CALIFORNIA PLANNING & DEVELOPMENT REPORT

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Decade of '90s Will Bring Profound Change to Cities

For developers and city planners, the story of the '80s was the transformation of the suburbs from sleepy bedroom communities to bustling work centers. Modems and fax machines made moving information easy, while traffic congestion made moving people difficult. Gradually, office work became "uncoupled" from the traditional, in-city business centers where it had always been located. And with real estate capital easy to come by in the '80s, developers rushed into the suburbs to construct large office buildings that, by turns, made suburbanites' lives easier (by providing shorter commutes) and more frustrating (by impinging on their quiet lifestyle).

But the changes that telecommunication brought to the '80s will be nothing compared to the impact it will have on the '90s. The "uncoupling" of activity and location that has changed the business world in the last few years will spread to all aspects of life. Shopping, schooling, cultural events, maybe even political activities such as voting — all will be available electronically, either over telephone lines or through cable television. (And by the way, the difference between those two things will disappear, too; it won't be long before voice, video, and data transmissions will be available together and — perhaps — packaged in new combinations.) *Continued on page 4*

L.A. Light-Rail Lines Face Political Struggle

Los Angeles County is moving forward with an ambitious light-rail construction program, but the lack of a political consituency for the effort may come to haunt the L.A. County Transportation Commission, which is building the system.

Currently, LACTC is constructing its first light-rail line, from Long Beach to downtown Los Angeles. But several critical milestones lay ahead for the agency. Southern Pacific Railroad Co. is selling off considerable portions of its Red Car right-of-way throughout Southern California, giving the commission a rare opportunity to purchase land. At least two important rail financing measures may appear on the ballot next year — a half-cent local sales-tax increase and a $2-billion state bond issue. And new estimates suggest that building a critical line across the San Fernando Valley will be far more expensive than the rail planners previously believed.

Though traffic congestion is an obsessive topic in Los Angeles, local residents don't appear excited about light rail. Conspicuously absent is the rhetorical support from the county's numerous slow-growth activists, who would seem to be a natural constituency for mass transit. Many municipal-level rail advocates have also been offended by what they regard as the high-handed manner in which the county's light-rail authority has chosen rail lines and station locations. And some local residents, especially *Continued on page 7*

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BRIEFS

Giants Look to Santa Clara

Having lost another stadium election in San Francisco, the Giants baseball team is looking southward to the Silicon Valley.

The Giants are believed to be interested in Santa Clara, which has offered up a 120-acre parcel of land near the Great America theme park just off Highway 101.

The Santa Clara County Stadium Task Force has been trying to persuade the Giants for the past two years to consider the site, which is owned the City of Santa Clara and the Leslie Salt Co.

The financing plan — public or private — for the stadium remains up in the air, however. Last spring, the Giants reportedly demanded virtually all of the stadium's operating profits, but local officials feared such a deal would leave them without sufficient funds to repay bonds necessary to build the stadium.

HUD-Lyon Deal May Be Investigated

A federal auditor has questioned a deal between the Department of Housing and Urban Development and Orange County developer William Lyon — a deal that permitted Lyon to buy the rights to some $1.6 million in county funds for only a dollar.

Lyon purchased the Robinson Ranch from HUD for $16 million in 1985. HUD acquired the project after the original developer, Ridgewood Development, could not make federal payments on its $35 million federal loan. According to the Orange County *Register*, an internal HUD report said the property was sold to Lyon even though HUD received higher bids from other parties. The deal is among the HUD actions being investigated by Congress.

As part of the original development deal, Ridgewood Development had constructed a road valued at $1.6 million. Orange County was to reimburse the developer with development-fee funds. On the same day that Lyon's company purchased the Robinson Ranch project, however, it also bought the rights to the development-fee money from HUD for only $1. In November, Lyon demanded reimbursement from the county.

Building Moratorium in Santa Cruz County

In the wake of the October earthquake, Santa Cruz County supervisors have imposed a temporary building moratorium on all unincorporated areas of the county.

During the moratorium, county planners will study geological conditions to determine what impact the quake may have had on landslide areas.

The moratorium could slow down reconstruction efforts because no building permits will be issued until after its expiration late in January. Geologists fear that the quake may have increased the likelihood of landslides in several high-risk areas. In some areas, the county may never permit damaged homes to be rebuilt.

Bradley Seeks Changes at Porter Ranch

Los Angeles Mayor Tom Bradley has threatened to oppose a large development project sponsored by one of his own campaign contributors, Nathan Shapell, unless substantial changes are made.

The $2-billion Porter Ranch plan is one of the largest development proposals ever considered by the City of Los Angeles. Located at the northwest corner of the San Fernando Valley, the project would include more than 3,000 housing units as well as a commercial complex on 1,300 acres of land.

In early December, Bradley surprised the L.A. City Council by demanding significant changes, including a 20% low/mod housing requirement, dual plumbing to permit use of reclaimed water, a comprehensive recycling program, and several steps to minimize the use of automobiles, included a mixed-use development plan, an internal transit system, and a cutback on office parking.

Convention Center Opens in San Diego

The $165 million San Diego Convention Center, largest on the West Coast, finally opened just before Thanksgiving.

The convention center was first proposed by then-Mayor Pete Wilson more than 15 years ago, but it took almost a decade for city and officials of the San Diego Port District, which built the facility, to decide on a site. Last year, the city and Port officials were divided by a debate over whether to name the convention center for Martin Luther King. (The port commission voted 4-3 against the idea.)

The convention center apparently will not be a big money-maker for the Port District, which has leased it to the city for $1 per year. But the district's activities generated a $30-million-a-year surplus anyway — and officials of San Diego and other cities in the area are backing state legislation to grab a share of those revenues.

Three Buildings To Compete in S.F.

Three downtown office buildings have been proposed in San Francisco — the first new projects put forth since the city adopted an allocation system on downtown office space three years ago.

Proposition M limits office construction to less than 500,000 square feet per year. The three proposals include a 435,000-square-foot building by Bechtel Corp.; a 250,000-square-foot building by Ron Kaufman; and a 190,000-square-foot building by Transamerica Corp.

The buildings will compete in San Francisco's annual "beauty contest" next year.

Inclusionary Housing in Irvine to be Voluntary

The Irvine City Council has decided not to adopt mandatory inclusionary housing requirements, settling instead on a voluntary 12.5% low-income housing commitment from developers.

The council's decision came under pressure from the Irvine Co., which owns virtually all undeveloped land in the city. The company said it would object to a mandatory rule unless it were coupled with density bonuses. *Continued on page 5*

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Editor & Publisher:
William Fulton
Contributing Editors:
Morris Newman
Stephen Svete

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UPDATE

Following Up on Some of the Year's Best Stories

Over the last year, California Planning & Development Report has carried dozens of stories about current developments around the state. Here are updates on four of the most important stories we covered this year.

Indian Wells and Sunterra

In our November "Deals" column, we predicted that, despite a series of ongoing legal disputes, the City of Indian Wells would still reap considerable benefits from the Sunterra resort project. ("Sunterra: Indian Wells Will Get What It Wants After All," November 1989.) But we turned out to be wrong. Only four weeks after our story appeared, developer Bill Bone decided to kill his own project.

Indian Wells is a small and affluent desert community near Palm Springs. Sunterra would have been a billion-dollar project with four resort hotels, to be built partly inside a redevelopment area. Sunterra was to be built by Sunrise Co., a local company controlled by developer Bill Bone, with financial help from the Mitsubishi Estate Co., a giant Japanese firm.

But Sunterra ran into trouble from the beginning. Local citizens opposed the size of the development. Poverty lawyers challenged the fact that the project would have no housing for service workers. Marriott Corp. feared competition with its new resort in Palm Desert. And neighboring cities complained about traffic impacts and other problems.

In the end, virtually all of these groups sued. One of those lawsuits forced Indian Wells to redraft its general plan and put the Sunterra project on hold in the meantime. That put Sunterra two years behind schedule.

On November 28, Bone held a news conference to say he was throwing in the towel. He claimed that the delays were costing him $1 million a month and that his financial backers, including Mitsubishi, asked him to forget about Sunterra and explore other development possibilities.

One possibility, Bone said, would be to build a smaller, country-club project on the Sunterra property. But within a day, an even more enticing possibility surfaced: an enormous resort project in the City of Palm Springs. Bone admitted he had been talking with Palm Springs Mayor Sonny Bono and to local property owners about undertaking such a project. Palm Springs, of course, was one of the cities that sued Indian Wells over Sunterra.

Federal Housing Programs

In March, we reported on the resurgence of housing as an issue in Congress — including an ambitious federal housing proposal by Sen. Alan Cranston, D-California, and the debate over renewing the low-income housing tax credit. (*Special Report: The Housing Issue*, March 1989.) As it turned out, the tax credit was renewed, and President Bush appropriated most of Cranston's ideas in his own housing proposal, unveiled in November. But Cranston's problems with the Lincoln Savings & Loan scandal have slowed the progress of his housing package.

Bush revealed his housing package at a meeting of the National Association of Realtors in Dallas on November 12. The package contained, among other things, $2.15 billion in grants to state and local government (and non-profit organizations) for low-income housing; $1 billion to convert federal housing projects into tenant-owned co-ops; $210 million for "housing opportunity zones," similar to enterprise zones; and a provision that would permit first-time homebuyers to use individual retirement account funds for their down-payment. The program would cost $7 billion over three years.

Most of these ideas were contained in the housing package introduced by Cranston and Sen. Alfonse D'Amato, R-N.Y., which would cost about $4 billion the first year. The Bush package even carried a nearly identical name. Cranston and D'Amato had dubbed their program the Housing Opportunity Program (HOP); Bush called his Home Ownership and Opportunity for People Everywhere (HOPE).

"HOP, HOPE, I'll go for anything," D'Amato told *The New York Times* after Bush unveiled his package. The Cranston-D'Amato package has stalled in committee, and with Cranston embroiled in the savings-and-loan scandal, it probably won't go any further — at least not with Cranston's name on it. A new housing package may have to be introduced next year.

Meanwhile, Congress did approve a one-year renewal of the low-income housing tax credit, preserving one of the few real estate tax-shelters that survived the 1986 Tax Reform Act.

But Congress reduced the volume of tax credits available by 25%, from $1.25 per capita in each state to 93.75 cents per capita. In California, this reduced the available tax credits from somewhere around $30 million to somewhere around $25 million.

County Hazardous-Waste Plans

In May, we reported that counties around the state — and especially Kern County — were on a collison course with the state Department of Health Services over their hazardous-waste plans. ("Counties, State Clash Over Tanner Waste Plans," May 1989.) Well, the collision occurred. On November 30, DHS considered the first batch of 19 county plans. Seventeen were rejected, including Kern's, and only two — Tulare and Los Angeles — were approved.

In most cases, DHS objected to the counties' siting criteria, which it regarded as too restrictive, and to their so-called "fair-share" language — that is, the county's policy toward accepting hazardous waste from other counties.

The fair-share crusade has been taken up by the County Supervisors Association of California, which has encouraged counties to declare that they will not accept hazardous waste from other counties unless the two entities sign an interjurisdictional agreement. DHS found this provision unacceptable.

Similarly, counties such as Kern, which tried to integrate their siting process and their general plan, also got slapped down on the argument that their standards were too restrictive. Kern, for example, used general-plan designations to rule out hazardous-waste processing facilities in seismic areas, landslide-prone areas, and prime agricultural land. Kern officials said they see no reason for one state-mandated plan (hazardous waste) to take precedence over another (the general plan). But DHS objected that the general-plan designations were not based on rigorous scientific analysis.

Meanwhile, Tulare County chose to compromise with DHS in order to receive approval. Tulare's plan does call for preservation of agricultural land (all land in Williamson Act contracts, which in Tulare means most property in the county, is not eligible for hazardouse-waste facilities). But county supervisors agreed to include DHS-approved "fair share" language.

California's other 39 county plans will be approved or rejected by DHS by the end of February. CSAC hopes the state will compromise more on the fair-share language, but DHS spokesmen say that's not likely. If a compromise can't be reached, it's possible that some counties will take the state to court in order to force acceptance of their local plans.

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These technological advances will do more than simply give people electronic alternatives, however. They will change people's attitudes about place and location and travel. As Laventhol & Horwath consultant David Peterson puts it, "Banking used to be a place that you go. Now it's an activity that you do." Once you've uncoupled an activity from a location — not just on the ground, but also in people's minds — you've also called into question the rationale for cities and metropolitan areas.

Historically, cities are the creatures of economic need and technological limitations. People need to live near their jobs. Businesses need to locate near their suppliers. Retailers need to locate near their customers. Many companies — whether manufacturers or service-oriented — must have easy access to central markets where their goods or services are traded.

But over the next decade, these artificial constraints will be lifted. Already, there is virtually no technological reason for any service business to locate in a city; the modem and fax provide interaction between continents far faster than a messenger running between neighborhoods. And now that the telecommunications industry is deregulated, the cost of operating out of a remote area is coming down rapidly.

But if development patterns don't depend on proximity — if there is no technological or economic constraint forcing people and jobs to locate close together — then what will shape the landscape of the '90s and beyond?

Impact on Cities and Suburbia

The most tempting prediction to make is that the telecom revolution will make cities and suburbs obsolete. If place doesn't matter anymore, won't everybody head for some uncrowded, hassle-free mountaintop and work on a pine deck, like the guy in the computer commercial?

The answer, apparently, is no — and the reason is that the guy in the computer commercial is probably lonely for somebody to talk to. "We are social animals," says journalist Joel Garreau, a demographics expert. "We put an enormous amount of time and effort and money into face-to-face contact." Indeed, the expected boom in work-at-home employment has not materialized, largely because of the loneliness and domestic distractions such an arrangement brings.

And perversely, telecommunications may be the key to holding bulging metropolitan areas together when otherwise they would fall apart. Garreau, who is writing a book about suburban business centers — which he calls "edge cities" — says that today's multi-centered metropolitan areas would not be possible without telecommunications. The "edge city" gives workers the personal interaction they want and need, and the phone and fax machine give them the ability to communicate with distant parts of the metropolis without actually having to travel there.

Similarly, working at home part-time may soon have a similar impact. While working at home full-time does not appeal to most people, working at home a day or two a week may be attractive to many commuters in the congestion-clogged urban and suburban areas of California. The state instituted such a part-time telecommuting program after the October earthquake made travel difficult, while the City of Los Angeles has embarked on a permanent program.

Even if telecommunications doesn't destroy cities completely, however, many experts fear it will weaken them by encouraging "bright flight" — the flight of high-income, mostly white professionals from California's metropolitan areas to remote locations like the Sierra, the Rockies, or New Mexico. These professionals might fly into California for one or two days a week to handle face-to-face business and spend the rest of their time working in their rural paradises. (In fact, according to a recent story in the *Los Angeles Times*, the first-class cabin of some Albuquerque-Los Angeles flights has become a club of L.A. dropouts living in Santa Fe.)

Bright flight, like white flight before it, could lead to a deteriorating tax base — not just in the inner cities, but for entire metropolitan areas, as the upper middle class moves its families and its businesses away. "What does it say about the fiscal future of communities that a lot of economically healthy people can run away from them?" asked Laventhol's Peterson.

But, as in most other instances, telecommunications cuts both ways. Used correctly, telecommunications could actually strengthen the inner cities. One of the biggest problems that inner-city residents have is access to jobs. Most jobs are now located in the suburbs; many inner-city dwellers don't have cars. Since those people can't get to jobs, telecommunications could bring jobs to those people. Most of the current trends have run the other way, but the '90s is also expected to bring a labor crunch, and businesses will probably have to seek out and train labor markets they have not bothered with in the past.

Impact on Rural Areas

In many ways, the telecommunications breakthrough is the best news in decades for rural areas. Now they can compete for jobs with urban areas, usually offering lower wage rates and a highly motivated work force.

Several rural states have made telecommunications the centerpiece of their economic development strategy. Probably the most aggressive state in this arena is Nebraska, which has targeted "telemarketing" firms as one of its top economic development strategies.

Nebraska has long been known as the "800 Capital of the World" because of the large number of telemarketing firms based in Omaha. Now those firms are branching out in more ways than one. Some of the original telemarketing companies — those that accept orders or credit-card authorizations over the phone, for example — are moving to Nebraska's small rural communities, where wage rates are lower (usually $4.50 an hour compared to $6 or $7 in Omaha.) At the same time, Omaha companies are picking up more business doing "outbound" telemarketing, which specialize in aggressive telephone solicitations.

The biggest barrier to rural telecommunications businesses is technological. Many rural areas cannot handle data transmission or high-volume telephone service. Pacific Bell estimates that it serves well over 100 rural areas in California with World War I-era switching equipment.

Pac Bell recently won permission from the state Public Utilities Commission to replace all its old electrical equipment with digital equipment — a move that will essentially allow data transmission on every telephone line in the state. Pac Bell will spend $400 million over the next three years on the project, but George Schmitt, Pac Bell's vice president for state regulatory affairs, says the investment is necessary. "The big cities are dead," he says. "Business are going to move somewhere. If you don't have the rural areas wired, the companies are going to go to Oregon or Colorado or Arizona."

But the telecommunications revolution isn't likely to affect rural areas only by providing steady jobs for farm wives. It's also likely to

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attract major new development to areas previously too remote to support it — especially if those areas are scenic. And those developments will probably bring a different sort of resident to rural areas.

For example, in the isolated mountains of Tehachapi, halfway between Lancaster and Bakersfield, one development company is planning a 4,000-acre mixed-used project, with thousands of houses and thousands more jobs. The company is working with AT&T specifically to target telecommunications-intensive companies. The attractions are cheap housing, cheap land, and clean air.

Jack Lessinger, a retired real estate professor from the University of Washington, has named such emerging rural areas "penturbia" — a term he acknowledges refers as much to the residents' state of mind as to their location. Penturbia means literally the fifth wave of human development, coming on the heels of suburbia.

Lessinger, who will soon publish a new book called *After the Crash of Suburbia: The Coming Boom of Small Towns*, says the settlers of penturbia will differ from their forebearers in suburbia in the way they view the world. The suburban lifestyle was oriented toward consumption. Lessinger predicts that the penturban lifestyle, with its emphasis on scenic beauty and small-town livability, will be much more conservation-oriented.

But the transition is not complete. As the telecommunications age has permitted urban and suburban dwellers to move away from big cities, it has also permitted them to spread out on the land — indulging in their consumption-oriented habits all the more. And this in itself causes problems. Says Lessinger: "A lot of what I call penturbia is already being spoiled." Ironically, then, penturbia has become almost the opposite of Lessinger's vision: a place ever more wasteful of land and space than suburbia.

Impact on Land and Planning

If the uncoupling of activity and location changes the average person's perception of place, it must necessarily also do so for planners and other involved in the process of growth and development.

The first big change is that the use of land is becoming an activity without clear distinctions. This problem is already giving planners fits with regard to suburban business parks; though they must fit into standard land-use classifications, such buildings may house anything from a laboratory or assembly plant to a sales office or "pink-collar ghetto," depending on who the tenants are.

Telecommunications is only going to make this problem worse. Telecommuting, of course, turns the home into an office. But the whole point of the telecommunications revolution is that almost any place can be an office. Says Laventhol's Peterson, a Berkeley-trained planner: "If you have a fax in your car and you're stuck in traffic for an hour and you're making phone calls and you're getting pages transmitted to you, is that an office, or is that part of the transportation system?"

If land uses can no longer be defined or separated, development standards — parking spaces, setbacks, noise standards — become virtually meaningless. Planners will have to rethink the underlying rationale for most such standards.

Perhaps even more important, however, is the potential for telecommunications to eradicate the difference between city and countryside — a possibility that could harm agricultural areas and turn all of California into one giant sprawling suburb (or, at least, penturb).

In his book *The New Heartland*, urban-affairs journalist John Herbers claims there is a significant difference between the old suburban towns and the rapidly developing fields of penturbia. Suburban dwellers were still tied to the old city. But penturbanites value "independence and space" above all else. They have generated "a new kind of low-density growth with its own economic base. People who settle there rarely have anything to do with the closest big city."

Penturbanites are the leading edge of a significant trend — the continual increase in the amount of land consumed per capita. Even if they want to shop in nearby towns and work in office settings — even if they depend on the "edge city" to some degree — they still want to spread out at home in order to control their environment. So far this voracious appetite for space has had minimal impact. California is converting land from rural use to urban/suburban use at a rate of only about 2% (less than 100,000 acres) per year. Nevertheless, it does not take too many penturbanites to threaten the urban-rural fabric of California's development patterns.

Yes, there will continue to be limits to growth. Yes, people will still want face-to-face contact. Yes, many people will still have to gather in large groups to work or go to school. In the face of all this, the telecommunications revolution will still change traditional attitudes toward location, and, in so doing, still challenge the traditional rationale for cities and towns. The challenge of the '90s, for planners and developers, is to reformulate that rationale — partly around the opportunities telecommunications offers — so that communities remain liveable and distinct, rather than agglomerating into penturbia.

William Fulton

BRIEFS

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Roundup

The Tahoe Regional Planning Agency has approved water hookups for **the first new single-family homes to be constructed in the Lake Tahoe area** since 1983....Rep. Jim Bates, D-San Diego, has introduced a federal bill **to preserve Camp Pendleton as a buffer between Orange County and San Diego** even if the base is ever closed....Mayor Ann Rudin and Assembyman Lloyd Connelly, D-Sacramento, are calling for **height limits on office buildings near the Capitol** in Sacramento....The San Diego City Council **removes a home-building moratorium near Brown Field**, which may make airport expansion there more difficult.

COURT CASES

Rezoning Doesn't Require EIR, Appellate Court Rules

The rezoning of a San Jose golf course site from industrial to mixed commercial use does not require an environmental impact report, the Sixth District Court of Appeal has ruled.

In the same case, *Schaeffer Land Trust v. San Jose City Council*, the appellate court found that an EIR prepared for redevelopment of a nearby school site was adequate, even though the lawsuit challenged its discussion of the cumulative impacts of both the golf course and school projects.

In question are the city's rezoning and general plan amendments for the two sites — a 79-acre golf course property and 45-acre school property nearby. The Schaeffer Land Trust questioned not only the environmental review under the California Environmental Quality Act, but also the consistency of these actions under the city's general plan.

San Jose initially approved rezoning of the golf-course property to industrial use in 1982. In 1986, after developing half the property, developers sought to include retail, office, and residential uses in the rest of the site. At first the city demanded the developer prepare an EIR. But subsequently the developer's traffic study suggested that any significant environmental effects could be mitigated by restriping some traffic lanes and adding a left-turn lane.

In siding with the developer, the court came to its own conclusions about the validity of the traffic study. "The reality is that the city's decision to adopt the golf-course amendment has no traffic consequences," wrote the appellate justices. "The decision leads the city not one step closer to an ecological point of no return."

Similarly, the court reached its own conclusions on the discussion of cumulative impacts contained in the school property's EIR. "City's approval of each project specified that traffic issues would undergo further environmental review," the court wrote. "Thus, cumulative impacts existing at subsequent stages of development of each project will be addressed and will be actual rather than conceptual. As a practical matter, a study of actual cumulative impacts has more utility than a study of conceptual cumulative impacts."

The full text of Schaeffer Land Trust v. San Jose City Council, No. H004754, appeared in the Los Angeles Daily Journal Daily Appellate Report on November 21, beginning on page 13892.

Court Says Library Can't Yield Easement for Redevelopment

The City of Palm Springs can't redevelop part of its public library property for commercial purposes, the Fourth District Court of Appeal has ruled.

In *Save the Welwood Murray Memorial Library Committee v. City Council of the City of Palm Springs*, the Fourth District ruled that the redevelopment scheme violates the terms of the 1938 deed by which the property was conveyed to the city. The court also upheld an injunction preventing the city from pursuing a similar commercial deal in the future.

In 1986, Palm Springs entered into a redevelopment agreement permitting Wessman Construction Co. to purchase the library property and incorporate it into part of a larger commercial redevelopment in the surrounding area. As part of the deal, a well-known local diner was to be relocated to the library itself. In addition, a pedestrian connection on the library property, linking the area to nearby commercial development, would be expanded.

However, the 1938 deed between the city and George Welwood Murray and May D. Murray called upon the city to "continue and forever maintain the Palm Springs Free Public Library above mentioned in and on buildings which are now or may be hereafter placed on the property hereby conveyed."

The city argued that the pantry and pedestrian connection are "consistent" with the purposes contained in the deed. But the court concluded that the proper test is not consistency, but, rather, whether the proposed use will "directly contribute" to the purposes set out in the deed.

"Perhaps most notably," the court wrote, "the plan to grant the developer an easement over the Library Property for the uses outlined in the various participation agreements, if executed, obviously would effectively bar the use of the subservient tenement for the construction of additional library wings or rooms should they be needed. Such a result is clearly in violation of the restriction(s) contained in the 1938 Murray deed."

The full text of Save the Welwood Murray Memorial Library Committee v. City Council of the City of Palm Springs, No. E005844, appeared in the Los Angeles Daily Journal Daily Appellate Report on November 21, beginning on page 13877.

San Juan Capistrano Not Liable for Subsidence, Court Says

The Fourth District Court of Appeal has ruled that issuance of a grading permit is a discretionary act — a decision that means the City of San Juan Capistrano is not liable for property damage that resulted from subsidence.

The Cancun Homeowners Association, a group of about 40 condominium owners, sued the developers and their consultants, seeking to recover damages because the land on which their units were located had subsided. But the condo owners also attempted to sue the city, claiming that the city had a "mandatory duty" to require that the developers compact the soil adequately before grading and building permits were issued.

The city argued that its duty to ensure soil compaction was discretionary, not mandatory, and the appellate court agreed.

The ordinance in question was the city's grading and excavation code, which states that "all fills shall be compacted to a minimum of 90% of maximum density." City building officials ordered new fill on the property to be compacted to 90%, but issued the grading and building permits even though soil reports indicated that old fill on the site was compacted to less than 90%.

In its ruling, the appellate court concluded that the city council deliberately gave the building department discretion to approve a permit even if the compaction requirements were not met. The city code deviated from the Uniform Building Code on which it was based by saying: "Unless *otherwise approved by the Building Official* (a phrase not included in the Uniform Code) and recommended in the approved soil engineering report, fills shall conform to the provision of this section."

Wrote the appellate court: "We think it quite clear the governing body wished to inject more discretion for their building officials than was available in the Uniform Code."

The full text of Cancun Homeowners Association v. City of San Juan Capistrano, No. G007218, appeared in the Los Angeles Daily Journal Daily Appellate Report on November 30, beginning on page 14184.

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in the San Fernando Valley, are vigorously opposing light rail, apparently fearing disruption to their neighborhoods.

Several local politicians complain that LACTC, an agency governed by both municipal and county officials, has not built the organizational support necessary to counteract neighborhood resistance. "It's much easier to mobilize popular opposition to something than to get support," says Assembly Transportation Chairman Richard Katz, a Democrat from the San Fernando Valley. "This is what we've seen on a lot of things in the Valley over the years." L.A. City Councilman Michael Woo, a trained urban planner, urges transit supporters to form political interest groups not unlike L.A.'s strong network of slow-growth homeowner groups.

Perhaps the LACTC believes it has already won a popular mandate to build the system. After all, voters in 1980 approved Proposition A, a measure that increased the sale tax by a half-cent for transit projects and approved a 150-mile countywide light-rail system. Prop. A of 1980 provides $135 million annually for transit projects. Now, LACTC will find out the hard way — in the polling place — whether support for light rail has eroded in the last decade. So far, 28 of a necessary 44 local governments in L.A. County have signed off on a new sales-tax measure, tentatively slated for the November 1990 ballot. The new tax would provide a total of $1.1 billion over the next 20 years for transit purposes.

Rights-of-way are also a hot issue, because the Southern Pacific Railroad is selling off real estate assets. LACTC is currently eyeing the purchase of the Burbank Branch line that runs from Glendale to Canoga Park, the Exposition line running between Santa Monica and downtown Los Angeles, the West Santa Ana line between South Gate and Anaheim, and the Baldwin Park and Santa Fe Second Subdivision lines, both of which run between downtown L.A. and San Bernardino.

But support for purchasing this right-of-way has been less than overwhelming. Last summer, LACTC halted buying right-of-way in the Valley because of homeowner opposition. "Just because a right of way is for sale doesn't mean you buy it," says Westwood slow-growth leader Laura Lake. "There are opportunity costs of spending the money."

Underlying Lake's comment is a skepticism, among both political activists and transit experts, about the value of expensive rail systems. Martin Wachs, a professor in UCLA's Graduate School of Architecture and Urban Planning, points to an unpublished study of existing U.S. rail systems concluding that, in all cases, ridership fell short of projections, while construction and operating costs overran budgets. The study also observes that most rail passengers are former bus riders. Wachs and other transportation experts have often called for better bus service, instead of or in addition to rail construction.

LACTC's community relations efforts have not helped build a grassroots constituency for rail either — especially in the San Fernando Valley, where neighborhood-level opposition to the routing of a light-rail line is high. Valley activist Richard Smith says LACTC harmed its chances of gaining public support by adopting a high-handed approach. Six years ago, he said, "the commission initially said, 'We are going to put the light rail here and we are going to put it in without asking the public,' which brought out everyone's worst fears."

LACTC's attitude may stem from a fear that getting bogged down in local land-use politics could slow down and even kill the rail lines. In a recent speech in downtown L.A., LACTC board member Christine Reed, a Santa Monica City Councilwoman, stated, in essence, that the time for transit planning had passed and the time has come to build a system. "Plans don't mean shit, frankly, if they're just sitting on a desk," she said.

LACTC Community Relations Manager Steve Lantz said the commission now recognizes its strategic mistake in the Valley. Today, added Lantz, LACTC offers communities a variety of routes, a selection of "profiles" (i.e. whether trains are underground, at grade, or elevated) and a selection of transit technologies.

And, indeed, LACTC later went back to the Valley and formed a 30-member citizen advisory committee, which included Smith, to work out a route alignment. But even this effort has not overcome grassroots political opposition. State Sen. Alan Robbins, a Valley Democrat, has proposed an underground line in the Valley, saying it would cost $1.1 billion. But the latest LACTC estimates suggest that any route all the way from North Hollywood to Warner Center would cost at least $1 billion, while an underground route would more likely cost $3 billion.

And while LACTC's revised approach may have created a dialogue between local officials and the county commission, it has not resolved basic differences in point of view. For example, LACTC also locked horns with a light-rail advisory committee in Pasadena.

According to Pasadena panel member Chuck Hotchkiss, who is also chair of the Department of Urban and Regional Planning at Cal Poly Pomona, the city proposed an east-west rail line along the Foothill Freeway, as well as seven stations inside Pasadena. LACTC accepted the route, which was politically the least explosive, but cut down the recommended seven stations to five or fewer.

Contacts: Steve Lantz, LACTC, (213) 626-7370.
Christine Reed, LACTC commissioner, (213) 458-8201.
Richard Smith, Valley activist, (818) 881-2788.
Chuck Hotchkiss, Pasadena appointee, (714) 869-2688.

Morris Newman

Following Up on Some of the Year's Best Stories

Continued from page 3

Annexations and Tax-Sharing in Fresno County

Last summer, we brought you news of a dispute between Fresno County and the county's 15 cities over annexation and the division of tax revenues. ("Fresno County, Cities Fight Over Annexation," part of our *Special Report: Annexation and Development*, August 1989.) County officials had called a halt to all annexations in the county, hoping to force a more favorable split of tax revenues — property, sales, and redevelopment — from the cities.

The cities and the county reached an agreement on property and sales tax splits at the end of August. But redevelopment funds remain a sticking point, and the county Board of Supervisors has refused to move forward on the first two points unless an agreement is reached on all three.

Under the tentative agreement, the county could receive up to $23 million in sales and property tax from the county's 15 cities over the next years. Over a period of several years, most cities would dedicate 5% of their total sales-tax revenues to the county. (The City of Fresno, which was already giving 1%, would dedicate 6%.) Property-tax splits would remain the same with all cities except Fresno, which would turn over a larger percentage of its property-tax revenues to the county.

But redevelopment has been a longstanding bone of contention, particularly between the county and its two largest cities, Fresno and Clovis. Two years ago, the City of Fresno agreed under threat of lawsuit to give the county a share of the tax-increment from a redevelopment project near the Fresno Air Terminal.

DEALS

Sometimes Design Matters Just as Much as Money

Developers who want to win important redevelopment projects in California cities would be well-advised to follow the example of Sacramento developer Peter McCuen and Rockefeller & Associates. They won a prized redevelopment project in Sacramento last November by offering the most attractive architecture — and by bending the rules a little bit.

The incident dramatized the tensions and skewed agendas of elected politicians and professional planning staffs. When making the final decision on the coveted Lot A site, located three blocks from the state capitol, the Sacramento City Council surprised everyone by placing architecture ahead of property-tax revenue and speed of construction.

The background of the decision is Sacramento's new role as a boomtown. Suddenly, investment counsellors are calling Sacramento the most important emerging metropolitan area in California. Such enthusiasm has led to a rash of high-rise plans in downtown Sacramento.

One of the most important is the city's plan for Lot A, a redevelopment parcel between Sixth and Seventh streets on the Capitol Mall. Following the recommendations of a task force from the Urban Land Institute, the Washington, D.C.-based real estate research group, the city was asking for an office building, a major hotel, and a free-standing parking structure. The city was hoping for a healthy chunk of property tax increment, hotel "bed" tax, and fees collected from the parking structure.

To compete for the prize, several four local developers hooked up with some of the best-known national real estate firms and architects in the country. Sacramento Kings owner Gregg Lukenbill, for example, teamed with Reliance Development Group of New York to propose a single 57-story tower. They asked for a $15.9-million city subsidy.

But Lukenbill made a stormy withdrawal from the competition over the city's insistence that a hotel be included in the project. Downtown hotel occupancies are a meager 70 percent and the average room rate for "first-class" hotels is only $70 nightly, according to Mark House, an associate in the San Francisco office of Laventhol & Horwath, who acted as a consultant to the City of Sacramento on the Lot A project. Lukenbill, who is part-owner of the Hyatt Regency, Sacramento's first luxury hotel, was openly skeptical of downtown's ability to support a second such hotel. He and Reliance made two proposals — one with a Hilton Suites Hotel and another with apartment units instead — before his departure from the scene.

Meanwhile, the nation's largest private owner of real estate, The Prudential, made a proposal with local developers Teichert Land Co. and T.M. Chang for a 41-story tower and a 300-room Guest Quarters hotel. But the Pru plan would have required a $20 million subsidy in exchange for an estimated $44.3 million in city revenues over the next 20 years. So in October, the city council pared the field down to two other proposals that promised large financial gains while requiring no city subsidy at all.

The more spectacular of the two came from Sacramento developer Peter McCuen, in partnership with Rockefeller & Associates Realty. The McCuen-Rockefeller team proposed 800,000 square feet in three separate buildings and estimated they would generate $73.7 million for the city over 20 years. The team included famed architect Philip Johnson.

Unlike Lukenbill, the McCuen-Rockefeller team was not skeptical about the luxury hotel market, choosing the upscale Ritz-Carlton chain as the hotel operator. However, city officials didn't like McCuen's plans to build the project in three separate phases, with the hotel — and its lucrative bed tax — coming only in the last phase.

Significantly, McCuen-Rockefeller tweaked the rules of the competition slightly by locating its parking garage off-site. In so doing, the proposal encouraged the use of the Seventh and Eighth street RT Metro lines into downtown, a gesture to the city's air-quality problem that city officials liked.

The most lucrative plan for the city — at least according to its own estimates — came from the team of team of Lankford & Cook and Phelps Inc., who proposed a two-tower scheme that combined upscale apartments and hotel rooms and promised $76.7 million in tax revenues and parking fees. They also promised to build the project in one phase. But their design, by Hellmuth, Obata & Kassabaum, featured conventional, boxy high-rise buildings topped by mammoth mansard roofs.

The council appeared split between the McCuen-Rockefeller team's appealing design and the Lankford plan's promise of more money. In an attempt to win favor, McCuen agreed at the last minute to cut the number of construction phases on its project from three to two. However, the redevelopment staff — and the planning commission — ultimately endorsed the Lankford plan. While the Lankford plan had the least attractive design, it required neither a subsidy nor phased construction, giving it "the greatest degree of certainty," according to Housing and Redevelopment Chief Robert Smith.

Significantly, both consultants and staff were unconvinced that Sacramento's soft hotel market could support a luxury hotel like a Ritz-Carlton. "If they are talking about rooms rates of $175 a night, that will be very difficult for the Sacramento market to bear," says Laventhol's House. Nevertheless, when it came time to make the final decision, the city council reversed both the staff and the planning commission and went with the McCuen-Rockefeller project.

The Lankford team was incensed. "We believe there was a process problem, that's fairly evident," developer Rob Lankford told the *Sacramento Bee*. "The council can do whatever it wants to, but in the interest of fairness, they should have done something to ensure a level playing field."

At its heart, the dispute between the council and its staff illustrates the tension, to paraphrase Mick Jagger, between getting what a city wants and what a city needs. By recommending the ungainly Lankford project, the city staff thought it was on the high road of fiscal responsibility. But the council members recognized that "safety" is not always all it seems.

An interesting comparison could be drawn between the choice for Lot A in Sacramento and a similar decision reached by the Los Angeles Community Redevelopment Agency board 10 years ago on another big redevelopment project. In picking a developer to build the California Plaza in downtown L.A.'s Bunker Hill area, the CRA board chose safety over beauty.

As in Sacramento, the CRA board went against the recommendation of its own staff. But the difference was that CRA chose an architecturally mediocre project, conceived by Canadian developer Cadillac Fairview, over an ambitious, avant-garde scheme put forward by Rob Maguire, then a fledgling developer. At the time, CRA said the decision was based on a sense of security in Cadillac Fairview, then the largest commercial developer in North America. Five years later, however, Cadillac Fairview went into a financial tailspin and had to bring in Metropolitan Structures as a partner to keep the California Plaza project going. Meanwhile, Maguire emerged as one of the leading developers in Los Angeles and the nation. So much for prudence.

Morris Newman