CALIFORNIA PLANNING & DEVELOPMENT REPORT

March 1991 | William Fulton, Editor & Publisher | Vol. 6, No. 3

Drought Likely to Cause More Growth Limits

Having reached crisis proportions, California's five-year drought is beginning to force restrictions on development throughout the state. And a recent poll suggests that Californians believe restrictions on growth to be an effective way to deal with the water shortage in the short run — but not in the long run.

With rainfall running 20-25% of normal as the "wet" season draws to a close, many reservoirs throughout the state are nearly empty. In February, Governor Pete Wilson shut off all State Water Project deliveries to Central Valley farmers and Southern California urban water users. Meanwhile, the federal Bureau of Reclamation, which operates many dams and water supply systems in California, cut back farms by 75% and urban areas by up to 50%.

Eleven counties, ranging from Glenn to Santa Barbara, have declared water emergencies. Officials around the state are thinking about desalination plants. Most parts of the state are now under some form of water rationing, ranging from a 10% cutback in Los Angeles to a limit of only 50 gallons a day per person in Marin County. Morro Bay, in San Luis Obispo County, has been widely publicized as the driest spot in the state; residents there don't know each evening whether there will be enough water to get them through the next day.

And local governments and water agencies around the state are beginning to impose moratoria on water hook-ups — in effect, stopping growth *Continued on page 6*

Brown Will Push Hard On Regionalism Bill

Despite a request from Governor Pete Wilson to wait a year, Assembly Speaker Willie Brown has opened a new campaign to deal with growth by forming powerful regional governments. Meanwhile, three other important growth players in the legislature — Senate Local Government Committee Chair Marian Bergeson, her Assembly counterpart Sam Farr, and Senator Robert Presley, D-Riverside — are all returning to the legislature with new growth management proposals this year.

Shortly after the new legislative session began, Brown introduced AB 3 — a bill similar to his controversial AB 4242 of last year, which would have combined existing agencies into powerful, multi-purpose "regional development and infrastructure agencies." However, in January, Wilson asked the legislature to postpone any action on growth management until next year. He has appointed a task force on growth management and instructed the group to report back to him next January.

In late February, however, Brown called a press conference saying that he would do everything he could to push a growth management bill through the legislature this year. He said there was no reason to delay, given the state's continuing growth and the problems created by the drought. (However, none of the bills introduced seek to bring water supply issues closer together with local planning issues.) *Continued on page 6*

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REDEVELOPMENT

L.A. Council Votes to Assumes More Control of CRA

As expected, the Los Angeles City Council voted unanimously in late February to tighten its control over the city's Community Redevelopment Agency, the largest in the state. The council's action was prompted by a wave of negative publicity regarding CRA Administrator John Tuite's $1.7 million severance package. (CP&DR, February 1991). And another scandal involving Tuite also broke in February, revealing that CRA's contract procedures are under federal investigation.

The new ordinance, which passed 14-0 on February 26, gives City Controller Rick Tuttle direct control of CRA finances and makes City Attorney James Hahn responsible, in principal, for legal matters. The shift in legal responsibilities could mean the end of CRA's long relationship with prominent redevelopment attorney Murray Kane, whose firm bills the agency for millions of dollars of work each year.

Also, Mayor Tom Bradley salvaged his power to appoint CRA board members, though the council may now remove board members at will. The council will also have the power to review all board decisions — including salaries and compensation packages — and will have the right to confirm any future administrator. The current board will remain in place, though the reform package may give the council enough power to oust CRA Board Chairman Jim Wood, who has defended the Tuite buy-out deal.

The new ordinance represents middle ground between a reform proposal offered by Bradley and tougher action advocated by Council President John Ferraro and Councilman Zev Yaroslavsky. Bradley had recommended that the Tuttle and Hahn exercise closer oversight of CRA matters, while Yaroslavsky and Ferraro had proposed firing the entire CRA board and replacing it with appointees more responsive to the council.

Under the reform package passed by the council, City Attorney Hahn will have the power to hire CRA attorneys through a competitive bid process. Several councilman have been publicly critical of Kane, who is perceived as a strategist and a hard-nosed champion of agency interests, rather than a neutral legal advisor. "Kane has an extremist view of redevelopment law and always favors the agency, and what the agency wants to do," says a local lawyer. Says a former CRA staffer, "Murray sometimes overstepped his role and thought he was the administrator rather than the legal counsel."

In an interview, Kane did not directly answer questions regarding his role as CRA strategist, but claimed he is proud of his legal role for the agency. "(CRA) gets sued 50 or 60 times a year, and we have never lost a case," he said. He also said that his firm is "uniquely qualified" to continue working for the CRA and that he intends to compete for contract work in the future.

Outrage over Tuite's severance package enabled the council finally to breach the walls of the formerly "untouchable" agency. Days after the Tuite story broke in January, Yaroslavsky administered a public tongue-lashing to Commissioner Dolly Chapman, chiding her for a "disgraceful" role in approving the Tuite buyout; a council committee monitoring the CRA later voted unanimously against reappointing Chapman.

In January, Tuite agreed to leave the CRA after months of rumors that he was under fire from Bradley's office. But the $1.7-million severance package — coming after Tuite had served less than five years with the agency — was roundly criticized by the council and the media. Prior to the Tuite scandal, council redevelopment critics such as Yaroslavsky and Gloria Molina had been unable to force major reforms in the way CRA operates. For several years, Yaroslavsky and Molina have claimed that, under Wood's leadership, the agency has simply bounced from one deal to another with few formal policies. They had sought to reform CRA in 1989, but the most they could get was an oversight committee with little real power.

Even after his announced departure, Tuite remains a lightning rod for the media, as illustrated by another minor scandal revealed in February. In April 1988, Tuite had sent letters to the City Council and the Mayor's office, urging approval of a $600,000 loan to Sheridan Manor, a low-income housing project in downtown Los Angeles. But prior to coming to CRA, Tuite had received $9,000 in 1984 and '85 from project developer Harold Washington.

He later disclosed his role in agency documents and took no part in the staff recommendation. But his cover letter to council said: "We respectfully request that this important project receive your earliest consideration and approval." Tuite has dismissed accusations of conflict, saying that the cover letters were routine and ministerial.

Fairly or not, Tuite seems tarred by his association with Sheridan Manor, which could expand into a major scandal for the agency. In late February, a partner in the project, Jerome Steinbaum, was convicted of underpaying workers and fined $500,000 after agreeing to assist local, state, and federal investigations into CRA procedures for awarding contracts. The plea bargain was the first public confirmation that the agency was under federal investigation.

Morris Newman

O&Y Misses $35 Million Yerba Buena Payment

In yet another snag in the long-awaited Yerba Buena redevelopment project in San Francisco, Olympia & York was unable to pay a $35 million deposit on time and was forced to renegotiate the payment schedule.

Helen Sause, Yerba Buena project manager for the San Francisco Redevelopment Agency, said that O&Y was having financial problems due to "the current state of the real estate market and the economy in general." She also speculated that the Canadian developer may have been short of cash due to its huge investment in the Canary Wharf section of the London Docklands redevelopment project. The office market in London is currently weak.

The renegotiation of the deposit payment surprise was still somewhat surprising and sobering, since O&Y is one of the largest development companies in the world and has been traditionally viewed as well managed. It has successfully developed other projects in redevelopment areas, such as the World Financial Center in New York's Battery Park City.

Under the new schedule, O&Y paid an initial deposit of $3.6 million in February, to be followed by $3.1 million in April, $9.9 million in May, $9.8 million in October, and $8.6 million in January 1992. The money goes toward the $62 million purchase of two office site from the redevelopment agency. The agency will, in turn, use the proceeds to fund $87 million in cultural facilities at Yerba Buena.

The city has much incentive to be flexible with O&Y. San Francisco expects to receive $3 million annually in revenue participation from O&Y's office buildings, hotel, and retail operations when they are up and running. That sum is expected to climb to $15 million by 2020. Other benefits include $19 million annually in assorted taxes.

O&Y and the San Francisco Redevelopment Agency negotiated for more than a decade before striking a deal on the development of the 80-acre Yerba Buena site south of Market Street. The scheme has been described as the most complex redevelopment project yet attempted in California. (CP&DR Deals column, March 1990.)

Project design for the cultural facilities are complete and are scheduled to go out to bid in May.

Morris Newman

BRIEFS

Developer Guilty of Campaign Violations

Riverside County developer Louis Laramore has pleaded guilty to criminal charges of laundering political contributions in a county supervisor's race.

Laramore will pay $212,000 in criminal fines, and still must reach a financial settlement with the state Fair Political Practices Commission, which investigated the case.

The allegations stem from Riverside City Councilman Sam Digati's unsuccessful 1986 campaign to defeat incumbent supervisor Melba Dunlap. According to allegations, Laramore broke state campaign laws by laundering funds for Digati's campaign. A parole report obtained by the Riverside *Press-Enterprise* said Laramore opposed Dunlap's re-election because he feared she would be an obstacle in his development of the Mira Loma area.

Sacramento May Restrict Height Near Capitol

Sacramento city planners have proposed height restrictions to protect view of the State Capitol building.

The planners are recommending a 135-foot height limit within a half-block radius, so that the Capitol's 240-foot dome will not be dwarfed by surrounding buildings. Height limits would increase gradually, so that buildings two blocks away could be as high as 358 feet.

Planning officials have also given the city two other options — one that would limit adjacent buildings to 106 feet and another that would permit adjacent buildings to rise as high as the Capitol dome itself.

But the plan might be ignored by the state itself, since the state does not have to conform to local zoning laws in constructing its own buildings.

Curbs Slow Development — Or Maybe Not

It's official: San Francisco's downtown building restrictions either slow development or encourage it.

According to a new study from the city planning department, office construction was slowed in the 1985-1990 period by the Downtown Plan and Proposition M, while the number of jobs and housing increased. However, a conflicting study from a private real estate firm argues that Proposition M's restrictions have encouraged developers with permits to build, even if the market won't support new space.

The city study found that between 1985 and 1990, San Francisco had lost thousands of jobs in the finance and communications fields — many of those jobs were lost when "back- office" operations moved to the East Bay — but concluded that 16,000 new tourist-oriented jobs more than made up for the loss. The study also found that the number of affordable housing units doubled over the previous five-year period to 8,479.

The private real estate report, by the brokerage firm of Stubbs, Collenette, and Associates Inc., found that San Francisco will see construction of more than 10 million square feet of office space between 1986 and 1993 — despite the fact that Proposition M restricts construction to 475,000 square feet per year. According to the report, this discrepancy has occurred because all developers with permits have felt compelled to build their projects. Other real estate brokers in the city disputed the report's conclusions.

California Developers Like Public Finance

Almost two-thirds of California developers use public financing mechanisms such as Mello-Roos districts, assessment districts, and tax exempt bonds, according to a recent study from the UCLA Center for Finance and Real Estate and the Cox, Castle & Nicholson law firm.

The California figure of 62% stands in sharp contrast to the a figure of only 8% for developers outside the state. The study's authors said the discrepancy was due to the property-tax limitations contained in Proposition 13 and predicted that the California trend would spread to other states as government finance problems became more acute.

The study also found that California firms were larger, leaner, and more willing to take risks than their counterparts elsewhere. Some 63% of California firms said they are willing to buy land without entitlements, compared to only 28% elsewhere.

Bernson Faces Tough Re-Election Fight

Los Angeles City Councilman Hal Bernson is facing a tough fight for re-election because he has championed the gigantic Porter Ranch development project in the San Fernando Valley.

Bernson faces an April 9 election against several opponents, including school board member Julie Korenstein, who are attacking him on the Porter Ranch issue.

Bernson has close ties to Porter Ranch developer Nathan Shapell, from whom he has accepted tens of thousands of dollars in campaign contributions. In early February, he got involved in a vocal scrape with constituents when he claimed the Porter Ranch environmental impact report exaggerated smog and traffic problems and asked that it be rewritten. Later in February, Shapell threatened to sue a homeowner group for libel, claiming that the group had falsely claimed he made illegal payments to Bernson.

The Bernson campaign bears a resemblance to the 1987 re-election campaign of Pat Russell, then president of the L.A. City Council. A champion of the massive Playa Vista project near the L.A. Airport, Russell was defeated for re-election by newcomer Ruth Galanter. Galanter has since come out in favor of a revised version of the project — giving her problems in her own re-election campaign.

Roundup

The City of **Chico has sued California State University** over CSU's master plan for the campus in Chico....Hoping to avoid being part of an L.A.-based regional government, **Ventura County agencies are reviving their own council of governments**....**Walt Disney Co. pays $30 million** for 23 acres of land around Disneyland in Anaheim....Some **63,000 acres of agricultural land was lost to urbanization** between 1986 and 1988, according to the latest state figures....The L.A. City Council has given **final approval to the Central City West** project, a "second downtown" across the Harbor Freeway....Three Bay Area counties **will pay Southern Pacific $240 million** to obtain a 52-mile right-of-way from San Francisco to San Jose.

is published monthly by

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Subscription Price: $179 per year
ISSN No. 0891-382X

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COURT CASES

Napa Winery Dispute Yields Important CEQA Ruling

A longstanding and contentious dispute between neighbors in the Napa Valley has yielded four lawsuits — and an important appellate ruling involving the California Environmental Quality Act.

Whitbread of California Inc., which produces Atlas Peak wine, is constructing a 450,000-gallon-per-year winery based on permits received by Napa County in 1986, and now has plans to move the winery to another part of the property. But two neighbors, Fletcher Benton and Joseph Schreuder, have taken several legal and administrative actions in hopes of stopping the expansion. These actions range from a lawsuit seeking invalidation of the county's environmental review process to a dispute over control of Whitbread's corporate name.

In late January, the First District Court of Appeal issued two rulings in lawsuits arising from the case. In *Benton v. County of Napa*, A048905, the court ruled that Napa County had correctly extended the life of Whitbread's use permit while Whitbread's corporate powers had been suspended temporarily because the company had been in arrears in its taxes. In a more important ruling in *Benton v. Board of Supervisors*, A046292, the court ruled that the environmental review process doesn't need to start all over again if a project is modified — even if the initial review resulted only in a negative declaration.

The case began five years ago, when Whitbread received the use permit to construct a winery on an 856-acre parcel of land on Soda Canyon Road. Using the California Environmental Quality Act, the county decided an environmental impact report wasn't necessary and approved the project based on a mitigated negative declaration. The following year, however, Whitbread acquired an adjoining 120-acre parcel and asked the county for permission to relocate the winery on the new parcel — and closer to the houses of the neighbors Benton and Schreuder. The board approved the new use permit and accepted another mitigated negative declaration for the new project.

The CEQA case came later that year, when Benton and Schreuder sued in hopes of forcing the county into preparing an environmental impact report on the project. Benton contended that, under CEQA, the county had to consider the environmental impacts from scratch, as if the original project had never been approved.

The appellate court disagreed, and in doing so extended the scope of a Court of Appeal ruling in *Bowman v. City of Petaluma*, 185 Cal.App.3d 1065 (1986).

In the Bowman case, the court ruled that under CEQA (Public Resources Code Section 21166), a new EIR is not required when a project is changed unless circumstances change or new information comes to light. The CEQA Guidelines (Rule 15162) say that this rule should also apply to projects that receive negative declarations, although CEQA itself does not mention this. In the Whitbread case, the Benton and Schreuder challenged the application of the CEQA Guidelines for this reason. But, the court wrote, "If a limited review of a modified project is proper when the initial environmental document was an EIR, it stands to reason that no greater review should be required a project that initially raised so few environmental questions that an EIR was not required, but a negative declaration was found to satisfy the environmental review requirements of CEQA."

The court also ruled that, in determining whether the judiciary should overturn the county's decision, a "substantial evidence" test should be used rather than a "fair hearing" test. This standard of review makes it more difficult for plaintiffs such as the Bentons and the Schreuders to persuade judges to question governmental actions after an initial environmental review is completed.

Victor Fershko, who represented Benton and Schreuder, criticized the ruling. He said that, in some cases, a modified development project might be big enough that it would require an EIR, even if the initial project did not. Napa County Counsel Robert Westmeyer said the ruling "puts people on notice that the first time around they'd better do it (challenge the environmental review), because after that the fair argument test is gone forever."

In the second ruling, the appellate court upheld the county's decision to extend Whitbread's use permit after the company's corporate powers had been suspended because of failure to pay a franchise tax bill of $1,300. During the suspension, Benton and Schreuder acquired the corporate rights to the name Atlas Peak Vineyards and then demanded that Whitbread stop using it. Subsequently, Whitbread, which holds a registered trademark for the Atlas Peak name, filed suit in federal court to get the name back. The two sides settled that case out of court.

The full text of Benton v. Board of Supervisors (the CEQA case), No. A046292, appeared in the Los Angeles Daily Journal Daily Appellate Report on January 25, beginning on page 1012.

The full text of Benton v. Napa County (the corporate powers case), No. A048905, appeared in the Los Angeles Daily Journal Daily Appellate Report on January 25, beginning on page 1010.

Moorpark Schools Ordered to Sell Land to City Under Naylor Act

The Moorpark Unified School District must sell a surplus piece of school property to the City of Moorpark at a discounted price, the Second District Court of Appeal has ruled.

The appellate judges concluded that a long-disputed sale of land between the two entities is governed by the Naylor Act (Education Code Sections 39390-39404), which requires school districts to sell surplus school property to cities under certain circumstances. The Moorpark school district had sought to exempt the property from the Naylor Act's requirements.

When fast-growing Moorpark Unified replaced its high school in 1987, the school district decided to sell the 26-acre site of its old high school. The city expressed an interest in an eight-acre portion of the property that included ballfields.

Under the Naylor Act, surplus school sites must be offered to other local government agencies interested in maintaining the land for park or recreational use. If they interested, those agencies may buy up to 30% of a school site for as little as 25% of its fair market value. In the past few years the Naylor Act has led to conflict between financially strapped school districts looking for funds and cities interested in preserving open space. (See *CP&DR Special Report: Schools and Land*, May 1987.)

In 1989, the city offered $319,750 for the property — exactly 25% of the city's own appraisal of the property — and asked the school district for its own appraisal. Subsequent to the city's offer, the school board voted to exempt the site from Naylor Act provisions. Under Section 39401, a school board may exempt two sites from the Naylor Act if the district is planning to use the proceeds of a land sale to acquire new property for school use. Subsequent negotiations failed and the city sued.

The Second District appellate panel in Ventura ordered the school district to set aside this last action, saying it had been taken only because of the city's interest in buying the site. "Only after the city filed this action did the district adopt (a resolution) to declare the property non-surplus," the court wrote.

"Section 39401 (of the Education Code) allows school districts to meet legitimate emergency needs for an additional school site," the judges concluded. "A school board may not use it as a means to extricate itself from a binding contract to sell a surplus site at less than fair market value."

The full text of City of Moorpark v. Moorpark Unified School District, No B046659, appeared in the Los Angeles Daily Journal Daily Appellate Report on January 15, beginning on page 533.

COURT CASES

Appellate Court Rejects *Nollan*-like Conditions on Retaining Wall

Relying heavily on the U.S. Supreme Court's ruling in *Nollan v. Coastal Commission*, an appellate court has rejected the Coastal Commission's demand that Seal Beach residents surrender public access in exchange for permission to keep a protective retaining wall.

In reversing the ruling of an Orange County judge, the Fourth District Court of Appeal found that the Coastal Commission had not provided sufficient evidence that the retaining wall would cause erosion in the Surfside Beach area. Using erosion as a "nexus," the Coastal Commission had demanded that beachfront property owners provide an easement for access across the beach and also from the beach to Pacific Coast Highway.

The Coastal Commission originally issued an emergency permit allowing the retaining wall in 1982, when erosion along the beach threatened the homes of Surfside Colony, a private residential development. At the same time, however, the commission required four conditions involving public access: a "lateral easement" permitting the public to cross the beach in front of the houses; an easement permitting future construction of a boardwalk the length of the retaining wall; an easement permitting pedestrian and bicycle access from the beach through the private development to Pacific Coast Highway; and "conspicuous signs" advising the public of its right to traverse the area.

These conditions are similar to Coastal Commission access easements required in other cases, including *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), the landmark U.S. Supreme Court case on the issue. In Nollan, the Supreme Court found that the Coastal Commission's easement demands were not sufficiently related to the project at hand.

In the Surfside Colony case, the Coastal Commission based its easement demands on scientific evidence that retaining walls generally cause coastal erosion. But after the commission's ruling, Surfside Colony sued, claiming that the Coastal Commission's conditions constituted a "taking" of property without compensation because the nexus between the retaining wall and the Coastal Commission's conditions was not strong enough. Orange County Superior Court Judge William Rylaarsdam ruled that three of the conditions represented a taking, but upheld the Coastal Commission's use of the lateral easement. (A similar lateral easement was struck down in the Nollan case.)

In overturning Rylaarsdam on the lateral easement, the appellate court relied heavily on the fact that the Coastal Commission had provided no scientific evidence that the retaining wall would cause erosion at this particular beach. "Of the expert studies, only one dealt with Surfside Beach — the one submitted by Colony," the court wrote. "That report, of course, does not support the Commission's decision....Of the remaining studies, none of them show this revetment will cause erosion at this beach. They either deal with erosion at other beaches with different wave conditions, or with the effects of revetments and other such structures generally....

"Revetments and seawalls may have different effects at different beaches....We must therefore conclude no substantial evidence exists to justify a "nexus" between the revetment and the public access requirement."

The full text of Surfside Colony Ltd. v. California Coastal Commission, No. G007940, appeared in the Los Angeles Daily Journal Daily Appellate Report on January 18, beginning on page 767.

State School Laws Don't Preclude Zoning Denial, Court of Appeal Says

State school finance laws don't preclude local governments from denying a rezoning — or requiring mitigation measures — because of school overcrowding, the Second District Court of Appeal has ruled.

The ruling came in a lawsuit filed by two school districts in the Santa Clarita Valley that are attempting to force Los Angeles County to use its planning requirements to address issues of school overcrowding. The ruling means that the case could go to trial in Superior Court, though the county is likely to appeal the ruling.

Underlying the lawsuit is a school finance crisis in the Santa Clarita Valley that is representative of problems throughout the state. School officials say development fees — authorized by the 1986 school finance law — do not raise enough revenue to pay for new schools, and state bonds have been authorized but not issued. In 1987, voters approved a special school construction tax in five school districts in the Santa Clarita Valley — ranging from $5,400 to $6,200 per housing unit — but the same Court of Appeal panel ruled that school districts don't have the power to levy special taxes under Proposition 13.

In the current lawsuit, the William S. Hart Union High School District and the Saugus Union School District sued L.A. County to overturn the county's approval of a 2,500-unit housing project in the Sand Canyon area. The school districts claim that the county violated its own mandatory development guidelines by approving the project.

As the result of an earlier legal settlement, the county must abide by guidelines contained in a so-called "development monitoring system," which measures proposed projects against available infrastructure capacity. (*CP&DR*, February 1987.) In the case of the Sand Canyon project, the county's reports acknowledged a shortage of classrooms in the area and also acknowledged that the new houses might have a significant impact on the school districts. The county approved the project over the objections of the school districts, however.

In court, the county claimed that the 1986 school finance law (Government Code Section 65995) pre-empted the county's ability to reject a project based on school overcrowding issues. The 1986 legislation was actually a package of bills designed to deal with the issue of school finance; among other things, it authorized local school districts to impose fees on new development.

Relying on *Mira Development Corp. v. City of San Diego*, 205 Cal.App.3d 1201, the Court of Appeal concluded that while the school finance law might prohibit the county from denying a development permit because of school overcrowding, it does not prohibit the county from denying a zone change for the same reason. Furthermore, the court concluded, the school finance law did not prohibit the county from demanding more mitigation measures from developers to alleviate school overcrowding problems.

"If the county, based on erroneous legal advice, believed that it had no choice but to grant such zoning changes, and therefore did not sufficiently consider the impact on school facilities that the proposed zoning changes would have, or what mitigation measures, if any, might be required, then it has not discharged its responsibilities under the DMS (development monitoring system) and the general plan," the court wrote.

The appellate court also concluded that the school districts should be able to claim, in their lawsuit, that the county should have required more mitigation measures. "(W)hile the respondents could not deny a development project on the basis of inadequate school facilities, school districts can still challenge the board's decision on the grounds that respondents (the county) did not do all they were permitted to do under Section 65996 to mitigate the adverse impact that the proposed project will have on schools."

The full text of William S. Hart Union High School District v. Regional Planning Commission of the County of Los Angeles appeared in the Los Angeles Daily Journal Daily Appellate Report on January 29, beginning on page 1146.

BY THE NUMBERS

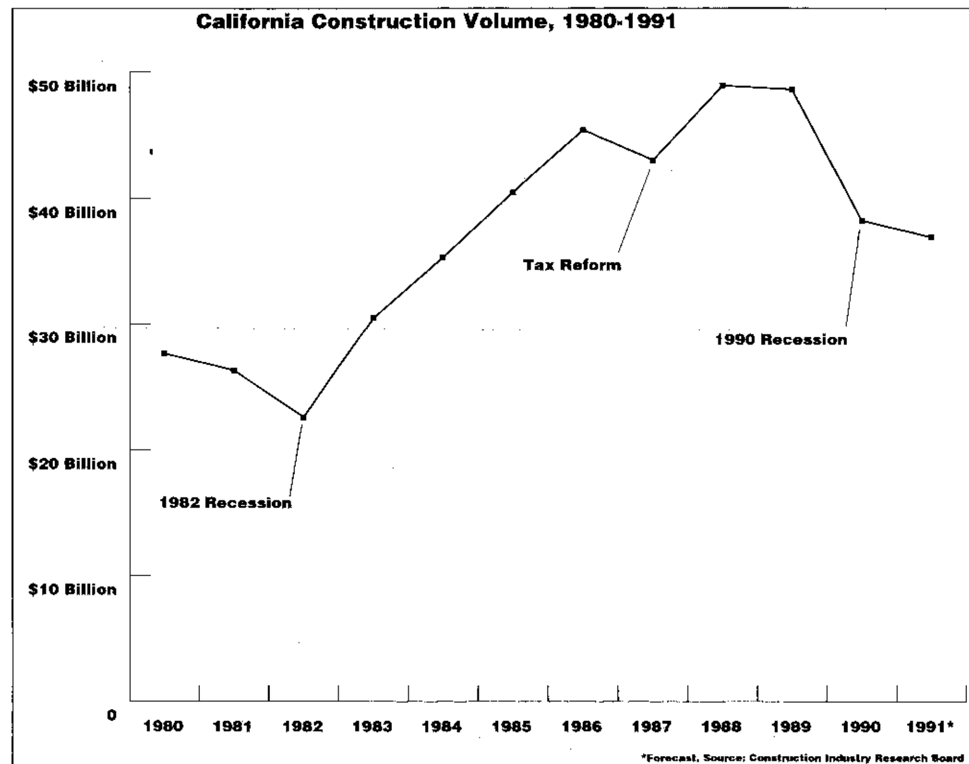
New Figures Confirm That Development Industry Is Suffering

New figures from the Construction Industry Research Board confirm that California's real estate development business is in a deep recession.

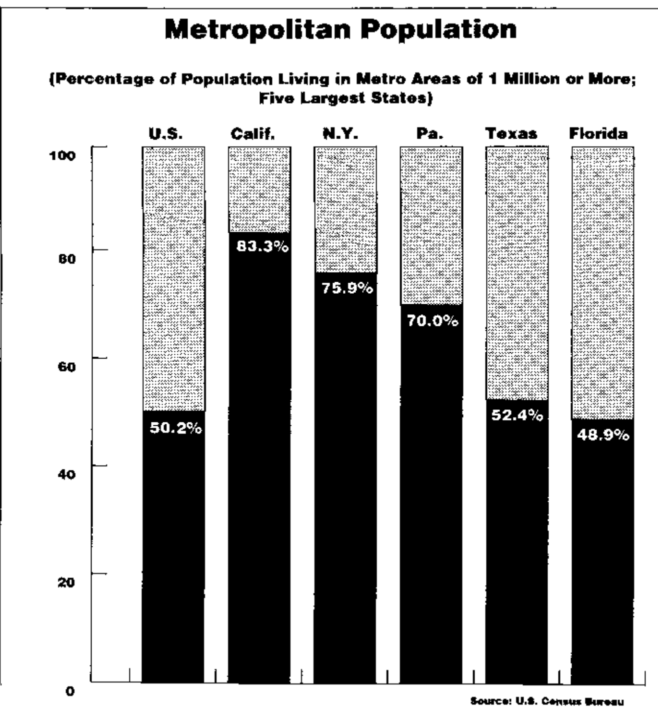
According to CIRB's preliminary figures, residential building permits dropped 44.5% last year, from 237,000 in 1989 to only 164,000 in 1990. CIRB is predicting a further 8% drop, to 150,000 units, in 1991.

Overall construction volume dropped 21%, from $48 billion in 1989 to $38 billion in 1990. This was the lowest figure since 1984 but still far higher than the 1982 recession figure, which totalled only $22.6 billion. But most of this drop reflected the drop in residential construction. Non-residential construction dropped only 11.2%, from $14.2 billion to $12.7 billion.

Hardest hit was the office sector, which dropped 32%, from $2.8 billion in total construction volume in 1989 to $1.9 billion in 1990. Retail construction held steady at about $2 billion. Hotels dropped 22% to about $400 million, while industrial buildings dropped only 6.6%, from $1.7 billion to $1.6 billion.



83% of Californians Live in Metropolitan Areas of 1 Million or More



California is the most urban of the nation's large states — and far more urban than other fast-growing Sunbelt states such as Texas and Florida, according to new figures released by the U.S. Census Bureau.

Census figures show that almost 25 million people, or 83.3% of the state's population, live in California's four metropolitan areas of 1 million people or more: Los Angeles, San Diego, the Bay Area, and Sacramento. This compares with 75.9% of New York's population and only about half the population of Texas and Florida, the other two fastest-growing large states in the country. Nationwide, the figure is 50.2%.

The same set of census figures also confirmed that the Los Angeles metropolitan area, as defined by the Census Bureau, added 3 million people between 1980 and 1990 and stands poised to make a run at first-place New York over the next generation. Metropolitan New York added a half-million people in the 1980s to top the 18 million mark, but L.A. grew from 11.5 million to 14.5 million. Under Census Bureau definitions, New York , Los Angeles, and the Bay Area, among others, are called Consolidated Metropolitan Statistical Areas, meaning they are made up of several smaller Metropolitan Statistical Areas. The Los Angeles CMSA includes L.A., Orange, Riverside, San Bernardino, and Ventura counties. Half of California's population lives in this region.

The Bay Area added almost 900,000 people — bringing the total to 6.2 million — and surpassed Philadelphia as the fourth-largest metropolitan area in the country. Adding 600,000 people to obtain a total of 2.5 million, San Diego rose from 19th to 15th, in between Seattle and Minneapolis-St. Paul. Sacramento — adding 400,000 for a total of 1.4 million — rose from 32nd to 26th, in between Kansas City and Portland., Oregon.

Brown Plans to Push Hard on Regional Government Bill

Continued from page 1

The four leading growth bills in the legislature this year are as follows:

• Brown's AB 3, a follow-up to last year's AB 4242. Like last year's bill, AB 3 would combine regional air quality, water quality, transportation, housing, and other agencies into a single regional entity with wide-ranging authority over growth and development. Under Brown's bill, all members of these regional boards would be directly elected, so that each agency would be governed, in effect, by a regional growth legislature. Last year, Brown's bill did not get out of committee, partly because he chose not to push hard.

According to Todd Kaufman, a consultant with the Assembly Office of Research, this year's Brown bill contains two important changes from last year's version. First, it would create a state Growth Management Commission, charged with making sure that the state's own plans are consistent and that regional plans are consistent with the state plan. Second, AB 3 would provide a way for regions to create their own regional framework, rather than follow the Brown bill's proscriptions, so long as regional goals are achieved.

• Bergeson's SB 434, which is somewhat more aggressive than her previous growth bills — but still displays the Newport Beach Republican's typical caution. Under SB 434, local governments would be given incentives to create regional infrastructure finance authorities. The creation of such authorities would be voluntary, but if they are created they would wield tremendous power.

The regional authorities would have the power to seek voter approval for new property transfer taxes that would be earmarked for regional infrastructure. However, they would be required to designate "development boundaries" — another term for an "urban growth boundary." Local governments would be required to approve development projects inside the boundaries if they conform with local plans.

The Bergeson bill also includes several important planning provisions that would be in place whether or not regional authorities are created. All local governments would have to update their general plans every five years, and the Governor's Office of Planning and Research would be required to review local general plans if any person asks, but that person would be required to bear half the cost of review.

If OPR declares a local general plan valid and consistent with state plans, then all state agencies would be subject to that local plan's requirements

• Farr's AB 76, a successor to his AB 4235 of last year, would split the Governor's Office of Planning and Research in two. The Governor's Office of Research would work on issues at the pleasure of the governor, while the State Planning Agency would prepare a comprehensive state plan that state agencies must abide by. The bill would also require that regional plans be integrated with the state plan, and provide for consistency between local and regional plans. AB 4235 was vetoed by ex-Governor George Deukmejian.

• Though he has not introduced a bill yet, Presley seems likely to return with a bill similar to last year's SB 1332, which would have encouraged the creation of sub-regional planning boards that could work on ironing out planning problems between neighboring jurisdictions. Last year, Brown's staffers indicated that they liked the ideas contained in SB 1332, which, they said, could provide an optional "bottoms-up" alternative to the top-down decision-making proposed in AB 3.

Bay Area Regional Structure Proposed

A region-wide task force for the Bay Area has recommended that existing regional agencies should be merged into a single entity, forming the basis for regional government in the area. The new Regional Commission is not unlike the regional infrastructure and development agencies proposed by Assembly Speaker Willie Brown in AB 3 — and the threat of Brown's bill may motivate the Bay Area to move in the direction proposed by the commission's report.

Bay Vision 2020, a blue-ribbon commission chaired by former UC-Berkeley Chancellor Ira Michael Heyman, has called for the merger of the Metropolitan Transportation Commission, the Bay Area Air Quality Management District, and the Association of Bay Area Governments into a single Regional Commission.

"The merger would link, in one agency with one new governing board, responsibility for regional air quality, regional transportation, and regional aspects of land use," said the Bay Vision report. "It would also make possible effective planning and actions for other, related matters. Because the new agency's work would affect adjoining counties, they would be invited as appropriate to take part in its work." This last comment appears to be an attempt to reach out to Stanislaus and San Joaquin counties — Central Valley agricultural areas that have lately become bedroom communities for Bay Area commuters.

The report also proposed that, once the Regional Commission is created, other agencies might also be merged with it, including the San Francisco Bay Regional Water Quality Control Board and the Bay Conservation and Development Commission.

The Bay Vision recommendations are similar to the recommendations for urban Southern California made by the L.A. 2000 committee in 1989. So far those recommendations have not been implemented.

Drought May Lead to Development Moratoria Around the State

Continued from page 1

and development until the water shortage has passed. The City of San Diego has granted Mayor Maureen O'Connor emergency power to stop all new water hookups, and the San Diego County Water Authority has urged its water districts to reduce hookups by 30%. Many other water districts around the state are considering similar action.

According to a recent *Los Angeles Times* poll, sentiment against growth is running high because of the drought. The *Times* found that 45% of all residents in the state blame the water shortage on excessive growth in Southern California, and 40% agree that growth should be restricted until the drought is over.

In the long run, however, only 22% of California residents supported growth restrictions as a way of dealing with water problems. More popular were desalination and reclamation (45%), conservation (32%), and dam construction (22%).

But even in the current drought, restricting growth may not be the favored alternative of local governments seeking to cut water use. Rather, a system of water credits and trades — similar to the emissions trading used by air-pollution agencies — may emerge to accommodate further growth.

Los Angeles Mayor Tom Bradley has proposed a trading system that would permit developers to build if they reduce water usage elsewhere. His proposal came in response to a plan by Councilman Zev Yaroslavsky that would restrict water hookups by 2% for every 1% in reduction required from current water users. Thus, for example, when L.A. goes to a 15% mandatory cut in usage on May 1, the city would also be required to cut hookups by 30%. Under the city's most restrictive water rationing plan — which would cut water use by 50% — no hookups would be allowed.

A system similar to Bradley's proposal is also under consideration in the City of Ventura. And San Luis Obispo already requires developers to obtain water usage offsets before they are permitted to build.

A comprehensive Special Report on the drought and its impact on planning and development in California will be included in the April issue of CP&DR.

EALS

Is Redevelopment in Pleasant Hill a Bull or a Cow?

According to a waggish real estate lawyer we know, redevelopment is "sometimes a bull in a china shop which must be stopped, and sometimes a cow that should be milked." And by all outward signs, Pleasant Hill developer Albert Seeno regards redevelopment as the bull.

He is feuding with the local redevelopment agency over the future of a site he controls in the center of the Contra Costa County city. Seeno is irked that his request to build a shopping center has been turned down the city, which is asking instead for an office building and hotel. To argue from a position of strength, Seeno has resorted to a powerful weapon: the ballot box. Seeno plans to spearhead a referendum that would scuttle the $175 million downtown Pleasant Hill redevelopment plan. If he wins at the polls, he will have stopped the bull.

Then again, the dissident developer may be playing a different game entirely.

By itself, the story of Albert Seeno's feud with the City of Pleasant Hill might deserve only a footnote in the annals of California redevelopment. What makes the case notable, in part, is the fact that it's an interesting example of how to use the referendum referendum as a mean of holding ambitious city governments in check. But the case is also a vivid illustration of how small-town land-use politics works when the developer and the city are more or less evenly matched.

At issue in the Seeno case is a nine-acre parcel in downtown Pleasant Hill which is part of a 42-acre redevelopment area. On the land not controlled by Seeno, the city and and its chosen developer, The Martin Group of Emoryville, envision 325,000 square feet of retail space, 30,000 square feet of office space, and an undetermined amount of housing. A 34,000-square-foot civic center, to be funded separately, is also planned in the redevelopment area. On Seeno's site, the city envisions a 242,000-square-foot office and hotel complex. The developer himself would prefer to build a courtyard-style neighborhood center fronting on Contra Costa Boulevard, the small city's main commercial strip.

To outsiders, Seeno's ire might be hard to understand, since an office-hotel complex sounds like a "higher and better" use than a shopping center. But the strong-willed developer likely has his reasons. After all, even redevelopment officials acknowledge that both the office and hotel markets are weak; an office building immediately adjacent to his parcel is literally half-empty. Seeno, who would not return telephone calls, apparently thinks a small shopping center is a stronger product, particular with Pay Less Drug Store committed as an anchor store.

Seeno, who was characterized by one city official as a "wealthy and obnoxious developer who is also highly intelligent," arrived at a clever strategy to thwart the redevelopment agency. He hired people to gather signature for petitions to qualify a referendum that would challenge an increase of the redevelopment agency's funding cap. In November, the City Council raised the tax-increment ceiling from $50 million to $346 million in order to facilitate the downtown redevelopment plan. Since Seeno does not stand to profit if the referendum is approved, observers say they do not understand his motive; one official speculated it was a "grudge match." Said another: "I think the developer is operating out of hate." But there's more than hate here; Seeno is using his referendum drive as a bargaining chip with the city.

The use of referenda to fight redevelopment is well established. Citizens in a number of California cities, ranging from Baldwin Park to Vista, have challenged projects through the ballot box. Christopher Sutton, a Pasadena lawyer who describes himself "as a private lawyer who gets paid for killing redevelopment projects," says referenda are powerful ultimate weapons in the hands of redevelopment-bashers. "When I go into a city, I tell my clients, 'Don't worry. If they don't negotiate with us, we will referendum (the project) and get a new city council'," says Sutton. Because state law requires referendum sponsors to gather signatures of 10% of resident voters in a given city, the tactic is probably too unwieldy for cities above a certain size. "Long Beach is about the breaking point," says Sutton. In a town of 20,000 like Pleasant Hill, however, gathering signatures — and tossing out redevelopment on its ear — may be only a few afternoons' work.

But referendum campaigns against redevelopment are usually the work of little guys afraid of big developers. Seeno's strategy has turned this scenario on its head. And that's not the only way in which his referendum drive differs from most others.

Although most campaigns against redevelopment stress fears of eminent domain or heavy debt, Seeno has apparently played the tax angle of the story. While the petitions themselves say nothing more inflammatory than Ordinance 654 should be repealed by referendum, observers claim that Seeno is playing upon misunderstanding of tax increment; some observers think Seeno and his petition gatherers are telling residents that their taxes will go up. "A lot of things were said to mislead people," said city attorney Dave Larsen. "People are being told that you somehow must pay for the redevelopment project out of the general fund, with the implication is that your taxes will be somehow less if there is no project."

Whether or not the Pleasant Hill redevelopment budget will reach the ballot box is is unclear, for the time being; city officials are challenging the validity of many signatures, which had been collected by people wh were not resident voters. Even if a referendum becomes inevitable, however, both city redevelopment administrator Rich Bottarini and Martin Group project manager Jim Kessler say they are confident that voters will uphold the tax increment increase. At least once city councilmember, Kim Brandt, has voiced concern that if Seeno continues to spread a misleading interpretation of tax increment as rising taxes, a tax rebellion could be brewing in Pleasant Hill.

But Seeno may not make good on his ballot threat — especially if he can use it to force the city to cut a deal with him. For one thing, he needs the redevelopment agency; if the downtown project falls, conceivably all parcels, including Seeno's, might be deprived of their maximum economic value. And for another, the referendum threat is working as a bargaining chip. Seeno is said to be negotiating with the city, and observers say that a compromise may be in the works.

What is intriguing about Seeno's strategy is the fact that it creates a level playing field between developer and city. Redevelopment agencies can tell developers, "You build the project we want on your site, or we will take it for ourselves through eminent domain." In this case, a developer is countering by saying, "If you do not let me build the project I want, I will bring down your entire redevelopment area upon your heads." In other words, both sides are taking hostages in a land-use contest.

Only time will tell whether Seeno will be shown to be a crusader against the bull in the china shop, or, as some outward signs may indicate, he is using the threat of a referendum as the vehicle to cut the most aggressive deal possible with the redevelopment agency. For all his protest, Seeno may be doing nothing more than milking the redevelopment cow.

Morris Newma