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Inside

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Las Vegas, Phoenix Undercut California's Impact Fees

But Yearly Fees Make These Cities Less Competitive

By Morris Newman

A new survey of municipal development fees shows extreme disparity among California cities — and a clear advantage for cities in neighboring states, such as Phoenix and Las Vegas. In many cases, however, the overall cost of doing business turns out to be competitive when ongoing fees and taxes are added to up-front development fees.

Although the California cities generally charge higher up-front "impact" development fees, supposedly low-cost cities such as Las Vegas sometimes charge higher business license fees and utility taxes. "Some cities may be passing on the cost to the (business) tenant in an indirect way," says Lawrence Kosmont of the Burbank-based Kosmont Associates, which conducted the survey. "It's an interesting phenomenon that public agencies will (lower) their fees if they want to do development — but if they feel they are in a desirable city, once a development is done, they will put their tax hooks into the users."

The 1996 "Kosmont Survey of Municipal Business Fees, Taxes, and Economic Incentives," will likely provide ammunition for a host of different cities in their business-development propaganda wars. The survey, which covered selected California cities as well as Phoenix and Las Vegas, is significant because it covers both development-related costs and ongoing costs of doing business to provide a complete picture of the real costs of doing business in particular cities. While not comprehensive, the survey's coverage is strongest in Southern California, while providing some information on most of the major cities in California as well as cities in neighboring states that have been luring

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Prop. 62 Proves Stumbling Block For 'Community Charters'

Constitutional Panel Struggles With Charter Cities

By William Fulton

California's Constitution Revision Commission is moving toward final approval of the so-called "community charter" idea. But the commissioners are grappling with the question of how to deal with charter cities, which fear that they will lose power under the proposal.

Meeting in late February, the Constitution Revision Commission agreed to recommend that the constitution require all localities to create a Citizen Charter Commission on Local Government Efficiency and Restructuring to determine whether a "community charter" would be appropriate in their area. Local voters would have to vote on community charters by 2000.

The Constitution Revision Commission also agreed to provide one major incentive for localities to organize into charter communities: the power to increase local taxes with a simple majority vote. However, this proposal causes problems for charter cities, which claim they are exempt from Proposition 62's requirement that all local taxes be put to a vote. The commission will meet again in Sacramento on March 25 in hopes of taking final action on this and other issues.

The commission also voted to eliminate one other aspect of the community charter proposal: the ability of local governments to bring category state aid "to the table" in creating a community charter. But commissioners familiar with problems of local government organization still say the commission's proposal is a breakthrough. "Even though the number of incentives has diminished and categoricals are not included, I think this still is an important first step in getting started reforming local government," said

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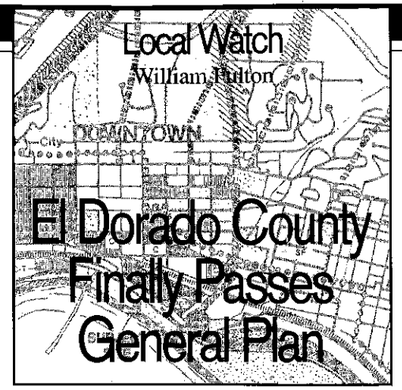
Local Watch
William Fulton



El Dorado County Finally Passes General Plan

After more than six years of contentious argument, El Dorado County has finally approved a new general plan that forecasts a doubling of the county's population over the next 20 years. But the lengthy fight isn't over yet, as a group of environmentalists and slow-growth advocates have already challenged the plan in court.

The plan was dramatically revised after the 1994 county elections, when Supervisor Bill Center, an advocate of managed growth, was defeated by free-marketeer Walt Shultz. Another casualty of the plan's preparation was Planning Director Tom Parillo, whose contract was not renewed last fall. He was replaced by Conrad Montgomery, the planning director in Placerville, the El Dorado County seat.

Expecting legal challenges, the county has also been working with Jim Moose of Remy, Thomas & Moose, an expert in the California Environmental Quality Act, to help "bulletproof" the plan against a possible CEQA challenge. "Jim sat with the planning commission and worked on it for six months," Montgomery said. According to the Sacramento Bee, the county has spent $250,000 on outside legal assistance with the plan.

Nevertheless, El Dorado County has been sued under both general plan law and the California Environmental Quality Act by a group of plaintiffs including the El Dorado Taxpayers for Quality Growth, the Sierra Club, the California Sportfishing Protection Alliance, Alpine County, and the California Native Plant Society. The group is represented by the Sierra Club Legal Defense Fund, which already has a suit against local water agencies involving water storage plans.

With a current population of almost 150,000, El Dorado is one of several fast-growing counties in the Sierra Foothills. Stretching from suburban Sacramento east to Lake Tahoe, the county grew by 73% between 1980 and 1995, according to the state Department of Finance figures. That made El Dorado the eighth fastest-growing county in the state during this period. The western part of the county, near Placerville, is receiving many rural and "exurban" commuters from Sacramento; the county's current jobs/housing ratio is 0.55:1. Much of the debate centered around whether rural areas should be downzoned or permitted to develop with estate-type lots.

The general plan revision process began in 1989, when the county hired Sedway & Cooke to prepare the plan. After Sedway & Cooke finished the first draft in 1992, however, the Board of Supervisors changed directions and assigned the project to in-house staff. A new draft plan was released in 1994, but after the supervisorial shift the plan was revised yet again to reflect the higher growth assumptions contained in the plan as adopted.

"The previous board was looking at restrictions on resources and looking at the land-use categories," Montgomery said. "Also there was some debate as to whether the county could restrict the number of building permits. That issue was up in the air when the supervisors changed in the election."

Under the new plan, Montgomery added: "We're not going to restrict growth in the market. We're going to let it grow as the market would let it grow." The plan calls for a population of approximately 400,000 people at "build-out," with about 262,000 in 2015.

However, the availability of water and other public resources and infrastructure remains a potential constraint. The plan predicts considerable traffic congestion, and contains no guarantee that water will be available for all development that would be permitted under the plan. The El Dorado Water Agency and the El Dorado Irrigation District are proposing additional water measures, some of which are under attack by environmentalists. And it remains possible that future growth could be supplied with water from the nearby Auburn Dam project, assuming that project is ever built. Federal authorities are currently considering several proposed alternatives for that project. Some would make additional water available, while others would simply focus on flood control.

Sierra Club LDF attorney Stephan Volker said his organization sued the two agencies in 1993 over plans to store water in three high mountain lakes in the Sierras, a step he claims would lead to "extravagant urban sprawl." That lawsuit is still pending, and Sierra Club LDF might file a separate challenge to the general plan or its environmental documentation.

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Sacramento County Okays Citrus Heights Incorporation

After almost a decade of wrangling, the Sacramento County Board of Supervisors has finally given its blessing to the incorporation of Citrus Heights — so long as the county gets $5.1 million in return.

The supervisors voted unanimously not to oppose the incorporation of Citrus Heights, a proposed city whose incorporation the county had previously fought all the way up to the U.S. Supreme Court. Fearing a loss of revenue to the county, the Board of Supervisors and the county's Deputy Sheriff's Association sued the county's Local Agency Formation Commission in 1987. In that lawsuit, the county challenged the constitutionality of the LAFCO process, saying residents in other unincorporated areas should also be permitted to vote because they have a stake in the outcome. The county won at the Court of Appeal but lost at the California Supreme Court; the U.S. Supreme Court declined to review the case.

Subsequently, a new state law was passed requiring incorporations to be "revenue-neutral" for counties. The LAFCO approved the Citrus Heights incorporation last year with the proviso that the new city reimburse the county for the tax revenue lost in the incorporation. The city would make the payments over a 25-year period.

Even with this payment schedule, some county supervisors still worried they might lose money — especially if the new city chooses not to impose a utility users' tax. With the unanimous vote, however, an election is expected in November.

Mello To Chair Land Use Committee

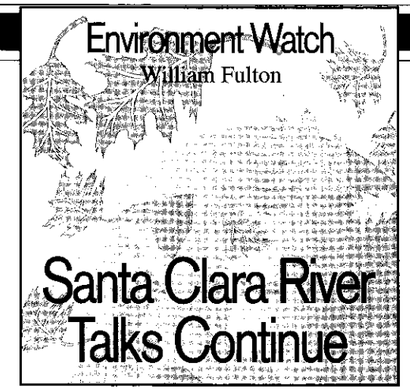
Senate Majority Leader Henry Mello, D-Watsonville, has been named as acting chairman of the Senate Housing and Land Use Committee. The job has been vacant since December, when the previous chair, Tom Campbell, was elected to Congress.

A legislator since 1976, Mello is widely viewed as a shrewd Sacramento operative with considerable experience in land-use issues. He was co-author of the legislation creating Mello-Roos districts and the chief architect of the Fort Ord Reuse Authority.

Because the majority leader typically does not chair committees, Mello's appointment is not expected to be permanent. A reshuffling of committee appointments is expected in March, after a special election to fill Campbell's seat. Front-runner for that seat is Byron Sher, the longtime chairman of the Assembly Natural Resources Committee.

Committee consultants Peter Detwiler (land use) and Howard Yee (housing) will remain in place. ❑

Environment Watch
William Fulton



Santa Clara River Talks Continue

Despite lots of new urban development, one of Southern California's last "wild" rivers may remain at least somewhat wild — at least if local agencies and developers follow through on a plan to engage in "green" flood control and riverbed stabilization efforts.

Unlike such rivers as the Los Angeles and the Santa Ana, the Santa Clara River has never been channelized into concrete "chutes to the sea," as one flood-control expert puts it. Now a multi-agency task force is seeking to strike a balance between development, farming, and the environment along the whole course of the river. But in large part, the success of this effort depends on the efforts of the Newhall Land and Farming Co., a large land development company that owns a significant chunk of the river. State and federal conservation agencies are currently assessing Newhall's proposed conservation plans.

Flowing from Angeles National Forest north of L.A. to the Pacific Ocean in Ventura County, the Santa Clara runs through mostly agricultural and undeveloped areas and has remained relatively natural. At 100 miles in length, it is also one of the longest rivers in a region characterized by short riparian runs from the mountains to the sea. And because of fluctuating seasonal flows, the riverbed sometimes stretches a quarter-mile across. "It's very diverse," says Cat Brown, a biologist in the U.S. Fish & Wildlife Service's field office in Ventura. "There are a lot of very unique species because of the ecology of the area."

Brown's office has been coordinating the Santa Clara River Enhancement and Management Plan, or SCREMP, a multi-agency watershed planning process that has included not just state and federal agencies, but also local developers, farmers, environmentalists, and even the flood control and public works agencies from Los Angeles and Ventura counties. The plan is expected to cover such diverse topics as aggregate mining, flood control, biology, and cultural resources.

The SCREMP process began some five years ago, when the Ventura County supervisor representing most of the Santa Clara River Valley, Maggie Kildee, convened a series of breakfasts among interested parties. A 25-person steering committee is now meeting regularly, and the Fish & Wildlife Service hired CH2M Hill to prepare the plan. But the process is moving slowly, much to the frustration of many participants. Brown said six subcommittees are currently at work producing their own reports back to the steering committee. "Every plan is going to be unique," she said. "There is no template you can lay down over a watershed."

No matter what the outcome of the watershed plan, however, Newhall Land is moving forward on its own river planning activities in hopes of nailing down federal permits for future development projects in the Santa Clarita area, where the company owns most of its land. Newhall recently prepared a river management plan for the so-called "Valencia portion" of its property, a 15-mile stretch of the river east of Interstate 5, near Newhall's Valencia community.

Newhall prepared the plan in hopes of obtaining a "general permit" from the U.S. Army Corps of Engineers for wetlands fill activity along the Santa Clara river watershed. Among other things, Newhall and the City of Santa Clarita plan to preserve 285 acres of riparian habitat in exchange for annexing 900 acres of property for an 1,800-unit project that would include a man-made lake.

Though Corps regulators say they like many aspects of the plan, they have not issued a general permit as yet and, instead, they have asked Newhall to use the plan as the basis for an environmental impact statement. "We can't issue a general permit unless the impacts are minimal," said David Castanon of the Corps' regulatory branch in Ventura.

Newhall is calling the plan a "natural river management plan", saying it calls for development on only 4.6% of the land along the river bottom. Among other things, Newhall has proposed a plan to allow winter runoff to clear vegetation rather than doing the job mechanically. Newhall is touting the plan as "a new, more effective strategy for balancing competing interests," and has sought to have an article about this plan published in a variety of planning and environmental journals.

One such publication recently caused a small stir in the wetlands world. The article, written by Mark Subbotin, director of planning for Newhall's subsidiary Valencia Co., was published in the widely respected National Wetlands Newsletter. However, the article omitted any mention of the larger planning process on the Santa Clara River, causing the newsletter's editors to ask Castanon to write an accompanying article. While touting the larger plan, Castanon wrote that Newhall's plan "is an innovative one" and said that once the EIS process is complete, the Corps may be able to issue one or more general permits for certain portions of the riverbed based on the plan.

Subsequently, Reed Holderman of the Coastal Conservancy — another stakeholder in the SCREMP process — wrote another and more critical response to Subbotin's article. Newhall, Holderman wrote, "did not invent the 'natural river management concept,' nor are they applying it correctly to their property." He claimed that the proposal, while seeking to avoid channelization, would nevertheless manipulate stream flows in the river. "Newhall still needs to do more work on their plan to convince me that their development will be as benign as they maintain," he wrote.

As the debate continues over the Valencia portion of the property, environmentalists are equally concerned about the potential impact of Newhall's proposed 12,000-acre Newhall Ranch project, to be located just west of Interstate 5 near the Ventura County line. Now pending before Los Angeles County, this project would include 25,000 new homes on both sides of the river. The property is not included in Newhall Land's other management plan. Environmentalists and government biologists are hoping to use the watershed management plan as a lever to move development upland, away from the river. "That's the most sensitive part of the river, right there at the county line," says local environmentalist Ron Bottorff of the Friends of the Santa Clara River.

While participating in the management plan, Newhall Land has not applied for a Corps permit for the Newhall Ranch project, company spokeswoman Marlee Lauffer said. The Corps' Castanon said that while his agency has spoken with Newhall about incorporating the Newhall Ranch project into the Valencia river management plan, "we're reluctant to change the ground rules on them" for fear that this additional requirement would be interpreted as excessive regulation.

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Base Watch

Morris Newman

Will Mather Become a Theme Park?

We have no proof of this, but we think the military is hushing up something at Mather Air Force Base: we think the Pentagon is secretly holding a contest for developers to come up with the most outlandish and extravagant proposal possible at the Sacramento County facility.

Among the proposals are two theme parks, one with a Atlantis theme, the other with the Gold Rush motif. But the current front-runner for the outlandishness prize is a multi-billion-dollar world trade center, complete with 50-foot tower and 4,000 hotel rooms, proposed for the semi-rural area.

Reno-based Lodestar Entertainment Group is promoting a $300 million theme park which would fill up to 700 acres of the planned 1,600-acre Mather Park. (The park is a portion of the base that will soon be available for development).

Lodestar, which sent an outline of its proposal to Sacramento County Parks and Recreation Department in February, envisions an entertainment center, a water park "theme" that would depict the legendary sunken continent of Atlantis, and a "multicultural center" modeled after Tivoli Gardens in Denmark. Lodestar plans to present a master plan to the county Board of Supervisors in June.

A Sacramento-based group is talking about a $2.6 billion world trade center. The grandiose scheme would feature a 50-story world trade center; the bottom 30 floors would contain 1,000 hotel rooms. Also part of the master plan is a 2,500-room hotel and 1,000 rooms respectively, a 500,000-square-foot convention center, and an 18-hole golf course and a complex of 30-theaters modeled after the country-western music attraction at Branson, Mo. The developers are a Sacramento-based pair of businessmen, John Mastrototaro and Sam Eng, who claim financing would come from a single, unnamed, offshore investor. Both county and reuse officials have expressed skepticism about the proposal.

A competing proposal for a Gold Rush-themed attraction has been proposed by a Folsom-based developer. Other notions for Mather Park include an auto raceway, proposed by the founder of the Long Beach Grand Prix. Sacramento County itself envisions an a RV park, together with an office park and athletic fields, a 100-seat conference center comparable to the Asilomar Conference Center in Monterey.

If a theme park seems far off at Mather, a retirement village is getting closer to reality. In January, two homebuilders - Lewis Homes Management Corp. and Elliott Homes Inc. - agreed to pay an undisclosed price (between $5 million and $10 million, according to the Business Journal of Sacramento) for 1,271 existing single-family homes on the base. The development partnership plans a seniors' community modeled after those developed by Del Webb. Developers are touting Mather's somewhat rural setting and adjacency of a golf course and a planned regional park.

McClellan Moves Toward Privatization

Officials of McClellan Air Force Base have taken the first steps in the immense task of privatizing the Air Force Logistics Center. Although other Air Force bases are pursuing conversion through privatization - including Kelly Air Force Base in Texas, Newark Air Force base in Ohio and Vance Air Force Base in Oklahoma - McClellan is by far the largest such effort. The question is whether other Air Force bases want McClellan's privatization efforts to succeed.

In keeping with President Clinton's promise to protect the 10,000 jobs at the Sacramento County facility, the Air Force has begun to offer various work units, or "workloads," to private industry through a bidding process.

In January, Major Gen. Eugene L. Tattini said that the Air Force Logistics Center had received permission from the Air Force Materiel Command to seek bids for three workloads: software (involving 300 jobs), hydraulics (330 jobs) and the Electrical Accessories Technical Repair Center (250 jobs). Tattini, in a statement, said McClellan's push into privatization will be "extremely aggressive and extremely ambitious." Notwithstanding, base spokesmen described these initial bids are "prototypes," and McClellan officials have admitted that they have yet to fully master the subtleties of auctioning off various pieces of the Air Force's high-tech bastion. Still, the Air Force has been canny enough to market the workloads on the World Wide Web (www.mcclellan.af.mil).

Although privatization would appear to be a "win-win" solution that saves jobs while providing opportunities for industry, not everybody is cheering the efforts. According to a source that asked to be unnamed, other bases fear that they will be forced to privatize if the mammoth effort at McClellan succeeds. "If McClellan is successful, it puts them closer to the precipice," the source said. For that reason, "we think the political supporters of these other maintenance depots wish us ill."

"Commercialization" is a second means by which McClellan is converting to civilian use. Similar to the "dual use" arrangements that are commonplace on military bases, commercialization entails deals with private industry as a means to create commercial opportunities for military high-tech operations. On February 7, Air Force Secretary Sheila Widnall was on hand at McClellan to sign an agreement between the Air Force and the National Center for Manufacturing Sciences Incorporated. The latter is a non-profit organization that intends to promote manufacturing technology in the U.S. and assist the efforts of private companies and the Air Force in the making of weapons systems as well as commercial products.

The first two projects stemming from the agreement involve the development of prototype of a low-emission, low-vibration rotary engine; the second is the development of extraction and insertion technologies. Both efforts are intended to assist McClellan's Manufacturing and Service Division evolve as a supplier to both federal agencies and to private industry.

In a similar vein, officials of an existing "dual use" venture between the Air Force and Sacramento Municipal Utilities District (SMUD) are seeking to expand a four-year-old effort to develop electric-car components at Mather.

Started in August 1992, the Advanced Transportation Technology Development Center focused its efforts on electric-vehicle applications that would be of use to both the military and the civilian market. With McClellan slated for closing, however, the directors of the project say they would like to redirect their efforts to serve the nascent commercial market for electric vehicles.

To date, 10 companies have participated in the program. The Pentagon has contributed $8 million to the electric-vehicles center; that sum must be matched with private funds. SMUD's Department of Electric Transportation has kicked in $500,000.

Phillip Mook, electric transportation director at McClellan, said he is hoping to see a manufacturing and assembly plant at the base within the next two years. Mook would not comment further on the proposals, except to say that "we are continuing to work in advanced transportation as a reuse commercialization opportunity." ❑

CP&DR
LEGAL DIGEST

Court Issues Vested Rights Rule

Mining Firms May Interpret Non-Conforming Uses Broadly

In an important but confusing ruling, the California Supreme Court has concluded that a non-conforming mine or quarry may spread its operation to additional territory if that additional territory was known as a target for future mining at the time the zoning ordinance was adopted. But in the specific case of a Nevada County mining company, the court said it could not determine from the record whether a Nevada County mining company has a vested right to continue mining on all of its property or only part of it.

The court also ruled that an aggregate mining company's vested right to continue operation as a non-conforming use should be based on the whole of its aggregate mining business and not on discrete mining operations.

A majority of the court concluded that the "diminishing asset" doctrine applies in California non-conforming mining cases. This doctrine states that because quarrying is location-specific, a non-conforming use may include areas not being quarried at the time the zoning ordinance was passed, so long as that area was known to be contemplated for quarrying by the company at the time.

The ruling is significant because it is the first major California Supreme Court interpretation of mining rights in decades. Zoning and mining have increasingly come into competition with one another throughout central and northern California in recent years. Previously the leading case in the area was *McCaslin v. City of Monterey Park*, 163 Cal.App.2d 339 (1958), a Court of Appeal ruling. In making the decision, the Supreme Court relied heavily on cases from other states — an unusual occurrence.

But the court was badly split in a way that could weaken the ruling's precedential value. Only three justices signed the court's opinion, though Justice Kathryn Werdegar agreed with the reasoning in a concurring opinion. Justice Joyce Kennard filed a dissenting opinion joined by Justice Ronald George. Justice Stanley Mosk filed a separate dissenting opinion that was more sharply worded but similar in legal reasoning.

The case involves Hansen Brothers Enterprises' proposal to expand its gravel-mining operations along the Bear River from 1,300 cubic yards per year to 250,000 cubic yards, even though the Nevada County portion of the mine has been a non-conforming use since 1954. (A portion of the mine lies in Placer County but this is not the subject of litigation.) Between 1955 and 1989, the company excavated and produced 209,000 cubic yards of gravel, including 44,000 cubic yards on the Nevada County side. All of the mining occurred in the riverbed, and only a small amount of quarrying took place in the adjacent hillsides, which Hansen Brothers also owned.

In 1989, Hansen Brothers submitted a reclamation plan under the state's Surface Mining and Reclamation Act as part of a proposal to expand mining operations. Claiming a vested right to mine both the riverbed and the hillside, Hansen proposed mining 250,000 cubic yards of gravel per year across the entire parcel for 60 to 100 years. This proposal included mining the hillsides to a depth of 350 feet.

The plan was rejected by the Nevada County Board of Supervisors, which concluded that Hansen Brothers would need a conditional use permit. The board found that the reclamation plan involved an enlargement of the mining operation beyond the company's vested rights under its status as a non-conforming use. The board also found that because Hansen had abandoned hillside quarrying for more than 180 days, the company had essentially stopped mining the hillside area, meaning it had no vested right to do so under the non-conforming use status.

Both Nevada County Superior Court Judge Reginald Littrell and the Third District Court of Appeal ruled in favor of the county. (*CP&DR Legal Digest*, December 1994.)

Writing the Supreme Court's opinion, Justice Marvin Baxter first concluded that the diminishing asset doctrine does apply to non-conforming mines. "When a mining or quarrying operation is a lawful nonconforming use, progression of the mining or quarrying into other areas of the property is not necessarily a prohibited expansion or change of location of the nonconforming use," Baxter wrote. "When there is objective evidence of the owner's intent to expand a mining operation, and that intent existed at the time of the zoning change, the use may expand into the contemplated area."

Baxter also took pains to draw a consistency between the diminishing asset doctrine and the legislative intent underlying the Surface Mining And Reclamation Act. "Were the diminishing asset doctrine inapplicable," Baxter concluded, "a mining enterprise would be required to immediately initiate mining on all areas of its property lest, under a subsequent zoning change, its right to further mining be extinguished."

However, Baxter declined to reach the conclusion that Hansen Brothers has a vested right to mine on all 67 acres of Nevada County property it owns along the Bear River. "The evidence ... establishes only that whatever vested rights to mine and quarry its property Hansen Brothers has, exist on the 28.898-acre parcel mining claim patented to its predecessors and conveyed to it in 1982, and on the 3-acre ... parcel which the County admitted in its response to the petition was part of the mine in 1954." Vested rights on the rest of the parcel, Baxter concluded, cannot be determined by the administrative record.

Overturning the appellate court, Baxter's opinion also concluded that "the fact that rock quarrying may have been discontinued for 180 days or more is irrelevant" because the vested right held by Hansen Brothers is the vested right to continue all aspects of its aggregate business, not the right to engage in discrete mining activities.

In her concurring opinion, Justice Werdegar made the specific point that the record does not reveal whether the diminishing asset doctrine can help Hansen Brothers. "While the record suggests that some activity occurred farther up the hillside, it does not establish what, exactly, that activity was or whether it occurred before or after the zoning ordinance took effect." She stated that the trial court on remand must determine "whether and, if so, to what geographical extent the requirements of the diminishing asset doctrine have been satisfied."

In her dissenting opinion, Justice Kennard concluded: "Substantial evidence supports the determinations by the board of supervisors and the trial court that plaintiff's mining of the riverbed and its mining of the adjacent land were separate uses. Viewed in this light," she added," plaintiff's proposed plan represents a substantial intensification of its previous mining operations, and is therefore beyond the scope of its nonconforming use."

In a shorter but more emotional dissent,

Justice Mosk railed against Baxter's opinion for contravening what he called "settled legal principles." He concluded that Hansen Brothers had, in fact, abandoned the hillside and, using italics, emphasized that the application called for the removal of 20,000 pick-up-truck beds every year for the next century. "Fairly examined, the record reveals that Hansen Brothers proposes to move its nonconforming mining operation from a riverbed and a riverbank to nearly pristine hillsides, where its new mine will create a moonscape....And this destruction will occur without so much as the requirement of a permit." ❑

■ The Case:
Hansen Brothers Enterprises v. Board of Supervisors, No. S044011, 96 Daily Journal D.A.R. 300 (January 8, 1996).

■ The Lawyers:
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CEQA

Mitigated Negative Declaration Upheld In Gravel Mining Case

The Fifth District Court of Appeal has rejected an environmental group's contentions that Stanislaus County erred in adopting a mitigated negative declaration for a sand and gravel mining use permit for a location near the Tuolomne River. The case was published a month after its issuance by the Fifth District, which normally publishes very few cases.

The case involved a proposal by Western Stone Products to excavate 600,000 tons of sand and gravel from a 20-acre site south of the Tuolomne River over a 10-year period and then convert the property into a fish pond afterward. The county planning commission approved a use permit and certified a negative declaration in September of 1990, but the San Joaquin Raptor/Wildlife Rescue Center appealed the case to the Board of Supervisors. San Joaquin Raptor and Western Stone sought to reach a negotiated solution, but they did not reach an agreement and eventually the supervisors voted in favor of Western Stone over San Joaquin Raptor's objections. San Joaquin Raptor then sued.

Once in court, the Western Stone case had a lengthy legal history. The trial judge ruled in favor of Western Stone and the county (sustaining their demurrers), but in 1993 the Fifth District Court of Appeal reversed in part. In an unpublished opinion, the Fifth District ruled that while demurrers to eight of the 10 causes of action were properly sustained, San Joaquin Raptor had in fact stated two sufficient causes of action: cumulative impact and allegations that there was no substantial evidence to support the county's determination that the project was consistent with the county general plan. (*San Joaquin Raptor/Wildlife Rescue Center etc. v. County of Stanislaus*, FB 17473, July 1993.) Eventually, Stanislaus County Superior Court Judge David Vander Wall ruled in favor of Western Stone and the county on these causes of action, and San Joaquin Raptor sued.

On appeal, San Joaquin Raptor claimed that Judge Vander Wall had made three mistakes. First, the ruling was erroneous because evidence in the administrative record supports a fair argument that significant environmental impacts may occur — the legal threshold for an environmental impact report. Second, the county did not analyze cumulative on-site and off-site impacts. And third, substantial evidence does not support the county's conclusion that the project is consistent with its general plan. The appellate court rejected all three arguments.

Regarding the question of whether an EIR should have been prepared, the court easily batted down San Joaquin Raptor's arguments. Two biologists stated that no significant impact on plant and animal life would occur, and San Joaquin Raptor did not present contrary evidence. Similarly, the court noted, although San Joaquin Raptor contended on appeal that noise and vibration impacts would be significant, neither the organization nor anyone else raised this concern at the administrative hearing. "In sum," the court concluded, "the administrative record presents no substantial evidence to support a fair argument that the project may have a significant adverse environment impact." Therefore, an EIR is unnecessary.

Regarding the cumulative impact argument, the court stated: "Western Stone and the County present a wealth of evidence of no significant environmental impact, and the showing has not been countered with any contrary evidence. Instead, SJR merely argues that the County should have conducted other studies of other projects."

Finally, the court also rejected San Joaquin Raptor's argument that the project is inconsistent with the general plan. "SJR does not attempt, in support of this conclusory argument, to explain what the County General Plan says or how approval of the use permit was inconsistent with this General Plan," the court wrote. "The General Plan is not part of the administrative record. Nor does SJR make any citation to the administrative record to attempt to show that the purported inconsistency of the project with the General Plan was raised by SJR as an issue at the administrative hearing....SJR has shown no error." ❑

■ The Case:
San Joaquin Raptor/Wildlife Rescue Center v, Stanislaus County, No. F022674, 96 Daily Journal D.A.R. 1211 (January 4, 1996).

■ The Lawyers:
For San Joaquin Raptor/Wildlife Rescue Center: Richard L. Harriman, (916) 753-0869.
For Stanislaus County: E. Vernon Seeley, (209) 525-6376.
For Western Stone Products: Teresa Vig Rein, Rein & Abbott, (209) 544-3688.

EIR Challenge Fails; Not All Parties Sued

An environmental group's challenge to an environmental impact report has failed because the group did not include the actual owner of the property in question as a defendant in the case.

In a case involving land proposed for a marina in National City, the Fourth District Court of Appeal, Division One, ruled that Save Our Bay should have included property owner Chula Vista Capital in the case and, because it did not, the case was properly dismissed by a trial judge in San Diego. Save Our Bay was challenging an environmental impact report prepared by the San Diego Unified Port District for a marina project that required acquisition of 22 acres of land owned by Chula Vista Capital.

The case began in 1993, when the port district prepared an EIR for the marina project. The project was expected to include a total of 24 acres, including 16.6 acres of tidelands currently owned by the port district and 7.4 of the 22 upland acres owned by Chula Vista Capital. (The port district was expected to purchase all 22 acres and then keep development off of the remaining area of approximately 15 acres.) After certifying the EIR in early 1994, the port district authorized the purchase of the Chula Vista property for $5.7 million. Shortly thereafter, Save Our Bay filed suit against the port district and the city of National City, seeking a writ of mandate to set aside certification of the EIR.

But the lawsuit did not name Chula Vista Capital even though Save Our Bay's response to EIR comments made mention of the fact that the property would have to be purchased from that company. The port district argued that the case was improperly filed because Chula Vista Capital was not named as a defendant before the statute of limitations expired. San Diego Superior Court Judge Judith McConnell issued summary judgment in favor of the port district, and Save Our Bay appealed.

The definition of an "indispensible party" in a case filed under the California Environmental Quality Act comes from *Sierra Club Inc. v. California Coastal Com*, 95 Cal.App.3d 495 (1979), in which the appellate court ruled that an indispensible party is a party that would be "injured or affected" by the court's relief. On appeal, Save Our Bay argued that Chula Vista Capital had no interest in the outcome of the EIR lawsuit, and also argued that it was the port district, not Chula Vista Capital, that was acting as the developer of the property and therefore could represent the landowner's interest as permitted under the 1985 case Citizens Association for *Sensible Development of Bishop Area v. County of Inyo*, 172 Cal.App.3d 151 (1985). Save Our Bay sought to argue that Chula Vista Capital was a "mere speculator" with no " vested rights" as defined in the 1989 case of *Beresford Neighborhood Assn. v. City of San Mateo*, 207 Cal.App.3d 1180. Instead, Save Our Bay sought to define the port district as the "developer" of the property.

But the appellate court did not agree with Save Our Bay. "[T]he District cannot be expected to represent the interests of Chula Vista Capital in the approval of the EIR for this specific plan," the court wrote. "The District is only interested in placing the marina on this site, not in representing the concerns of any particular owner of that site." The court noted that in an unexecuted draft of escrow instructions between the port district and Chula Vista Capital the parties agreed that the district "cannot be expected to represent the [owner's] interests."

In arguing that the port district, not Chula Vista Capital, was the "developer" of the project and therefore was the appropriate defendant, Save Our Bay cited the EIR's use of the words "developer" and "develop" to refer to the actions of the Port District. But the court said these references "do not furnish the slightest substance to the conclusion the District is the developer. ... The reference ... is a generic use of the word having no bearing on the District's role in bringing about the result except as the lead agency required under CEQA to describe the project, its environmental consequences and alternatives." Thus, the court said, the *Citizens* case is inapplicable to this case.

■ The Case:
Save Our Bay Inc. v. San Diego Unified Port District, No. D023148, 96 Daily Journal D.A.R. 1583 (February 9, 1996).

■ The Lawyers:
For Save Our Bay: Craig Sherman, (619) 231-8502.
For San Diego Unified Port District: Michael Gatzke, Gatzke Mispagel & Dillon, (619) 341-9501.

ZONING

Judge Strikes Down Westminster Adult Zoning

The City of Westminster's adult zoning ordinances violates the U.S. Constitution, and the city also violated the constitution in denying a conditional use permit to an adult cabaret, a federal judge in Los Angeles has ruled.

After a lengthy wrangle, the Westminster City Council denied a conditional use permit to Santa Fe Springs Realty Corp. in January of 1994. Santa Fe Springs Realty sued, claiming both a facial and as-applied violation of First Amendment rights.

On the facial challenge, Senior U.S. District Court Judge Laughlin E. Waters found that the city's ordinance "constitutes an unconstitutional prior restraint because the vague wording leaves open the possibility of content-based censorship." But he took pains to point out that he believes that a municipality may be permitted some degree of discretion in making zoning decisions about adult businesses. However, he said that such discretion "must be limited by narrow, objective, and definite criteria which eliminate the possibility of content-based discrimination."

In the as-applied challenge, the judge also found that Westminster had violated the First Amendment in denying the CUP. "The Court finds that the City Council applied improper criteria and articulated pretextual reasons when it denied the CUP application," he said. He ordered a permanent injunction forcing the city to issue the CUP.

The case began in 1990, when Theron Smith attempted to open an adult cabaret at 7132 Garden Grove Boulevard in Westminster. At the time, an emergency ordinance was in place prohibiting all adult businesses in the city. After Smith sued, the city adopted a new ordinance purportedly allowing some adult businesses to operate in the city. Among other things, this ordinance called for adult businesses to be located at least 250 feet away from various other uses such as churches and schools, that it be consistent with the general plan, and that it conform to the city sign code.

The city then stated that, although 7132 Garden Grove Boulevard was not an appropriate location, 7000 Garden Grove Boulevard was acceptable. Orange County Superior Court Judge James Gray ordered Smith to seek a CUP for 7000 Garden Grove, then the location of a rock 'n' roll nightclub. The application was approved but the property's owners were not interested in leasing the property to Smith.

Subsequently, the operator of the Marquee and several other individuals formed Santa Fe Springs Realty and applied for a CUP for an adult cabaret, called Scamps, at 7000 Garden Grove Boulevard. In early 1994, the case went before the city planning commission. In his staff report, Planning and Building Director Michael Bouvier recommended approval, saying the proposal met the requirements contained in the city ordinance. After hearing complaints from neighbors, however, the planning commission postponed consideration of the project for a month. Subsequently, Santa Fe Springs Realty requested a de-novo hearing in front of the city council.

Prior to the council meeting a month later, Bouvier issued a new staff report recommending that the project be denied. Among other things, the staff report found that the current nightclub had generated many complaints from neighbors, that the adult business can create secondary adverse effects on surrounding properties, and that the site had inadequate parking. The council subsequently denied the permit and Santa Fe Springs Realty sued in federal court.

While the case was pending, Santa Fe Springs Realty made several improvements to the property, while the city revised its ordinance to loosen requirements associated with buffers and physical appearance.

In ruling against the city on the facial charge, Judge Waters focused on the apparently vague wording of several provisions of the ordinance. He noted that the ordinance requires the site to be "adequate in size and shape", that residential areas be "sufficiently buffered", and that exterior appearance of the structure not be "inconsistent with" surrounding commercial structures.

"The Planning Commission and City Council's ability to make determinations based upon the vague criteria set forth above vests the City with an unconstitutional amount of discretion," Waters wrote.

Waters was critical of the city in the as-applied challenge, especially regarding the conflicting staff reports issued in January and February of 1994. He found that the findings made by the City Council in denying the application directly conflicted with the findings issued previously in approving the Smith CUP for the same property. "The City Council should have conditionally approved the plaintiff's application, as recommended in the January 24, 1994 report from the City's Planning and Building Director," he wrote. "The proposed site has been substantially improved, and all of the criteria of Chapter 17.57.160 [the city's ordinance] have now been satisfied by the plaintiff." ❑

■ The Case:
Santa Fe Springs Realty Corp., No. CV 94-736, 96 Daily Journal D.A.R. (October 20, 1995; published in the D.A.R. February 23, 1996).

CP&DR

DEMOLITION

L.A. Should have Issued Demolition Permit, Judge Rules

A judge has ruled that the City of Los Angeles violated the so-called "Ellis Act" in denying a demolition permit for a 17-unit apartment building in Venice. The ruling is the latest in a lengthy dispute between the property's owner, the city, and some apartment dwellers on the property over the owner's attempt to redevelop the property. A substantive challenge to the project's denial - involving interpretation of the city's general plan - is expected soon.

A group of prominent investors has been seeking for several years to tear down a 735-unit apartment complex in Venice and replace it with 650 condominiums plus about 200 units dedicated to low- and moderate-income residents. The investors received city planning commission approval for the so-called "Lincoln Place" project last year, but that approval was reversed by the City Council. Council member Ruth Galanter, who represents the area, objected ot the project.

Lincoln Place Investors Ltd. subsequently sued the city, claiming that a closed meeting of the council's planning committee (which included Councilmember Galanter even though she is not a member of the committee) violated the Ralph A. Brown Open Meetings Law. A judge ruled in favor of Lincoln Place and the council was forced to take up the issue again.

Meanwhile, Lincoln Place Investors Ltd. sought to move the project forward by demolishing one of the 35 buildings on the property. The city denied a demolition permit and Lincoln Place sued, claiming that the city had violated the Ellis Act, a state law that protects the rights of private apartment owners to "go out of business" by withdrawing their units from the market. L.A. County Superior Court Judge Alan Haber ruled in favor of Lincoln Place in mid-February.

Since Haber's ruling, the L.A. City Council again rejected the project, saying it is inconsistent with the general plan. Lincoln Place's lawyer, Allan Abshez, said the developer intends to proceed with demolition of one building and probably will also file a lawsuit challenging the city's interpretation of the general plan in denying the project. ❑

■ The Case:
Los Angeles Lincoln Place Investors Ltd. v. City of Los Angeles, No. 038778 (February 13, 1996).

■ The Lawyers:
For Lincoln Place Investors: Allan Abshez, Irelle & Manella, (310) 277-1010.
For City of Los Angeles: Anthony S. Alperin, Assistant City Attorney, (213) 485-5440.
For Lincoln Place Tenants Association: Marcia Sculley, (213) 217-7130.

SLAPP

SLAPP Law's Reach Expanded In Scientology Case

In a case that expands the scope of the state's so-called "anti-SLAPP" law, the Second District Court of Appeal has ruled that the law can properly be applied to a lawsuit brought by the Church of Scientology seeking to set aside a multimillion-dollar judgment in favor of a disgruntled former Scientology member. In the process, the court ruled that the anti-SLAPP law "applies to any cause of action arising from petition activity, not only tort actions."

Although the Scientology case obviously has nothing to do with land-use law, it does have potential application in the land-use field. So-called "Strategic Lawsuits Against Public Participation," or SLAPP suits, attempt to muzzle opponents of development projects by launching retaliatory lawsuits against them. (*CP&DR*, November 1990.) They have been most frequently used by developers against citizens who speak out against their projects.

The anti-SLAPP law, contained in Code of Civil Procedure §425.16, was enacted in 1992 after being vetoed by Gov. Pete Wilson the year before. The law permits the defendant in an alleged SLAPP suit to file a motion to strike the cause of action at the beginning of the case. The law permits the motion in defense of any person who has exercised rights of free speech or petition "in connection with a public issue."

The Scientology case is the fourth case involving the anti-SLAPP law issued by appellate courts in the last five months. Like the previous three cases, this one appears to expand the law's use.

This ruling is the latest development in 15 years of litigation between the Church of Scientology of California and Lawrence Wollersheim, a former member who originally sued the church in 1980 claiming the church had intentionally and negligently inflicted severe emotional distress on him. A jury awarded him $5 million in compensatory damages and $25 million in punitive damages. These amounts were subsequently reduced to $500,000 and $2.5 million by the Second District Court of Appeal. Further appeals followed and continued until 1994.

In 1993, however, the church filed a lawsuit seeking to set aside the Wollersheim judgment based on new evidence suggesting that the trial judge had harbored absolute malice against the church. Among other things, the lawsuit alleged that the judge believed Scientologists had killed his dog and followed him throughout the trial.

Subsequently, Wollersheim filed a motion to strike under the anti-SLAPP law, using a variety of arguments. Among other things, Wollersheim alleged that the action is part of an attempt by Scientologists to use litigation to harass opponents and further argued that the church could not demonstrate a probability that it could prove key facts — which is required in defending against anti-SLAPP motions to strike. In response, the church argued that the anti-SLAPP provisions should not apply because the lawsuit is not an attack on Wollersheim personally and would not interfere with his right to pursue his claims against the church.

"The Church argues that it has every right to exhaust its legal remedies, including appeal rights," the appellate court wrote. "We agree. However, when a litigant continuously and unsuccessfully uses the litigation process in filing unmeritorious motions, appeals and lawsuits, such actions have constitutional implications which may be reviewed on a motion under §425.16."

The court also ruled that anti-SLAPP motions are not limited only to tort actions. "[T]he free exercise of the constitutional right of judicial redress is no less threatened by the employment of non-tortious litigation practices designed to economically 'bludgeon the opposition into submission'. In either case the result is to subject the litigant to economic loss sufficient to discourage the free exercise of a constitutionally protected right."

The court also concluded that the church had failed to establish the probability that it would prevail on its claim. "An examination of the Church's complaint reveals an absence of any admissible evidence to demonstrate its claim," the court wrote. ❑

■ The Case:
Church of Scientology of California v. Lawrence Wollerhsheim, Nos. B084686 & B086063, 96 Daily Journal D.A.R. 1162 (February 1, 1996).

Las Vegas, Phoenix Undercut California's Impact Fees

Continued from page 1

businesses from Southern California.

Some cities are showing increased awareness of the competitive disadvantages of high development fees and tenant costs — in particular Los Angeles, where Mayor Richard Riordan has launched an effort to re-examine the city's fees and taxes, as well as the creation of a standardized incentive package for new and expanding businesses. The City of Burbank is also looking into its fee structure. (The Kosmont survey, however, does not attempt to measure the biggest wild card in the cost of developing in California: costs related to compliance with the California Environmental Quality Act. Recent surveys have shown that CEQA practice varies widely from city to city, and Arizona and Nevada have no equivalent.)

Among the highlights of the Kosmont report:

• 30% of California communities charge development impact fees, while 42% charge specified traffic impact fees, 21% charge thoroughfare and/or bridge fees, and 25% charge a fee for art in public places.

• Development fees on a 60,000-square-foot office building range from a low of $0 in several cities to a high of $995,000 in Los Angeles (that amount, however, only applies in a small area of the city). The median fee is $90,500. For a 100,000-square-foot shopping center, fees range from $0 to $2.91 million (in the City of San Diego); the median fee is $113,000. Fees for a 40-unit apartment building go from $0 to $200,000 (in the City of Santa Clarita). Laura Stotler, an associate planner in Santa Clarita, said that the high fee for multi-family projects was based on a study of staff time needed to process such projects, which require public hearings if developers ask for density bonuses. The city is willing to waive fees on affordable housing, she added.

> *"L.A.'s Mayor Riordan and his economic development staff have targeted the city's notoriously high tax and development-fee structure."*

• 88% of communities impose some form of business-license fee.

• Seven jurisdictions "make the top cut" in low business costs, at least from the point of view of business costs, by charging neither business-license fees nor utility user taxes: Industry, Mission Viejo, Santa Clarita, Westlake Village, and the unincorporated areas of Orange, Riverside and San Bernardino counties.

• The communities most likely to provide economic incentives to new and expanding businesses are the Town of Apple Valley, the unincorporated area of San Bernardino County, and the cities of Alhambra, Bakersfield, Barstow, Carson, Chula Vista, Colton, Covina, El Cajon, El Monte, Fresno, Hawthorne, Montebello, Oakland, Pico Rivera, San Bernardino County (unincorporated area), Tustin, and Upland. Those incentives are measured by the availability of at least five types of incentives out of a list of six, the presence of redevelopment or other special economic zones, and the absence of special development fees.

The report also scrutinizes some of California's competitors. Las Vegas, a center of laissez-faire development, charges no development fees whatsoever. But a hypothetical 30,000-square-foot law firm in Las Vegas would pay a higher-than-median $10,050 in annual fees and taxes and a 50,000-square-foot manufacturer would pay a higher-than-median $9,700.

A city official, however, said that Nevada's low-tax climate more than offsets those costs. "In Las Vegas, we make out as a great business location through our lack of taxes on corporate income, personal income, inventory, unitary, in-transit goods, capital stock, franchise, admissions, inheritance and a low property tax," said Eric Bordenave, senior project development officer for Las Vegas. (Only gaming and mining are taxed in the city).

In Phoenix, a 10,000-square-foot advertising agency would pay annual business fees of $51,940, while a 45,000-square-foot supermarket would pay a whopping $177,980. Both those fees are higher than corresponding fees in L.A.

Los Angeles, in particular, fares poorly in the Kosmont survey. In addition some of the highest development costs (again, in the maximum range and only in select parts of the city) the survey also reveals that L.A. has the highest average business license fees of an average 0.341% of gross receipts, and the highest utility user tax of 12.5%.

"These kinds of surveys certainly make the marketing of Los Angeles difficult," said Christopher Foss, special assistant for economic development for the City of Burbank, adding that "we realize that L.A. is looking at ways of lowering the costs of doing business and these kinds of studies should give them the impetus to lower their costs." Foss added that Burbank itself is also "looking at its rate structure with an eye toward making development more affordable." (Burbank's development fees, at their minimal levels, are equal to those in Los Angeles, but tenant costs are significantly lower. Foss attributes the difference in tenant costs to a lack of a gross-receipts tax and a comparatively low utility-user tax.)

L.A.'s Mayor Riordan and his economic development staff have targeted the city's notoriously high tax and development-fee structure. In mid-1995, the mayor launched a development reform program, aimed at streamlining the permit process and lowering development fees. In January, the mayor issued a request for proposal for an analysis of the city's tax structure "to evaluate and recommend changes in City taxes paid by businesses."

And in the afterglow of positive publicity surrounding the giant lease of the Dreamworks film studio at the Playa Vista development — which involved an incentives package described by city officials as the largest ever offered by the city to a private company — the mayor's office and the city council are working on standardizing a similar set of incentives for all businesses. Currently, the city council's Economic Development Committee is studying a package that centers on tax rebates for job creation.

The Kosmont report, however, suggests that non-financial incentives, such as permit streamlining and reduction of regulatory burdens, however, are "of equal or greater importance to business operators." Asked in an interview whether he thought financial incentives or a friendlier permitting process was more important, Mayor Riordan replied, "Both are important. But if I am forced to say one or the other, I would say permitting." ❑

■ Contacts:
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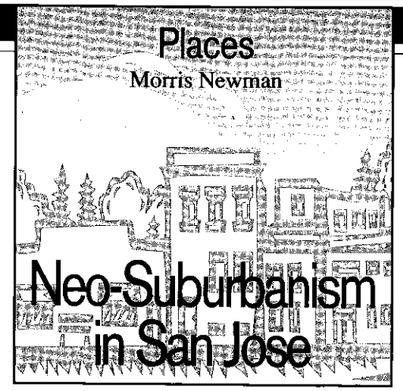
Laura Stotler, associate planner, City of Santa Clarita, (805) 255-4330.
Eric Bordenave, senior project development officer, City of Las Vegas, (702) 229-6551.
Christopher Foss, special assistant for economic development, City of Burbank, (818) 238-5180.
Richard Riordan, mayor, City of Los Angeles, (213) 485-1212.

Places

Morris Newman



Neo-Suburbanism in San Jose

One of the fascinations of community design is how a single scheme must seek to accommodate multiple agendas. In San Jose's Evergreen Specific Plan, for example, policy calls for beautiful streets, open spaces, distinctive landmarks, and a well-developed circulation system of pedestrian walkways. And in accordance with the city's doctrine of containing urban growth, the plan offers a higher density of housing than in surrounding areas of the city.

On the other hand, Evergreen attempts to come to terms with the wishes of home builders and home buyers, which tend to favor car-dependency over density and private space over open space and urban amenities.

As with any community plan, the question facing the Evergreen Specific Plan is whether all the different agendas — public, private and community — are adequately served. The second question is whether those agendas clash or cancel each other out. In the case of Evergreen, the result is more admirable as policy than as urban design.

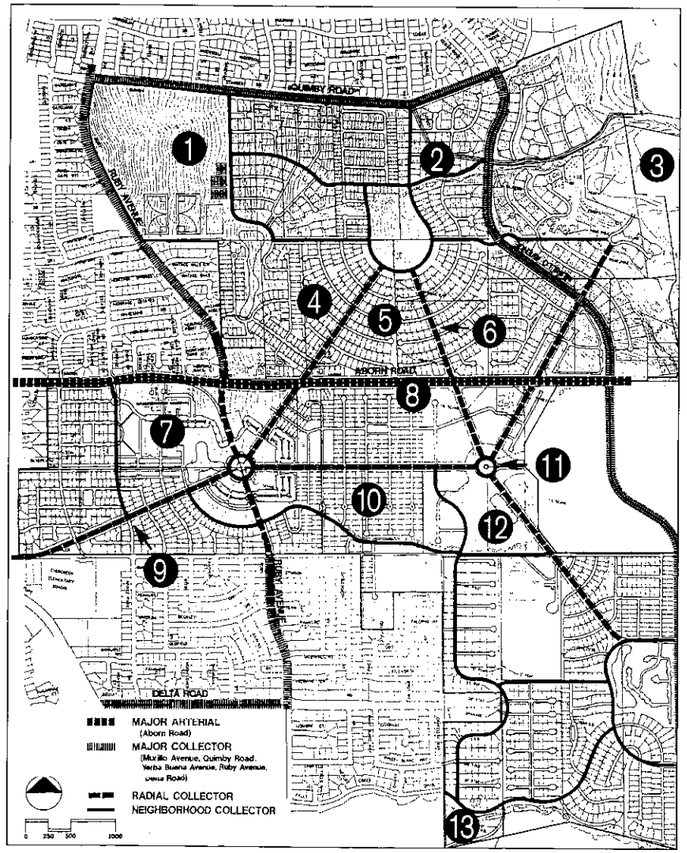
The community process that led to Evergreen alone would make the plan noteworthy. The plan represents the consensus of 31 different owners of 47 separate parcels. The owners include three major home builders, as well as Mirassou Winery, the local archdiocese, the city and a number of private individuals.

Currently, the Evergreen area is an irregularly shaped 865-acre area of vineyards and orchards dotted with historical sites. The most notable industrial site is the Mirassou Winery at the west end of the plan. The site is crossed by two creeks and includes three small lakes, creating the potential for trails and water-oriented public space.

The plan, prepared by The Dahlin Group of San Jose for the city, calls for nearly 3,000 homes in the area. Housing types include apartment buildings, townhouses, duplexes, carriage homes, and individual single-family lots ranging from 4,000 to 8,000 square feet. A community center is planned at the center of the site, near the existing winery. The plan also calls for a number of parks, nature trails and stream corridors.

The layout of streets and individual parcels, at first glance, seems typically suburban. Rather than a grid, the plan favors individuated residential streets that turn their backs to major thoroughfares. Many residential streets end in cul-de-sacs. True, the plan circulates much more efficiently than the "spaghetti" streets of classic, postwar suburbia — particularly due to a set of "radial collector" streets that appear inspired by 18th Century city planning. It's almost as if Pierre L'Enfant, the original designer of Washington, D.C., had been called upon to design a street system for Coral Gables.

But the formalistic elements of the plan, including the radial collector streets, are not used to full advantage as urban design elements. Instead, they are exploited, suburban style, for only their traffic efficiency. As in other suburban plans, one must follow a maze-like route of residential streets, to "collector" streets, and finally to a major thoroughfare, heavily camouflaged in landscaping. Traffic "radials" — the hub-like intersections of skewed streets — are traditionally used as occasions for plazas and urban-design set pieces. But in anti-urban Evergreen, the intersections that seem so intriguing on the map turn out to be little more than traffic circles, whose banality must be masked with decoration, such as fountains and landmark statuary.



1 Open Space: High School Playfields
2 North elementary school site
3 Urban Growth Boundaries border
4 Radial Collector Street
5 Single-Family home lots; 6,000-square foot lots
6 Radial Collector Street
7 Mirassou Winery (bordered by high-density multi-family)
8 Evergreen Village Center (bordered by high-density multi-family)
9 Radial Collector Street
10 Single Family Home lots: 5,000-square-foot lots
11 Traffic Radial
12 Open Space: Fowler Park (adjoining existing middle school to the south
13 Open Space: Dedication to Montgomery Hill Regional Park

A far better use for the traffic circle can be found in the Evergreen Village Center. Located next to the Mirassou Winery, the Village Center is intended to be the "retail, activity, circulation, and visual hub of this area," whose models are Beacon Hill in Boston, Nob Hill in San Francisco, and Ballard in Seattle. Configured around the convergence of five radial streets, the Village Center will contain a supermarket, theater, restaurants and two-story retail/office building. Happily, the retail buildings are fronted by diagonal parking, which complements pedestrian activity. All are oriented around a "community rotary park" with a statue in the center.

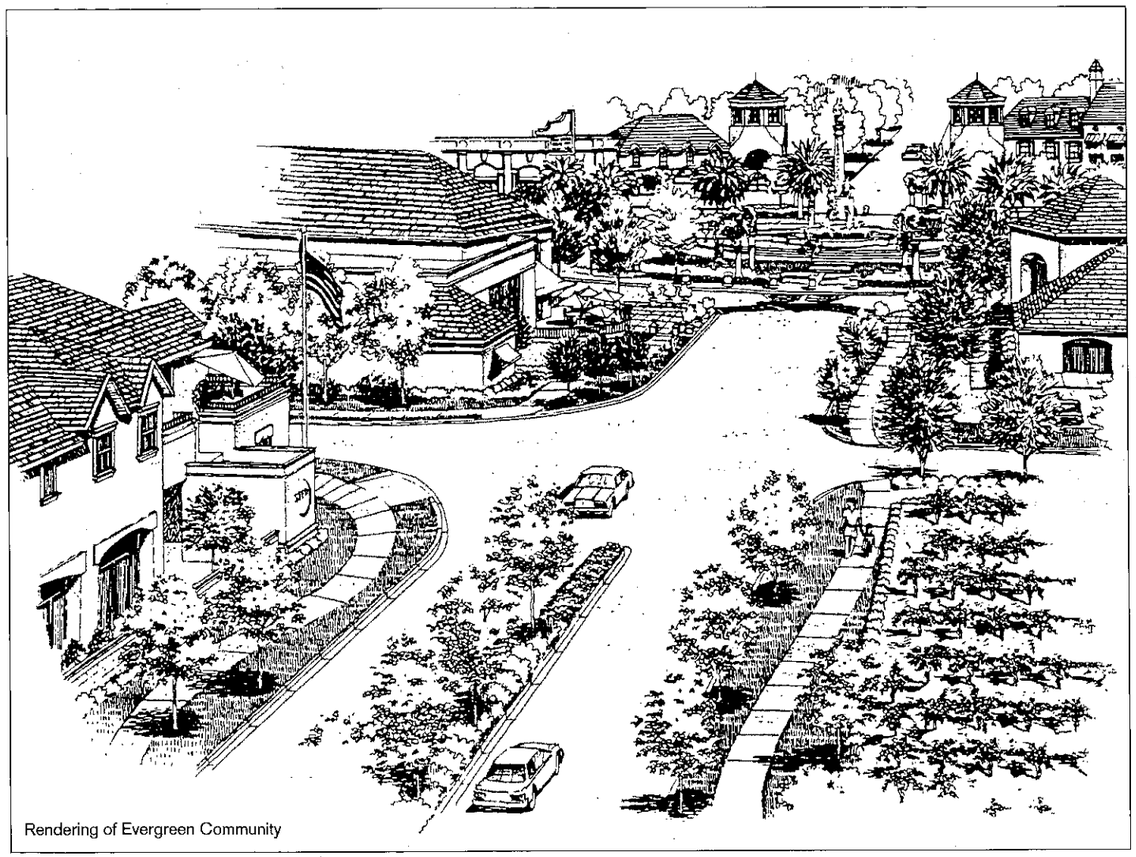
The plan extols the Village Center as an alternative to strip retail and neighborhood shopping centers. But this centralized retail center will probably be inaccessible to many pedestrians, so this pleasant, pedestrian-oriented retail area will ultimately promote traffic.

The most objectionable part of Evergreen is the prescribed "French Village" architecture — a bastardized idiom combining the cliches of steeply pitched roofs and dormer windows with "Mediterranean" stucco and tile. This style, intended for public, commercial and residential buildings alike, would be safeguarded by a design committee. Style requirements are bad enough in themselves. But requirements for a pastiche style of design is a virtual guarantor of architectural mediocrity, and the conceptual examples offered by The Dahlin Group confirm one's worst suspicions of committee-approved banality.

Surprisingly, the ratio of open space to developed area appears low for a community of 3,000 homes (the plan does not specify the actual acreage set aside for parks and recreation). The major "open space" resource is a proposed Fowler Park, eight acres of land immediately north of the Fowler Creek. This open-space amenity is intended to serve as a community center. In the conceptual design prepared by Dahlin, the park is crowded with such amenities as a swimming pool, tennis courts, a community center and parking. All those amenities are fine, but do not answer the need for genuine open space and parkland. The potential of creating a park focused on Fowler Creek goes unexploited. A "Heritage Vineyard" next to the Mirassou Winery is a fine idea, except that the vineyard is cut through by roads, lessening its value as an open-space resource. Laudably, the plan also plans five "pocket" parks, but these are too few and far between to be accessible to many residents without resorting to their cars.

The Evergreen Specific Plan is admirable for its flexibility and site specificity, as well as its strategy of combining many different types of housing. As such, the plan is a minor miracle of accommodation, and in the view of many people, that is what planning should be about in a democracy: achieving a consensus among government, residents and businesses.

Ultimately, Evergreen is a suburban plan that has been mitigated for rational automobile circulation and pedestrian movement. A tension still exists between the paradigms of auto-oriented suburbia — privatistic, anti-pedestrian, and anti-communitarian — and the principles of the New Urbanism, with their intoxicating promises of pedestrian movement and sense of public place. Evergreen falls almost precisely between these two different tendencies. In this way, Evergreen is emblematic of the deep ambivalence in our current way of thinking about cities. ❑



Rendering of Evergreen Community

Prop. 62 Proves Stumbling Block for 'Community Charters'

Continued from page1

commissioner Jane Pisano, dean of the School of Public Administration at the University of Southern California.

Created by the Legislature, the Constitution Revision Commission has been meeting since 1994 with the charge of crafting changes to the state's massive constitution. The commission's proposals will be submitted later this spring to the Legislature, which will then have the option of placing the proposed changes - or an amended version of them - on the November ballot.

The commission has dealt with a broad range of issues, including the idea of a 120-member unicameral legislature (this was discarded) and amending term limits so assembly members are allowed up to 12 years in office. Recently, the commission's work has been complicated by the fact that several members originally appointed by Willie Brown were ousted by new Assembly Speaker Curt Pringle, who replaced them with his own people. But commission members agree that revision of local government lies at the core of the commission's work. "This is probably the most difficult part of what we're doing,' said commission chairman William Hauck.

In preliminary recommendations adopted last August, the commission suggested that local government agencies - including school districts - be given the power to create "community charters." Subject to voter approval, these charters would permit local officials to restructure regulatory authority and tax revenue (including property tax, now allocated by the state) according to local consensus. Areas with community charters would be permitted to adopt any tax increase except ad-valorem property taxes by a two-thirds vote.

Under the community charter proposal, a group of neighboring local governments would be required to get together to determine whether to create their own charter. This charter would re-organize the distribution of regulatory power (such as land use) and the distribution of property and sales tax revenue according to whatever consensus is achieved by the local government.

> *"Each county would be required to form a charter committee next year and place a charter proposal before the voters."*

As adopted by the Constitution Revision Commission in February, each county would be required to form a charter committee next year and place a charter proposal before the voters no later than November, 2000. The charter committees would be required to have at least 15 members, with a majority of members being non-government officials. Under the commission's proposal, the county Board of Supervisors would appoint five members, cities would appoint six, and school board and special district boards would appoint two each. A similar process would be available for those areas wishing to create multi-county commissions.

"We started out with the idea that one way to decrease the number of governmental units would be for them to get together and figure out what they could do most effectively," Pisano said. "The idea was that local governments would bring all their money to the table."

That idea was narrowed during the February meetings. But the notion of giving additional taxing power to local governments has retained widespread support. In discussing simple-majority taxes at its February meetings, however, the Constitution Revision Commission ran into the problem of charter cities and Proposition 62 - currently a raging issue for cities and counties because of the California Supreme Court's recent ruling in *Guardino v. Santa Clara County*.

Under Proposition 13 coupled with Proposition 62, a statutory initiative passed in 1986, "special taxes" require two-thirds voter approval for passage, while general taxes require simple majority. In the *Guardino* case, the court ruled that under Proposition 62, any general tax imposed by local governments must be placed on the ballot and approved by at least a simple majority of voters. (*CP&DR*, November 1995.)

The *Guardino* case has local governments in an uproar. Some experts estimate that some $3 billion in general local taxes have been levied since 1986, most of it without voter approval. Critical to the Constitution Revision Commission's work is the fact that California's 80-odd charter cities, which have more than half the state's population, claim they are exempt from Proposition 62 and do not require voter approval for general taxes at all. (Charter cities have their own charters and have more freedom from state law. Most of California's cities are "general-law" cities that are strictly bound by state law.)

At its February meetings, the Constitution Revision Commission voted to support the idea that all local taxes, general and special, should be subject to a simple majority vote - a move designed to assist local governments in raising money by wiping out the two-thirds vote requirement for special taxes. But charter cities oppose this idea because it would seem to enshrine in the constitution that they, like general-law cities, would have to subject tax increases to a public vote.

This controversy impinges on the community charter discussion as well. The commission has discussed getting around the charter city problem by merely having the constitution state that the community charter and voter-approval requirements do not abrogate any current power of a charter city. However, this would seem to leave charter cities with no motivation to participate in community charters which might afford them more revenue-raising opportunity. "It's a big hole in the doughnut," said Fred Silva, the commission's director.

But Hauck, the commission's chairman, said he is determined to find a solution to this problem before the next meeting. And, in a larger sense, he stated that he believes the Constitution Revision Commission must "force the issue" of local government reorganization. "I feel strongly that we need to initiate at the state level a review of how we deliver services locally," he said. "Rather than have the state decide, we probably should let the people in the communities make that decision. The Legislature has got to decide, do you let the people in the localities make these decisions, some of which you don't like, or do you take a more controlling interest in local government?" ❑

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