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Inside

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Researchers Call For CEQA Reform

More Predictability Needed, Says UC Berkeley Team

The California Environmental Quality Act should permit wide-ranging discussion of environmental issues at the planning stage but provide tightly focused analysis at the project level, according to a new report from a team of researchers at the University of California, Berkeley.

"Fixing CEQA," a report published by the California Policy Seminar, is the latest in a long series of documents suggesting how CEQA might be reformed. It comes on the heels of a recent policy report by the Little Hoover Commission, which also proposed some changes to CEQA. But the Berkeley report also contains a great deal of data on how CEQA is used by planning practitioners in California.

Underlying both reports is the ongoing question of what the relationship should be between CEQA and the planning process. Comparing CEQA to the National Environmental Policy Act and 17 other "mini-NEPAs" around the country, the research team concluded that CEQA is much more widely used at the project level than its counterparts — a fact that often makes it the "driver" on many planning issues. Only the mini-NEPAs in Washington and New York are used in so wide a range of situations, but development activity in those states is a fraction of what it is in California.

Like the Little Hoover Commission report, the Berkeley team recommends greater involvement of state and regional agencies in the CEQA process and incentives to provide greater certainty all along the line. "The fundamental problem with CEQA," the researchers report, "is that it fails to encourage fairness and consistency in the review process or in the required impact mitigations." This problem is reflected in what Berkeley planning professor John Landis, the lead researcher, calls "the 90%/10% problem." "For 90% of the projects which are not controversial, CEQA works fine," he said. "For the other 10%, it falls apart."

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Adelanto Pays Price For Base, Water Fights

City Must Restructure Bonds To Pay Legal Cost

By Morris Newman

The City of Adelanto in San Bernardino County finds itself isolated and on the brink of municipal bankruptcy, partly as a result of longstanding fights with its Victor Valley neighbors over control of a closed military base and the regional water supply.

The city is running a $4 million deficit and, until recently, appeared in danger of defaulting on its bond payments. Adelanto is also facing a $5 million settlement on a lawsuit with San Bernardino County, and must borrow money from the county to make its debt payments on redevelopment bonds. The financial problems have also forced Adelanto to abide by a region-wide water allocation that the city initially resisted.

The story of this High Desert city is a worst-case example of what happens when one city decides to resist regional cooperation. It is also an extreme example of the trend in California for jurisdictions to conduct business with each other through the courts, and the consequences of doing so. While most of the blame seems to lie squarely with the city's elected leadership, recent news reports suggest that San Bernardino County, the City of Victorville, and the Mojave Water District each played a role in chastening the maverick city.

Currently, Adelanto is desperately trying to avoid defaulting on its bonds. In October, the city's bond underwriter, Tony Wetherbee, disclosed at a council hearing that the city was running a $4 million deficit after having spent more than $9 million in lawsuits against neighboring jurisdictions. As of December, the redevelopment agency was $760,000 short of a $2.4 million payment on a bond issue of $46 million.

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Local Watch
William Fulton

Sacramento Finally Gets Out of Hyatt Hotel Deal

The City of Sacramento has finally cut all ties to the Hyatt Regency Hotel, a 15-story luxury hotel across the street from the State Capitol that the Sacramento Housing and Redevelopment Agency helped subsidize. The deal releases the redevelopment agency from its obligations without laying out any cash.

In December, the city agreed to surrender title to the land under the hotel and the adjacent parking garage (of which the redevelopment agency owned 48%) to Mutual Life Insurance Co. of New York, the hotel's current owner. In exchange, the redevelopment agency has been released from its obligation to provide a $1.5 million annual subsidy to the hotel's owners for the next 68 years.

The Hyatt opened in 1988 as part of a public-private partnership between the redevelopment agency and several prominent private developers in Sacramento including Joe Benvenuti and Gregg Lukenbill. It was designed as a centerpiece project for downtown Sacramento. The Hyatt is the most luxurious hotel in downtown Sacramento by far, and its meeting room facilities are located close to the downtown convention center. The city invested $13 million in the project and agreed to the annual subsidy for 75 years, retaining ownership in the land and part ownership in the parking garage.

But Benvenuti and Lukenbill ran into financial trouble when the real estate market went sour in the early '90s, and MONY — the primary lender on the project — assumed ownership in 1992. Ever since, MONY and the city have sought to reach an agreement that would take the city out of the project altogether.

In 1991, on the eve of MONY's foreclosure, the city offered $11 million in order to be released from its obligations but MONY rejected the offer. Earlier this year, one consultant suggested that the city offer MONY $7.7 million and the hotel land. But Mayor Joe Serna and some other members of the City Council were reluctant to agree to a deal that called for the redevelopment agency to turn cash over to MONY.

Under the deal as agreed, the redevelopment agency will not be required to provide any cash to MONY. In fact, MONY will actually pay the redevelopment agency $196,000 for a small parcel of land at the southwest corner of the hotel. And if MONY seeks to sell the property, the city could profit. Under the deal, the city will receive 25% of any sales price over $62 million. MONY officials said they have not decided whether to sell the hotel.

Accord Reached on Vermont Avenue

Los Angeles's leading politicians have reached an agreement with First Interstate Bank to reduce the city subsidy on the controversial mixed-use project proposed for the corner of Vermont Avenue and 81st Street.

A city loan to buy the property was approved by the City Council in November but vetoed by Mayor Richard Riordan. (*CP&DR*, December 1995.) Subsequently, however, the council passed a unanimous override of Riordan's veto. In the ensuing weeks, Riordan, Councilman Mark Ridley-Thomas, and First Interstate agreed to a new financial agreement which calls for the bank to put more money into the project so the city's subsidy will drop from $90,000 per housing unit to $70,000 per housing unit.

Riordan opposed the project for two reasons: opposition from a nearby homeowners association and the high subsidy per unit. Riordan became interested in the project after neighboring homeowners — U.S. Rep. Maxine Waters among them — said they are opposed to any housing development along the commercially zoned Vermont Avenue corridor. He also questioned the $90,000 subsidy, which is close to double the typical subsidy in a city-assisted housing project.

Under the agreement with Riordan, the project still retains 35 moderate-income townhomes. Yet Riordan claimed victory for the neighborhood, saying that he, unlike other politicians, had listened to a group of residents who have traditionally been disenfranchised.

The Vermont proposal arose from a design/build competition for affordable housing sponsored by First Interstate after the 1992 riots. The project is to be built on a mostly vacant 1.7-acre site that served as the original location of Pepperdine University. As currently designed, the project will include 35 townhomes (selling for between $88,000 and $130,000 each), six small retail storefronts, and a satellite office of the USC Business Expansion Network, to be located in an historic art-deco building on the site. The project was strongly embraced by Councilman Mark Ridley-Thomas, who represents the area.

Malibu Passes General Plan

Facing a deadline from the Governor's Office of Planning & Research, the City of Malibu has finally approved a general plan that many council members claim is not restrictive enough even though outside critics call it too restrictive.

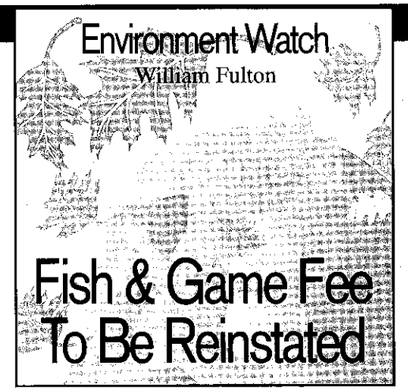
Approval of the general plan came more than four years after the city's incorporation. The city has been engaged in a highly political dispute with OPR last year over a time extension for approving the plan. OPR denied a time extension after claiming the plan does not provide affordable housing choices. Property owners are likely to challenge the city's general plan in court on housing element grounds.

The plan calls for one-acre lots (or lower density) on 95% of the undeveloped residential property in the city. A few residential properties will be permitted to build four to six units per acre. The plan also prohibits construction in areas previously designated by Los Angeles County as "environmental sensitive habitat areas" (about 9% of the city altogether) and discourages development of sidewalks, street lights, and other typical suburban infrastructure.

The plan calls for permitting the construction of one hotel near Pepperdine University, which city officials hope will produce enough revenue to keep the city solvent.

Property owners and state officials were not the plan's only critics. Officials in nearby Santa Monica also complained about the plan, which says Malibu's homeless will probably have to find shelter in Santa Monica. Mayor Paul Rosenstein told the *Los Angeles Times*: "There have been rumors for years that other cities have been sending their homeless people to Santa Monica. This is the first time I have seen a city admit it." ❑

Environment Watch
William Fulton



Fish & Game Fee To Be Reinstated

After a new legal challenge, a Sacramento judge has ordered the state Department of Fish & Game to resume collection of the Fish & Game environmental review fee. But the state has not yet begun collection of the fee and the judge has not yet decided whether to make collection retroactive.

However, Fish & Game may seek a legislative solution by asking the legislature to repeal the law that instituted the fee in the first place. Fish & Game General Counsel Craig Manson said the agency has spoken to some legislators and legislative staff members but no bill has been introduced yet.

The latest set of developments are the most bizarre yet in the controversial history of the fee. On the one hand, Sacramento Superior Court Judge Jeffrey Gunther has ordered Fish & Game to start collecting the fee once again even though he had previously ruled the fee unconstitutional. And on the other hand, Fish & Game has taken an official position against the fee, even though the agency benefits financially from it.

Last summer, Fish & Game agreed to stop collecting the fee as part of a legal settlement with several plaintiffs who challenged the fee as an illegal tax. (*CP&DR* Environmental Watch, July 1995.) The legal settlement came after Gunther had initially ruled against the fee. But the settlement was subsequently challenged by the California Association of Professional Scientists (CAPS), the union that represents most of the biologists who work for Fish & Game.

CAPS argued that a state department cannot stop enforcing a state law unless ordered to do so by an appellate court. Gunther agreed and ordered the state to begin collecting the fee again. However, in early January, the Fish & Game Department had not yet begun to collect the fee because Gunther had not issued a final written ruling.

The Fish & Game fees were instituted by a bill that passed the legislature in 1990. Local development applicants subject to the California Environmental Quality Act must pay $850 for Fish & Game to review environmental impact reports and $1,250 for the department to review negative declarations.

As Fish & Game's revenue from hunting and fishing licenses has declined, the fees have provided a new source of revenue, bringing the agency approximately $3 million per year, or about 2% of its total budget. The fees have always been controversial because no other state agency has statutory authority to collect such fees and because local governments were required to collect the fees for Fish & Game.

The fee was originally challenged in 1991 by Redding property owner Albert Mills. Mills claimed that the fee was not a fee for service and therefore constituted a tax. He further argued that as a tax, the fee was invalid because it did not pass the Legislature by a two-thirds vote. Mills later formed Californians for Fair Government Fees, representing 112 other applicants who had paid the fees. Mills's lawyer, Walter McNeill of Redding, filed a separate suit because of a Fish & Game fee he had paid personally.

Last March, Gunther ruled in favor of Mills, saying that the fees were really taxes because the state had never determined the actual cost of reviewing environmental documents before passing the law. Pessimistic about the chances of success on appeal, the agency agreed to a settlement which called for refunds to Mills, McNeill, and members of Mills's group, as well as a ban on further collection of the fees.

Craig Manson, Fish & Game's general counsel, said that collection of the fees would not begin until Gunther issued his written ruling. He also said Gunther's ruling would address the question of whether Fish & Game should collect fees retroactively from applicants who had not paid the fees because of the legal settlement.

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Orange County NCCP Released

A wildlife habitat plan calling for preservation of 39,000 acres of undeveloped property has been released in draft form by Orange County. About half the preserve will consist of coastal sage scrub, the habitat of the controversial California gnatcatcher. The Orange County Planning Commission is now in the process of reviewing the plan and the Board of Supervisors is expected to act on the plan in March.

The plan is part of the "Natural Communities Conservation Planning" program undertaken by local, state, and federal agencies in 1991 when the gnatcatcher was first proposed for listing under state and federal endangered species laws.

Called the Central/Coast NCCP/HCP (habitat conservation plan), the plan calls for preservation of almost 20% of all property in a 325-square-mile portion of Orange County that stretches from Cleveland National Forest south and west to the Pacific Ocean near San Juan Capistrano. Much of the land to be preserved is owned by The Irvine Co. The plan is designed to protect a total of 42 species, most of which are not currently listed under the state or federal endangered species laws. Part of the plan's purpose is to provide property owners with assurance that they will have met their legal obligations if any additional species are listed in the future.

The Central/Coast plan is the first of three "sub-regional" plans dealing with different areas of Orange County. An NCCP plan for south Orange County is expected to be released later this year, and a third NCCP for north Orange County is also in the works. Three NCCP plans are also under way in San Diego County. ❑

Base Watch
Morris Newman

Packard Bell Deal Looks Good — Butt Comes at a Price

One year after the conversion of the Sacramento Army Depot into a regional headquarters for Packard Bell, the deal is shaping up as one of the most successful conversions of a military base in California. Part of that success can be credited to extraordinarily high subsidies provided by the City of Sacramento. Also sharing the credit is a base-conversion method known as an "economic development conveyance," which allowed local authorities to acquire the base at no cost in return for sharing the profits of base reuse with the military.

To date, the conversion of the Army Depot has far surpassed initial expectations of both job creation and tax revenues. Packard Bell had projected employment for 1,000 jobs at the end of its first year; the company currently employs 5,000 people at the former depot, which is now an assembly plant for personal computers. In addition, the new plant has spurred the creation of an additional 2,500 to 3,000 jobs in the community at large. The payroll, initially projected at $60 million to $80 million, is currently about $200 million. The plant also generates about $1 million annually in local taxes. City officials claim that enterprise zone tax credits have encouraged a greater level of hiring and have taken several hundred local residents off the welfare rolls.

The Army Depot is the first closed military base to use the economic development conveyance. Without it, Sacramento and the Army might still be arguing about the value of the Depot, according to Bill Farley, the city's economic development manager. "When we first met Army officials, it was clear in a few hours that we would never be able to agree on the value of this real estate," he said. Army officials based their valuations of the Depot based on the money they had poured into the base over the years. City officials saw a group of outmoded buildings that had to be rehabbed and marketed in a depressed real estate market. Although he would not disclose the Army's asking price for the Depot, Farley acknowledged that "we were tens of millions of dollars apart. We could not even agree on how to approach the method of valuing the property." In contrast, "the economic development conveyance and the profit-sharing provisions really took that extremely contentious issue out of the equation," Farley said. Under the plan, the city can sell portions of the base to private businesses, and will eventually pass along $7 million to the Army in sales and/or lease proceeds.

Sacramento's initial reuse plan called for confining the Army to a single portion of the base, while finding new uses for the 2.5 million square feet of buildings on the site. The city planned to spend $19 million to clear out or refurbish old Army buildings ("These buildings were built to very high standards, and they cost a fortune to demolish," Farley said.) To market the Depot to private businesses, the city would subdivide the base into individual parcels of 40 to 80 acres apiece, and eventually to sell the parcels to private businesses for a total of $15 million.

Sacramento's great stroke of luck was the Northridge earthquake of January 1994, which dislodged Packard Bell from its plant in Northridge and sent the company looking for potential new sites in less seismically active areas. In July, Packard Bell officials asked Sacramento officials to identify possible locations. The strongest selling point for the depot was the inclusion of the Army Depot in a State Enterprise Zone program, which allows employers to take a tax credit of $6,000 for every disadvantaged worker hired, according to Debra Nyland, an assistant economic development director for the city. The credits enabled the company to save between $2 and $4 million annually, according to Nyland.

The agreement between the city and the computer maker was a 20-year lease for 2 million square feet of rehabbed space for $50 million. Annual lease payments began at $5 million and drop to $2.5 million after the fifth year. In the tenth year the company has an option to buy the property for $7 million, or extend the lease for 35 years at $1.25 million annually. For its part, the city provided a $17 million loan for tenant improvements, plus a $9 million loan as a moving allowance. The rents are higher in the first five years, so the city can recoup the moving loan, which "was fairly risky because it was unsecured," Farley explained. The tenant improvement loan is being amortized over 12 years of lease payments.

The city also indemnified Packard Bell against any costs relating to environmental issues. Although the military clearly has the responsibility for any environmental clean-up issues under CERCLA, the federal Superfund law, the company apparently wanted additional assurance.

(Separate from the deal, the city also paid $800,000 to relocate Vietnam Veterans of California, which was using the site under the McKinney Act. The city has also requested other public agencies, which have priority to take space in former military bases, to forego the depot.)

The Packard Bell lease negotiation was remarkable for its speed. The company and the city struck a deal in less than two months, and in September 1994 the deal was approved by state lawmakers in 18 days. Packard Bell took occupancy of the buildings in November, almost a month before it signed the lease in December.

The deal is all gravy to the Army, which spends nothing and actually saves $1 million annually in maintenance costs for the Packard Bell facility.

Farley describes the economic development conveyance as "a great tool" for local governments. Cities, he said, are "in the business of redeveloping properties through various programs the state has created. We never had a tool to accomplish the same tasks with military bases, so this really makes the city into a player in the redevelopment of the base."

Despite the national publicity on the success of the depot conversion, Farley was quick to add that the city's work is not done. "As you start to build new facilities, and add onto the existing infrastructure of the base, it leads to certain problems." One problem is a $1 million "catch up" fee that the Sacramento County regional sewer plant is attempting to charge the base. (When the Depot was a military base, it was exempted from sewer fees. Now that the depot is under local control, the sewage plant is attempting to bill the depot for all the fees it had not paid while it was still under military control.)

Listed for closure in 1991, the 480-acre Depot officially closed in March. The Army remains on 80 acres of the facility. ❑

■ Contacts:
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CP&DR
LEGAL DIGEST

Listing of Species Stalled

Appropriations Rider Can Halt Listing Work, 9th Circuit Rules

A Republican attempt to block new endangered species listings by denying appropriations for the listing process has been upheld by the Ninth U.S. Circuit Court of Appeals. The decision is likely to hold up attempts to list more than 100 species in California alone.

Overturning a district court judge's ruling, a three-judge panel of the Ninth Circuit acknowledged that Interior Secretary Bruce Babbitt missed the statutory deadline for making a decision on whether to list the California red-legged frog as endangered. But the court found that Babbitt "is unable to comply with his listing duty under the Act" because Congress rescinded listing funds in last year's appropriation and has continued the ban on new listings in the continuing resolutions during this fiscal year as well.

The ruling came even though the statutory deadline for listing the frog occurred before last year's appropriation bill was passed.

The ruling, written by Judge Betty Fletcher, contained a stern warning against legislation by appropriation and stated that the Endangered Species Act is still in full force despite the appropriation bill. Quoting *TVA v. Hill*, 437 U.S. 153 (the so-called "snail darter" case), Fletcher said: "Repeal of legislation by implication is disfavored," especially when "the claimed repeal rests solely in an Appropriations Act."

Ultimately, however, Fletcher concluded that Babbitt was prohibited from making a final determination by the terms of a rider to the 1995 appropriation bill. "The use of any government resources — whether salaries, employees, paper, or buildings — to accomplish a final listing would entail government expenditure," she wrote. "The government cannot make expenditures and therefore cannot act, other than by appropriation."

The red-legged frog case was widely watched because the listing process has been halted on 120 species in California and 240 nationwide.

The 1995 appropriation bill specifically rescinded $1.5 million allocated for listing and determination of critical habitat and also stated that the U.S. Fish & Wildlife Service cannot use any other funds for this purpose. Originally passed on April 10, 1995, this rider has been contained in the continuing resolutions passed to keep the government operating during the recent budget negotiations.

At the time the rider was passed, the Fish & Wildlife Service was already engaged in lengthy litigation with the Environmental Defense Center of Santa Barbara over the listing of the red-legged frog. Under the Endangered Species Act, Babbitt should have made a final determination on whether to list the frog by July 19, 1993. When Babbitt missed the deadline, EDC sued, but the two parties eventually agreed to a settlement agreement requiring a final decision by November 1, 1993.

Babbitt missed that deadline also, however, and EDC sued again. Finally, the Fish & Wildlife Service published a proposed listing on the Federal Register on February 2, 1994. Under the Endangered Species Act, Babbitt then had one year — until February 2, 1995 — to make a final decision on the listing. Babbitt missed the deadline again, and EDC sued in May of 1995. By then, however, the appropriations rider was in effect.

U.S. District Court Judge Manuel Real in Los Angeles issued summary judgment in favor of the EDC and ordered Babbitt to take a final action by September 15, 1995. However, the U.S. Supreme Court issued a stay of this order and the Ninth Circuit heard the case on an expedited schedule.

In Fletcher's ruling, the Ninth Circuit ordered the final listing "delayed until a reasonable time after appropriated funds are made available" and ordered Real to establish the time frame. ❑

■ The Case:
Environmental Defense Center v. Babbitt, No. 95-56255, 95 Daily Journal D.A.R. 16341 (December 12, 1995).

■ The Lawyers:
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CC&R'S

State Supreme Court Lays Down CC&R Rule

The California Supreme Court has ruled that CC&Rs (covenants, conditions, and restrictions) in two Woodside subdivisions should be enforceable even though they are not mentioned in the subdivisions' property deeds. In the process, the court majority laid down a sweeping new rule to govern the enforceability of private property covenants: If restrictions are recorded before the sale of property, "the later purchaser is deemed to agree with them."

The controversial ruling may be the first step toward clearing up a complicated real property law issue and is likely to have an important impact on private land-use restrictions. "It's a good decision," said UCLA law professor Susan French, one of the leading scholars in the area of private covenants.

But it may also lead to further confusion, because the court declared that the new rule should be applied retrospectively and because it declares that all information about a piece of property need not be included in the deed. In a strong dissent, Justice Joyce Kennard wrote that the ruling will transform deeds "that on their face are unrestricted conveyances of the landowner's entire interest into deeds conveying only a portion of the landowner's interest." (French disputed Kennard's view, saying that the restrictions will turn up in title reports.)

The case drew the attention of many outside groups, including the California Association of Realtors, the California Building Industry Association, and the Coastal Commission, all of whom intervened on behalf of the neighbors seeking to enforce the CC&Rs. The Coastal Commission argued that if all CC&Rs must be included in deeds, the agency may not be able to enforce conditions it imposes on new development projects along the coast.

The role of CC&Rs in land-use planning and regulation is growing. Especially in California, more and more planned communities are created with a "private" municipal government made up of homeowner associations that enforce private deed covenants.

However, as CC&Rs have grown in number they have also generated a lot of complicated litigation about how, when, and by whom they can be enforced. French has called the law surrounding CC&Rs "the most complex and archaic body of American

property law remaining in the 20th Century." Several recent appellate court rulings have dealt with CC&Rs. Last September, the Court of Appeal ruled that a homeowner association may record a notice of violation with the county recorder even though such actions are sometimes taken because they are cheaper than suing the homeowner. (*California Riviera Homeowners Association v. Superior Court*, *CP&DR* Legal Digest, October 1995.) The Supreme Court decertified this case shortly before issuing its ruling in the Woodside case.

The new case involves Jared and Anne Anderson, who bought two parcels of property in Woodside and obtained a conditional use permit from the city to operate a winery. The two parcels were originally part of two separate subdivisions, each of whose subdividers had recorded CC&Rs restricting the property to residential use. Claiming that the Andersons had violated the CC&Rs, a group of neighbors organized as the Citizens for Covenant Compliance and sued the Andersons. However, the Andersons claimed they had no knowledge of the CC&Rs because there was no reference to them in the deeds of either parcel they had purchased.

San Mateo Superior Court Judge Harlan K. Veal ruled that the CC&Rs were not enforceable, and the First District Court of Appeal affirmed. But on a 6-1 vote, the Supreme Court overturned the lower ruling and declared the covenants enforceable despite the defects in the deed, establishing the new rule in the process. "The CC&Rs of this case were recorded before any of the parcels were sold ... they state an intent to establish a general plan for the subdivisions binding on all purchasers and their successors; and they describe the property they are to govern," wrote Justice Armand Arabian for the majority. "...Therefore ... the fact that the individual deeds do not reference them is not fatal to their enforceability."

To arrive at the new rule, Justice Arabian's majority opinion reached deep into the legal history of easements, covenants, and equitable servitude (sometimes known as restrictive covenants), all of which seek to govern the enforceability of private land use restrictions. Traditionally, a covenant is a restriction that "runs with the land" because it affects the use of the land in some way. Beginning in the 19th Century, English and then American courts adopted the doctrine of equitable servitude, which permits enforceability of covenants that would not be strictly enforceable under the doctrine of covenants. Because the Woodside covenants impose a burden on the property — rather than simply a benefit — and because they are agreed to between grantor and grantee — rather than between landowners — they fall under the doctrine of equitable servitude and not covenants.

Legal scholars have noted that legal doctrines surrounding covenants and equitable servitude are similar and perhaps should be combined. California law treats them similarly, and in the majority opinion Arabian stated that the Supreme Court's new rule should apply equally to both doctrines.

In reaching his conclusions on the Woodside case, Arabian said that the basic issue was not whether the restrictions run with the land but whether they ever took effect in the first place given the fact that they are not mentioned in the deeds. The Andersons argued that the CC&Rs never took effect because they were not mentioned in the deeds. But Arabian said that accepting this argument would lead to "byzantine" results. What if some deeds included the CC&Rs and others did not? According to case law, he concluded, any property sold subsequent to the first property whose deed mentioned the CC&Rs would be subject to the CC&Rs — even if the particular deed in question did not mention them. Claiming that this greatly complicates title searches, Arabian said the result would be a "crazy-quilt pattern of uses."

In laying down the new rule, Arabian stated: "The overall plan, and not individual deeds, should determine what restrictions are in effect, and between whom." He also concluded that the rule should apply retrospectively.

In her dissent, Justice Kennard wrote that the new rule "blasts a gaping hole through the structure of real property law that has been painstakingly erected by the Legislature and by the courts over the past century." She said that the rule will allow "for the unilateral creation of enforceable land use restrictions, contrary to established law," and that it will deny constructive notice to land purchasers under state law. She also stated that retrospective application of the new rule will wreak havoc throughout the state. Noting that land subdivision in California dates back to the 1860s, she said: "If the subdivider of any of these thousands of lands recorded a plan of common restrictions for the lots but conveyed the lots by unrestricted grant deeds, retroactive application of the majority's new rule will now bring those restrictions to life no matter how long they have lain dormant." ❑

■ The Case:
Citizens for Covenant Compliance v. Anderson, No. S043578, 96 Daily Journal D.A.R. 79 (January 3, 1996)
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TAXATION

Appellate Court Strikes Down Fresno-Area Arts Tax

Fresno's so-called "Arts-to-Zoo" tax violates the California constitution because the organization that administers the tax is a private entity, the Fifth District Court of Appeal has ruled.

The Fresno Metropolitan Projects Authority was created by the state legislature in 1993 as a vehicle for administering a 1/10-cent sales tax in the Fresno area for cultural facilities. Fresno-area voters approved the tax by a 57% majority in 1993. Under the Government Code, half of the tax proceeds are distributed to the local zoo, the philharmonic orchestra, and two museums, 25% are distributed for cultural programs, and 25% are distributed for a variety of other purposes including capital improvements for cultural facilities. The authority is governed by a 13-member board. As specified in the law, the city and the county each choose one board member. The other 11 members are selected by such organizations as the Parent Teachers Association, the Chamber of Commerce, the local taxpayers association, the Farm Bureau, the Fresno-Madera Central Labor Council, the League of Mexican-American Women, the West Fresno Ministerial Alliance, and the local division of the California Retired Teachers Association.

The Howard Jarvis Taxpayers Association sued and claimed that the state law creating the authority was a violation of Article XI, section 11 of the state constitution, which prohibits the legislature from delegating the power to tax to a private entity. Fresno County Superior Court Judge Stephen J. Kane ruled in favor of the Jarvis group and the Fifth District affirmed his ruling.

Before the Fifth District, the Metropolitan Authority made a series of arguments, including the argument that it is a public body because it performs public functions. But the court pointed out that only two of its 13 board members are appointed by public bodies. "The electorate cannot remove those who are chosen as director of the Authority and the electorate cannot remove those who choose," wrote Presiding Justice James Ardaiz for the court. "But the electorate must bear the consequences of the decisions of those who compose the authority. ... As we see it this is a distinction that marks the Authority as a private body."

The Metropolitan Authority also argued that the tax was levied by the people and not by the Authority, but the court rejected that argument, stating that the law specifically authorizes the Authority to levy the tax. The court also concluded that voter approval did not render the constitutional provision inapplicable to this particular tax, as the Authority claimed.

"The voters have no say in the matter of fund distribution for the next 20 years short of repeal of the entire tax," wrote Ardaiz. "This appears to us to be precisely the type of situation the framers sought to avoid by prohibiting the delegation to a private body of the power to tax."

Finally, Ardaiz rejected the Metropolitan Authority's argument that its "regional" nature exempts it from the constitutional provision in question. The court's review of case law, he concluded, "leads us to conclude that the present article XI, section 11 means just what it says: that the Legislature may not delegate to a private person or body the power to levy taxes. The section does not contain any exception for any particular type of tax, 'regional' or otherwise."

■ The Case:
Howard Jarvis Taxpayers Association v. Fresno Metropolitan Projects Authority, No. F023727, 95 Daily Journal D.A.R. 16419 (December 13, 1995).
■ The Lawyers:
For Howard Jarvis Taxpayers Association: Jonathan M. Coupal, (916) 444-9950.
For Fresno Metropolitan Projects Authority: Gene Livingston, Livingston & Mattesich, (916) 442-1111.

NEPA

Supplemental EIS Not Needed For Doppler Weather Station

The federal government did not need to prepare a supplemental environmental impact statement for a Doppler weather radar tower atop Sulfur Mountain in Ventura County, the Ninth U.S. Circuit Court of Appeals has ruled.

Environmental review of the weather station was challenged by the Environmental Coalition of Ojai and two individual Ojai residents including actor Larry Hagman. Among other things, the Environmental Coalition claimed that the federal government should have prepared a supplemental EIS just for the Ojai site and that other environmental documents should have been updated to reflect new research about the environmental health dangers of radiation from the weather system. However, the Environmental Coalition has lost the case all the way down the line and the Sulfur Mountain facility is now in operation.

The Sulfur Mountain station is part of the National Weather Service's national modernization program known as NEXRAD (for Next Generation Weather Radar). The system is being constructed jointly by the Commerce, Transportation, and Defense departments. Doppler radar systems must be located away from "electronic pollution" contained in metropolitan areas.

The Environmental Coalition originally asked U.S. District Court Judge Terry Hatter to enjoin construction of the project but he refused and eventually he granted summary judgment in favor of the government. The Court of Appeals affirmed his ruling.

The NEXRAD system has been the subject of a long series of environmental documents, including a programmatic EIS and a supplemental environmental assessment, which examined the environmental impact generally and the radiation issue specifically. Based on this information, the government chose not to produce a supplemental EIS for the NEXRAD program and instead filed a finding of no significant impact, or FONSI, in 1993. (A FONSI is the equivalent of a negative declaration under the National Environmental Policy Act.)

With regard to the Sulphur Mountain site, the government produced an initial environmental assessment in 1986 and an in-depth site survey in 1987 and as a result of those documents issued a FONSI for the site in 1989.

The Environmental Coalition's case contained two key components. First, the Coalition argued that the government should have prepared a site-specific EIS for the Sulfur Mountain site. And second, the Environmental Coalition argued that the government should have done a supplemental EIS for the whole NEXRAD program after new research on the radiation became known.

In ruling for the government, the Ninth Circuit relied heavily on the U.S. Supreme Court's ruling in *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360 (1989). In that case, the court concluded that the federal government need not prepare a site-specific EIS for every federal project. In the Sulfur Mountain case, Judge Arthur Alarcon, writing for the Ninth Circuit, said: "In its 1986 and 1987 site-specific EAs (environmental assessments), the Government considered the environmental impact of the NEXRAD installation on Sulfur Mountain. Having determined that the Sulfur Mountain NEXRAD installation would have no significant local environmental impact, the government reasonably issued a FONSI in 1989 instead of preparing a site-specific EIS."

On the question of a supplemental EIS on the radiation issues, Alarcon listed a long set of materials reviewed by the government in its supplemental environmental assessment. "In each instance," Alarcon wrote, "the Government found that although initial studies suggested an association between RFR [radar radiation] and ... diseases, more rigorous subsequent studies either failed to confirm the initial results or yielded negative findings." Based on this review the government concluded that the radiation would not be an environmental health hazard. "Accordingly, its previous conclusion that the weather stations would have no significant adverse environmental impact (published in the preliminary EIS) remained valid," Alarcon wrote. "Therefore, the Government determined that it was not necessary to prepare a supplemental EIS."

The court also rejected the Environmental Coalition's argument that the government had failed to provide adequate notice for the environmental documentation on both the radar system generally and the Sulfur Mountain facility. The Ninth Circuit concluded that Ojai citizens were not required to receive specific notice on the nationwide system issues, and that the government had satisfied notice requirements on the local issues by filing documents with state and local clearinghouses. ❑

■ The Case:
Environmental Coalition of Ojai v. Brown, No. 94-56164, 96 Daily Journal D.A.R. 40 (January 2, 1996).
■ The Lawyers:
For Environmental Coalition of Ojai: Dale G. Givner, (805) 485-4454.
For the federal government: Patrick J. Walsh, Assistant U.S. Attorney, (213) 894-2451.

Researchers Call For CEQA Reform

Continued from page 1

Unlike the Little Hoover Commission report, however, the Berkeley report does not recommend that CEQA be used as the primary tool for environmental decision-making on a regional and state basis. (For more information on the Little Hoover Commission report, see *CP&DR*, December 1995.) "They want to regionalize CEQA," Landis said. "I'm not sure that's the right thing to do." Landis acknowledges that four regional issues continually pop up in CEQA analyses: air quality, water, wildlife habitat, and traffic. Instead of using CEQA as a regional tool to solve these problems at the project level, the Berkeley team recommends using CEQA in a different way at the plan level and the project level. The Berkeley researchers also recommended a series of improvements to cumulative impact monitoring to handle regional issues.

"At the planning stage," concluded the research team, "CEQA should encourage a broad and open-ended discussion of alternatives and environmental impacts. This discussion should be integrated with ongoing local, regional, and state planning processes. Environmental review of specific projects, by contrast, should focus on the impacts of that project in relation to all underlying adopted plans, still attempting to establish feasible mitigation measures for all significant adverse impacts."

The Berkeley team's five specific recommendations are:

1. Improving the involvement of state and regional agencies in the CEQA process. This is similar to the Little Hoover Commission's recommendations and it draws from the research team's observation that state and regional agencies are unpredictable players in the CEQA process.

2. Increasing the certainty and consistency of local CEQA review. Like the Little Hoover Commission, the Berkeley researchers noted that a lack of consistent thresholds and other standards makes it difficult for applicants to know how the process is going to move forward. Among other things, the Berkeley researchers propose that localities be forced to adopt standardized thresholds and standardized mitigation measures to be used in mitigated negative declarations.

3. Improving mitigation and monitoring of cumulative impacts. To overcome CEQA's chronic project-oriented approach, the research team recommended such steps as an expanded use of tiered environmental impact reports, standardized mitigation measures to deal with regional cumulative impacts, and greater use of pro-active regional planning and conservation efforts.

4. Making alternatives analysis better or else eliminating it. The researchers characterized current alternatives analysis as little more than a "scaling exercise" that shows how environmental impacts can be reduced if the scale of the project is reduced. The researchers proposed expanded alternatives analysis at the plan level and a more fine-grained alternatives analysis at the project level. But if these cannot be achieved, the researchers concluded, the alternatives analysis is not worth keeping.

5. Creating more consistency and predictability in CEQA litigation. The research team concluded that CEQA currently contains few incentives to mediate disputes and/or avoid litigation. The team recommended that the Governor's Office of Planning and Research create a series of guidebooks to establish "best CEQA practices" in areas where judicial direction has not been clear or consistent.

"Fixing CEQA" is available by contacting the California Policy Seminar at (510) 642-5514. ❑

How CEQA Is Used

What distinguishes the Berkeley study from previous CEQA analyses is the huge amount of data collected by the researchers. Among other things, the researchers surveyed local governments in California and quantified their use of CEQA; did an in-depth comparison between CEQA and the other "mini-NEPAs" around the country; and a case study analysis of CEQA use in 14 local jurisdictions ranging from Calaveras County to Rancho Cucamonga. (Some of the survey data, analyzed by University of Illinois planning professor Robert Olshansky, was discussed in the October 1994 issue of *CP&DR*.)

Here are some of the research team's most interesting findings:

CEQA Is More Widely Used Than Comparable Laws Elsewhere.

The researchers compared the use of CEQA in California to the so-called "Mini-NEPAs" in other states. Mini-NEPAs exist in 15 other states plus Puerto Rico and the District of Columbia. Yet CEQA is more widely used in California than in any other state — and, in fact, it's more widely used than NEPA, the National Environmental Policy Act.

Whereas California undertook some 1,300 environmental impact reports in 1990, the equivalent figure (in 1992) was only 364 in New York, 126 in Washington, and 69 in Massachusetts. Connecticut undertook no environmental impact reports/statements in 1992. Even the federal government, operating under NEPA, initiated only 456 EIS's in 1992. Similarly, while California processed more than 25,000 negative declarations in 1990, the equivalent figure (for 1992) was 1,800 in New York, 7,500 in Washington, and only 12 in Connecticut.

Part of the reason for the difference is that the breadth of CEQA's application is greater. But part of it is simply that California's construction activity is so much greater than any other state. When adjusted for the amount of construction activity, the researchers found that only Washington and New York have approximately the same amount of CEQA-type activity. Hawaii and Minnesota lag far behind, while all other states are barely even on the radar screen.

EIRs and EIR Litigation Is Rare In Statistical Terms

The researchers found that, statewide, well over 90% of all CEQA actions result in negative declarations. Only about 6% of CEQA actions lead to EIRs in cities and 3.5% in counties. And only one in every 354 CEQA reviews (less than 1/3 of 1%) results in a lawsuit. But because CEQA is so widely applied, the raw numbers are high even though the percentages are low. The Berkeley numbers indicate that somewhere around 1,300 EIRs were being undertaken in 1990, while more than 400 CEQA lawsuits were filed in the five-year period between 1986 and 1990.

The case studies revealed large variations in these numbers, however. In Santa Barbara County, for example, 21% of all CEQA reviews led to an EIR — a figure almost three times higher than any other case study jurisdiction.

The researchers also discovered that EIRs are far more commonly used on residential projects than on commercial or industrial projects. On a per-capita basis, more than twice as many EIRs are initiated for residential as opposed to commercial projects, and this finding holds true for both cities and counties.

Thresholds Are More Common for Counties Than Cities.

The Berkeley researchers found that 80% of counties used standardized thresholds in CEQA review compared to only 12% of cities.

Mitigated Negative Declarations Are Commonly Used

The researchers found that mitigated negative declarations are used more than half the time in CEQA reviews, though they noted this includes a wide variety of different situations. This figure was considerably higher for counties (66%) than for cities (48%). More than 70% of all jurisdictions reported that they have a mitigation monitoring program in place. ❑

Adelanto Pays Price for Base, Water Fights

Continued from page 1

. Wetherbee is refinancing the redevelopment agency's bonds by structuring a new issue of $55 million that would allow the city to make its bond payments while allowing enough extra to pay off the hefty settlement to San Bernardino County.

With 8,500 residents, Adelanto is by far the smallest city in the High Desert. Its path to near-ruin began in 1989, when the federal Base Realignment and Closure Commission listed George Air Force Base on its closure list. Adelanto, which borders the base, wanted to annex the entire base and rejected the option of joining the local reuse authority, the Victor Valley Economic Development Authority (VVEDA), which includes San Bernardino County and the neighboring cities of Victorville, Hesperia, and Apple Valley.

At one point, Adelanto offered the Air Force $25 million to buy the base outright. The Air Force, however, recognized VVEDA as the local reuse authority, and Victorville eventually annexed the former base in 1994.

Refusing to take the decision lying down, Adelanto fought back with a host of lawsuits challenging the environmental impact report for the reuse of George. At the height of the court battle, there was a 34 lawsuits that cost the parties at least $11 million in legal fees, according to the Base Reuse Report, a Sacramento-based newsletter. Adelanto's litigiousness, however, ultimately backfired by dragging the city through a series of costly legal defeats. In 1994, a Riverside Superior Court judge ruled that Adelanto could not use redevelopment money in its effort to acquire George. And in a court-ordered settlement conference in January, 1995, Adelanto finally stood down and relinquished its claim on George.

At the same time, however, Adelanto got into another dispute with its neighbors over the water rights at George. When George was an operational military base, the state created a special arrangement for the city and the base to share a common allocation of water. However, last fall, at the instigation of the Mojave Water Agency, a Riverside County judge issued a comprehensive settlement of all water rights claims in the area. Under the agreement, all water users were required to reduce their water use and the Mojave Water Agency, which sells water to 250,000 residents in the High Desert, was named special master. (*CP&DR*, November 1995.)

Adelanto did not agree to the settlement, continuing to claim it had a "prior and paramount" right to the waters of the Mojave River. At this point, however, the Mojave Water Agency shrewdly used Adelanto's financial troubles on the redevelopment front as a lever to get the city to buy into the water agreement.

Adelanto's redevelopment troubles began in 1993, when the San Bernardino County Grand Jury audited the city's attempt to acquire George. The Grand Jury found that the city was borrowing money from its well-funded redevelopment agency (most of Adelanto is carpeted in redevelopment project areas) while the redevelopment agency attempted to keep itself afloat by issuing new bonds with interest rates higher than the city could afford. In its report, the Grand Jury found that the redevelopment agency had "exhausted all available resources for operations," while lacking "any financial plan detailing its projected expenditures, bond proceeds and other revenues over the next several years."

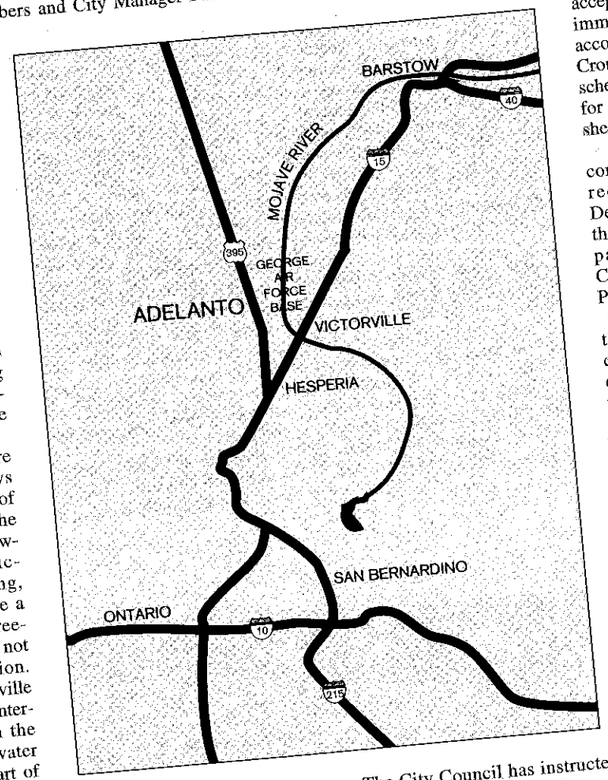
Based on the Grand Jury's findings, San Bernardino County sued Adelanto in November 1993. The suit alleged that the city had spent more than $4.2 million to acquire George, *Continued on page 10*

Adelanto Pays Price for Base, Water Fights

Continued from page 9

and had illegally dipped into redevelopment funds for city operations. The suit requested a group of city officials, including then-Mayor Mary Scarpa, five city councilmembers and City Manager Patricia Chamberlayne to pay the redevelopment agency $6.34 million for the tax increment used to pursue George and other non-redevelopment purposes. The settlement, signed in October, required Adelanto to pay the county $5 million by the end of 1995, while allowing the Adelanto Redevelopment Agency to borrow $100,000 of the county's "fair-share" cut of the city's tax increment revenues to make its bond payments. The settlement also authorizes Adelanto to float the $55 million bond issue, which would enable the city to restructure its existing bond portfolio and raise the additional $5 million to pay off the county.

Adelanto city officials were angered, however, when news reports revealed that the City of Victorville had quietly lent the county $800,000 to fund the lawsuit against Adelanto. Victorville's role was surprising, because it appeared to violate a January 1995 settlement agreement between the two cities not to engage in further litigation. But Mike Rothschild, Victorville Mayor Pro Tem, said in an interview Adelanto had broken the peace by prosecuting the water issue, which he said was part of the "total settlement package."



The final humiliation for Adelanto, however, came in November, at the hands of the water agency. The city clearly needed to move ahead as quickly as possible on the new bond issue. But the city could not move forward without the approval of the Mojave Water Agency. The water purveyor, however, threatened to sue Adelanto over a crucial part of the recovery plan — the merger of two redevelopment areas in the city — unless the city agreed to the regional water-sharing plan. Advisers to the city pleaded with the mayor and councilmembers to give into the water agency, and avoid catastrophe.

"Adelanto is insolvent," bond underwriter Tony Wetherbee told the council. Said City Attorney Robert Corrado at the same meeting: "Municipal bankruptcy is an ugly, ugly thing. We're going to be in litigation forever." Later, when the council appeared adamant against the water deal, he pleaded, "This is a mistake of cosmic proportions and it means the end of Adelanto as we know it."

Notwithstanding those pleas, Mayor Judy Crommie and two other council members voted against accepting the water plan. Almost immediately after the meeting, according to local news accounts, Crommie changed her mind, and scheduled an emergency meeting for the following Thursday, when she switched her vote.

Adelanto had attempted to complete the restructuring of its redevelopment bonds by December 31, 1995, which was the deadline for the $5 million payment to San Bernardino County. Because Standard & Poor rated the issue (BBB-) — an important precondition of the bond sale — only in the closing days of the year, the county granted the city an additional 10 days to the city to make its payment; the new bond issue was scheduled to close on January 9, according to the Victor Valley Daily Press. Michael Sakamoto, acting city manager and the only Adelanto official who would agree to be interviewed for this story, was reluctant to comment on whether he thought the city had done wisely in spending so much of its treasury fighting for George and the Mojave River. "I don't want to comment on the appropriateness or inappropriateness of any city action. The City Council has instructed me to look for, and try to fashion, a plan for the city to go forward," he said. ❑

■ Contacts:
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Tony Wetherbee, Chilton & O'Connor Inc., (714) 717-2000.
Michael Rothschild, Mayor Pro Tem, City of Victorville, (619) 955-5000.
Robert Corrado, contract city attorney, (310) 908-7800.

NUMBERS

Stephen Svete

Economy's Up, But Construction Isn't

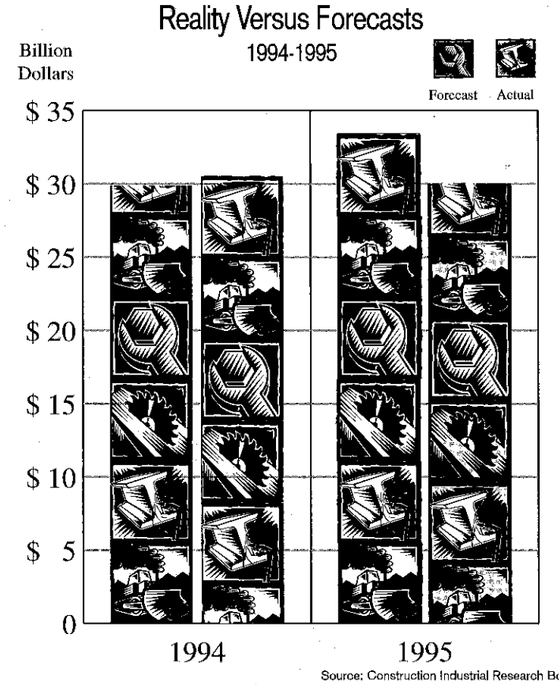
After showing signs of a rebound in 1994, California's construction industry slid back into decline in 1995, reviving a five-year dip in building activity in California. The renewed slump confirms the break in relationship between building and the rest of the economy here, and draws into question a range of community development dictums that revolve around growth.

Two years ago, we announced that the sector that once set the course of economic trends had instead become a follower (*CP&DR* Numbers, January 1994). Last year, we reported that construction experienced its first growth year in the last six (*CP&DR* Numbers, January 1995.) All three sectors (residential, non-residential, and heavy) experienced increases in total construction dollars in 1994 relative to 1993, indicating that, at long last, the building industry had rebounded.

As it turned out, 1995 was the year that entertainment and biotech replaced a goodly portion of the jobs lost in the aerospace/defense industry, the year that home prices actually began to climb in some of the state's zip codes, and the year when even aerospace/defense saw some job growth linked to a revival of some B-2 and McDonnell Douglas passenger jet orders. But the building industry took a dive again. With 10 months of data in hand, the Construction Industry Research Board is forecasting a retraction year in total construction dollars, led by slides in residential and heavy construction.

If there is any economic bright spot, it is that the $29.9 billion spent last year did not drop to the 13-year record low year of 1993, when only $28.8 billion were spent. The other positive statistic is the employment data: though total construction dollars are down, construction jobs enjoyed a second straight year of growth.

This is all quite confounding for industry watchers such as Ben Bartolotto of the CIRB. After all, a year ago he had predicted an 11.8% increase, rather than the 1.7% drop he now estimates. (Final numbers will be available in March.) "All of the dynamics were in place: job growth, drops in vacancy — the drop is frustrating," Bartolotto said. The job growth data apparently reflects ongoing reconstruction or renovation that does not show up in regular construction figures.



Source: Construction Industrial Research Board

Bartolotto suspects that the disconnect between employment and housing demand may be resulting from lower levels of real personal income compared to, say, 10 years ago. And this time, L.A. cannot be blamed for holding the state back: of the 25 markets surveyed by CIRB, Los Angeles-Long Beach, along with San Francisco and Santa Barbara County, were the only housing markets that increased housing construction from 1994 to 1995. Rates from other types of construction varied widely by region, but one thing has emerged as constant: the building industry is not a reliable indicator of economic health in California. And a healthy economy does not necessarily translate into a booming building industry.

The lesson may be an important one for planners, who should — now more than ever — think about implementing community goals in ways that do not rely on new construction activity.

Which brings us to the forecast for building in 1996: Does anybody still care? Once again, the CIRB calls for a comeback year, with an 11.9% increase in overall dollars spent. This is expected to be paced by a strong surge in housing construction, with a 29.8% increase in activity over 1995. Cynical as one is tempted to become about such forecasts, it is true that the housing industry seems to be poised for some kind of turnaround. Analysts have been saying that the pent-up demand for housing may find an outlet as potential buyers come to market in order to avoid the 2.5% increase in prices expected in 1996. But one thing we have learned: We won't draw any conclusions about the larger economy based on the construction industry. ❑

Places

Morris Newman

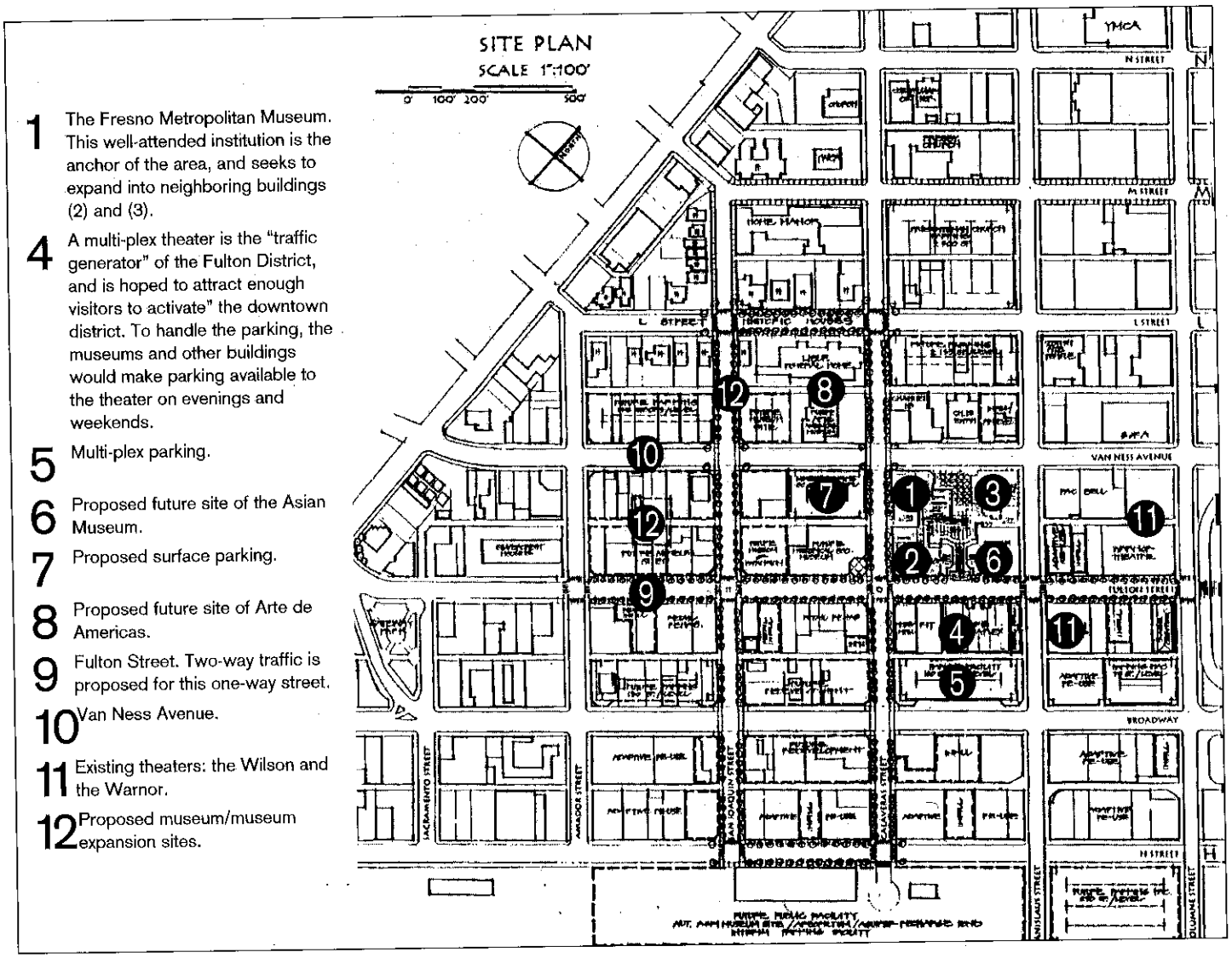
Remaking Downtown Fresno

The Fulton District in Downtown Fresno has much in common with other aging city centers across the state: high vacancy rates in older buildings, out-of-date infrastructure, inadequate parking, a perception of crime, and a general lack of vital pedestrian activity. The district also has a number of positive attributes, including a number of existing cultural institutions, most notably the Fresno Metropolitan Museum, which attracts 250,000 visitors annually.

The "Met," as it is known locally, is in an expansion mode, and museum directors have acknowledged that a bigger and better Met needs to be supported by other institutions in the immediate area. The notion of a cultural district was already suggested in the downtown master plan created in 1993 by developer Wayne Ratkovich, and some city officials view the area as the cultural center not only for the city but for a 125-mile radius of the San Joaquin Valley. A team of consultants, made up of Keyser Marston Associates, Barry Howard Limited, and RTKL Associates Inc., have proposed a cultural district, with the Met serving as the nucleus, surrounded by at least six other museum or museum expansion sites, including new locations for the Afro-American Museum and Arte de Americas.

The cultural district would be buttressed by an entertainment/retail district immediately southwest, anchored by that tried-and-true generator of urban foot traffic: a multi-plex cinema, which is expected to bring in 1 million people annually. The pedestrian quality of the cultural district could benefit from another proposal to convert one-way streets to two-directional traffic. Neo-traditional designers favor two-way traffic as a means to slow traffic and make streets more comfortable for pedestrians, although few cities have had the gumption to convert one-way streets — a favorite of traffic planners — back to two-way traffic.

A strength of the plan is the high number of existing and proposed museums oriented on Van Ness Avenue. The plan identifies at least two vacant lots on important thoroughfares as parking sites, which could blight the experience for pedestrians, unless the parking structures incorporate street-level retail. The plan has been approved by the museum's board of directors, and is awaiting a vote by the Fresno city council. ❑



1 The Fresno Metropolitan Museum. This well-attended institution is the anchor of the area, and seeks to expand into neighboring buildings (2) and (3).

4 A multi-plex theater is the "traffic generator" of the Fulton District, and is hoped to attract enough visitors to activate" the downtown district. To handle the parking, the museums and other buildings would make parking available to the theater on evenings and weekends.

5 Multi-plex parking.

6 Proposed future site of the Asian Museum.

7 Proposed surface parking.

8 Proposed future site of Arte de Americas.

9 Fulton Street. Two-way traffic is proposed for this one-way street.

10 Van Ness Avenue.

11 Existing theaters: the Wilson and the Warnor.

12 Proposed museum/museum expansion sites.