CALIFORNIA PLANNING & DEVELOPMENT REPORT

July 1991 | William Fulton, Editor & Publisher | Vol. 6, No. 7

Real Estate Slowdown May Jeopardize Bonds

Now that the California real estate development market has slowed to a virtual standstill, some California public finance officials are predicting that the downturn could cause trouble for millions of dollars of tax-exempt bonds sold to help finance development.

So far the state has not seen any significant bond defaults. But some experts say that increasing amounts of over-reaching and overlapping debt could mean danger in the near future for many of California's local governments. In particular, concern has become especially acute over Mello-Roos and Marks-Roos bonds, which became popular tax-exempt tools to finance infrastructure for new developments in the wake of Proposition 13. "We will have at least one default by the end of the year," predicted Dean Misczynski, principal consultant with the Senate Office of Research, who wrote the Mello-Roos law.

In addition, the highly publicized collapse of Executive Life Insurance Co. could mean bad news for several Mello-Roos bond issues. The Temecula Valley Unified School District invested $27.5 million in bond proceeds with Executive Life, while the cities of Simi Valley and Whittier invested smaller amounts. Under the Executive Life restructuring plan proposed by Insurance Commissioner John Garamendi, these government agencies may be forced to default on the bonds.

Continued on page 5

Base Closures Provide Planning Opportunity

The proposed closure of close to 20 military bases in California may throw open tens of thousands of acres of prime land for re-use or redevelopment — and the communities involved are already debate the future of the property involved.

In most cases, local governments have already taken preliminary steps towards land-use planning for the bases. And the opportunities are vast. In the housing-rich, job-poor Inland Empire, for example, the closure of two large Air Force bases — located directly in the path of development — may afford local economic development officials an opportunity to create a balance of jobs and housing since the "affordable housing" boom began there.

But there may be problems. While the bases are offering vast canvases for regional planning, toxic contamination and slow-growth activism may hamper redevelopment efforts. And in at least one region, tensions are rising among neighboring cities over control of a former base site.

In April, Defense Secretary Dick Cheney proposed closing 11 California bases; in June, the Defense Base Closure Commission recommended mothballing another seven bases in the state. While the military and federal government have the first right to re-use former bases, observers expect the majority of closed bases to be conveyed to local governments or economic development groups at nominal cost.

The communities surrounding these bases may "go to school" on the redevelopment efforts now being undertaken by areas already hit by base closures. *Continued on page 8*

INSIDE

News

Courts, legislature reconsider Proposition 13 .... Page 2

Briefs .... Page 4

Court Cases

Vested rights may be easier to obtain under new ruling .... Page 5
Neighbors may proceed with fraud case against developer .... Page 5
Higher school fees likely in wake of *Murrieta Valley* decision .... Page 6
New trial ordered in $11.5 million judgment for developer .... Page 6
Hollywood redevelopment plan upheld .... Page 8

Deals

America's "most entrepreneurial city" buys back a hotel .... Page 8

Real Estate Slowdown May Jeopardize Bond Repayments

Continued from page 1

Mello-Roos Bonds

Most public finance officials point to Mello-Roos debt as the security most likely to be affected in a prolonged real estate downturn. Mello-Roos bonds are sometimes called "dirt bonds," because the dirt, or undeveloped land, is often the primary collateral backing the bonds. If the projects fall through — or if houses sell at a lower pace than projected — the developer is often responsible for making interest payments on the debt. With only undeveloped land (which may be plummeting in value) as collateral, a developer may be tempted to just walk away from a troubled project.

"All the bond payments (for each Mello-Roos district) are generated from that one parcel of land," said Jack C. Crose, a Sacramento lobbyist for the California Public Securities Association. "In the real estate slowdown we've had, it's possible that a default could happen."

Indeed, the bond market appears to be reflecting the uncertainty that the real estate downturn has brought to Mello-Roos bonds. At a recent building industry conference, Mello-Roos expert William Huck of Stone & Youngberg reported that since August, the interest-rate spread between Mellos and general-obligation bonds has grown from 0.5 percent to between 1.5 and 2 percent.

Often, Mello-Roos bonds are the only way that developers and local governments can raise the capital needed to provide up-front infrastructure for a new development. Under the Mello-Roos law, a local government can create a special district and levy a tax if two-thirds of residents approve, but if there are fewer than 12 residents, the landowners are permitted to vote to levy the tax on new residents. This makes the tool especially attractive in undeveloped land.

So far no Mello-Roos bonds have defaulted. But some officials point to the $600 million default of similar special-district bonds in Colorado during the real estate bust there and say it is only a matter of time before California suffers the same fate. "In Colorado, some would argue, everything was going well, it was just the economy that went bad," said Phillip Feigin, securities commissioner for the Colorado Division of Securities. "Others will say there were very aggressive and perhaps underhanded developers who walked into some county areas like a 'music man'...and sold people on ideas. California may have similar problems brewing."

Earlier this spring, drought conditions appeared to threaten Mello-Roos bonds in western Riverside County, the state's fastest-growing region. On February 6, the five-member board of the Elsinore Valley Municipal Water District imposed a moratorium on new water hook-ups because of the drought. The move could have affected millions of dollars of Mello-Roos bond debt that was expected to be backed by fees on new home buyers. When the water was shut off, many of the homes for each district had not been built.

Developers protested the move with threats of lawsuits,and municipal officials expressed concern about the bonds that had already been issued. Luckily, the March rains helped alleviate the problem and water officials suspended the moratorium.

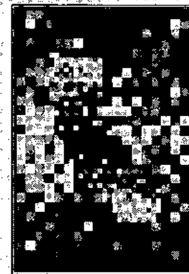
"In hindsight, it's easy to see how no one could have anticipated the ripple affect our move had," said Mark Dennis, a spokesman for the water district. "It's still a situation we must be cautious about because no one wants to repeat this next year."

Rating officials said Mello-Roos districts could have run into trouble if a drought-driven moratorium slowed development, meaning financially strapped developers might not have been able to make the bond payments on the property they were still holding. Also, defaults could have occurred if land values on the undeveloped Mello-Roos property dropped so low that developers would decide to walk away rather than make payments.

Marks-Roos Bonds

But Mello-Roos bonds are not the only type of debt being affected by economic conditions in 1991. Many in California are especially worried so-called "Marks-Roos" bonds, *Continued on page 4*

THE WORLD ACCORDING TO FULTON



Introducing **William Fulton's *Guide to California Planning***

The first book ever to provide a comprehensive look at all aspects of local planning in California.

In a lively and readable fashion, ***Guide to California Planning*** covers the full range of land-use planning issues in California, ranging from general plans and zoning to CEQA, as well as the relationships between planning, development, and municipal finance.

Guide to California Planning not only lays out planning laws and processes in detail, but also describes how planning really works in California — how cities and counties and developers and citizen groups all interact with each other on a daily basis to shape California communities and the California landscape, for better or for worse.

ORDER: *GUIDE TO CALIFORNIA PLANNING*

#____ of copies @ $30.00 each
____ Add 6% California sales tax
____ Add $1.75 shipping/handling for each book, up to $7.00
____ Total amount for book(s)

Or call **Solano Press Books** to order today! **707/884-4508**

Please fill out this form and return it to:
Solano Press Books
PO Box 773 • Point Arena • CA • 95468

Name
Title
Organization
Address
City State Zip
Telephone
Signature

CP791

After 13 Years, Courts and Legislature Reconsider Proposition 13

Pressure appears to be mounting in both the legislative and judicial arenas to overturn or reform Proposition 13, the 1978 initiative that has kept California property taxes low for the past 13 years.

A test case is pending before the U.S. Supreme Court that challenges Proposition 13's controversial clause permitting reassessment of property only when it is sold — a clause that has led to thousands of instances where similar neighboring properties pay vastly different taxes. The court is not likely to decide until next fall whether to take the case, Nordlinger v. Lynch. But in early June, the justices agreed to take another case that challenged the acquisition reassessment clause — *R.H. Macy & Co. v. Contra Costa County* — only to have Macy withdraw the case for fear of alienating California homeowners. However, the Nordlinger case is likely to have much broader impact in any event, since the Macy case involved the somewhat narrow question of whether a corporate reorganization constitutes a transfer of ownership that triggers reassessment.

At the same time, however, the state legislature is moving forward with a series of proposals to reform Proposition 13. Only a few days after the Supreme Court accepted the Macy case, the Senate Commission on Property Tax Equity and Revenue issued a report that contained many sweeping recommendations, including an end to acquisition reassessment and a phase-in of full-market assessment for all properties around the state. Meanwhile, the Assembly Select Committee on Property Tax and Local Government Finance is beginning work as well, meaning that both Senate and Assembly may soon have legislative proposals to revamp Proposition 13.

The constitutionality of Proposition 13 and its acquisition reassessment clause was upheld by the California Supreme Court shortly after the initiative's passage in *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal.3d 308 (1978). At the time, the court acknowledged that inequities in property assessments might come about, but the legal issues remained settled until two years ago, when the U.S. Supreme Court, ruling in a property-tax case from West Virginia, invited a challenge to Proposition 13. (Allegheny Pitt v. Webster County, 488 U.S. 336; for more information on the case, see CP&DR, March 1989.)

In both the Nordlinger and Macy cases, Proposition 13 was challenged as a violation of the equal protection clause of the U.S. Constitution. However, in both cases, California appellate courts concluded that the Amador Valley ruling still applies to Proposition 13. As the First District Court of Appeal put it in *Nordlinger v. Lynch*, 275 Cal.Rptr. 684, "The Amador decision is not rendered invalid by the fact that the expected disparities generated by Article XIII A (of the California Constitution) have since materialized." The Second District expressed similar sentiments in *Macy v. Contra Costa County*, 276 Cal.Rptr. 530, when it said: "With this long-settled law of California, we may neither tinker nor tamper." The California Supreme Court declined to hear appeals in both cases.

The Nordlinger case contains considerable documentation of the inequities that Proposition 13 has created. Research conducted on behalf of the Center for Law in the Public Interest, which is handling the Nordlinger case, concluded that the tax disparity in Los Angeles County at the time Proposition 13 was passed was approximately 1.4 to 1. By 1989, the disparity had grown to 5 to 1 countywide and reached 15 to 1 in certain parts of the Westside. Even the appellate court acknowledged that the initiative "created an arbitrary system which imposed disparate tax burdens on owners of similarly situated properties without regard to the use of the real property, the burden the property placed on the government, the actual value of the property, or the financial means of the property owner."

Nordlinger does not challenge the 1% cap on property-tax rates imposed by Proposition 13. So experts around the state are trying to figure out what will happen if the Supreme Court strikes down the acquisition reassessment clause and the 1% cap remains. Theoretically, the property assessments on thousands — perhaps millions — of California parcels would increase, and so would overall property-tax revenues. But legislative leaders and economic experts are batting around ideas that would spread the property-tax burden more equitably without increasing the overall amount of tax raised. "If the system is going to be changed, they should retain the predictability of the tax system, and it should be 'revenue neutral'," said Mack Powell, president of the California Association of Realtors.

Research by UC San Diego economist Robyn Phillips, who chaired the Senate commission, indicates that if a revenue-neutral scheme were pursued, the state's average property tax rate for all properties could drop from 1% of acquisition value to 0.44% of current market value. Thus, while longtime homeowners would still pay more tax, the blow would be cushioned somewhat.

In its report to the Senate, the Phillips Commission made a broad list of recommendations on what to do if the assessment system is declared unconstitutional and the 1% cap remains. The recommendations include:

- Phasing in market-value assessments. Under Proposition 13, assessments may be raised only 2% per year. The commission recommended increasing that limit by another 2% each year, so that the increase would be 4% the second year, 6% the third year, and so on.
- Increasing the homeowners' property tax exemption from $7,000 per home to $50,000 per home.
- Lowering countywide tax rates to create revenue neutrality, then permitting an increase in local tax rates with a simple majority vote.
- Creating a "split roll" which imposes a higher tax rate on commercial and industrial property — though even the commercial/industrial rate still could not exceed 1%.
- Authorizing a state takeover of several programs that currently consume huge amounts of local property tax, including the court and jail system, health services, and welfare.
- Revamping the formula by which property tax revenue is allocated. This formula, created by AB 8 in 1978, has remained unchanged for 13 years. In particular, the commission criticized the AB 8 formula as being out of touch with recent changes in population and service demands.

In a series of minority reports, however, some members of the commission disagreed with some of the commission's suggestions. Five members, including Chamber of Commerce President Kirk West and Republican state Senator Marian Bergeson, opposed the split roll, saying it would hurt business. And Iola Williams, representing the League of California Cities, urged that the doctrine of "revenue neutrality" be flexible enough to accommodate demographic and fiscal changes from one community to another since Proposition 13 passed.

CALIFORNIA PLANNING & DEVELOPMENT REPORT

is published monthly by

Torf Fulton Associates
1275 Sunnycrest Avenue
Ventura, CA 93003-1212
805/642-7838

William Fulton, Editor & Publisher
Morris Newman, Senior Editor
Stephen Svete, Contributing Editor

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

We're Electronic
and you'll find us exclusively on
NEWS NET
For online access information call 800/345-1301

OURT CASES

New Appellate Ruling May Make Vested Rights Easier to Obtain

Relying on a recent California Supreme Court case involving condominium conversions, the Fourth District Court of Appeal in San Diego has apparently softened California's harsh test for determining a developer's vested rights.

Ever since the California Supreme Court's ruling in *Avco Community Developers Inc. v. South Coast Regional Commission*, 17 Cal.3d 785 (1976), legal experts have interpreted California case law to require a building permit — usually the last permit required before construction may begin — to obtain a vested right. (Avco also laid down the rule that developers must have made "substantial expenditures" in reliance of the building permit to make a claim to vested right.) This so-called "late vesting" rule has been a source of consternation to developers for 15 years and, among other things, provided the impetus for the state legislature to pass the development agreement law in 1981.

However, in *Consaul v. City of San Diego,* a three-judge panel of the Fourth District's Division One relied on *City of West Hollywood v. Beverly Towers Inc.*, 52 Cal.3d 1184 (1991), in ruling that a developer did not need a building permit in order to establish vested rights. Rather, the court said, Thomas Ahrens, a developer working with landowners Robert and Eva Consaul, had obtained vested rights when the city allocated him the right to build 26 apartment units under the city's Interim Development Ordinance, which restricts construction citywide to 8,000 residential units per year. Thus, the court ruled, the city could not downzone the property, as a community association requested. "The undisputed admissible and competent evidence before us is that Ahrens had obtained all discretionary approvals for their 26-unit condominium project at the time the city took its action to rezone their property," wrote Justice Gilbert Nares for a unanimous three-judge panel.

By applying the West Hollywood test in a more conventional land-use context, the appellate court appears to have made important new law. "This is the first case where the 'last discretionary approval test' comes to California," development attorney Gail Gordon said at a recent building industry conference.

The case began in 1986, when Ahrens first sought permission to build an apartment complex on the one-acre parcel of land in the Peninsula area of the city. Under the city zoning ordinance, Ahrens could have built 54 units. However, hillside zoning constraints reduced the development potential to 44 units, and after discussions with the city staff Ahrens proposed a 26-unit project. The Peninsula community planning organization expressed no objection (such neighborhood planning organizations have considerable political clout in San Diego), and in late 1988 Ahrens received an allocation of 18 units. But city staff members said they would not process any building permits until Ahrens received allocation for the other eight units, which he obtained in early 1989.

One month after Ahrens received the balance of his allocation, however, the newly elected chair of the local planning organization asked the city to consider rezoning the property for single-family homes. The planning group subsequently recommended a zone change, but Ahrens claims he knew nothing about the proposed zone change until he received notification of a public hearing before the city planning commission. The staff report did not mention Ahrens' allocations under the Interim Zoning Ordinance, and the planning commission approved the rezoning. When the inconsistency became apparent, the city council ordered Ahrens to meet with the Peninsula planning group. However, according to Ahrens' court documents, the Peninsula group considered the meeting to be a pro forma event and did not take another vote on the rezoning.

In court, Ahrens argued that "something other than a building permit may amount to sufficient government action to form the basis through which vesting may occur." The city countered by relying on *Russ Bldg. Partnership v. City and County of San Francisco*, 44 Cal.3d 839 (1988), a case in which the California Supreme Court ruled that a developer did not have a vested right protecting it against a later-enacted transit impact fee.

Superior Court Judge Thomas O. Lavoy bought the city's argument, but the appellate court did not. "*Russ* does not hold, as City contends, that the possession of building permits is the sole criteria for application of the vested rights doctrine," the court said. "The vested rights doctrine is not limited to the possession of building permits."

The appellate court used the recent *West Hollywood* ruling as the basis for its decision. In that case, the California Supreme Court ruled that condominium converters do not have to abide by subsequent changes in conversion laws if they already have obtained a final map under the Subdivision Map Act. In distinguishing *West Hollywood* from *Avco*, the Supreme Court stated that Beverly Towers had received all discretionary approvals, while Avco still needed Coastal Commission approval. (Avco brought the lawsuit because the Coastal Commission was created — and asserted jurisdiction over the Avco project — after the company had received all discretionary approvals from local governments but had not received building permits.)

After citing *West Hollywood* in the case from San Diego, the appellate court concluded that "the allocation was, in fact, an entitlement, a vested right to proceed with the project in compliance with the discretionary approvals received by Ahrens and upon which they reasonably relied to their detriment."

The full text of Consaul v. City of San Diego, No. D012162, appeared in the Daily Journal Daily Appellate Report on June 18, beginning on page 7039.

Neighbors May Proceed With Fraud Case Against Developer

In a revised opinion of an earlier ruling, the Court of Appeal has permitted a Dana Point homeowner to proceed with a fraud case against Southwest Diversified Inc., an Irvine-based developer.

A split panel of the Fourth District court in Orange County concluded that Southwest owed Clyde Lacher and his neighbors a "duty of care" in describing its proposed development project, and that state land-use laws do not preclude a fraud case.

The case involves Southwest's successful effort to obtain the support of Lacher and his Dana Point neighbors for a 25-acre residential development near their homes. Concerned about protecting their views, Lacher and his neighbors balked at the project at first. However, according to the lawsuit, the neighbors felt reassured after Southwest officials told them that the natural terrain would be retained and the homes would not be more than one story in height. The neighbors supported the project at a public hearing before the Orange County Planning Commission.

According to Darryl Paul, Lacher's lawyer and neighbor, Southwest's project looked quite different to the neighbors once construction began. He alleges that the home "pads" were elevated up to 18 feet and that the houses were more than 20 feet in height. He compared his neighbors to "little lambs" when it comes to dealing with developers.

Paul filed a suit for fraud and negligent misrepresentation, he says, because "there really was no land use case *Continued on page 8*

Real Estate Slowdown May Threaten Bond Repayments

Continued from page 1

which have been the subject of considerable controversy since the development slump began.

Under the Marks-Roos law, a single city can fund a "wish list" of future projects by issuing bonds through pools. This is attractive because it gives local governments more flexibility and an ability to lock in low fixed interest rates that make it easier to attract developers. Unlike Mello-Roos bonds, which are tied to specific projects, Marks-Roos pools allow a local government to draw down funds to loan out to developers.

The use of Marks-Roos bonds in Folsom is being investigation by the Sacramento County district attorney. Marks-Roos was the subject of a long expose in the San Francisco Examiner in May, which concluded that "greed ... pie-in-the-sky promises ... and investments in doomed or questionable projects threaten the economic future of at least eight Northern California communities." Some public finance experts have predicted that Mark-Roos bonds may prompt an investigation by the Internal Revenue Service. And concerns have been raised about cities that have used Marks-Roos bonds as a money-making tool — investing funds at a higher rate of interest than they are paying to their bond holders. Such profiteering is illegal, but many cities still find ways to get around the law.

The biggest concern, however, is that many small cities have overextended themselves by floating large Marks-Roos bonds. With the slowdown in development, real estate projects may fall through, leaving a city and its taxpayers liable for crushing amounts of debt.

Perhaps the most astounding Marks-Roos deal came in the fast-growing city of Lake Elsinore, a community of 20,000 people which last year approved the sale of $500 million in Marks-Roos bonds. Only $68 million of the funds have been used. With the real estate slowdown and water problems in that area (the city is within the previously mentioned Elsinore Valley Water District), some public finance officials are predicting there is no way the city can use all $500 million.

But Lake Elsinore is not alone. Avenal, a city of 5,000 people near Bakersfield, issued $11 million in Marks-Roos bonds to lock in a low interest rate for new projects based on high growth projections. But many of those projects, including a hospital, have since fallen through. Similarly, Waterford, a city of 4,700 people in Stanislaus County, sold a $12 million Marks-Roos bond last fall. Investment bankers involved in the deal say half the money has already been drawn down and the rest will be used. But some officials charge that it was too much debt for such a small city to issue — Waterford doesn't even have a stoplight — and predict not all the proceeds will be used within Marks-Roos's three-year time limit.

"The problem with the extreme Marks-Roos cases that we're talking about is that these bonds may never be paid off," said California PSA's Crose.

All three of these tax-exempt bond issues were underwritten by First California Capital Markets, a San Francisco-based underwriting firm that specializes in Marks-Roos deals. Michael Richardson, president of First California says that these alternative public financing tools are needed by financially strapped smaller cities because of the constraints imposed by Proposition 13.

"No one — not our state legislators, our urban leaders or other officials — has thus far shown the guts to address the real problem of why alternative financing has to be used," he said. "It is time to do something about Prop. 13 and create more viable methods for cities to raise the capital they need to handle growth," he said.

Investment Problems

But alternative financing is not the only area in the tax-exempt bond market causing officials to wring their hands. The investment of bond proceeds after the bonds are sold and before the funds are used in construction is another area a developer and city must be cautious about.

Recently, it was discovered that the Temecula Valley Unified School District invested $27.5 million of Mello-Roos bond proceeds in a guaranteed investment contract (GIC) with Executive Life, the now-collapsed insurance company. The school district has a $2.2 million bond payment on the issue due September 15. If it does not receive any money from the state insurance commissioner by then, the district can levy special taxes on the school project's developer, the San Diego-based Buie Corporation, according to attorneys for the district. The cities of Whittier and Simi Valley have also invested bond proceeds in Executive Life GICs.

The Temecula Valley situation may be the tip of the iceberg. "It is at least conceivable that as more insurance companies run into problems, you will see more municipal bonds having trouble," Misczynski said. "A certain amount of concern is in order. It's not pleasant to lose all your bond proceeds."

Contacts: Dean Misczynski, Senate consultant, (916) 445-1727.
Jack Crose, securities lobbyist, (916) 441-5818.
Phillip Feigin, Colorado securities commissioner, (303) 894-2320.

Debora Vrana

Debora Vrana is a Los Angeles-based senior editor of California Public Finance, *a weekly newsletter.*

RIEFS

Spaulding Leaves San Diego

San Diego City Planning Director Robert Spaulding has resigned after it was revealed that the city secretly made a $100,000 settlement with planning staffer who accused him of sexual harassment. His departure leaves the city debating whether his three-year tenure improved the Planning Department's performance or eroded it.

San Diego City Council members were angered to learn in May that top city officials had not informed them of the settlement with Susan Bray, a former associate planner with the city. Spaulding quickly offered his resignation and the council accepted it. Former City Manager John Lockwood said he shielded the settlement from public view — it was carefully structured so as not to require council approval — in hopes of protecting Spaulding's wife and four children.

Bray acknowledges having a two-year affair with Spaulding, but says she did so partly because she feared she would be fired otherwise.

Roundup

Restaurateur Michael McCarty files a multimillion-dollar claim against the City of Santa Monica, where voters nixed his hotel project....The **Contra Costa County Grand Jury** hammers the county's redevelopment agencies hard for their high debt load and several questionable projects....The **L.A. Ethics Commission** is investigating the actions of former city planner Gary Morris, who represented a private developer before the city planning commission less than a year after he left the city....The state Commerce Department's **Main Street economic development program** will add five new demonstration cities, bringing the total to 19....**Preservationists in Redlands** fight to save seven old homes in the downtown area, which Sacred Heart Church wants to demolish for a parking lot....The Coastal Commission approves a massive **Navy/developer project** in downtown San Diego.

COURT CASES

Appellate Court Affirms Judge's Ruling to Drop Measure From Ballot

A trial judge in San Mateo County was correct in removing a referendum from the ballot in Brisbane, the First District Court of Appeal has ruled.

The appellate court concluded that the referendum, which had been scheduled for April 1990, involved a zoning matter that was administrative, rather than legislative, because it was implementing a "habitat conservation plan" under the federal Endangered Species Act. Under California case law, most rezonings are considered legislative acts and therefore subject to referendum.

The case stems from a plan to preserve part of San Bruno Mountain in order to save the endangered Mission Blue butterfly, which lives on the mountain. The plan, which was negotiated among local, state, and federal agencies and private development interests, calls for preservation of most of the mountain while permitting a limited amount of development. In addition, developers agreed to pay for maintenance of the preserve, which has seen an invasion of gorse, a shrub. The San Bruno Mountain plan was the first habitat conservation plan ever drawn up under the Endangered Species Act, and provided the model for 1982 amendments to the law. (See *CP&DR Special Report: Federal Environmental Laws*, June 1990.)

After the HCP was agreed upon, the City of Brisbane and the Southwest Diversified Inc., which was developing that portion of the property located within Brisbane, agreed on changes to the development plan for part of the San Bruno Mountain area. In particular, the revised plan cut the number of residences in half, included single-family homes as well as condominiums, and changed the zoning boundaries of the open space and "planned development" districts. According to Southwest's lawyers, the revised boundaries improve the project's environmental sensitivity by providing larger chunks of land free of development.

Nevertheless, a citizen group known as Bay Area Mountain Watch gathered enough signatures to place the zone change on the ballot as a referendum. Southwest then sued the city, asking that the referendum be removed from the ballot.

In early 1990, Superior Court Judge Thomas Jenkins did, in fact, take the referendum off the local ballot — an unusual move, since the California judiciary is typically deferential to ballot measures and will usually entertain legal challenges only after an election has been held. (*CP&DR*, April 1990.) And in May, the Court of Appeal affirmed Jenkins' decision.

In so doing, the court relied heavily on another case from the San Bruno Mountain controversy, *W.W. Dean & Associates v. City of South San Francisco*, 190 Cal.App.3d 1368 (1987). In that case, the appellate court ruled that a local action occasioned by a change in the federal habitat plan was an administrative action, not a legislative act.

In the *Brisbane* case, the appellate court applied the same reasoning to the proposed referendum. The *Dean* case, the court said, "differs from the present case in certain significant respects ... but it supports the view that the amendment of a development plan pursuant to ... the HCP Agreement may be regarded as merely carrying out a previously adopted legislative policy."

However, the appellate panel warned that the *Brisbane* opinion should not be used to undermine the state's well-established case law — stemming from *Arnel Development Co. v. City of Costa Mesa*, 28 Cal.3d 511 (1980) — that most zone changes are legislative acts subject to referendum. "By constructing the revision of a zoning boundary pursuant to a previously adopted procedure as an administrative action, we cast no doubt on the classification of zoning actions generally as legislative in nature," the court wrote.

The appellate court also affirmed Judge Jenkins' decision to remove the referendum from the ballot prior to the election. Relying on a series of California Supreme Court cases from the early 1980s, the court wrote: "There can no longer be any doubt that the courts may remove a referendum from the ballot on the grounds that it does not concern a legislative matter."

The full text of Southwest Diversified Inc. v. City of Brisbane appeared in the Daily Journal Daily Appellate Report on May 13, beginning on page 5472.

Bankrupt Partnership Won't Get Extension of Development Permit

A bankrupt real estate partnership is not entitled to an extension of its development permit for a subdivision in the Santa Monica Mountains, the Ninth U.S. Circuit Court of Appeals has ruled.

Eastport Associates claimed that Los Angeles County's refusal to sell the firm land for an access road — a condition of approval under Eastport's permit with the City of L.A. — constituted a "development moratorium," entitling Eastport to more time. But a three-judge panel of the Ninth Circuit rejected Eastport's contention.

In 1981, the City of Los Angeles approved Eastport's tentative subdivision map for a 500-unit residential subdivision. When the tentative map expired in 1984, the city renewed it for three years.

Part of the reason that Eastport was unable to build the project was the fact that it could not obtain land for an access road from Los Angeles County — a condition of approval for a 500-unit project. (Eastport could have constructed a 300-unit project without the access road.) The county refused all offers from Eastport, including an offer to purchase the land for nine times fair market value.

Just prior to the extension's expiration in 1987, however, Eastport filed for Chapter 11 bankruptcy. A few months later, Eastport filed a declaratory relief action, asking the U.S. Bankruptcy Court to rule that it was entitled to another extension. In 1988 Eastport even lobbied the state legislature for an amendment to Government Code §66452.6, apparently making it more applicable to Eastport's situation.

However, the Ninth Circuit showed little sympathy for Eastport, ruling that §66452.6 does not apply to the case even as it was amended in 1988. "The County's action in itself did not prevent Eastport from filing a final map," wrote Judge Pamela Ann Rymer for the court. "When Eastport was unable to get the County to convey the property, it still could have submitted a map for 300 units. Eastport argues that the 300-unit development was not economically feasible, but in that case it was economics, not the County, that prevented Eastport from getting a final map approved."

Eastport also argued that a development moratorium was in place because the city refused to take the county's land by eminent domain in order to facilitate the project, but the Ninth Circuit rejected that argument, too. "Eastport's argument that condemnation was practically the only way to satisfy the condition (of acquiring the land) is not persuasive," the court wrote. "The mere fact that the County was obstinate does not transform the condition into one requiring action by the City."

The full text of In re: Eastport Associates appeared in the Daily Journal Daily Appellate Report on June 17, beginning on page 7018.

COURT CASES

Higher School Fees Appear Likely in Wake of *Murrieta Valley* Ruling

The Court of Appeal's recent ruling in the Murrieta Valley case (*CP&DR*, May 1991) is rapidly changing the attitude of school districts and local governments toward the role of developers in providing school construction funds. But the Supreme Court has declined to take the case and some confusion on the school facilities issue is likely to remain.

The *Murrieta Valley* court ruled that cities and counties are not prohibited by the 1986 School Facilities Act from dealing with school overcrowding issues as a condition of approval. Already, school districts are interpreting the ruling as meaning that they are no longer bound by the $1.58-per-square-foot limitation on residential impact fees contained in the 1986 law. As a result of the Murrieta Valley ruling, the Riverside County Planning Commission is now drawing up a proposal that would require developers to pay higher fees as a condition of approval. "We are in the formation stage at this time," said Planning Commissioner Robert Wolf. Wolf said the county may have a tough time coming up with a consistent fee that would be accepted by the 30-odd school districts in the county.

At the same time, the Sacramento City Unified School District voted to create a Mello-Roos district that would impose a levy of $3.46 per square foot — in addition to the $1.58 impact fee — on 7,000 houses in a newly developing neighborhood.

Meanwhile, the Fourth District Court of Appeal in San Bernardino has issued a series of unpublished opinions, ruling in favor of the Murrieta Valley school district against individual homebuilders whose projects were approved by Riverside County. In several cases, the homebuilders have reached out-of-court settlements with the school district by agreeing to pay a school facilities fee of about $3.80 per square foot — more than twice the $1.58 limit contained in the state School Facilities Law.

At a recent building industry conference, homebuilder Jack Schine said he has recently spent more time with lenders on school fees than any other issue, including marketing. "The first thing they said to us was, Don't tell me you're going to pay $1.58 for school fees. We know better."

However, if there is confusion among local governments and developers about the scope of the *Murrieta* ruling, it is likely to continue. The California Supreme Court has declined to review either the *Murrieta Valley* decision or a similar case, *William S. Hart Union High School District v. Regional Planning Commission*, 226 Cal.App.3d 1612 (1991). However, a petition for review in the case of Lincoln Property Co. v. Cucamonga School District is still pending before the Supreme Court. The Lincoln case is important because the appeals court upheld a school district's power, under a state constitutional provision, to levy fees independent of the 1986 School Facilities Act. (*CP&DR*, June 1991.)

At the same time, school lobbyists are attempting to codify the Mira and Hart decisions with AB 1846, carried by Assemblyman Mike Gotch, D-San Diego. The bill says that local governments may deal with school facilities in their planning documents, and also says that the School Facilities Act shall not be construed to prohibit a city or county — as opposed to a school district — from considering the adequacy of school facilities in making land-use decisions. The bill is opposed by the building industry.

The 1986 School Finance Act was designed to provide a state-local solution to the growing problem of school construction finance. The package authorized — and apparently limited — impact fees to be levied by school districts (originally $1.50 per square foot for residential projects and 25 cents per square foot for all others) to raise local funds for all school construction. At the same time, the state was to provide the balance of the construction money from statewide school bond issues. However, school population has grown much faster than expected and the state has been unable to provide its share of construction funds, even though voters have approved several bond issues statewide.

In *Murrieta Valley Unified School District v. County of Riverside*, the school district alleged that the county had wrongly failed to address the school overcrowding issue in both its general plan documents and in an accompanying environmental impact report for a 210,000-acre district in the southwestern part of the county. The Fourth District Court of Appeal ruled that the state school finance law (Government Code section 65995) does not prevent local governments from dealing with school capacity issues — and proposed mitigation measures — either in the plan or in the EIR, which was required under the California Environmental Quality Act. Furthermore, the court faulted the county for not dealing with school capacity issues because the general plan's own goals call for school development, as well as cooperation between the county and school districts.

Judge Calls for New Trial in $11.5-Million Judgment for Developer

Calling the jury's $11.5 million damages award "grossly excessive," a San Bernardino judge has ordered a new trial in a developer's case against the City of San Bernardino.

However, both sides plan to appeal the decision — the developer because of the judge's ruling, and the city because the judge chose to order a retrial on damages only, rather than on all issues.

The jury award came in April, when jurors agreed with Stubblefield Construction Co.'s argument that a series of delays on an apartment project in San Bernardino constituted a violation of Stubblefield's civil rights under Section 1983 of the federal Civil Rights Act. It was believed to be the largest verdict of its kind ever issued in California. (*CP&DR*, June 1991.) However, Superior Court Judge Don A. Turner ruled on June 10 that a new trial should take place on the damages issue.

In his order, Turner claimed that the jury had confused damages suffered as a result of the delaying taeties (in 1986) with damages that may have been suffered later when the city's general plan revision (passed in 1989) reduced the allowable number of units on Stubblefield's property from 630 to four. "Much was made by plaintiff's experts and plaintiff's attorney of the claim that the Revised General Plan, which was adopted after the conduct of the City Council complained of in this trial, makes plaintiff's property economically useless," Turner said in his written ruling. "Yet the evidence was uncontradicted that the rezoning complained of, before the Revised General Plan, left plaintiff with the right to build its apartments."

Commenting on Turner's ruling, Darlene Phillips, Stubblefield's lawyer, said she had deliberately tied the consequences of the revised general plan to the delaying tactics. "That's the point of the case," she said. "From Day 1 what we alleged was that the abuse of administrative process was designed to delay the project until the general plan was revised." She said the issue of the general plan revision and the delaying tactics had been combined and separated several times during the course of the litigation.

Turner denied the city's request to issue a judgment notwithstanding the verdict, a legal tactic which would have permitted him to overturn the jury's ruling entirely. He said sufficient evidence was presented to support the jury's verdict, though he acknowledged that a different jury might have come to the opposite conclusion.

Base Closures Provide Opportunity for Large-Scale Planning

Continued from page 8

the next century. Norton and Castle are both priority Superfund sites; in the case of Castle, TCBs used to clean aircraft in the 1940s have invaded local aquifers. The Air Force says it the 5,300-acre can be remediated for $100 million and could be done by 2002; EPA says the costs will run from $200-$400 million and will go to 2017. Out of the 28,000 acres at Ft. Ord, 8,500 are believed contaminated, and may cost up to $350 million to remediate and can take 10 to 15 years. The Pentagon receives a portion of federal Superfund money, but it is not likely to cover the entire cost of the cleanup.

Despite pollution, the base closure has been greeted happily in some cities. San Francisco Mayor Art Agnos expressed excitement over the possible closure of Treasure Island, a 400-acre naval base in the shadow of the Bay Bridge, where the city conceivably could build 11,000 housing units of the 26,500 it needs to build. San Francisco Redevelopment Agency director Ed Helfeld said the island might be redeveloped along the lines of Roosevelt Island, the auto-free settlement off Manhattan. (Treasure Island survived the most recent round of cuts announced by the Base Closure Commission on July 1.) And although Long Beach is officially cool to the notion of closing the naval facilities in that port city, it may facilitate the proposed Port Disney tourist attraction. Disney officials say the closure might allow a game of musical chairs in land use, with the Ports of Los Angeles and Long Beach moving in to fill the former military land, freeing up 300 acres immediately adjacent to Disney land for the new attraction.

Possible Reuses

Because many of the targeted bases contain air fields, the base closures may provide a bonanza for both passenger and freight activity. Commercial air carriers may also seize upon the bases as affordable service areas and plane depots, since rents are likely to be far lower than those in major airports. Mather, Norton, George, and Moffett are among bases viewed as potential commercial air fields.

In the case of Moffett Field in Santa Clara County, however, local government is fighting against privatization, on behalf of the private sector. A study by the cities of Sunnyvale and Mountain View, both of which border the base, says a federal presence is crucial for the research-and-technology industry of Silicon Valley, which relies on a federally controlled airfield to keep air space clear for test fights. Many companies already have plants on the base. The two cities suggest that NASA Ames Research Center, an immediate neighbor, could expand into part of the base.

Another strong re-use possibility is 1,555-acre Tustin Marine Corps Air Station in central Orange County. Located near densely developed Santa Ana, the land could be worth $500,000 an acre, although observers says the development potential may be limited by the presence of two 20-story blimp hangars from World War II which have been designated as national landmarks.

Other cities, particularly in not-in-my-ecosystem Northern California, seem poised to minimize growth. In Monterey County, Supervisor Sam Karas says that Ft. Ord's 10,000 buildable acres can expect only "extremely conservative development." He says many residents favor a four-year university, which would take control of 3,500 existing residential units on site. The county has convened a task force of 12 mayors and assorted military personnel, which is studying land use, educational uses, housing, environmental issues and infrastructure needs. "The idea is we are asking communities to get involves with all these different committees and see what kind of plan we can create, in case the base closes," Karas said.

And The Presidio in San Francisco is to become part of the Golden Gate Recreation Area when the military lets it go, according to an existing agreement. Rep. Nancy Pelosi, D-San Francisco, has said she wants to preserve open-space uses, and also advocates homeless housing, an arts center or a campus expansion for UC San Francisco. Preservationists are concerned about the Presidio's many historic buildings, which are poorly maintained.

Previous Rounds

As communities surrounding the newly targeted bases fight for survival or dream of open space, several localities surrounding bases previously marked for closure have delved deeply into redevelopment planning — with mixed results.

Local officials in the Bay Area may be wise to keep in mind the experience of Hamilton Field in Novato. After closing in 1979, the Air Force conveyed the base to the City of Novato in Marin County, which selected Berg Revoir of Tiburon as the land developer for a 355-acre site. After five years of negotiation, the city and developer arrived upon a development agreement, which was scuttled. A second developer, the Martin Group of Emeryville, is currently preparing a new plan entailing 1400 residential units and 1.4 million square feet of commercial and retail uses — roughly the size of the Berg Revoir proposal. Developer Toby Taylor of The Martin Group says the project has been "well received" in community meetings.

Elsewhere, the size of the bases and the economic role they play has brought local governments together to handle the simultaneous challenge of closure and re-development.

In Sacramento, county officials have been debating five different plans for redevelopment of Mather Air Force Base, which lies only 12 miles east of the state capitol. Though the base itself is 5,800 acres, the Sacramento Area Commission on Mather Conversion is planning for a 14,000-acre area including the base and surrounding land. One plan would call for the creation of a new commercial airport, while the other four plans would stress commercial, industrial, residential, and open-space uses, respectively. The plans will be presented to the county Board of Supervisors in September.

In San Bernardino County, local governments have created two joint-power authorities under SB 419, a law specially created to help the county coordinate the re-use of Norton and George, which both received orders to close in 1988.

Norton, which is slated for final closure in 1994, is expected to be conveyed to the Inland Valley Development Association, which includes the county and the cities of San Bernardino, Colton and Loma Linda. IVDA hopes to convert the 2,000-acre base into an airport served both general-aviation and commercial users that would serve as the centerpiece of an aerospace-oriented industrial complex.

Lockheed has already committed to a commercial airliner repair-and-retrofit operation on the site, while the joint-powers authority is negotiating with other aerospace assemblers. At the same time, IVDA has selected a little-known developer, Iddo Benzeevi of Los Angeles, as the master developer for the entire base. Benzeevi's best-known project was a failed attempt to create a free-trade zone in Riverside, and his plan for Norton resembles his earlier scheme: a free-trade zone with 10,000-foot-long airline runway and a large-scale intermodal cargo hub connecting rail, trucks and planes. Benzeevi first teamed up with Watt Enterprises of Santa Monica; Watt left for undisclosed reasons in February, and was replaced by two San Fernando Valley developers, Anden Group and Lamco.

The 5,300-acre George base is to be conveyed to the Victor Valley Development Authority, comprised of the county, with the cities of Victorville and Hesperia and the Town of Apple Valley. Dave Wilcox, senior vice president of Economic Research Associates of Los Angeles, which is conducting market feasibility for VVDA, says an airport will be part of the final plan, but top priority will be on the creation of jobs. Conspicuously absent from the VVDA is the City of Adelanto, which is promoting its own plan for George.

Morris Newman

Base Closures Provide Opportunity for Large-Scale Planning

Continued from page 1

In particular, the closure of George Air Force Base and Norton Air Force Base in San Bernardino County, Mather Air Force Base in Sacramento, and the Presidio in San Francisco have already occasioned broad-based community debates about the future of the land involved.

Not surprisingly, some local governments, including Long Beach and the cities adjoining Castle Air Force Base in Merced, are taking a hard line on base closures and refusing to discuss base re-use, at least publicly. Within 48 hours of the announcement, the military and local government created the "Castle Air Force Base Task Force 2000" to halt the closure. "One hundred percent of our effort has been to save Castle. We did not want to give out any feelers to the government that we were even interested in re-use at this point," says John Fowler, a retired base commander and military advisor to Castle Air Force Task Force 2000. At the same time, a similarly constituted committee, as yet unnamed, is quietly studying Castle's future either as base or for re-use.

Toxic contamination is possibly the single largest barrier to redevelopment of the former bases. Because the actual extent of contamination has yet to be determined, the full potential of development on former bases remains an unanswered question. While the government is committed to cleaning up the residue of decades of dumping, metal working and bombing, the work is many cases is likely to drag into the first two decades of *Continued on page 9*

COURT CASES

Appeals Court Upholds Hollywood Redevelopment Plan

An appellate court in Los Angeles has affirmed the validity of the Hollywood redevelopment plan, as well as a trial judge's ruling that fraud was not involved in its passage.

The appellate court rejected a wide-ranging appeal from the citizens group Save Hollywood Our Town, which sought a total reversal of the trial court's ruling against SHOT as well as a new trial. "The trial court had sat through this case for six months," said Bruce Tepper, a lawyer representing the victorious Los Angeles Community Redevelopment Agency. "The appellate court said, essentially, that anything that could come out did come out at the trial."

With a projected budget of almost $1 billion over 30 years, the 1,100-acre Hollywood redevelopment projects is one of the largest redevelopment efforts ever undertaken in California. But at a lengthy trial in 1988, SHOT made a variety of claims, saying, among other things, that the area was not "blighted" as required by law, that the Project Area Committee was not legally formed, and that the CRA engaged in fraud in operating the Project Area Committee. After taking three months to review the 10,000-page record of the trial, L.A. Superior Court Judge Barnet Cooperman concluded that SHOT had "produced no credible evidence." (*CP&DR*, August 1988, February 1989.)

The appellate court affirmed Cooperman on virtually all issues. In upholding the blight finding, the court relied heavily on a legal challenge to the Bunker Hill redevelopment project in the '60s, *In re Development Plan for Bunker Hill*, 61 Cal.2d 21 (1964), and concluded that judicial review of a blight finding is limited to arbitrariness, capriciousness, and lack of evidentiary support. The court also found "no credible evidence that the PAC was unduly influenced or dominated by any group or agency in either its formation or functioning," and, on the fraud charge, called Cooperman's finding that no fraud occurred "conclusive."

SHOT's lawyer, Dale Gronemeier of Pasadena, told reporters that he would probably try to appeal the case to the state Supreme Court, though he acknowledged that chances for success are slim. The case has taken a tremendous toll on Gronemeier's law firm. The firm has had to forgive SHOT two-thirds of the $600,000 cost of the case so far and it is questionable whether the firm will ever collect the remaining $200,000 in full. Christopher Sutton, who tried the case on behalf of SHOT, has left the Gronemeier firm and is now a sole practitioner in Pasadena.

Despite the legal victory, the Hollywood redevelopment effort is still under political attack, largely because of the CRA's decision to subsidize a key development project near the Chinese Theater. CRA may give as much as $48 million toward the Hollywood Promenade Project, which would include office space, a shopping mall, and entertainment attractions. The developer is Melvin Simon & Associates, the nation's largest retail developer. In June, L.A. Councilman Zev Yaroslavsky, acting chairman of a CRA oversight committee, attacked the proposed subsidy, saying that the money could be used for housing instead. (For more information on the Hollywood redevelopment effort, see *CP&DR Deals*, November 1990.)

The full text of Morgan v. CRA appeared in the Daily Journal Daily Appellate Report on June 18, beginning on page 7088.

Contacts: Bruce Tepper, CRA lawyer, (213) 617-0480.
Dale Gronemeier, SHOT lawyer, (818) 568-4600.
Christopher Sutton, ex-SHOT lawyer, (818) 405-9852.

Neighbors May Proceed With Fraud Case Against Developer

Continued from page 5

available; the statute of limitations had expired." Southwest argued that the neighbors should have filed a land-use case.

But in a bitterly split division, the appellate court rejected the argument. The alleged problem, the appellate court said, was not with the county's land-use approvals, but with representations made directly to the neighbors.

In a scathing dissent, Justice Edward J. Wallin criticized the majority for creating "a new tort which might be called 'developer fraud.'" He went on: "I believe, however, that this tort does not exist in California....In my view, the only remedies available to petitioners are those under the applicable land use statutes." He said Southwest can't be held accountable for statements made in the midst of a political process and called the fraud charge "tantamount to a back door challenge to the approvals previously obtained."

In a footnote added after a rehearing, Justice Henry T. Moore, writing for the majority, called Wallin's that a developer cannot commit fraud "ludicrous and laughable."

The full text of Lacher v. Superior Court, No. G009348, appeared in the Daily Appellate Report on June 4, beginning on page 6361.

Can Nation's 'Most Entrepreneurial City' Make a Downtown Hotel Work?

Entrepreneurs are risk-takers, so when cities try to become entrepreneurial they have to take risks too. Visalia took a big risk in the 1970s, when the city bought the town's baseball club after its major-league owner decided to drop the farm team. Visalia managed the club successfully for six years and later sold the franchise to a new private owner.

Now the Tulare County city of 67,000, which prides itself on business acumen — and was once described by INC. magazine as "the most entrepreneurial city in America" — has taken what may be its greatest risk ever by spending about $19 million to buy a floundering hotel. While the city controls some of the factors that might influence the outcome, it may be fair to wonder whether Visalia, despite its "can-do" attitude, isn't getting in a little over its head.

In its eagerness to complete a hotel and convention complex, Visalia has made some decisions of debatable wisdom, of which the purchase of the 201-room Radisson Hotel is only the most recent. The developer selected by the city was so weak financially that he borrowed money from his architect; later he was unable to make his payments. The hotel has been a weak performer, and a convention center expansion that could jump-start the hotel is behind schedule.

While Visalia can be faulted for building a hotel on a house of cards, the reasons why it did so are easy to understand. Visalia perceives the hotel as the keystone for the city's expanding convention center and an economic buttress of an aging downtown. "The hotel is essential in maintaining the image of a city with a great downtown area. You have no alternative unless you want the city to go into a deteriorated state," says City Manager Don Duckworth. Even in its current condition, the hotel generates about $20 million of business annually in the downtown area, and the amount is expected to increase on completion of the convention center.

The hotel has been one of the city's most persistent projects since the historic Johnson Hotel burned in 1968. With the intent of replacing the Johnson, Visalia bought the site of hotel site, then sold it in the 1970s and acquired the site of the present Radisson in the early 1980s. After two earlier developers fell out, the city chose to lease the hotel site to Pacific Development Group of Pleasanton. "The major players were not interested in Visalia, so the decision was to go with a smaller guy who would try harder, theoretically," says Visalia's Duckworth.

A Rashomon-like dissimilarity can be found between the city's and the developer's accounts of the ensuing events. According to William Courtney, president of Pacific Development, the city is ultimately to blame for the poor performance of the hotel, which opened last year. Projections of hotel occupancy, he says, relied upon the expansion of the 60,000-square-foot convention center into a 100,000-square-foot facility that could double as a sports and entertainment venue. Originally scheduled to open last year, the convention center is not expected to be complete until this fall. The delay of the convention center, which is a city project, "knocked out the hotel's ability to pay all of its services and costs," he said.

Although Courtney would not release information on occupancy, he said the hotel was still shy of the low-70-percent range that would qualify it as a "seasoned" property. The developer drew an analogy between his troubles and those of the Omni Hotel in downtown San Diego, which went into Chapter 11 several years ago, because of delayed construction on the San Diego Convention Center. The convention center is now open, and the Omni has emerged from bankruptcy. "Most people in real estate are coming from an attitude of location, location, location," Courtney said. "But what it really is, is timing, timing, timing."

Visalia's Duckworth sees events very differently. Although the developer claims to have done commercial projects in 13 California cities, his financial condition was "incredibly weak," recalls the city manager. This past spring, Duckworth received a verbal reprimand for financial dealings with Fresno architect Warren Thompson, who was the designer of both Courtney's hotel and the city's convention center. Specifically, the city council reprimanded Duckworth for advancing $185,000 to the architect in August 1988 for work on the convention center design, instead of the $80,000 approved by the council. (The council said Duckworth's action was "inappropriate" but not illegal.) What is interesting, however, is that the architect had requested the $185,000 from the city immediately after writing a check for the same amount to the developer, who used the loan to help obtain financing for the hotel. The architect repaid the city for the extra $105,000 five days later. Duckworth says he was aware at the time of the financial relationship between the architect and the developer, but had regarded the advance fee to the architect as unrelated to the architect's loan to the developer. He acknowledges, however, that the parallel transactions created "a problem of perceptions."

Again, the developer takes issue with the city's version of events. Courtney says the city itself delayed construction on the convention center by hiring a second architect in 1989 to oversee construction. The new architect specified some cheaper materials, necessitating new drawings and delays, according to Courtney.

But Duckworth says the developer was responsible for delaying both the hotel and the convention center by vacillating between different designs. "We had progressed to the point where the convention center drawings were nearly complete when he said he had to change his overall plan," he said. "We had to pull people off work, because he was unable to move ahead." And when the hotel finally reached completion last year, the developer was unable to service the debt.

When the insolvency of the developer became apparent, the city chose to take over the project rather than go through a costly and time-consuming foreclosure. Duckworth says the city's hotel ownership is a "temporary" measure. "We would prefer not to be in the hotel business. We would have preferred that the private sector had brought the project to fruition and not relied on the city to bail it out," he said.

In April of this year, the developer and the city came to terms. According to the developer, the $19 million price tag on the hotel included $12 million in assumption of debt, another $2.9 million of convertible debt, and $2.8 million to reimburse the developer and pay off remaining expenses. Courtney would not confirm press reports that he made only $200,000 on the deal.

The shakiness of the hotel deal seems at odds with Visalia's reputation for business smarts. Past and present managers have helped the city save money and even make money, by encouraging employee bonuses, creating "worker democracy" in some city shops, leasing police cars to officers themselves, and other clever management techniques that improved both morale and efficiency. "Be a catalyst. Be a broker. Don't be a doer," the former city manager told INC. magazine in 1985.

In contrast to that hands-off managerial policy, however, Visalia's Duckworth said the city must sometimes have a hand-on attitude "if we are going to have baseball teams or downtown hotels." In small towns without a large private sector, "the city is responsible for the outcome," he says. The difference between a baseball team and a hotel, of course, is that the ball club has a proven market and the hotel does not. To run a successful convention center and hotel in a small San Joaquin Valley city will be a tall order — even for the most entrepreneurial town in America.

Morris Newman