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Republican Takeover Of Assembly Leads To Big Changes

New Chairman Selected For Housing, Resources Panels

By William Fulton

The Republican takeover of the California State Assembly is likely to bring big changes to planning and development legislation — and improve the chances of real estate and business leaders who want to reform the California Environmental Quality Act and the California Endangered Species Act.

After consolidating power and electing Curt Pringle as speaker in January, the Republicans dramatically reshuffled committee assignments in a way that suggests landowners and real estate interests will have a much stronger hand in that house. But in late January the new committee chairs were still hiring staff, putting them far behind the typical legislative schedule.

Most significantly, longtime environmentalist Byron Sher was ousted as chairman of the Assembly Natural Resources Committee and replaced by property-rights advocate Keith Olberg, a former staff member of the Building Industry Association. The Republicans also replaced longtime Housing Committee chairman Dan Hauser, a Democrat, with Republican Phil Hawkins of Cerritos, a former real estate broker and contractor. The Republicans did retain longtime Water, Parks and Wildlife Committee Chair Dominic Cortese, who abandoned the Democrats and joined Ross Perot's Reform Party. Cortese's committee holds jurisdiction over the Endangered Species Act.

These changes mean that the legislature's chief defender of strict environmental laws such as CEQA and the Endangered Species Act is likely to be Tom Hayden, the environmentalist chair of the Senate Natural Resources Committee. After asserting jurisdiction over CEQA last year, Hayden was successful *Continued on page 9*

New Deals for Colorado River Water Called 'Landmark'

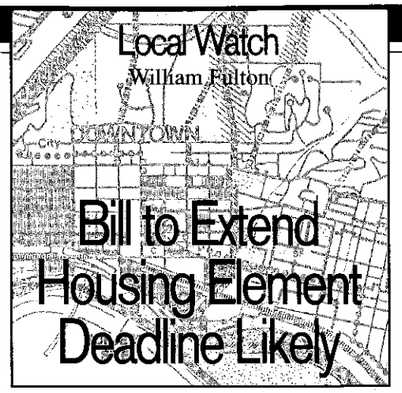
Vegas-MWD, San Diego-Imperial Deals Cause Controversy

By Morris Newman

Two recent agreements involving the transfer of Colorado River water to Southern California are being hailed by their their authors as landmark events in the long and controversial history in Western water rights. The deals — the first between the Metropolitan Water District and the Southern Nevada Water Authority, and the second between San Diego County Water Authority and the Imperial Irrigation District— are unrelated at first glance. But the parties in both deals are quarreling, and it seems likely that the competition for water rights of growing cities in the Sun Belt are likely to be hard fought well into the next century.

In December 1995, the Met board signed a memorandum of understanding with the Southern Nevada Water Authority — a group of water purveyors serving the Las Vegas area — to share the cost of lining the All-American Canal in the Imperial Valley. In exchange for paying $50 million of the $130 million project, the Nevada agencies will obtain 30,000 acre-feet, or about 40% of the water conserved by the project.

And in a separate agreement, the San Diego County Water Authority signed an MOU in September 1995 to an undetermined amount of water (up to 400,000 acre feet of water annually, according to one account) from the Imperial Irrigation District, at a price yet to be determined. Although the deals appear unrelated, they have opened a new round of in-fighting among the Met, Imperial Irrigation, and San Diego County. At bottom, the controversy reveals deep differences among different interest groups on the *Continued on page 10*



Local government lobbyists in Sacramento are preparing to make another attempt to extend the deadline for preparing housing elements.

Cities in the six-county region represented by the Southern California Association of Governments must submit their proposed housing elements by June 30 to the state Department of Housing & Community Development.

But those housing elements are supposed to be based on regional housing estimates prepared by SCAG. And SCAG has not prepared the numbers, because the Legislature relieved SCAG and its counterparts around the state of that obligation under a budget-saving "mandate relief" program three years ago. So local governments are "stuck".

Lobbyists for SCAG and other local government groups sought last year to postpone the housing element deadline but failed. Now they are planning to work with new Assembly Housing Chair Phil Hawkins, a Republican, to push a one-year - and possibly two-year - extension through the Legislature this year. Because the SCAG-area deadline is so close, the bill might be introduced as an urgency bill, which would require two-thirds approval.

Paul Deoro, Hawkins' committee consultant, said Hawkins plans to carry an extension bill but also wants to work on trying to get a broader resolution to the problem — possibly identifying a source of funds for the housing needs assessment in the future.

The deadline extension proposal may get intertwined with a larger effort to reform the housing element law. Local government, housing, and building industry lobbyists have been working for several years to streamline the housing element process - so far without success. However, Sen. Jim Costa, D-Fresno, still has a housing element bill that could serve as a reform vehicle this year. Costa's SB 1073 has already cleared the Senate and is pending in Hawkins' committee.

Under state planning law, local governments must revise their housing elements every five years and submit them to HCD, which then reviews them and concludes whether or not they are in compliance with state law. The law establishes a schedule for a kind of "rolling" rotation - SCAG cities and counties must submit their housing elements in 1996, jurisdictions in the Bay Area must submit their housing elements in 1997, and so on.

But the local housing element is actually the last step in a lengthy process of assessing and allocating the need for low- and moderate-income housing around the state. HCD first sets a statewide target and then allocates it by region. The regional councils of governments, such as SCAG, then use computerized modeling to allocate this regional housing need among the local governments within their region. It is this process that the Legislature suspended as part of the mandate relief package.

Last year, local government lobbyists persuaded Senate Housing Chair Tom Campbell to include the deadline extension in his housing element reform bill SB 936. Despite HCD's support, however, Gov. Pete Wilson vetoed the bill for other reasons.

Kevin Conner, HCD's assistant legislative advocate, said his department remains supportive of the deadline extension and will do what it can to assist. However, he emphasized that if a bill is not passed this spring - a strong possibility if a two-thirds vote is required - then the local governments in the SCAG region will still be required to submit housing elements to HCD by June 30, even without guidance from SCAG.

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More Clovis Indictments

Continuing a string of indictments involving developers and elected officials of the City of Clovis, a federal grand jury in Sacramento indicted former Mayor Charles D. Lawson and several others on January 4 on charges of mail fraud. The indictment named two city officials known to be under investigation but not previously indicted in the Operation Rezone probe, including Lawson and City Councilman Glynn L. Bryant. Also indicted were developer Kerry M. Hamel and former councilman Leif Sorensen; the latter was indicted in August on racketeering charges. (*CP&DR*, October 1995) Developer Patrick Fortune was also named in the mail-fraud charges, but was not charged. In August, he pled guilty to charges of mail fraud, the filing of a false tax return and witness tampering.

On January 25, Lawson pled guilty in U.S. District Court in Fresno on the mail-fraud charge, involving the receipt and nondisclosure of a $27,000 loan from Fortune. He has agreed to cooperate with the federal investigation.

Lawson's guilty plea and the indictments were the latest fallout of Operation Rezone, an investigation into corruption in the cities of Clovis and Fresno, being conducted by the FBI and the IRS. Federal officials declined to identify other people under investigation.

As a group, Lawson, Bryant and Sorensen comprised a majority of the city council in the early 1990s, and helped approve a number of projects of developers who allegedly bought influence, or who reimbursed others who made contributions to Clovis politicians.

The indictment alleges that Sorensen, Bryant, and Lawson were bribed by Fortune, Hamel and Williamsburg Manor Inc., a homebuilding outfit for which Fortune and Hamel served as directors. The charges allege that the three Clovis officials had knowingly filed false Statements of Economic Interest which did not mention the income they had received from the developers. The politicians subsequently violated conflict-of-interest laws by voting on general plan amendments for Williamsburg Manor and other projects controlled by Fortune.

Last summer, the Clovis council took the unusual step of rescinding two general plan amendments involving Fortune's projects. Councilman Kent Hamlin said he would have liked to have reversed many other plan amendments, but could not because the projects were already entitled or under construction.❑

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A federal takings bill has taken an important step toward enactment, but its future has gotten bound up in presidential politics. If passed, such a bill could have a profound impact on federal regulation of wetlands and land designated as endangered species habitat.

The Senate Judiciary Committee has passed S. 605, the Senate bill that would require compensation when a landowner's property is diminished in value by federal action. The bill is broader in scope than its House equivalent, which has already passed. But the Senate bill's diminution "trigger" is higher — requiring a 33% loss of property as opposed to a 20% loss.

The next stop for the bill would be the Senate floor, but Senate Majority Leader Bob Dole — the principal sponsor of S. 605 — has held up Senate floor debate on the bill until after the New Hampshire primary. Despite its pro-property rights reputation, New Hampshire is one of three states in the country where property rights legislation has been defeated at the polls.

Both proponents and opponents agree that the future of property-rights legislation depends on the attitude in the Senate. "It depends," said Nancy Marzulla of Defenders of Property Rights, who has been advising Dole on the drafting of S. 605. "You're dealing with the Senate, which is the whole reason thus far nothing has been accomplished in the 104th Congress."

Meanwhile, Nancy Willis, lobbyist for the American Planning Association, expressed hope that S. 605 won't survive once it is debated in the Senate because of its breadth.

Last year, the House passed HR 925 as part of the Republican majority's "Contract With America". Under that proposal, the federal government would be required to compensate property owners whenever their property is diminished in value by 20% or more. But the requirement would apply only when property owners are damaged by actions under the Endangered Species Act and Section 404 (wetlands regulation) of the Clean Water Act.

In addition to carrying a 33% trigger, the Senate bill is broader in scope. It would require a "takings impact analysis" on federal actions. More important, it would apply to all federal actions, not just wetlands or endangered species regulation — a fact that opponents hope to capitalize on. "That could apply to anything," Willis said. "It could apply to gun control. Civil rights cases have also been threatened."

In addition, Washington number-crunchers disagree on the financial impact. Willis said that President Clinton's Office of Management and Budget claims a takings bill will require $28 billion to administer over a seven-year period — not counting the possible compensation payouts. But Marzulla said the Congressional Budget Office, now controlled by Republicans, estimates a lower cost because the government's regulatory behavior would be altered by the requirement.

The bill's chances have not been enhanced by the three defeats at the polls, which have come in New Hampshire, Arizona, and Washington.

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California Property Rights Bill Dies

Meanwhile, property rights legislation continues to go nowhere in the California Legislature.

The latest defeat came in early January, when Sen. Ray Haynes, R-Temecula — one of the most ardent property rights proponents in the Legislature — chose not to seek a vote in the Senate Judiciary Committee on SB 635, his leading property rights bill.

SB 635, also known as the Property and Homeowner Protection Act, is a wide-ranging bill that includes a general declaration of property rights and a requirement for a takings impact analysis. The bill calls for compensation in the event of a taking and states that a taking can occur "even though the [government] action results in less than a complete deprivation of all use or value." Unlike the federal bills, it does not identify a percentage figure for compensation. It suggests that a 50% figure might be appropriate, by stating that if a taking is found in a case when 50% or more of the property value is lost, compensation must be for the full amount lost and not merely for the amount beyond 50%.

Most important for local planning, however, the Haynes bill appears to circumscribe state and local land-use regulatory power. The bill notes that actions designed to protect public health and safety — as opposed to public welfare, the traditional legal rationale for many planning regulations — are often given "broader latitude" by the courts. However, the bill states that the mere assertion of public health and safety concerns "shall be insufficient to avoid a taking" and describes steps that government agencies should take to determine what regulations might be acceptable in a public health and safety situation. The bill also seeks to narrow the scope of land-use regulation to ordinances necessary to prevent nuisances and provide public services, while environmental protection laws "may not deprive a landowner of use of his or her property ... without compensation."

When Haynes withdrew the bill, he allegedly complained that the committee analysis, drafted by the staff of Chairman Charles Calderon, D-Whittier, was "hyperbolic."

Meanwhile, AB 137 (Olberg), which would provide compensation in some cases, remains alive, pending in the Senate Natural Resources Committee. Olberg's bill is similar to the federal House bill, calling for compensation when value drops by 20% or more, but only in cases involving the state Endangered Species Act.

Coastal Panel Approves Bolsa Chica

The California Coastal Commission has approved the development and wetlands restoration plan for the Bolsa Chica property near Huntington Beach.

The approved development proposal put together by Koll Real Estate Group calls for 2,500 homes on the 200-acre Bolsa Chica mesa and 900 homes on another 200 acres in the Bolsa Chica lowlands near the ocean. Koll must pay $48 million for lowlands restoration before engaging in any lowlands development. The company is negotiating with the Interior Department and the American Land Conservancy to sell most of the remaining acreage.

Wetlands Acreage Up

The Resources Agency says the state has added about 78,000 acres of wetlands since 1993.

The state now has more than 529,000 acres of wetlands, the Resources Agency says. The agency is one-third of the way toward meeting its goal of an additional 225,000 acres of acquired, restored, and enhanced wetland habitats by 2010.

More than half of the 78,000 acres added since August 1993 have been on agricultural land, especially in the Central Valley habitat of wintering migratory waterfowl. ❑

Schools Watch
William Fulton

Farm Bureau Goes After Schools On Ag Buffer Issue

Spurred by farmers' complaints about the location of new schools in agricultural areas, the Legislature appears likely to pass a bill requiring school districts to bear the cost of providing buffers between schools and farms. The bill would require local governments to adopt ordinances establishing buffer standards.

AB 1724, being carried by Assemblyman Bruce McPherson, R-Santa Cruz, is working its way through the Assembly with the sponsorship of the California Farm Bureau Federation. Significantly, the California School Boards Association, which initially opposed the bill, has now changed its official position to "neutral" after the Farm Bureau altered the bill's approach and limited its scope.

The bill emerged from the Farm Bureau's concern about increasing conflicts between farm operations — especially pesticide spraying — and schools located in agricultural areas. The Farm Bureau has criticized school districts, which are not bound by local land-use regulations, for locating many schools in protected agricultural areas, where land values are lower. "School districts are using eminent domain to acquire land that farmers don't want to sell," said John Gamper, the Farm Bureau's land-use lobbyist. "Then the teachers tell the students to go home and tell their parents they're being poisoned by spraying."

The issue has even gotten intertwined with the highly publicized legislative debate over whether to ban the use of the pesticide methyl bromide. One of the many supposed "horror stories" about school districts ignoring local planning policies involves the location of the Ohlone School near Watsonville. This school, which is located in McPherson's district, has been highly publicized by educators and environmentalists as a methyl bromide "hot spot". By pushing AB 1724, the Farm Bureau is essentially arguing that such methyl bromide hot spots were created not by the farmers, but by school districts in search of cheap school sites.

A former school board member says the Ohlone School was located partly for cost reasons but placed part of the blame with the State Allocation Board, the state entity that distributes state school bond money.

Vic Morani, former president of the Pajaro Valley Unified School District Board of Trustees, said the Ohlone School is located next to an agricultural field. But he also said it is located next to a golf course and a housing development and was previously used as a rundown residence with illegal units and an illegal septic system. "It wasn't my first choice, but that's all they could afford," he said.

As the law now stands, buffers between agriculture and schools must be created by the farmers themselves under guidelines provided by the county agricultural commissioners. Many counties require 100-foot buffers, which experts say adds five acres to most required school sites. Many farm experts say 100 feet is not enough.

As originally drafted, AB 1724 would have gone much farther. Prior to legislative hearings in January, the bill would have declared it state policy that schools should be situated in locations that are consistent with local general plans. Furthermore, that version of the bill would have prohibited school districts from violating general plans unless findings were made that the site was not chosen primarily because of low cost.

According to Gamper and Laura Walker, lobbyist for the California School Boards Association, the bill's approach was altered when committee hearings began in January. At that time, the Farm Bureau dropped the language about state policy and findings and instead substituted a more modest approach. As now written, AB 1724 would simply add agricultural buffers to the short list of local land-use planning items that school districts are not exempt from. (This list, which is contained in Government Code §53097, currently includes drainage, road improvements, and on-site grading plans. Cities and counties would have to adopt agricultural buffer standards in order for this provision to apply.

Walker said CSBA went neutral because the organization was "kind of nervous" about opening up the whole question of the school districts' exemption from local planning ordinances. As revised, she said, the bill "is probably not that bad a deal for us." She said language is now being drafted specifying that school districts could use state bond funds to pay for additional land requirement to meet the buffer standards.

Without CSBA's opposition, the bill has passed the Assembly Local Government and Education committees and appears likely to pass.

In its literature, the Farm Bureau has erroneously referred to the Ohlone School in Watsonville as a high school. In part, this may be because the Pajaro Valley Unified School District considered — but rejected — a prime agricultural site for a high school.

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School Bond Goes on Ballot

Meanwhile, the Legislature and Gov. Pete Wilson have agreed to place a $3 billion state school bond issue on the March ballot — a measure that will apparently be the only state bond measure on the ballot during that election.

Placing the measure on the ballot represents a major victory for the school facilities lobby. It will be the first school bond measure on the ballot since June of 1994, when state school bonds failed to win voter approval for the first time since they began appearing on the ballot in 1982. The state school bond program is virtually out of money, but local bond issues, development fees and Mello-Roos taxes, and other local financing sources have not plugged the gap completely.

Since that time, school facilities advocates have lobbied hard for another crack at the ballot. An attempt to put school bonds on the November 1994 ballot fell short when Republicans and Democrats were caught in a squabble over whether bond measures should focus on schools or prisons. This time, however, the school bond measure even passed the Republican-controlled Assembly by a 68-6 vote. Among those credited with engineering Assembly approval was Assemblyman Bruce McPherson, R-Santa Cruz, who is also carrying the agricultural buffer bill. The measure even won the support of Gov. Pete Wilson, who has, in the past, called for an end to the state school bond program.

The school facilities lobby, which attributed the 1994 loss to a poorly financed campaign, is revving up for a more aggressive campaign. The Coalition for Adequate School Housing (CASH) has already distributed a videotape featuring shots of portable classrooms, crowded playing fields, and panoramas of new development. ❑

CP&DR
LEGAL DIGEST

Santa Clarita Plan Requires EIR

Redevelopment Work Lay Beyond Quake Damage

The City of Santa Clarita's ambitious plan to use a post-earthquake redevelopment plan to do $1 billion worth of public improvements in the city is not exempt from the California Environmental Quality Act, the Second District Court of Appeal has ruled.

Santa Clarita's plan might have been exempt from CEQA had it been confined simply to repairing earthquake-damaged property and public works, the court ruled. But this was not the case. The Santa Clarita situation "is an attempt to use limited exemptions contained in CEQA as a means to subvert rules regulating the protection of the environment," wrote Presiding Justice Mildred Lillie for a unanimous Division 7, Second District, panel. Reversing the ruling of L.A. County Superior Court Judge Robert O'Brien, the court ruled the city's notice of exemption overturned.

The Santa Clarita situation received wide attention because of its broad interpretation of the 1964 law permitting the expedited creation of redevelopment project areas after disasters. Assemblyman Phil Isenberg, D-Sacramento, who wrote the redevelopment reform law of 1993, criticized the city for merging his reform law with the redevelopment disaster law to create "a hybrid never intended by the Legislature." The Santa Clarita case was one of the reasons the Legislature passed AB 189 last year — a measure that specifically limits post-disaster redevelopment efforts to repairing damage created by the disaster.

Furthermore, the Attorney General's office — on its own initiative — intervened in the Santa Clarita case as an amicus curiae, arguing that the city had wrongly used the CEQA exemption. The AG's office, among others, pushed for publication of the Second District's ruling, which was originally released as an unpublished decision in December.

Incorporated in 1987 after rapid growth under L.A. County rule, Santa Clarita is located just north of the San Fernando Valley along Interstate 5. The city was heavily damaged in the 1994 Northridge earthquake, which was epicentered nearby.

A month after the earthquake, the city unveiled the plan to declare most of the city a redevelopment project area under the State Community Redevelopment Financial Assistance and Disaster Law, a special law passed in 1964 after the Crescent City tidal wave that permits rapid creation of redevelopment areas after disasters. Among other things, post-disaster redevelopment efforts usually fall under a CEQA exemption (21080(b)(3) and (4)) covering earthquakes and other natural disasters.

The city estimated earthquake damage at $144 million. But the city government originally sought to include all the city's territory (43 square miles) in the project area and eventually included two-thirds of the city (29 square miles) in the project area. Furthermore, the city based its redevelopment work program not just on earthquake repairs, but also on a 1988 analysis that concluded $911 million in public improvements would be required to bring the city's infrastructure up to current standards. (Santa Clarita residents have often complained about L.A. County's lax approach to infrastructure standards — a sentiment that was one of the leading reasons for incorporation.)

In one report to the council, city redevelopment director Donald Duckworth openly acknowledged that the post-disaster redevelopment law gave the city the opportunity to "not only recover and provide disaster relief from the earthquake, but also to advance some principal purpose that you identified in your adopted General Plan," meaning the $900 million infrastructure deficit.

Santa Clarita was then sued by Castaic Lake Water Agency, which stood to lose $42 million in property-tax revenues to the city under the proposed redevelopment plan.

In the trial court, Judge O'Brien concluded: "The fact that a pre-disaster potential redevelopment plan addressed conditions that a disaster restructuring plan also addresses is not a determinative factor. ... Simply repairing earthquake damage is not the purpose of the disaster exemption." He added: "So long as there is a logical synapse between the precisely damaged property, which needs immediate attention, and the other undamaged property within the plan and within the affected land use sphere of damaged property, the Disaster Law applies."

Writing for the appellate court, Justice Lillie disagreed. "[T]he administrative record 'unmistakably shows a predominant focus' on infrastructure and economic revitalization measures rather than the activities listed in the exemption statutes," she said. "The proposed plan encompasses much of the city and in addition to maintaining, repairing, restoring, demolishing, or replacing property or facilities damaged or destroyed by the Northridge earthquake seeks to among other things construct facilities independent from the earthquake, infrastructure improvements to alleviate deficiencies in the city's traffic, storm drain, and parks space system identified in a 1988 study, construct infrastructure to prevent future disasters, construct commuter rails and bikeways, and to redevelop sites identified as important to the success of the community's economic development and revitalization efforts."

The appellate court also overturned O'Brien's decision to allow Santa Clarita to assert that Castaic had not exhausted all administrative remedies. The city claimed Castaic did not object to the plan at public hearings, but the court concluded that Castaic's general manager had asked for a delay in order to consult with his board and that request was ignored by the city. ❑

■ The Case:
Castaic Lake Water Agency v. City of Santa Clarita, No. B088277, 96 Daily Journal D.A.R. 587 (January 19, 1996).
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ZONING

Annual Review of Shelter Struck Down By 9th Circuit

A city can restrict occupancy of a homeless shelter for handicapped people if those restrictions are "reasonable" — but cannot

subject the shelter to annual review under a special use permit, the Ninth U.S. Circuit Court of Appeals has ruled.

In a follow-up to the U.S. Supreme Court's ruling in *City of Edmonds, Wash., v. Oxford House*, 115 S.Ct. 776 (*CP&DR*, June 1995), the Ninth Circuit said it could "perceive no persuasive justification" for annual use permit review. Any contingency "appears to be controllable under the ordinary law of nuisance and the city's power to declare and abate nuisances," the court said.

The City of Caldwell, Idaho, did not appeal U.S. District Court Judge Larry Boyle's conclusion that the application of its zoning ordinance in this case failed to reasonably accommodate handicapped persons under 42 U.S.C. 3604 (the Fair Housing Act), as called for in the *Edmonds* case. However, after protracted discussion, Caldwell and the homeless shelter, Turning Point Inc., agreed that a 25-person occupancy level constitutes a "reasonable accommodation of the handicapped" in a 3,700-square-foot single-family home.

The case began in 1991, when Turning Point purchased a single-family home and an adjacent duplex in a C-2 (commercial) zone in Caldwell, a small city 25 miles west of Boise. Seeking to accommodate up to 40 people, Turning Point asked permission to obtain a special unit permit, or SUP, for the single-family home. The Planning Commission approved an SUP provided that occupancy was restricted to 25 people. After Turning Point appealed the SUP action, however, the City Council reduced the figure to 15 — a figure that had been suggested by the fire chief as "the tolerable number" even though local ordinances would have permitted 25.

Turning Point then sued in federal court, claiming that the city had violated the Fair Housing Act and also claiming that the city's zoning ordinance was unconstitutionally vague.

In the *City of Edmonds* case, the U.S. Supreme Court — affirming a ruling by the Ninth Circuit — concluded that an occupancy limit for a group home for recovering drug and alcohol abusers could constitute a violation of the 1990 amendments of the Fair Housing Act, which give special protection to the handicapped. The Ninth Circuit ruling (though not the Supreme Court ruling) was in place when Judge Doyle issued his ruling in the *Turning Point* case. Doyle ruled that although the city had not intentionally discriminated, the occupancy limit was "not calculated according to any uniform code or zoning ordinance"; was "not designed to preserve the character of a single-family residential zone"; and was "a severe financial burden on Turning Point that would eventually force it to close. Therefore, he ruled that the occupancy limit was unreasonable and a violation of the Fair Housing Act.

Doyle ordered the occupancy limit to be increased to 25. He ordered Turning Point to maintain the home's historical integrity and meet other conditions as well. But he also called annual review of the SUP "a crucial component," arguing that conditions which might be reasonable now could become "unreasonably burdensome" in the future.

Turning Point appealed, again arguing that the ordinance requiring the SUP was constitutional and claiming that the city intentionally discriminated. Caldwell appealed damages of $5,600 — but not the ruling that it violated the Fair Housing Act. "There was nothing to appeal in this ruling," the Ninth Circuit explained, "because this ruling faithfully reflected the direction that our decision in *City of Edmonds v. Washington State Building Code Council* took."

While acknowledging that the Caldwell zoning ordinance is "complicated and comprehensive," the Ninth Circuit also concluded: "It is typical of many such city ordinances." The language "is not so general as to be unintelligible to any reasonable owner of property. It is constitutional."

The court found that although Caldwell had insisted on an unreasonably low level of occupancy, Turning Point now agrees that a 25-person limit is reasonable. This left the annual review of the SUP as the only significant issue on appeal. In striking down the annual review, the court said the city could use its power to abate nuisances if necessary to deal with issues that might arise at Turning Point. The court chose not to reach the question of whether Caldwell had discriminated intentionally. ❑

- The Case:
  Turning Point Inc v. City of Caldwell, No. 95-35223, 96 Daily Journal D.A.R. 808 (January 25, 1996)
- The Lawyers:
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CEQA

General Information Good Enough For Reasonably Foreseeable Project

A Sonoma County judge has rejected a legal challenge to an environmental impact report for a housing project in Bodega Bay, saying that a general discussion of "reasonably foreseeable" uses is sufficient under the California Supreme Court's ruling in *Laurel Heights Improvement Association v. University of California*, 47 Cal.3d 376 (1988).

Judge Lawrence K. Sawyer's ruling is significant because the "reasonably foreseeable" future uses in the case actually involves commercial development originally proposed in the project and then deleted. "Although the discussion is not exhaustive, the discussion does appear to provide adequate, good-faith information to insure that the decision maker and the public are fully informed," Sawyer said.

The case involves the proposed Harbor View Project, originally a residential and commercial project proposed by TFC Development Co. on a six-acre parcel in Bodega Bay. The project has been surrounded by public controversy.

In 1989, TFC proposed 119 residential units and 40,000 square feet of commercial space. Three years later, the company returned with a second proposal to develop 84 residential units and a 20,000-square-foot commercial development on 4.2 acres. The county denied the project based on traffic impacts, most of which were associated with the commercial development. Subsequently TFC eliminated the commercial component of the project and obtained approval only for the 84 residential units. Some relocation of access roads was also required by the redesign.

TFC then identified the property that had been designated for commercial development as a "remnant" parcel and claimed to have no development plans for the parcel, commercial or otherwise. The EIR stated that commercial development will not occur until a Highway 1 bypass is built or Bodega Bay residents alter their view about the desirability of more commercial development.

Bodega Bay Concerned Citizens challenged the EIR on a number of grounds, but their principal argument was that the commercial development that had been originally proposed was "reasonably foreseeable" and therefore should have been examined in detail in the EIR. In particular, the citizens complained that the cumulative traffic impact analysis — projecting a 31% increase in traffic over the next 10 years — was too low and didn't reflect the likely traffic impact of commercial development on the parcel in question.

The *Laurel Heights* case established that reasonably foreseeable future development must be included in an EIR's discussion of cumulative impacts. Sawyer concluded that commercial development on the parcel in question was reasonably foreseeable, then moved on to the question of whether the EIR's analysis of that development was adequate. He concluded that even thought the EIR's discussion of the issue was quite general, it was still adequate under *Laurel Heights*. In particular, he accepted that the traffic forecasting methodology was consistent with Caltrans standards.

Sawyer also rejected the citizens' claim that the EIR was defective because it was geared to weekend peak hours rather than weekday peak hours.

Concerned Citizens had also argued that the EIR must be recirculated because on the date of its certification the county accepted a lengthy addendum which included an 18-page cultural resource evaluation that recommended monitoring of the site for archaeological finds. This required Sawyer to examine the question of whether this information was actually "new" information — a question that has been at issue in several CEQA court challenges recently. Sawyer found that the archaeological information was previously available and, in fact, had been referred to previously by the Concerned Citizens group. Thus, no recirculation was needed, he concluded. ❑

- The Case:
  Bodega Bay Concerned Citizens v. County of Sonoma, Sonoma County Superior Court No. SCV 209628 (decision filed December 15, 1995).
- The Lawyers:
  For Concerned Citizens: Susan Brandt-Hawley, (707) 938-3908.
  For Sonoma County: Neal Baker, Deputy County Counsel, (707) 527-2421.
  For TFC Development (Real Party in Interest): Judy Davidoff, Baker & McKenzie, (415) 576-5300.

CC&RS

State Supreme Court to Hear Yet Another CC&R Case

Litigation surrounding private CC&Rs — some of it related to local land-use regulations — continues to occupy the California courts.

In December, the California Supreme Court ruled that CC&Rs (covenants, conditions, and restrictions) requiring single-family use in a Woodside neighborhood could be enforced even though the CC&Rs were not included on the original deed. The property owners wanted to operate a winery and had obtained a conditional use permit from the city to do so. (*CP&DR Legal Digest*, January 1996.)

In early February, the Supreme Court was scheduled to hear arguments in a second case involving similar issues.

In *San Antonio Hills Inc. v. O'Neill*, No. 95-67, a community association in Los Altos has sued to block individual property owners' subdivision of land into half-acre lots even though such lots are permitted under current zoning.

This case involves land around the Los Altos Golf & Country Club. Some older 5,000-square-foot lots exist, but beginning in 1941 the club created CC&Rs requiring one-acre lots. But some property owners were not located within the boundaries of the original subdivision maps and apparently did not feel bound by this restriction. When two property owners sought to create half-acre lots, the community association sued.

In an unpublished opinion, the Sixth District Court of Appeal ruled in favor of the individual lot owners. The court ruled that the CC&Rs could not be enforced as covenants running with the land, nor could they be enforced as equitable servitude since they were not created by mutual consent between grantor and grantee and were not created pursuant to a plan for all the lots. San *Antonio Hills Inc. v. O'Neill*, C.A. 6th, No. H012062.

The Supreme Court's ultimate decision in the *San Antonio Hills* case may well be affected by its earlier decision in the *Woodside* case. In the *Woodside* case, the court laid down a new rule that brought the law of covenants and equitable servitude closer together.

In another CC&R case not closely tied to land-use regulation, the Second District Court of Appeal has ruled that a Beverly Hills-area property owner has a legitimate cause of action in suing his community association to recover the cost of repairing a hillside slump.

CC&Rs in the Benedict Hills Estates subdivision specify that the community association will maintain natural and manmade slopes and drainage ditches, even on individual lots. Property owner Eric Cutujian sought to have the association pay for a surface slump on his fill slope, which existed when he bought the property 12 years after the neighborhood was built. When the association balked at repairing the slump, Cutujian did it himself and then sought to recoup the cost from the association.

Cutujian filed three amended complaints and the association claimed that the action was barred by the statute of limitations. L.A. County Superior Court Judge Irvine Shimer ruled in favor of the association, but the Second District reversed, saying the statute of limitations for CC&R enforcement is four years. *Cutujian v. Benedict Hills Estates Association*, No. B083616, 96 Daily Journal D.A.R. 730 (January 24, 1996). ❑

REDEVELOPMENT

Court Rejects L.A. Appeal On CRA 'Spending Cap' Case

In another blow to the Los Angeles Community Redevelopment Agency, the Second District Court of Appeal has let stand a trial judge's ruling that the courts do not have jurisdiction to amend a 1977 settlement agreement imposing a cap on the amount of money the agency can spend in the 1,500-acre Central Business District Project Area.

The Second District denied a writ of mandamus without comment.

The CRA has been seeking to amend the so-called "spending cap" for almost 10 years. In long-standing redevelopment project areas such as L.A.'s CBD, redevelopment agencies are typically permitted to keep and spend all the "tax increment" — that is, all the increases in property taxes inside the project's boundaries. (More recent project areas are required to share this tax-increment with counties, school districts, and other local governments that receive a share of the property tax.)

In 1977, the agency settled a lawsuit brought by then-Councilman Ernani Bernardi, a longtime redevelopment opponent, by agreeing to a "cap" of $750 million for the life of the project. During the 1980s, however, CBD property values — and, hence, the CRA's tax-increment revenues — rose dramatically. The CRA negotiated for several years with the county and the school district over how to amend the settlement agreement so that the CRA could continue to receive revenue after the spending cap was reached. Among other things, the county would receive 26.1% of the tax increment and another 5% of the money would be set aside for use by the CRA on county-approved projects.

But Bernardi — now 85 and retired from the city council — has refused to go along with the agreement and has continued to oppose it in court. "They never know when enough is enough," he told the Los Angeles Daily News recently. In October, Superior Court Judge Florence Pickard ruled that, without Bernardi's consent, the courts do not have the power to change the 1977 settlement agreement.

Assemblyman Phil Isenberg, another redevelopment critic, has complained that the spending-cap agreement violates the spirit of his AB 1290, the 1993 redevelopment reform law that requires specific "passthroughs" to counties, school districts, and other taxing entities. Isenberg and other legislators asked Gov. Pete Wilson to intervene

in the case on Bernardi's side, saying that the deal would cost the state $800 million in current dollars because the state must make up any property-tax dollars lost by the school district in the redevelopment project area.

However, Los Angeles Mayor Richard Riordan complained to Wilson that Isenberg's letter was "well meaning" but "erroneous" and "ill informed". The state did not intervene in the case. ❑

ENDANGERED SPECIES

Judge Strikes Down State's Blanket Disaster Exemption

The Department of Fish & Game exceeded its authority under the Fish & Game Code by issuing an emergency exemption to small property owners from the California Endangered Species Act during last spring's heavy rains, a San Francisco Superior Court judge has ruled.

Judge William Cahill rejected the Fish & Game Department's contention that the Emergency Management Measures Permit is analogous to an incidental take permit under Section 10 of the federal Endangered Species Act, or to nationwide permits issued under Section 404 of the federal Clean Water Act, which deal with the dredging and filling of wetlands. "There is no express or implied exemption in CESA which authorizes issuance of the permit," Judge Cahill wrote.

Gov. Pete Wilson immediately issued a statement denouncing the ruling, saying: "With impending natural disasters, it is critically important that state rules and regulations not stand in the way of essential actions to protect life and property." However, Resources Agency spokesman Andy McLeod said the Administration had not determined whether Cahill's ruling would be appealed to the First District Court of Appeal.

That decision, he said, would depend in large part on the impact an appeal would have on political attempts to reform the California Endangered Species Act in Sacramento. Wilson's own reform proposal was killed in the Legislature last year, but other measures by Republicans and moderate Democrats are still alive.

The 1994-95 winter rains were among the heaviest on record, causing severe flooding and other problems, especially in Monterey County and the Bay Area. On March 17, 1995, the Department of Fish & Game issued a broad-ranging "Emergency Management Measures" permit allowing farmers and small property owners to restore property to pre-disaster conditions without meeting the requirements of the state Endangered Species Act. Like its federal counterpart, the state prohibits tampering with the habitat of a species listed as endangered without express approval from regulatory authorities. A group of environmental organizations led by the Planning & Conservation League sued.

Fish & Game typically issues individual permits for specific actions under Fish & Game Code §2081, which permits the department to authorize a "take" of species for "management" purposes; Fish & Game has interpreted the term "management" as requiring a net benefit to the species. (Most of the language of §2081 appears aimed at taking species for scientific or educational purposes.) In this case, however, Fish & Game sought to use §2081 to issue a blanket permit to cover unspecified activities by unidentified property owners to deal with disaster conditions. Cahill rejected Fish & Game's position in forceful terms.

Before Judge Cahill, Fish & Game unsuccessfully sought to argue that §2081 is analogous to §10 of the federal Endangered Species Act, which also allows incidental take permits and is often used in conjunction with habitat management. However, Cahill pointed out that the federal law requires the applicant to provide a detailed conservation plan with specific mitigation measures. "In stark contrast to the Section 10 permit process," Cahill wrote, "the subject EMM permit pre-authorizes unspecified activities by unknown members of the public. Respondents attempt to justify the permit and their broad interpretation of 'management purposes' on emergency grounds. Yet, Respondents concede that CESA contains no emergency exemption."

The analogy to Section 404 of the Clean Water Act was rejected on similar ground — that a 404 permit applies only to specific conditions and is issued only if minimal environmental damage results.

"Here, there is nothing in the record which supports Respondents' contention that issuance of the permit will not cause jeopardy to listed species," Cahill wrote. "The EMM permit does not require a net benefit result from the activities it authorizes, and in fact does not require that any measures be taken to mitigate the effects of the takings. Therefore, it does not comport with §2081 and is in violation of CESA."

Cahill also ruled that the permit is not exempt from the California Environmental Quality Act because it applies not only to emergency situations declared by the governor (as allowed under one CEQA exemption) but also to emergencies declared by local government. ❑

■ The Case:
Planning and Conservation League v. Department of Fish & Game, San Francisco Superior Court No. 970119 (January 17, 1996).

■ The Lawyers:
For Planning and Conservation League: J. William Yeates, Remy & Thomas (916) 443-2745.
For Department of Fish & Game: Clifford Lee, Deputy Attorney General, (415) 703-2013.

U.S. High Court Declines to Take Case on Owl's Critical Habitat

The U.S. Supreme Court has declined to review a decision by the Ninth U.S. Circuit Court of Appeals which concluded that environmental review processes do not apply to the designation of critical habitat under the federal Endangered Species Act.

The high court turned down *Douglas County v. Babbitt*, Supreme Court Docket No. 95-371 without comment. The case is one of several pieces of litigation surrounding the listing of the spotted owl as an endangered species.

The case arose when Douglas County, Oregon, sued the Interior Department, claiming that designation of the spotted owl's critical habitat should have been subject to an environmental assessment (and perhaps an environmental impact statement) under the National Environmental Policy Act.

After listing the owl in 1990, the Interior Department initially proposed designating 11.6 million acres of property in the Northwest for owl habitat, meaning private activity such as logging would not likely be permitted. The final rule designated 6.9 million acres as critical habitat, leaving out all private land and public land owned by local and state governments. All of these actions occurred under Interior Secretary Manuel Lujan, who was appointed by President Bush.

In its opinion, the Ninth Circuit ruled that NEPA does not apply to designation of critical habitat because Congress intended the Endangered Species Act procedures to replace the NEPA process and because designation of critical habitat does not change the physical environment. "We are reluctant...," the Ninth Circuit wrote, "to make NEPA more of an 'obstructionist tactic' to prevent environmental protection than it may already have become."

The Ninth Circuit's ruling, issued in 1994, can be found at 48 F.3d 1495. ❑

Republicans Take Control of Key Assembly Committees

Continued from page 1

in blocking reform efforts onmany environmental issues. Democrats remain in control of the Senate by a slim margin this year.

One big question mark has emerged in the Senate, however: the chairmanship — and, indeed, the future — of the Senate Housing and Land Use Committee. Senate Housing was peeled off of Senate Local Government last year in order to provide a chairmanship for Republican Tom Campbell of Palo Alto. But Campbell was elected to Congress in a special election in December and has resigned the State Senate. At press time no successor had been named and hearings were being chaired by Vice Chair Richard Monteith, a freshman Republican from Modesto. However, a reshuffling of committee assignments in the Senate could come after the March election, when Sher is expected to win Campbell's vacated seat.

The new Assembly committee assignment is likely to bolster the power of the California Building Industry Association, which also reorganized its lobbying structure after a purge last fall. CBIA recently hired Timothy Coyle, Gov. Wilson's director of Housing and Community Development, as executive vice president. The organization also hired Cliff Moriyama, who had lobbied on CEQA and Endangered Species Act for the California Chamber of Commerce, while retaining veteran lobbyist Richard Lyon, an old hand on planning and development issues.

In an interview, Coyle expressed confidence that regulatory reform will move forward this year, but refused to speculate on how CBIA and other reform advocates might be able to get their bills past Hayden's committee. Instead, he merely said the continuing building slump in many key legislative districts might win support for CBIA's cause.

The Republican committee lineup — especially in the Natural Resource Committee — suggests that Pringle and his lieutenants will make reform of environmental laws a top priority. Olberg, the new chairman, promoted sweeping changes in both CEQA and the Endangered Species Act last year; he has also called for compensation of property owners in takings cases. Furthermore, in contrast to most committees, the Republican leadership chose not to give the vice chairmanship to a Democrat, awarding it instead to Dick Ackerman, a freshman Republican from Fullerton. The Republicans also made Natural Resources the largest committee in the house (17 members) and appointed several high-profile probusiness Republicans, such as Gary Miller of Diamond Bar and Bernie Richter of Chico.

Lance Hastings, Olberg's chief of staff, said that in his new position Olberg will continue to champion the property rights cause, especially in the CEQA and Endangered Species Act arenas. His most significant pending bill is AB 137, which would provide compensation for property owners who lose value because of the California Endangered Species Act and also turn the final decision to list endangered species over to the Legislature. (The state Fish & Game Commission, which currently makes the decisions, would make recommendations instead.)

The Olberg bill passed the Assembly last year, but is still pending in Hayden's committee in the Senate. Surprisingly, Hastings said, Olberg and Hayden have a cordial relationship. "Sen. Hayden and Keith have talked several times trying to identify areas of mutual concern," he said. "They have many areas of mutual concern — but, of course, they disagree on almost everything."

Meanwhile, Housing Committee Chair Hawkins is said to be interested in diving into a number of controversial issues. "He believes that housing drives the economy, and he's looking at ways to improve the housing climate," said Paul Deiro, the new chief consultant for the committee. "We're going to look at everything from redevelopment to housing elements." Deiro is a former legislative analyst for the Governor's Office of Planning and Research and, most recently, a legislative specialist for the California Housing Finance Agency.

The Assembly Local Government Committee, which retains jurisdiction over most local land-use planning issues, has proven more stable. Both the chair, Republican Richard Rainey of Walnut Creek, and the chief consultant, Diane Longshore, have returned for another year. But the Republicans bounced the Democratic vice chair, Mike Sweeney of Hayward, an environmentalist who had hired several veteran Democratic staffers who had worked on planning and growth management issues. Sweeney was replaced by another Democrat, Grace Napolitano of Norwalk. ❑

New Committee Lineups

Here are the new lineups for three Assembly committees with key responsibilities for planning and development legislation:

Assembly Housing & Community Development Committee
(6 Republicans, 5 Democrats)
Chair: Phil Hawkins, R-Cerritos
Vice Chair: Robert Campbell, D-Martinez
Republican Members:
Mickey Conroy (Orange),
Trice Harvey (Bakersfield),
Bob Margett Arcadia),
Bernie Richter (Chico),
Ted Weggeland (Riverside)
Democratic Members:
Denise Ducheney (San Diego),
Dan Hauser (Arcata),
Phil Isenberg (Sacramento),
Grace Napolitano (Norwalk)
Chief Consultant:
Paul Deiro, (916) 445-2320.

Assembly Local Government Committee
(6 Republicans, 5 Democrats)
Chair: Richard Rainey, R-Walnut Creek (holdover)
Vice Chair: Grace Napolitano, D-Norwalk
Republican Members:
Dick Ackerman (Fullerton),
Brett Granlund (Yucaipa),
Steve Kuykendall (Rancho Palos Verdes),
Bob Margett (Arcadia),
Brian Setencich (Fresno)
Democratic Members:
Tom Hannigan (Fairfield),
Wally Knox (Los Angeles),
Kevin Murray (Los Angeles),
Mike Sweeney (Hayward)
Chief Consultant:
Diane Longshore (holdover),
(916) 445-6034

Assembly Natural Resources Committee
(9 Republicans, 8 Democrats)
Chair: Keith Olberg, R-Victorville
Vice Chair: Dick Ackerman, R-Fullerton
Republicans: Steve Baldwin (El Cajon),
Paula Boland (Granada Hills),
Gary Miller (Diamond Bar),
Charles Poochigian (Fresno),
Bernie Richter (Chico),
James Rogan (Glendale),
Bruce Thompson (Fallbrook),
Tom Woods (Shasta)
Democratic Members:
Sal Cannella (Ceres),
Barbara Lee (Oakland),
Steve Machado (Stockton),
Juanita McDonald (Carson),
Byron Sher (Palo Alto),
Jackie Speier (Burlingame),
Mike Sweeney (Hayward)
Chief Consultant:
Not named at press time. ❑

New Colorado Water Deals Stir Controversy

Continued from page 1

best way to provide enough water for fast-growing cities.

Anticipating reduced water supplies in coming years, the MWD — a public agency which buys water from various sources and resells it to water agencies in Southern California — has been working on a program of maximizing the water resources of the Colorado River, including "water banking" projects. Among other problems, the Met appears likely to lose Colorado River water to Arizona in the next few years under the river's complicated rules.

The lining of All American Canal, an 82-mile earth-lined channel which delivers Colorado River water to the Imperial Valley just north of the Mexican border, is expected to increase the yield of the All American Canal by 70,000 acre-feet to a total of 300,000 acre-feet. (The canal is owned by the U.S. Bureau of Reclamation.) Federal legislation in 1988 authorized the Met to line the canal as the means of settling a water dispute between five bands of Mission Indians and the San Diego County cities of Vista and Escondido. The resultant water savings is expected to supply the needs of both the tribe and the cities.

Meanwhile, Las Vegas, currently the fastest growing city in the West, needs more water to sustain future growth. The Las Vegas area, which uses about 200,000 acre-feet per year now, needs 60,000 acre-feet annually to accommodate future growth. The All-American Canal deal, combined with local water-conservation measures, will give Las Vegas 54,000 acre-feet of that goal, according to Patricia Mulroy, executive director of the Southern Nevada Water Authority. "This is an historic agreement for users of the Colorado River, because it is about cooperation, instead of competition," Mulroy said.

Timothy Quinn, MWD deputy general manager, described the deal as a "win-win" venture that ends 40 years of water disputes between Las Vegas and Southern California. But the agreement has angered the Imperial Irrigation District. The district, which had been in negotiations with the Met regarding the All American Canal, withdrew from talks shortly after the Met announced the MOU with Southern Nevada. An IID spokeswoman says the MWD acted unilaterally, without regard for the interests of either the IID or local farmers. The spokeswoman further claimed that Nevada is not entitled to the water, since the legislation was intended to benefit users in Southern California.

The Met's Quinn responds by saying: "Frankly, we are surprised by the furor it (the deal) has caused. We are spending money to eliminate waste. No user has a drop less than before."

Notwithstanding its claims on water from the All American Canal, the Imperial Irrigation District appears to have plenty of water — at least enough to sell to San Diego County.

Currently, San Diego is almost completely dependent on the Met, consuming 25% of MWD's production, even though the county is entitled to 12%. In other words, San Diego relies heavily on MWD's surplus water. That makes San Diego County officials anxious: under Section 135 of the MWD Act, which governs the distribution of water during dry years, Los Angeles has preference over San Diego. And in fact, despite several cycles of severe drought, MWD has never had cause to ration water and shortchange San Diego County. That history, however, does not assuage San Diego County Water Authority officials like Chris Frahm, who is both MWD vice chairman and a member of San Diego Water's Imported Water Committee. She says that Arizona's stated intention of using its Colorado River Water puts San Diego at risk. The "side deal" with Imperial Irrigation, on the other hand, will ensure a reliable water supply for the county, according to Frahm. The wild card, in this case, is the price that San Diego County Water must pay for its Imperial Valley water.

Price has led to a squabble between MWD and San Diego County Water. MWD officials say they support the San Diego County- Imperial Irrigation deal in principal; long-standing policy encourages MWD's member agencies to buy water from other sources. But MWD is balking at the idea of transporting water from the Imperial Valley to San Diego County. MWD's purpose, according to Quinn, is to provide the cheapest water possible; currently, MWD water costs $25 to $75 per acre foot. But the Imperial Valley water could cost San Diego far more, as much as $400 an acre foot, according to Quinn. Part of the reason, he claims, is that the Bass Brothers of Texas have been actively buying up water rights in the Imperial Valley, allegedly with the goal of reselling the water at a big markup to cities in Southern California. Why should MWD fill its aqueduct with expensive water, Quinn argued, at a time when MWD would prefer to fill its pipeline with cheap water. "It's the oldest thing in the world: cheap resources vs. expensive resources," he said.

The suggestion that San Diego will buy water at an exorbitant price angers Frahm of San Diego County Water, who retorts that MWD's price estimates are baseless, since the price is still under negotiation. Imperial Irrigation, for its part, is publicly attempting to distance itself from the aqueduct controversy, saying that it's an issue between the Met and San Diego County. MWD's Quinn seemed to downplay the brewing regional water conflict, pointing out that MWD is currently in negotiations with both the IID and San Diego County on the use of the aqueduct. In addition, MWD, Imperial and four other Southern California water agencies are in "facilitated negotiations" about disputed MWD proposals and other regional water disputes.

■ Contacts:

Patty Warren, spokesperson, Imperial Irrigation District (619) 682-4126.

Timothy H. Quinn, deputy general manager, Metropolitan Water District, (213) 217-6636.

Robert Gomperz, spokesman, Metropolitan Water District, (213) 250-6000.

Patricia Mulroy, executive director, Southern Nevada Water Authority, (702) 870-2011.

Chris Frahm, Met vice chairman and member of San Diego Water Authority's Imported Water Committee, (619) 589-5580.

NUMBERS

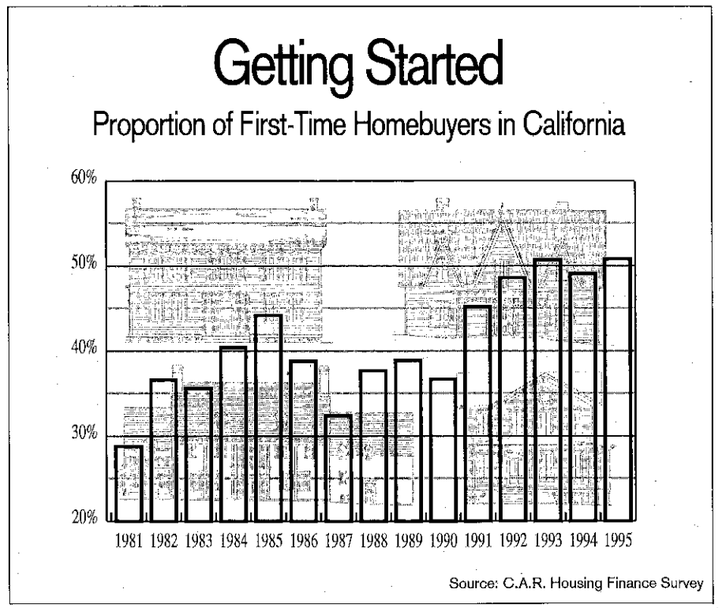
Stephen Svete

A New Kind of Equity

The story of residential real estate in California has long been a tale of haves and have-nots. The demographic group with a name that only a real-estate agent could love — the First-Time Buyer — once had a tough go of it in the Golden State. And this group was considered important to both real estate types and planners, as it was seen as the base of the housing market pyramid by the former and a stabilizer of neighborhoods by the latter.

Only five years ago, FTBs in California had to contend with home prices double the national average. Such households faced an unfortunate series of choices: leave the state entirely, resign to being a tenant forever, or endure long commutes from Adelanto or Tracy.

But the recession has changed a few equations in the real estate world. And those changes have opened up the housing market quicker than you could write an inclusionary zoning ordinance. The California Association of Realtors' 1995 Housing Finance Survey reveals that the FTB is now responsible for more than half of the homes purchased in the state — an all-time record figure. What's more, the pricing and financing data gathered as part of the survey indicates that this generation of FTBs may be able to provide for longer-term stability in the market.



From our vantage point in 1996, it is easy to deconstruct the rise and fall of the housing market in the state over the last ten years. The skyrocketing price structure peaked in 1990, and the plummet was foreshadowed by the collapse of the savings and loan industry — which had shot itself in the foot with the very deregulation that had made the boom of the late 1980s possible. In California, economic restructuring followed. All of these events eroded the collective household's buying power in California, and made housing in the state a bad investment. So housing prices have dropped. And dropped. And are only now beginning to stabilize and rebound in some markets.

But here's the good news: thousands of people have flocked to the housing market and become FTBs. This surge has resulted from several trends. For example, the median sales price for houses purchased with adjustable rate mortgages in 1991 was $234,000, while it dropped to $184,500 in 1995 — a 21% decline in five years. (For fixed-rate mortgages, the drop was 7%.). Lower prices have been recorded in part because of a large number of "repos", or defaulted properties that ended up back in the hands of lenders.

Borrowers benefited from lower interest rates, too. In 1991, at the beginning of the bust, the median ARM loan rate was 8.24%, while last year it dropped to 6.5%. The median fixed-rate loan dropped from 9.5% to 8% during the same period.

And FTBs didn't need as much money. The median income of an ARM loan borrower household dropped from $70,000 to $60,000 between 1991 and 1995. That's part of the reason that FTBs rose from 32% to 51% of the overall home-buying market during that period.

Of course, the losers in this new market situation are the longtime homeowners who are now trying to sell. Net cash proceeds to sellers dropped from $68,000 in 1991 to $35,000 in 1995, once again underscoring that California houses may no longer be a quick-money investment. From a sociological perspective, some of the most encouraging news in the survey is this: First-time buyers are no longer looking at the residence as an investment vehicle, but as a true home. When asked their reasons for making a home purchase, only 7.7% replied that they did so for investment/tax considerations. This compares with 15.3% of buyers in 1991. And 33.5% said they bought because they were tired of renting. This compares to 25.8% in 1991.

In the case of housing markets in California, it might be said that a lowering tide raises all boats. For the new financial realities in home purchases have led to greater social equity, if not mortgage equity. ❑

DEALS
Morris Newman

Using Leverage at a Railroad Yard

Archimedes, the legendary scientist of ancient Greece, is reputed to have said, "Give me a lever long enough, and I can move the world." If Archimedes had lived in present-day Sacramento, however, he might well have said, "Give me a slightly outdated covenant, and I can build an upscale neighborhood in a contaminated railyard."

The history of how neighborhood activists convinced a crusty old railroad company to build housing instead of industrial buildings may not become the stuff of legend. The story, however, certainly testifies to the power of leverage. The lever, in this case, was a condition on the deed, dating from 1906, to a 66-acre parcel of railroad property. The ancient deed stipulated that when the railroad no longer had use for the property, the land should be given to the city.

That gift would have been a mixed blessing, at best, for the City of Sacramento. The Union Pacific railyards in the Curtis Park area had been in continual use as a rail maintenance yard from the turn of the century to the 1980s, and the property had become a living encyclopedia of hazardous waste. The soil was imbued with a cocktail of petroleum byproducts, hydrocarbons, chlorinated solvents, and heavy metals. Long-time residents recalled a lagoon on the site where solvents were dumped, which earned the name of "Dead Rabbit Creek." The top soil was dusted in a layer of asbestos.

> *"With many political insiders among its members, the neighborhood group had a good grasp of compromise."*

Union Pacific inherited the property when it bought out the old Western Pacific Railroad in the mid 1980s. The new owner decided to junk the maintenance yard and contemplated industrial development on the site. Then-councilman Joe Serna was gung-ho on giving Union Pacific the green light. A group of local residents, however, were not so sure. They contended that the site was contaminated and should be remediated before anything was built.

In perspective, it is not surprising that residents of Curtis Park would be aware of toxics. The neighborhood, built in the 1930s, had been a respectable, lower-middle-class enclave near downtown Sacramento, until the real estate boom of the 1980s. At that time, the quaint neighborhood was "discovered" by young professionals. "A lot of people who moved here were involved in state government, such as staff people for agencies and legislative aides, and had a certain degree of sophistication," said Ralph Proper, a neighborhood resident who is an employee of the Air Resources Board. The new residents of Curtis Park formed a well-organized neighborhood association. They knew how to hold meetings, they knew how to negotiate, and they knew how government worked.

Several years of toxic testing confirmed their hunch. Union Pacific realized that it would have to pay a high price in toxic clean up, and resigned itself to pay enough to allow commercial development on the site. But the neighborhood group, which by now had recruited the office of Councilwoman Deborah Ortiz and local environmental groups, had a different idea: They wanted the site remediated at an even higher level required for homebuilding.

The neighbors, over time, had conceived their own plan to convert the disused railyard to a residential neighborhood that would be in keeping with the surrounding area of Curtis Park. Union Pacific, however, was not so sure.

That's when the city brought out its leverage. Officials reminded the railroad company that the city had a claim on the property, according to the old deed. "We weren't sure that the deed was enforceable," recalls Proper, "but we realized that this property could be tied up in the courts forever, and we didn't mind keeping it as open space."

Negotiations between the neighborhood group and the railroad dragged on for several years. According to Proper, the railroad was unaccustomed to submitting its business plans to outsiders. Although relations between the railroad and the homeowners was not openly hostile, "the railroad had its own way of doing things, and that clashed with an influential community that was quite adamant" about its own purposes, Proper said. "We had to understand each others' cultures, and find a way to communicate with each other, and a way in which we could compromise."

The cost of remediation remained the sticking point. For a long time, the railroad simply did not want to pay the extra cost involved in cleaning up the land to home-building standards. Over time, however, the railroad was persuaded that home building could be profitable enough to offset the added cost of remediation.

The neighborhood group, which had such a good grasp of process and negotiation, also had a grasp of compromise. Toxicological studies showed that the eastern portion of the site was far less contaminated than in the west. Rather than pursue an almost impossible course of pushing for total remediation, the neighborhood group chose instead to devote roughly half the site, which adjoined the Curtis Park neighborhood, for homebuilding and residential mixed use. The Environmental Coalition of Sacramento is hoping that a developer will build a transit-oriented development on the site. Recently, the federal government approved funding for an extension of the Sacramento light-rail line to run near the site. Sacramento Regional Transit plans transit stations at the north and south ends of the site. The railroad will hold on to 25 acres of the site for use as a railroad switching yard.

In November, after nearly 10 years of negotiations, the city and Union Pacific signed a memorandum of understanding detailing the cleanup of the site and its reuse. Union Pacific has selected a local developer, KCS Properties, to manage the project. City officials expect master planning and rezoning within the next year.

Many conclusions could be drawn from the story of the Curtis Park railroad site: the value of organization, the power of knowledge, the wisdom of compromise. The whole effort might have gone nowhere, however, had it not been for the city's big stick: its legal claim on the property. Sacramento's lever, in the end, was not long enough to move the world, but it was long enough to move a very heavy railroad off of 40 acres. ❑