'Fix' Problem This Year

By William Fulton

A series of recent legal developments has threatened the state's conservation planning process, prompting developers and state agencies to pursue legislation that will strengthen the power of the state Department of Fish & Game to implement such plans.

Two recent Court of Appeal rulings — plus a Superior Court commissioner's recent decision from Riverside County — have called into question Fish & Game's power to permit landowners to harm or kill some specimens of endangered species in the context of a broad-ranging conservation plan. According to these court rulings, the state does not have the explicit power to permit such "takes", either under Section 2081 of the Fish & Game Code — the legal authority the department has been using — or under the state's Natural Communities Conservation Planning law, which was passed in 1991.

Now, legislators lobbying groups in Sacramento are discussing two possible legislative "fixes" to this problem. One would simply change Section 2081 to explicitly state that incidental take of endangered species is permitted in the context of a conservation plan. The other decision — somewhat broader in scope — would change the state Endangered Species Act to include the same powers as the parallel federal law.

The current crisis began last year, when the Fourth District Court of Appeal called into question Fish & Game's power to permit incidental take as part of a conservation plan — meaning, in most cases, the power to permit developers to proceed with projects that will destroy some specimens of an endangered species if they participate in a conservation plan that is supposed to benefit the species in the long run.

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Utilities Look To Unload Raw Land

Deregulation May Mean Environmental Purchases

By Morris Newman

Driven by the needs to cut costs and become more competitive in the post-regulatory market, several of California's largest power companies are contemplating the sale of tens of thousands of acres of surplus land, including timberland and other environmentally sensitive areas. Last year, Pacific Gas & Electric, the state's largest utility as well as one of the state's largest landowners, sold off more than 10,000 acres of timberland, including at least two sales to an environmentalist buyer. In addition, PG&E, Southern California Edison and other investor-owned utilities are expected to sell tens of thousands of acres in the next several years. While the holdings range from urban buildings to desert property, many of the lands are environmentally sensitive forests and storm-runoff areas.

The availability of these lands has raised the hopes of some public agencies and environmental groups of either buying the lands or their development rights. But both the land-sales efforts and the public policy guiding it are in their infancy and largely untested.

In response to the contemplated land sales, a group of state and federal agencies have been meeting in an informal task force on utility deregulation since September. The purpose of the meetings is to prioritize those lands which appear to have the greatest public interest, such as habitat, watershed protection, recreational areas or access to wilderness, and determine whether any of the participating agencies would be interested in buying certain properties.

The proposed land sales are "an important opportunity. My hope is that this is done in a serious, systematic way, so that important opportunities aren't lost," said Michael Mantell, the former Resources Undersecretary and an organizer of the task force. Participating agencies in the task force include the state Resources Agency, the state Energy Commission, Lands

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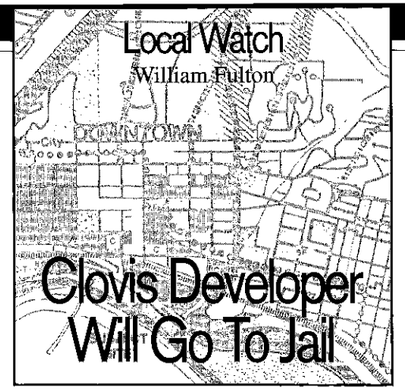
Local Watch
William Fulton



Clovis Developer Will Go To Jail

Developer Jerry Hamel, who pleaded guilty to bribing members of the Clovis City Council as part of an ongoing scandal over real estate development in the Fresno area, has been sentenced to 27 months in jail. Hamel was indicated in early 1996 along with former members of the Clovis City Council.

Hamel's sentencing was the latest round in the ongoing drama of Operation Rezone, an investigation into corruption in the cities of Clovis and Fresno being conducted by the FBI and the IRS.

The indictments have alleged that Hamel and his partners bribed a majority of the Clovis City Council to get their projects through in the early 1990s. Among other things, the charges alleged that the three Clovis officials had knowingly filed false Statements of Economic Interest which did not mention the income they had received from the developers. The politicians subsequently violated conflict-of-interest laws by voting on general plan amendments for Williamsburg Manor and other projects controlled by Hamel and his partners.

In 1995, the Clovis council took the unusual step of rescinding two general plan amendments involving Hamel's projects.

Ontario Considers Development of Dairy Preserve

Now that the longstanding Chino Dairylands Preserve has been broken up by urban development pressure, the City of Ontario is moving forward with plans to annex and develop its half of the 16,000-acre area.

The dairy preserve remained in place for more than three decades as urban development surrounded it in the cities of Chino and Ontario. After an acrimonious dispute that divided the farmers — some wanted to continue farming and some wanted to sell — the San Bernardino County Local Agency Formation Commission placed approximately half of the dairy preserve in the sphere of influence of Ontario and half in Chino's sphere.

Located just south of Highway 60 and west of Interstate 15, the Ontario portion is considered prime urban development property. Recently, a citizen committee in Ontario proposed a plan for the area that would include 30,000 homes and at least 20 schools, to be developed over a 25 year period. The project holds the potential to make Ontario the most populous city in San Bernardino County.

The project is currently under consideration by the city planning commission.

Studio Update: Universal and Burbank Airport

Movie studios continue to make development news in the Los Angeles-San Fernando Valley region — both as developers and as business boosters.

In early June, a proposal by Universal Studios to dramatically expand development on the 400 acres it owns near Burbank met with mixed reaction — as well as a counter-proposal from local politicians. This came on the heels of an embarrassing stumble on the part of the studios regarding the proposed expansion of the Burbank Airport.

Universal is rapidly turning its entertainment complex just off Highway 101 into a major tourist destination. The "studio tour" has been supplemented in recent years by a multi-plex cinema and the CityWalk entertainment retail center. Now Universal has unveiled a long-term plan to double the size of CityWalk, expand soundstages and other space actually devoted to the studios, and build a major theme park that would compete with Disneyland.

The proposal met with immediate opposition from local homeowners. The studio is located close to affluent hillside neighborhoods as well as Studio City, where an active homeowner association is bird-dogging the project.

In the wake of the Universal proposal, L.A. County Supervisor Zev Yaroslavsky and City Councilman John Ferraro — who share governance of the Universal property — proposed a scaled-down project that would not include the theme park.

The Universal proposal came less than a month after Walt Disney Co., NBC, and Warner Bros. all buckled under to pressure from the Burbank City Council regarding the proposed expansion of the Burbank Airport.

The Burbank Chamber of Commerce, of which the studios are members, recently voted to support the airport expansion, while the City Council opposes it. Subsequently, however, all three studios insisted that they are neutral on the issue and sought to reassure the City Council they are not opposed to the city's position.

Calvin Hamilton Dies

Calvin Hamilton, the much-revered and much-reviled former planning director for the City of Los Angeles, has died at age 72 after a long bout with Alzheimer's disease.

Hamilton had worked as planning director in Indianapolis and Pittsburgh when he came to Los Angeles in 1964. At the time the city was considered the most unsolvable problem in American city planning — a city that few planners could understand because it seemed to have many centers rather than just one.

In the 1970s, Hamilton led a visionary planning effort that included two farsighted components. First, he proposed the so-called "centers" concept — a proposal to identify some 35 centers in the L.A. area, direct high-density residential and commercial growth to them, and connect them with rail transit, thus protecting the sea of single-family homes that lay in between the centers. Second, he conducted a wide-ranging public participation process in drawing up the general plan based on the centers concept, winning the support of homeowner associations all over the city.

In the 1980s, however, development pressure led Los Angeles city politicians to largely ignore the Hamilton plan, and Hamilton himself became increasingly irrelevant. The plan was eventually implemented to some degree as a result of court decrees. Hamilton was forced out of office in 1985, partly because of allegations that he had improperly used city equipment and relationships with developers to promote a nonprofit organization devoted to international trade and tourism. ❑

California Planning & Development Report (ISSN No. 0891-382X) is published monthly by Torf Fulton Associates 1275 Sunnycrest Avenue, Ventura, CA 93003. The subscription rate is $221.00 per year. Periodical postage paid at Ventura, California, and at additional mail entry offices. Postmaster: Send change of addresses to California Planning & Development Report 1275 Sunnycrest Avenue, Ventura, CA 93003.

Environment Watch
William Fulton

Imperial Landfill Leads to Rift Between Law Firms

Southern California landfills are once again in the news. In recent months, landfill advocates in three outlying desert counties — Riverside, San Bernardino, and Imperial — have all been promoting the idea of a waste-by-rail landfill in their area.

In Riverside County, the proposed Eagle Mountain landfill near Joshua Tree National Park has been the subject of controversy for several years. In San Bernardino County, Waste Management Inc. and the Santa Fe Railroad have run into many roadblocks in attempting to win a permit to build a landfill near Barstow.

Perhaps the most unusual dispute has broken out in Imperial County, however — a dispute that has spilled over into the courts and caused a rift between two law firms traditionally associated with environmental law, the Sierra Club Legal Defense Fund and the private firm of Remy, Thomas & Moose.

The immediate legal dispute has to do with the Imperial County Board of Supervisors' decision to approve a proposal by Arid Operations Inc. — a consortium including the former Western Waste Inc., a major landfill company — to approve a rail-to-waste landfill proposal in the county.

But underneath the litigation over the Arid proposal is a simmering dispute between the Sierra Club LDF and Remy Thomas. A separate entity from the Sierra Club itself, the Legal Defense Fund is a highly regarded public-interest law firm that has been active in environmental litigation throughout the state for many years.

Meanwhile, Remy Thomas has long been regarded as the leading environmental law firm in the Sacramento area and, with Sierra Club LDF, one of the leading firms in the state. The founding partners, Michael Remy and Tina Thomas, are the authors of one of the authoritative books on the California Environmental Quality Act. Remy is a former president of the Environmental Council of Sacramento and is considered one of the godfathers of California environmental law.

In recent years, however, the Remy Thomas firm has expanded its practice beyond traditional environmental activism to represent government agencies and businesses in permits, environmental compliance, and defense against litigation from environmentalists. This expanded practice has increasingly put Remy Thomas at odds with traditional environmentalists, such as the Sierra Club.

For example, when El Dorado County recently adopted a new general plan calling for considerable growth, the two law firms wound up on opposite sides. Sierra Club LDF is representing environmentalists and slow-growthers who are challenging the general plan in court. But Remy Thomas partner James Moose was retained by the county to bird-dog the process of preparing the general plan and "bulletproof" the plan's environmental review — in the hope that it will be less vulnerable in court to the Sierra Club.

At the same time, however, Remy Thomas has continued to represent the Sierra Club on a pro bono basis in a number of cases — most notably the contentious litigation over the proposed expansion of the Squaw Valley Ski Resort, in which the resort's owners cut down a large number of trees without a timber harvest plan from the state.

The Sierra Club-Remy Thomas relationship may have been irreparably harmed, however, by the situation in Imperial County. Stepping deeply into the "enemy camp," Remy Thomas represented Arid in seeking permits from the county and in subsequent litigation. The Board of Supervisors approved a general plan amendment, rezoning, conditional use permit, and development agreement for Arid's Mesquite Regional Landfill proposal in September of 1995. Subsequently, the county was sued by the Sierra Club and a local group known as Desert Citizens Against Pollution. (*Desert Citizens Against Pollution v. County of Imperial*, Imperial County Superior Court No. 87141.) These plaintiffs were represented by the Sierra Club Legal Defense Fund.

After a series of skirmishes in the Superior Court, the county was ordered to deal with a series of issues in more detail, especially the relationship of the project to the critical habitat of the desert tortoise, which is an endangered species under federal law. The county subsequently prepared an addendum to its environmental impact report and then asked the Superior Court to discharge the writ that had been issued against the county.

Subsequently, Sierra Club Legal Defense Fund sought attorneys fees of $285,000. The county and Arid claimed that they were not entitled to the fees because they were not the prevailing party. Subsequently, Sierra Club LDF sought to disqualify Remy, Thomas & Moose from the case. Remy Thomas and the Sierra Club had signed a waiver prior to the case, permitting the private firm to represent Arid in the case against the Sierra Club, but the Sierra Club claimed that this waiver did not apply to certain discovery issues in the case.

In April, Superior Court Judge Artie Henderson discharged the writ against the county and denied the Sierra Club's request for attorneys fees. Now, Remy, Thomas and Moose claims it is no longer willing to do any pro bono work for the Sierra Club.

Meanwhile, the situation in San Bernardino County is just as volatile. The Rail-Cycle project was approved by the Board of Supervisors on a 3-2 vote in 1995. Subsequently, however, a nearby landowner sued the county, claiming that the Rail-Cycle proponents managed to taint the environmental review process. The case, *Cadiz Land Co. v. County of San Bernardino*, BCV02341, may go to trial in July.

Cadiz claims that its case was strengthened in March, when the Rail-Cycle project manager was arrested. A former community liaison for the project — who turned out to be a parolee operating under an assumed name — told police that he and others had paid local residents to testify in favor of the project.

After the arrest, Cadiz sought to re-open discovery in the case to learn more about these allegations. Among other things, Cadiz argued that the county should have hired outside counsel. But a trial judge denied the request and Cadiz appealed. ❑

Economic Development
Morris Newman

Passage of Stadium Measures Is Triumph for Willie Brown

By a margin of barely 1,000 votes, San Francisco voters handed Mayor Willie Brown his largest development victory to date on June 3, when the city's electorate approved two ballot measures clearing the way for a new football stadium for the 49ers and an entertainment-related regional mall at Candlestick Park.

The razor-thin plurality out of a total electorate of 170,000 voters allowed Propositions D and F to squeak through. Proposition D authorizes the city to issue up to $100 million in lease revenue bonds. Proposition F amends the city's general plan to allow a stadium and regional mall on existing park land. The city charter requires a vote to change the zoning on parks.

The bond allows the 49ers to build a new stadium, and replace the much-reviled 3Com Park, formerly Candlestick. 49ers President Carmen Policy has said repeatedly he would not renew a lease in the 40-year-old stadium. The developers of the 1.4 million-square-foot mall — a partnership of DeBartolo Entertainment of Indianapolis, The Mills Corporation of Arlington, Va., and Simon DeBartolo Group, also of Indianapolis — says that he has received "expressions of interest" from 40 retailers.

The ballot-box victory is the latest in a series of development-related triumphs for the first-term mayor. The Candlestick vote was "the single most important project to the mayor for 1997," according to Brown spokesman P.J. Johnson. Not only does the victory keep the popular 49ers franchise in the city, but the project also promises to provide jobs for many neighborhood residents. "In the face of welfare reform, the mayor's largest concern right now is creating jobs for people, especially in the most economically depressed area of town," Johnson said. Among Proposition D's provisions are commitment by the 49ers to hire 1,000 people on General Assistance; to hire 25% of the construction workforce from the poverty-ridden Bayview-Hunters Point Bayshore; and a non-discrimination hiring agreement with the 49ers.

The stadium and mall, added Johnson, "will be the single largest generator of jobs in recent history. We anticipate a couple of thousand construction jobs while the project is being completed, as many as 6,500 permanent jobs once the mall and permanent stadium are built." The mall project itself will be a "major source of economic activity in an area of town that has lacked attention for decades."

One of the most vocal opponents of the stadium measures was State Senator Quentin Kopp, I-San Francisco, who said he opposed the spending of public monies on the stadium project. In a statement, Kopp said he believed that the lease revenue bond, unlike a revenue bond, must be repaid from the city's general fund, and not simply from the "proceeds of the project built with fund monies."

"Proposition D imperils the public purse," Kopp said in a May 16 statement. "It gives away 200 acres of publicly owned land for 30 years and holds taxpayers accountable for $223,808,511 to be used for a private stadium/mall project. It also flies in the face of Proposition T, the 1897 initiative which recognizes the right of the people of San Francisco to prevent the giveaway of public land to private sponsors."

The 49ers, on the other hand, characterized the project as a fiscal cornucopia for the city. The team says that approval confers one-time benefits of $12 million for both community development and affordable housing, $6 million worth of training and employment for 1,000 welfare recipients, $2 million for BART, $2 million for the San Francisco Transportation Authority, $1 million for the Metropolitan Transportation Commission, $1 million for schools, and $690,000 for high school sports.

Proposition F, for its part, awakened fears in some people that the developer would interpret the vote as "pre-approval" for the project, and would attempt to "end run" the customary approval process.

To win the endorsement of the powerful San Francisco Planning and Urban Research Association (SPUR), a powerful citizens' lobby that monitors development in the city, the 49ers' Policy wrote a letter pledging cooperation with the city's planning commission and compliance with all environmental laws.

Specifically, Policy pledged that "we do not believe, and will not take the position in the future, that Proposition F limits the authority of the Planning Commission to impose conditions of approval in order to mitigate all impacts of the stadium and retail center, whether or not such impacts are characterized as significant environmental impacts under CEQA." Policy also wrote that he did not rule out that "social neighborhood concerns," such as "parking congestion, litter, crime, graffiti," and other issues would also be addressed in the approval process.

SPUR's Jim Chappell credited his organization, made up primarily of middle-class residents in the city's north side, Presidio Heights and Pacific Heights, with swinging the election in favor of the 49ers. Propositions D and F "would not have passed without SPUR's influence. The winning votes that came in at a quarter to 12 were from SPUR territory — that is from Presidio Heights and Pacific Heights neighborhoods." The strongest support for the propositions came from upper middle-class north side and the working-class, African-American community in Bayview-Hunters Point, according to Chappell.

Voter approval of the new Candlestick stadium and mall follows shortly on Brown's success in convincing the University of California regents to build a second campus for UC San Francisco in the Mission Bay redevelopment area (*CP&DR*, May 1997). Approval of the new Candlestick project, in fact, completes "a sort of triangle of major developments going on in the eastern portion" of the city, that includes the expansion of UC San Francisco in the Mission Bay redevelopment area and the Giants' new stadium in China Basin, says Brown's spokesman, P.J. Johnson. "Early in the next century, we will see that the legacy of Willie Brown will include a number of vitally important new landmarks in San Francisco."

The president of SPUR, an organization that has often been critical of city-backed development schemes in the past, sounded extremely positive about Brown.

The mayor, Chappell said, has "completely energized the city. There is a totally new atmosphere, a can-do attitude after years of woe-is-me. The City That Knows How had forgotten how, and now there is a feeling that anything is possible." ❑

CP&DR
LEGAL DIGEST

No EIS on Freeway Changes

9th Circuit Says "Re-Evaluation" Is Sufficient For New Design

A change in the design of a proposed freeway interchange in suburban Phoenix does not necessarily require the Arizona Department of Transportation to prepare a supplemental Environmental Assessment under federal law, the Ninth U.S. Circuit Court of Appeals has ruled. In so doing, the court upheld the U.S. DOT's decision to conduct an environmental re-evaluation with little public review.

The case involves a proposal by Arizona DOT to construct an eight-ramp interchange in a residential area of Tempe to connect U.S. 60, the Superstition Freeway, with State Route 101, also known as the Price Freeway or the Outer Loop Highway. Because the project is federally funded, it is subject to the terms of the National Environmental Policy Act.

In 1988, Arizona DOT approved a four-level, fully directional interchange including two below-ground, covered tunnels to allay neighborhood fears about the size of the structure. The tunnels reduced the overall height of the interchange from 50 feet to 25 feet above ground. Under NEPA, the agency conducted an Environmental Assessment and adopted a Finding of No Significant Impact, or FONSI, the NEPA equivalent of a "Negative Declaration" under the California Environmental Quality Act.

In 1995, Arizona DOT abandoned the tunnel design for cost reasons and instead adopted a new design that included two fully directional loop ramps. The Federal Highway Administration, or FHwA, required the agency to conduct an environmental evaluation to determine the continuing validity of the EA/FONSI.

At a public meeting in April of 1995, Arizona DOT encountered considerable opposition from the public. Subsequently, two citizens, James Peterson and Rick Schuster, submitted alternative designs for the two ramps. The state agency actually modified its plan and adopted a semi-directional ramp design based on Peterson's proposal. Schuster's proposal, calling for uncovered tunnel ramps below grade, was discussed at public meetings but not adopted.

In mid-1996, Arizona DOT submitted its final design to FHwA, including an environmental reevaluation that concluded there were no discernible differences in the level of environmental impact between the original design and the modified design, and that the positive design features outweighed the negative ones.

Arizona and the U.S. DOTs were subsequently sued by the Price Road Neighborhood Association, which sought a preliminary injunction based on NEPA defects. U.S. District Court Judge Earl H. Carroll granted the transportation agencies' motion for summary judgment and denied the neighbors' attempt to admit their own air-quality and noise study because it was not in the record.

On appeal, a three-judge panel of the Ninth Circuit ruled that Arizona DOT's environmental re-evaluation was sufficient and a new Environmental Assessment did not need to be prepared.

"By addressing the impacts caused by and unique to the redesign in its reevaluation, the agencies have taken the requisite 'hard look' at the environmental consequences of its action," wrote Judge Stephen S. Trott for the panel. "To require more would task the agencies with the sisyphean feat of forever starting over in their environmental evaluations, regardless of the usefulness of such efforts." A supplemental EA, Trott concluded, would be required only if the findings of the environmental re-evaluation called for it.

The Ninth Circuit also concluded that the re-evaluation process had not violated public participation requirements and that the agencies' decision was not arbitrary and capricious.

On the latter issue, the neighbors had argued that the agencies had failed to adequately analyze at least six potentially significant effects in the environmental re-evaluation. The court rejected this argument and, in fact, singled out the neighbors for criticism because of their attempt to admit their own studies into the court record.

In the opinion, Trott criticized neighborhood groups that try to "engage in a battle of the experts" and added that an agency "must have the discretion to rely on the reasonable opinions of its own qualified experts even if, as an original matter, a court might find contrary views more persuasive." ❑

- The Case:
  Price Road Neighborhood Association v. U.S. Department of Transportation, 97 Daily Journal D.A.R. 6795 (May 30, 1997).
- The Lawyer:
  For Price Road Neighborhood Association: Myron Scott, Tempe, Arizona, (602) 964-4274.
  For U.S. DOT: Joe Acosta Jr., and James R. Redpath, Assistant Attorneys General, Phoenix, Arizona, (602) 953-3566.

INITIATIVES

Landowners Not Disenfranchised By 'Son of DeVita' Measure

An initiative requiring voter approval to permit urban development on agriculturally zoned property in the City of Ventura has been upheld by the Second District Court of Appeal.

In an unpublished opinion, the Second District, Division Six, rejected a wide range of attacks on Measure I, which was passed by Ventura voters in 1995. Among other things, the court concluded that the initiative did not violate the voting and constitutional rights of landowners in the city's sphere of influence, who were not eligible to vote in the election even though their land was affected by the initiative.

Measure I was drafted by local slow-growthers to follow the requirements laid down by the California Supreme Court in *DeVita v. County of Napa*, 9 Cal.4th. 763 (1995), a case which upheld voter approval of changes to agricultural zoning. The only difference was that, while the *DeVita* case dealt with agricultural zoning in all of Napa County, the Ventura initiative dealt only with agricultural zoning in the sphere of influence for the City of Ventura. The measure passed with 53% of the vote and was subsequently challenged by a group of citizens and property owners known as Farmers, Families, and Friends Against Irresponsible Regulation, or FAIR.

Measure I simply locked into place all agricultural use designations contained in Ventura's 1989 general plan until the year 2030 unless city voters approve a change. The initiative contains an "escape clause"

permitting the city to bypass the voters if the land is useless for agriculture or if the designation for agriculture would create an unconstitutional taking.

The property owners filed a lawsuit containing eight causes of action. Ventura County Superior Court Judge John Hunter rejected all eight causes of action and Division Six — the appellate panel based in Ventura — agreed with Hunter on appeal.

The crux of the property owners' argument was that the vote requirement for the sphere of influence, coupled with Ventura County's strict guidelines on development and the fact that many of the property owners could not vote in the election, violated the property owners' rights and had the de-facto effect of regulating land outside city boundaries. But writing for the appellate panel, Justice Arthur Gilbert disagreed on all counts.

In making the major argument, the property owners claimed that because of the provisions of Ventura County's Guidelines for Orderly Development, Measure I actually regulates land outside the city's boundaries and therefore violated the rights of the landowners who own property in the sphere of influence but were not eligible to vote in the election.

Under the county's longstanding guidelines, urban development is challenged inside city boundaries, meaning that landowners seeking to develop property in the sphere of influence would likely have to deal with the city, not the county. The landowners tried to argue that this disenfranchised them. But Justice Gilbert disagreed. "Should the County decide to change its policies and allow urban development on agricultural lands outside the City, there is nothing in Measure I to prevent it," he wrote. Thus, he said, landowners in the sphere were not completely disenfranchised.

The landowners also made the argument that freedom of religion was violated by Measure I because some of the agricultural land affected by the initiative was owned by a church, the First Assembly of God of Ventura. First Assembly became involved in the lawsuit after the election, when it sought a general plan amendment from the city to build a new church and was informed that it would have to place the proposed change on the ballot because of Measure I. The church argued that this is a violation of freedom of religion because it will place the church and its teaching "in the intolerable position of being subject to a popularity contest."

Again, the opinion written by Justice Gilbert disagreed. "Measure I places no burden on any religious belief," Gilbert wrote. "It simply calls for a vote on a land use designation." Gilbert went on to say that the appellate panel did not understand why, in terms of the religious freedom issue, the church would distinguish between a vote of the people and a vote of the city council members. "If the church is concerned that the voters' decisions about land use may be affected by the church's religious beliefs, it is difficult to see why that concern does not apply with equal force to the city council."

In the argument that hews most closely to the *DeVita* case, the landowners also argued that by subjecting agricultural landowners alone to a voter requirement, Measure I violates their due process and equal protection rights. But the court batted this argument down quickly by relying on *DeVita* and its predecessors.

"The equal protection clause does not require uniform treatment," Gilbert wrote. "Classification of land is allowed if the classification is reasonable. Wide discretion is allowed in making the classification, and every presumption is in favor of its validity. The classification is reasonable if any set of facts can be conceived that would sustain it. .... Thus, it is reasonable to single out agricultural land for special treatment that makes it more difficult to change its classification."

The court also rejected landowners' arguments that Measure I was inconsistent with the city general plan, that it was an advisory resolution rather than a legislative act, and that it violates state housing law by restricting the construction of housing — an argument that has been critical in past legal challenges to local growth control initiatives. "Measure I does not prohibit any property from being designated for residential use," Gilbert wrote. "It merely requires a vote of the electorate to do it." ❑

■ The Case:
FAIR v. City of San Buenaventura, No. B015879 (June 9, 1997)
■ The Lawyers:
For FAIR: John Findley, Zumbrun & Finley, (916) 641-0015.
For City of San Buenaventura: Amy Albano, (805) 654-7806.

CC&R'S

CC&R Violation Can't Be Recorded, Court Says

In the latest case involving the enforceability of covenants, conditions, and restrictions (CC&Rs), the Second District Court of Appeal has ruled that a homeowner association does not have the unilateral power to record a notice of non-compliance with the county recorder.

The case arose out of a dispute between a homeowner and the local homeowner association over the color of a door.

The appellate ruling does not affect the homeowner association's power to enforce CC&Rs. Enforcement power under Civil Code §1354 was affirmed under *Nahrstedt v. Lakeside Village Condominium Association*, 8 Cal.4th 361 (1994). Rather, the ruling prohibits homeowner associations from recording violations of CC&Rs — a practice that can make it difficult for homeowners to sell or refinance their properties.

Property owner Diane Ward, who owns a home in the Los Angeles neighborhood of Beverlywood, received approval from the Beverlywood Homeowners Association to remodel her house and use "blue/blue-grey tones" to paint it. After completing the remodeling job in 1995, however, Ward received a letter from the BHA president complaining about the "atrocious bright-blue color," which the president found "hideous" and "offensive".

In the letter, the president fined Ward $50 unless the door were repainted and threatened to record a notice of non-compliance.

Several months later, while trying to refinance the home, Ward learned that BHA had unilaterally recorded a notice of non-compliance. Ward was unable to close the refinancing, but neither Ward nor BHA would relent. Ward was able to refinance the home only after posting a cash bond of $10,000 in favor of the title insurer. After Ward still refused to repaint, BHA sued. Ward moved to have the notice of noncompliance expunged but the request was denied by L.A. County Superior Court Judge Judith C. Chirlin.

On appeal, the Second District, Division Two, ruled in favor of homeowner Ward and ordered Chirlin to grant the motion to expunge.

The court concluded that a notice of non-compliance can't be recorded without statutory authority.

There is no specific statutory authorization to permit recording a notice of noncompliance. In court, BHA argued that the power is granted by generic authority contained in the Government Code [§27280(a)] permitting "[a]ny instrument or judgment affecting the title or possession of real property [to] be recorded."

On appeal, the court concluded that the notice of non-compliance does not fall into this category because it does not affect the state of the property's title and does not impose a lien. "Since the cited statutes do not authorize the recording and no other statutory authority can be found, it must be concluded that there is no statutory authorization for recording a document," the court wrote.

The court also concluded that Judge Chirlin should have granted the motion to expunge the recordation of non-compliance because the notice was not legally recordable. ❑

■ The Case:
Ward v. Superior Court
■ The Lawyers:
For Ward: Ronald M. Katzman, (818) 501-3501.
For Beverlywood Homeowners Association: Andrew S. Gelb, Wolf, Rifkin & Shapiro, (310) 478-4100.

NOTICE

Redevelopment Case Turns On Obscure Notice Provisions

In a complicated procedural case, the Fourth District Court of Appeal has ruled that citizens seeking to invalidate a Riverside County redevelopment project failed to properly serve the county with notification that the lawsuit had been filed.

Janet Hill and other residents sought a "reverse validation action" under §863 of the Code of Civil Procedure. This action is the reverse of a traditional validation action under redevelopment law. Instead of the redevelopment agency seeking validation for its project, citizens file a suit seeking to invalidate the project. The confusion came regarding an apparent inconsistency between the way the public is supposed to be noticed, as opposed to the way the redevelopment agency is supposed to be noticed. The case is the latest in a line of cases over the last 30 years dealing with notice requirements associated with redevelopment projects.

In a direct validation action, the only notice requirement is for the redevelopment agency to notice the public. In a reverse validation action, however, there are two notice requirements. The first is a requirement to notice the public through publication, just as in a direct validation action. In addition, however, the plaintiffs must also notify the redevelopment agency by personal service. The Code of Civil Procedure calls for this personal service to be issued to "all persons interested in the matter" and calls upon those persons to appear and answer "not later than the date specified in the summons, which date shall be 10 or more days after the completion of publication of the summons." This stands in contrast to the traditional summons, which calls for a response within 30 days.

However, Hill and the other plaintiffs did not use a modified summons form. On August 30, 1996, they published a copy of the usual civil summons, indicating that readers had 30 days to respond. No precise date for response was specified, though the published notice did include the dates "8/30, 9/6, 13, and 20", indicating the dates on which the notice was to be published.

This publication came 16 days after notice was served on the Riverside County Redevelopment Agency. The service, which came on August 14, also used a general service form, indicating that the agency had 30 days to respond. The Redevelopment Agency and the county moved to quash service on the grounds that both the published summons and the personal service were defective. The published summons, according to the county, was defective because it did not specify a date for answering and appearing. The personal service, according to the county, was defective because it was not allowed the same time to answer as the publication notified.

Riverside County Superior Court Judge Victor Miceli ruled that the lack of a date in the published notice was not significant and found the service valid. But the Fourth District Court of Appeal, Division Two, disagreed.

The basic legal problem was that the published notice and the personal service did not follow the same schedules. The personal service on the county required a response by September 13. But the published notice, which was published four times up until September 20, apparently called for a response anytime up until October 20.

While noting that no single statute requires an identical scheduling correlation between personal service and publication of the notice, the appellate court acknowledged that the legislature had created a confusing relationship between the two. The Code of Civil Procedure prescribes the manner for personally serving the public agency, but in doing so refers back to the statute which is concerned solely with the published notice. Riverside County interpreted this relationship as requiring exact scheduling correlation between the personal service and the published notice. But the appellate court stated that this would require orchestration of notice "with a nicety which might be impossible". For example, a published notice may require a response by January 31, but if the personal service could not be accomplished until after January 21 — 10 days prior to the response date — then the response date for the personal service would be different.

"We think that the Legislature, by appearing to require that the summons served on the public entity contain a specific date, has inadvertently created a potential pitfall for plaintiffs attempting to comply with both service requirements," the court wrote. However, the court added, "even if we accept ... that a specific date is required, we are not obliged to accept that the date must be the same as that contained in the published summons. ... It is enough that the public entity be informed of a date for response which satisfies the statutory requirement of at least 10 days notice."

However, the court reached a different conclusion regarding the published notice. The court noted that any average person seeking to understand the notice provisions after reading the published notice would probably have to consult and interpret a number of statutes. Nevertheless, the court concluded that the legislature's intent was to require "that the response date [be] set out with precision."

The court acknowledged that it might seem "harsh" to find that the nature of publication and service in this situation was fatally flawed. But the court referred to a 1967 redevelopment case *[Community Redevelopment Agency v. Superior Court,* 248 Cal.App.2d] to reinforce the idea that the procedure to be used in published notices "is not complex" and is "in all the books and readily available to plaintiffs' attorney". Thus, the court concluded, the method of notice used by Hill and the other plaintiffs in the case was fatally flawed, and therefore the case was dismissed. ❑

■ The Case:
County of Riverside v. Superior Court, No. E019570, 97 Daily Journal D.A.R. 5096 (April 23, 1997).
■ The Lawyers:
For Riverside County: Gary A. Pemberton, Stradling Yocca Carlson & Rauth, (714) 725-4000.
For Janet Hill and other plaintiffs: Robert Ferguson, (310) 829-3535.

REDEVELOPMENT

Redevelopment Case Turns On Obscure Notice Provisions

Redevelopment agencies can't obtain reimbursement from the state for money dedicated to low- and moderate-income housing, the Fourth District Court of Appeal, Division One, has ruled. The ruling came in response to a test case filed by the San Marcos Redevelopment Agency, which argued that the low/mod housing requirement is a state mandate for which the redevelopment agency should be reimbursed.

Under state redevelopment law, most redevelopment agencies must set aside 20% of their tax-increment revenue — that is, 20% of the property taxes they receive from property inside redevelopment project areas — for low- and moderate-income housing programs. The redevelopment agency may

administer the housing programs itself or else give the money to other housing entities engaged in these activities, such as housing developers or local housing agencies.

In the court case, San Marcos argued that the requirement constituted a state mandate under the Gann initiative. Passed in 1979 as a follow-up to Proposition 13, the Gann initiative restricted local government spending just as Proposition 13 restricted local government revenue. One section of the Gann initiative — embodied in Section 6 of Article XIIIB of the state constitution — requires the state to reimburse local governments for any "new program or higher level of service" imposed by the state. The purpose of this provision, as the Fourth District pointed out, "is to preclude the state from shifting financial responsibility for governmental functions to local agencies, which are ill-equipped to undertake increased financial responsibilities because they are subject to taxing and spending limitations" under Proposition 13 and the Gann limit.

San Marcos argued that the 20% low/mod setaside requirement constitutes a state mandate and therefore the state should reimburse local redevelopment agencies. Many redevelopment agencies have been oriented toward commercial and industrial development projects and have been reluctant to spend money on affordable housing.

The trial court ruled against San Marcos and the Fourth District affirmed the trial court's ruling. In making its ruling, the Fourth District relied heavily on *Brown v. Community Redevelopment Agency,* 168 Cal.App.3d (1985), which ruled that the Gann limit's expenditure restrictions did not cover a redevelopment agency's tax-increment funds. If the spending restrictions don't include tax-increment funds, the Fourth District concluded, neither does the Gann limit's state mandate provisions.

The Fourth District also relied on the Court of Appeal ruling in *County of Placer v. Corin,* 113 Cal.App.3d 442 (1980), a case in which the reach of the Gann limit was considered as well. The Fourth District quoted from the *Corin* case, noting that the Gann limit "does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on 'appropriations subject to limitation,' which consists primarily of the authorization to expend during a fiscal year the 'proceeds of taxes'. The *Corin* court noted that there no restriction in the Gann initiative on the expenditure of funds that are not proceeds of taxes.

"Because of the nature of the financing they receive," the Fourth District noted, "redevelopment agencies are not subject to this type of appropriations limitations or spending caps. ... The purpose for which state subvention of funds was created, to protect local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play when redevelopment agencies are required to allocate their tax increment financing in a particular manner."

In the case of the housing setaside requirement, the court said, "the state is not transferring to the Agency the operation and administration of a program for which is was formerly legally and financially responsible." ❑

■ The Case:
Redevelopment Agency of the City of San Marcos v. California Commission on State Mandates, No. D026195, 97 Daily Journal D.A.R. 7464 (June 12, 1997)

■ The Lawyers:
For Redevelopment Agency: John Morris, Higgs, Fletcher & Mack, (619) 236-1551.
For California Commission on State Mandates: Gary D. Hori, (916) 323-3562.
For California Department of Finance (Intervener): Daniel G. Stone, Deputy Attorney General, (916) 324-5499.

Court Rulings Mean Uncertainty For Species Plans

Continued from page 1

The state has used Section 2081 to allow such take, believing that it is analogous to federal law, which explicitly permits such activity.

In dicta — that is, comments that did not bear directly on the case at hand — the court suggested that the "incidental take" provisions of the California Endangered Species Act were meant to apply to such situations as scientific experiments and did not extend to conservation plans. (*San Bernardino Audubon Society v. City of Moreno Valley*, 44 Cal.App.4th 593; *CP&DR Legal Digest*, May 1996.)

Earlier this year, the First District Court of Appeal picked up on the Fourth District's reasoning. Overturning the state's use of the incidental take provisions in the aftermath of the 1995 flooding, the First District said: "We find no reason to depart from [*Moreno Valley*'s] basic reasoning or to attempt to distinguish that case from the one before us." (*Planning & Conservation League v. Department of Fish & Game*, 97 Daily Journal D.A.R. 4725; *CP&DR Legal Digest*, May 1997.)

The Planning & Conservation League forced state officials into a crisis mentality. The Department of Fish & Game is not currently issuing any new 2081 permits in the context of conservation planning, and legislative discussions have been stepped up as a result.

Since the Planning & Conservation League ruling was handed down, however, two new court developments have added to the crisis mentality and the confusion.

In May, a Riverside County Superior Court commissioner ruled that the Fish & Game Department has no independent authority to permit incidental take under the NCCP law — contained in Section 2835 of the Fish & Game Code. Subsequent to the *Moreno Valley* case, the state had made the argument that, Section 2081 notwithstanding, the NCCP law contained such authority.

However, in a case in which environmentalists challenged conservation plans established by the Metropolitan Water District of Southern California, Commissioner Gloria Connor Trask ruled against the Fish & Game Department on the issue. "The court finds that the NCCP Act does not provide independent authorization for incidental 'take' for development purposes, but instead refers back to CESA and to section 2081, which has already been examined and interpreted by the Appellate Court." (*San Bernardino Valley Audubon Society v. Metropolitan Water District*, No. 274844.)

But two days before Commissioner Trask issued her ruling, the First District Court of Appeal issued a modification to the Planning & Conservation League opinion which, according to some lawyers, gives more leeway to the Fish & Game Department in issuing Section 2081 permits. In the modification, the court wrote: "[W]e have reviewed these statutes [including the NCCP Act] and find that they address specific problems by bestowing authority to the Department to issue Section 2081 permits in narrowly defined situations." (*PCL v. Fish & Game* modification, 97 Daily Journal D.A.R. 6088.) Both the original PCL ruling and the modification were written by First District Justice J. Anthony Kline, an appointee of Gov. Jerry Brown who is generally considered to be friendly to environmental causes.

Based on the First District's modification, NCCP supporters have asked Commissioner Trask for a reconsideration of her earlier ruling. For example, in a brief to Commissioner Trask, the Coalition for Habitat Conservation — a group of Southern California landowners — argued that the combination of the NCCP Act and Section 2081 does permit incidental take in a conservation planning context. "If the Department is unable to permit incidental take for private landowners or local governments, the NCCP Act is a nullity," the brief reads. "NCCP plans can be prepared but not implemented."

With all the confusion in the courts, all sides are now turning to Sacramento to seek a legislative solution. At present, two bills appear likely to serve as the primary vehicles for a possible legislative "fix" of the problem.

> *"With all the confusion in the courts, all sides are now turning to Sacramento to seek a legislative solution."*

The bill most frequently discussed as the compromise vehicle is SB 879, introduced by Sen. Pat Johnston, D-Stockton. Also on the table, however, is AB 409 by Assemblyman Steve Machado, also a Democrat from Stockton.

At present, it appears that the two bills will offer two alternative approaches to resolving the 2081 permitting problem. The Machado bill is likely to propose a simple addition to Section 2081 specifically permitting incidental take for conservation planning purposes. The Johnston bill, on the other hand, may well call for a broader approach — possibly including, among other things, a set of standards for the use of incidental take in a conservation planning context, as well as language that would hew more closely to the federal law. Unlike the state law, the federal law requires an incidental take permit for conservation planning purposes anytime a landowner wants to develop on "critical habitat" associated with an endangered or threatened species.

Thus, the potential reach of Fish & Game's power could be expanded if federal language were included in the state law. In any event, landowners and environmentalists apparently see a legislative deal to be made — specific language permitting take for conservation planning in exchange for the broader take requirements in the federal law.

It is unclear whether the 2081/NCCP controversy will have an impact on federal conservation planning efforts in Southern California. Implementation of the federal Endangered Species Act in the region is tied to the NCCP and the state regulatory structure because of an unusual rule issued by the U.S. Fish & Wildlife Service in 1993, when the Service declared the California gnatcatcher as threatened.

Under the special rule, the Fish & Wildlife Service indicated its willingness to issue incidental take permits under federal law to landowners who participated in the state's NCCP planning process for coastal sage scrub in Southern California — a process dependent, in part, on the state Fish & Game Department's authority to issue Section 2081 permits.

The state Endangered Species Act was passed in 1984 — a time when conservation planning was in its infancy. The federal Endangered Species Act did not permit habitat conservation planning — the equivalent of the state's NCCP — until amendments in 1982. Federal HCPs did not come into widespread use in California until the late 1980s. ❑

Places

Morris Newman

Rethinking Context In Culver City

Context is an oft-cited concept in city planning, and one of the least understood. The doctrine of contextualism that became popular among architects and planners in the 1970s was a healthy reaction to the scorched-earth approach to urban design of Modernism. Instead of buildings and open spaces that ignored or reviled their surroundings, contextualism was a mind-expanding rediscovery that buildings and spaces participate in a larger whole of city design and urban history, and that individual projects had the best chance of success when that larger vision was acknowledged and built upon.

Too often, however, contextualism is oversimplified to a practice of "more of the same," in which architects fill in empty spaces with buildings that are the same size and visual style as their surroundings. Context, however, rarely consists of a single building type or a single use. In my view, contextualism is best understood as a set of conditions that interact and respond to each other. Using the metaphor of the natural world, context is a set of conditions in dynamic balance: the hierarchy of organisms, environment, climate, topography, temperature, and so on. Without getting carried away, let's simply say that nature eschews single-purpose solutions.

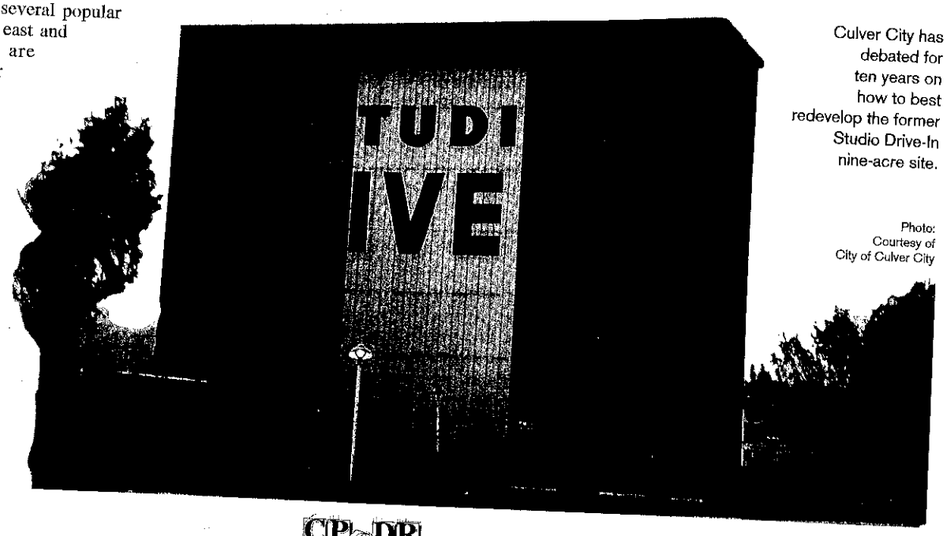
This expanded notion of context might be a good place to start when looking at the initial proposal for the Village Green in Culver City. Bear in mind that the project under examination here is the developer's response to the city's request for proposal, and has not gone through the refining fire of the approval-and-mitigation process. The final version that is built may differ significantly from the present scheme, and may well answer some of the objections outlined in this article. What is important to remember, however, is that the city selected this scheme — the developer is a partnership of The Lee Group, the ERAS Center School and Braemar Urban Ventures, and the designer is Van Tilburg, Banvard & Soderbergh AIA — because this design most closely conformed to the wishes of the existing homeowners. In other words, to paraphrase Bob Dylan, they were only doin' what they were supposed to do.

The design problem is an intriguing attempt to introduce single-family housing, plus a school for physically disabled children, on the former site of a drive-in theater. The site itself is an irregularly shaped, nine-acre parcel that lies immediately north of a large neighborhood shopping center with several popular big-box retailers. The east and west boundaries are defined by two major arterials — Sepulveda and Jefferson boulevards — that surround the project with traffic and noise. The consensus among homeowners on Dobson Way, a residential neighborhood immediately north of the project, was a preference for single-family housing that would mirror their own, in the belief that homebuilding would enhance the value of their existing homes. The neighborhood also ruled out commercial uses, but endorsed the school.

The resulting site plan seems to be a response to the question of how to maximize the number of single-family homes on the site, while accommodating the school building and its parking. The site plan, in fact, has the slightly shoe-horned look that results when developers try to "max out" an awkwardly shaped parcel.

The plan does a number of things right: the houses on the north end of the property echo the existing row of housing on Dobson Way; the plan provides a rational circulation system through the site, without cul-de-sacs; and the plan provides two "pocket" parks that are within walking distance of all the houses. (One park is actually part of the school property, however, and would be available for public use only on off-hours.) Primary access to both the housing and the school is located on a narrow service street (Machado Road) that runs between the two arterials on the southern edge of the parcel, although emergency access gates are located on both Sepulveda and Jefferson.

Where the plan becomes less tenable, however, is the way it addresses the two big streets — or its lack of address. Here, the public mandate for single-family-only shows its inadequacy. In a situation with intense traffic, the developers have chosen to face the houses inward, turning their backs to the street. An eight-foot wall surrounds the residential portion of the property, which is unfriendly to pedestrians and bicyclists, to put it mildly. The wall, combined with the emergency gates on the busy streets, may give the project the unintended appearance of a gated community.



Culver City has debated for ten years on how to best redevelop the former Studio Drive-In nine-acre site.

Photo: Courtesy of City of Culver City

The school building, which occupies much of the eastern part of the site, is surrounded by surface parking, a great deal of which lines the frontage of the little service street, which here has been treated strictly as a service alley, and fails to inquire creatively into the urban-design possibilities of a small street in a residential neighborhood hemmed in by two secondary highways.

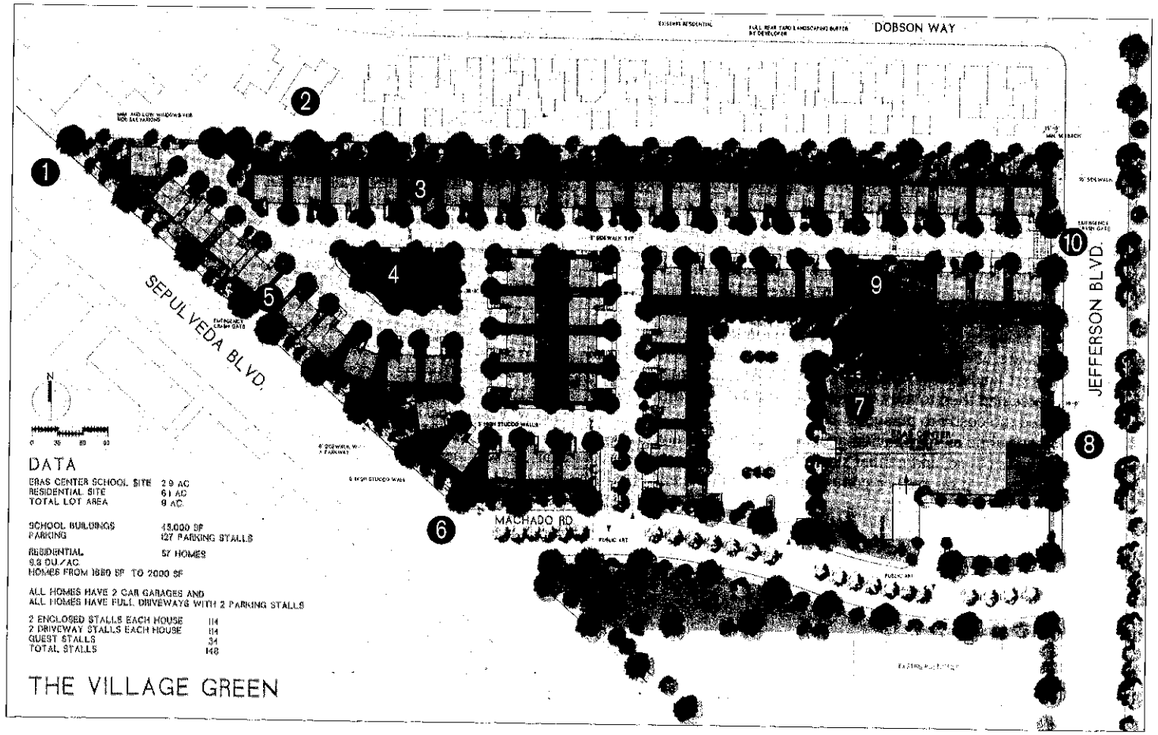
Housing is the right solution for this parcel. But the scheme is unsuccessful because it addresses the context of housing only, while ignoring the street. This is not contextualism; this is denial. Obviously, the single-family homes need a buffer from the street; a wall is the wrong way to do it. The best solution is to line the street with commercial uses. The school building should be reconfigured as a long-and-narrow building, to maximize its street frontage. The remaining street frontage should be lined with one- or two-story commercial buildings, such as live-work buildings with storefronts along the street, with lofts on the second level or townhouse units in back. I would extend that street edge to Machado, which now can start developing into an attractive street. (I would add diagonal parking along Jefferson and Sepulveda as another buffer from the busy streets).

Granted, these ideas contradict the express wishes of the homeowners. I don't pretend to know how to solve the political problem. They have raised the spectre of home values, which is the single most emotional (and hence irrational) issue in real estate (eminent domain is a close second). That's a shame, because the best way to preserve and enhance the single-family context in the Village Green is to make the entire neighborhood work: to provide an attractive street edge that provides a pleasant environment for pedestrians.

Not for a minute am I advocating harming anyone's property values. But a blind wall is not an improvement over a brownfield. Nor does the vision of traffic zooming past a stucco wall seem like some magic guarantor of housing values. Quite the opposite: Housing prices are not maintained by the shallow contextualism of repeating the same thing over and over again, without regard to the actual conditions. Make the Village Green into a well-rounded urban neighborhood where it is pleasant to live, and housing values will follow. ❑

LEGEND

1 Sepulveda Boulevard
2 Existing Housing on Dobson Way
3 New Single -Family Housing (Proposed)
4 Village Green
5 Emergency Gate
6 Machado Road, with Vehicular Access to Housing and Eras Center
7 Eras Center School
8 Jefferson Boulevard
9 Field Park (Attached to School)
10 Emergency Gate



Utilities Look to Unload Raw Land

Continued from page 1

Commission, and the departments of Fish & Game, Conservation, Water Resources, Forestry and Parks and Recreation. Federal participants on the task force include the U.S. Forest Service and the Bureau of Land Management.

In some cases, agencies that own lands adjoining utility properties might be logical buyers. One resource for land acquisition would be $15 million earmarked for the purchase of watershed lands in Proposition 204, which was approved by voters in November. And, according to Mantell, the state Lands Commission is a fiduciary to the Teachers Retirement Fund, and is "interested in buying lands and harvesting them in a way that preserves their long-term principal." In addition, private land trusts, such as the Nature Conservancy and the Trust for Public Land, may be interested in buying some surplus utility lands, according to Mantell.

The task force is also interested in working with private groups that buy land or development rights, according to Bob Haussler, a task-force participant who is manager of the energy facilities siting office for the state Energy Commission. "Once we have decided to move forward on (certain) properties, we will move farther afield and figure out who the stake holders are, and coordinate with them," he said.

The task force, for the time being, is being secretive about its priority list of sites to avoid driving up prices through speculation, according to Haussler.

In many cases, the power companies bought land as a sort of protective margin surrounding generating plants, or to allow room for expansion. Under deregulation, however, the "carrying costs" of real estate — such as mortgages or maintenance expenses — can no longer be passed on to ratepayers. Scrambling to compete in a very uncertain market, the state's investor-owned utilities are trying to shed all unnecessary costs.

Many obstacles remain to the sales, however. For starters, the utilities in general do not seem to know exactly how much land they own. PG&E, by itself, is believed to be one of the largest private landowners in the state, even though Bill Sessa, the company's real estate manager, would not provide a rough estimate of those holdings. (The *Sacramento Bee*, however, quoted a company publication in April that said PG&E owns 160,000 acres of "prime watershed" in the Sierra Nevada, Cascade, and coastal mountain ranges.) Edison, the next largest utility in the state, apparently has no database of its land holdings, although Haussler of the Energy Commission estimates that its forest holdings are about half those of PG&E, including substantial holdings of forest lands north of the Tehachapis. Although the public agency task force had tried to tally all the lands owned by utilities, the project appeared too costly to pursue.

Also, neither public environmental agencies nor utilities are in the real estate business per se, and neither side is familiar with conducting private land sales. Adding further complication, utilities themselves appear to be of two minds regarding the land sales, according to a task force committee member who asked not to be named. According to this member, the board of each utility is split between people who want to sell lands quickly, and others who are more cautious and want to watch the progress of deregulation before making big decisions about land sales.

Perhaps reflecting that skewed thinking, real estate managers of the big utilities say they are interested in selling, but not in a hurry. Edison, in particular, does not seem eager to sell. The company's most immediate goal is to sell lands adjoining its natural gas plants "because we are selling our fossil fuel assets in the basin," according to Mark Mikulka, manager of real properties and administrative services. But, he said, "don't expect to see huge amounts of property or a lot of parcels go on the market immediately, in some huge fire sale. We are going to sell it in a more judicious fashion."

Pacific Gas & Electric says it is aware of the environmental value of certain lands and has made an effort to inform environmental groups about land purchases. "Obviously, as we put properties up for sale, there are some that may have interest because of their historical importance or their environmental sensitivity," PG&E's Sessa said. To ensure that environmentalists have a shot at buying the properties, PG&E has "established a process that increases their ability to do that," he added. Part of that process is both consulting with interested parties about sensitive lands, and to invite those parties to bid on the properties. "When we put a property up for sale, we do that publicly. We have a bidders' list which is quite extensive, as many organizations express a desire to see the properties we have for sale." For some reason, environmental groups chose not to pursue any of 10 timberland parcels that PG&E is offering for sale this year. "Conservation and preservation groups were allowed to review the list and did not express interest in anything," Sessa said.

The utilities will probably not sell the land at a discount, however. Shareholders in the investor-owned companies want to see a healthy return on the sale of company assets. "We are trying to balance a concern for the environment with an obligation to rate payers that is overseen by the Public Utilities Commission. We can't just donate properties. But we have flexibility in working with conservation groups as they express interest in certain parcels," Sessa said.

PG&E's approach to land sales, however, does not please Laurel Ames, executive director of the Sierra Nevada Alliance, a coalition of 45 different groups in the region: "What is important to me is that these sales are not done a on piecemeal basis, but with a broad perspective. This is the kind of opportunity we don't have very often."

"We need to figure out what could be done in the broadest sense," Ames added, "for the benefit of the environment, for the benefit of PG&E, for the benefit of community recreation issues, wildlife issues, watershed protection issues, scenic issues — just the whole laundry list. The question is whether PG&E is amenable to doing that, or whether they going to deal with sales on a piece by piece basis." ❑