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INSIDE

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Housing Market Stage Comeback Throughout State

Starter Homes May Mean Fiscal Problems For Cities

By Morris Newman

The California housing market is recovering, with permit activity and new construction both showing a sharp upswing from recession-year levels. The coming boom is likely to differ, however, from earlier housing booms in significant ways.

First, the trend is toward development in or near cities, rather than farflung suburban sprawl. And despite the reliance of many cities on developer fees, the low-end housing market may end up as a financial drain on some cities, particularly those lacking long-term infrastructure plans and/or additional funding sources to build new schools.

For economists and economic boosters, the housing recovery is good news. The Construction Industry Research Board foresees a 15.6% rise in housing permit activity in 1994, with a total 97,700 permits "pulled" this year for both single-family and multi-family dwelling units, compared to 84,500 units the previous year. In 1995, CIRB expects a startling 39.2% jump in permit activity, for a total of 136,000 units. (These figures still seem modest, however, compared to the 20-year peak of 314,000 permits in 1986.)

As always, land prices are determining the geography of the housing market. As it turns out, the state has an abundance of entitled parcels in or near existing cities, and their low prices will bring home building closer to cities, where many home buyers would prefer to buy given the choice.

"It's a good opportunity to fill in areas that got jumped over" in the 1980s, said Gary Lowe, an Irvine-based land-use lawyer who until recently was a homebuilder in the Inland Empire. That "close-in" trend is likely to continue for years, because of the high number of affordable, unbuilt lots available to builders. In boom-and-bust housing markets like south Riverside County *Continued on page 9*

CEQA Often Used To Do Planning, Survey Reveals

Localities With Older General Plans Get Sued More

By William Fulton

Local governments in California spend far more money on environmental impact reports than on general plan revisions, and communities with older general plans rely heavily on EIRs to conduct planning, according to survey results compiled by a researcher from the University of Illinois.

According to the estimates calculated by Illinois planning professor Robert Olshansky, the average local jurisdiction in California spends about $160,000 annually on EIRs and only $17,000 on general plan revisions. The survey does not include the cost of specific plans and other planning documents. About 85% of the EIR money comes from developers, while cities and counties must foot the bill for general plan revisions themselves.

"A lot of stuff is being done through CEQA and EIRs that ought to be done through general plans," said Olshansky, who attended Berkeley planning school and worked as a planning consultant in California before moving to Illinois. Results of his survey will be included in a forthcoming book-length review of CEQA from the California Policy Seminar.

Olshansky estimated total cost of EIR preparation by local governments in California to be between $60 million and $70 million in 1990. The figure might be less now, because according to the State Clearinghouse the number of EIRs reported dropped 21% from 1990 to 1993. Using Olshansky's methods and his data, *CP&DR* estimated that general plan revisions cost in the vicinity of $8-10 million per year.

The results came from a 1991 survey of planning departments throughout California and was based on data from 1990. About 70% of all cities and counties in the state responded to the survey, and cities and counties with larger populations were more likely to respond. *Continued on page 10*

Local Planning
Morris Newman

EPA Proposes Alternative Design for Subdivision

The U.S. Environmental Protection Agency has made a novel foray into local planning by hiring private consultants to prepare a neo-traditional master plan for a housing subdivision in Sacramento County. The EPA's plan is an attempt to maximize open space and preserve wetlands on the location, but has been criticized by the home builder as an unwarranted intrusion by Washington into local planning.

The project in question is the 1,200-acre Sunrise Douglas housing tract, located in southeast Sacramento County, near the junction of the Highway 50 and Sunrise Boulevard. The developer, Sares-Regis Group, has spent six years in an effort to get a general plan amendment to build 7,000 housing units on the site, at a density of about seven to eight units per acre. Sares Regis also planned to leave about one-fourth of the site as open space, since part of the site is occupied by vernal pools, a seasonal wetland. The developer has applied to the U.S. Army Corps of Engineers, which has jurisdiction over wetlands, for a so-called wetlands fill permit under section 404 of the Clean Water Act. EPA generally reviews such applications, and has veto power.

In the case of Sunrise Douglas, EPA wanted the developer to consider a very different configuration that would increase the densities and provide a greater amount of buffer surrounding the vernal pools. Through the Cadmus Group, EPA hired three Northern California design firms — CONCUR of Berkeley, Urban Dynamics of Citrus Heights, and Acanthus of Sacramento. The EPA-sponsored site plan proposes densities of about 11 units per acre, the majority of which would have densities of 15 to 30 units per acre. The EPA document doubles the open space to 600 acres, and avoids four more acres of vernal pools than the developer's original plan.

"This is clearly an issue of the federal government stepping in and taking on local planning. It's a waste of taxpayer dollars," said Sares-Regis vice president Randy Collins, who added he believes EPA has taken an active interest in this case because the federal agencies want to forestall development in this area of Sacramento County.

But federal bureaucrats tell a different story. "Both EPA and Fish & Wildlife felt it was important enough" to commission an extra study, because "this project was opening a whole new area for development," said Larry Vinzant, an environmental specialist at the Corps. Jeff Rosenbloom, chief of the EPA's wetland and sediment management section, observed that "this is a pretty major permit that we are looking at, affecting a large number of vernal pools of very high value." EPA took the unusual step of hiring a design consultant to prepare an alternative plan, Rosenbloom said, because "we don't have a lot of expertise here, and we knew that the developer is sophisticated and would want some guidance on how to do other options."

Sares's Collins said he was not very impressed by the EPA alternative plan. "We found it to be pretty weak," said the developer, who wrote a critique of the plan for the Corps. The consultants, he added, "made a lot of assumptions that were erroneous, and they did not understand the project," from the perspective of land planning. According to Collins, the alternative site plain lacked proper drainage. Sares Regis's original plan, he claimed, already "maximized avoidance" of wetlands. Collins said he was also chagrined by the federal government's apparent willingness to dictate development densities without regard to local market conditions. EPA's proposed higher densities, he said, "are really infill densities, but this project is located on the urban fringe," where homebuyers expect lower densities.

Collins said his project is in conformance with the most recent update of the Sacramento County General Plan. If the EPA is concerned about environmental impacts in the southeast county, "they could have participated a heck of a lot more in the general plan process," he said.

But at least one federal official sounded blase about policy making. "Typically, we don't get involved in the local level of planning. We don't have a whole lot of time for those sorts of things," said the Corps' Vinzant.

Local Briefs

San Diego County supervisors have approved a development plan for the 3,300-acre East Otay Mesa area, effectively opening the area near the Mexico border for residential and commercial development. The vote concludes a three-year planning process that cost 35 landowners $1.3 million. The vote displeased the principal landowner, Roque De La Fuente, who owns 3,000 acres.

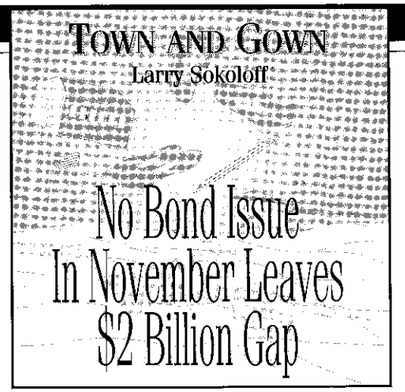
He protested a decision by the supervisors to classify 479 acres as environmentally sensitive because of gnatcatcher sightings and vernal pools. The plan envisions 2,300 acres of industrial development, 750 acres of residential development and 150 acres of commercial development on an area largely lacking in urban infrastructure....

Solano County Board of Supervisors have voted 3-2 to extend the protections to open space and agricultural land afforded by Measure A for another 15 years. Originally approved by county voters in 1984, the initiative protected 400,000 acres of ag land for 10 years. The supervisors' decision has apparently headed off an effort by local farmers to put Measure A back on the ballot....

Monterey County Supervisors have rescinded two ordinances, which had raised a furor among local farmers for requiring fees and limits on pumping for water in the Salinas Valley. A third ordinance requiring meters to measure water flow on all agricultural wells in the area remains law, but the effective date was pushed back to February 1995. The farmers had taken the unusual step of suing the county on CEQA grounds, claiming that the ordinances constituted a "project" and required an EIR. (*CP&DR*, July 1994)....

Placer County Supervisors approved a general plan by 4-1 on August 16, in the first update of the plan since 1967. The plan deleted two proposed new towns, and reclassified two others. The plan foresees a population of 400,000, double the county's current population, by the year 2040. The plan has been challenged in court by the City of Roseville. ❑

Town and Gown
Larry Sokoloff



No Bond Issue In November Leaves $2 Billion Gap

This has not been a good year for California schools. First came the loss of Proposition 1B, the $1 billion state bond issue, which fell just 35,000 votes short of passage on the June ballot. Then, on the last day of the session, the legislature failed to place a similar bond measure on the November ballot.

And it keeps getting worse. The state has a backlog of $2 billion in school construction projects already approved by the State Allocation Board. (More than $1 billion of the backlog is located in just four counties — Los Angeles, Orange, Riverside, and Fresno.) More students are pouring into the state's schools every day. And the next time the legislature can feasibly place a school bond measure before voters in March 1996 — a time the education establishment is likely to be fighting a school voucher initiative also on the ballot.

All this means that a new state bond to deal with $2-billion-list won't be an option until after the November 1996 election.

The defeat of Proposition 1B in June was the first time that a state school bond issue had lost since such measures began appearing on the ballot in 1982. The loss was a narrow one, perhaps presaging what happened in the Assembly on August 31. A $2 billion measure failed by one vote to obtain the two-thirds approval required to place it on the November ballot, losing 53-21. (The Senate voted against the bond measure, 20-10, on August 19.)

Rick Simpson, an aide to Democratic Assembly Speaker Willie Brown, blamed the failure of the November bond issue on Assembly Republicans. While all 47 Democrats supported the measure, only six of the Assembly's 33 Republicans supported it, and two of those Republicans added their yes votes after it became clear that the measure would not receive the 54 votes required for passage. The measure would have provided $1.5 billion in construction money for the state's K-12 schools and $500 million for higher education.

Simpson discounted reports that the bond measure failed in the Assembly because Democrats refused to make a deal with Republicans to get a prison bond measure on the ballot as well. He said the failure will mean more year-round schools and double sessions in fast-growing areas. The loss is also expected to lead to more local bond measures and more pressure on developers, despite the $1.72-per-square-foot limit on school facilities contained in the state School Facilities Act.

More school districts may also follow the lead of districts in the San Jose area, which filed suit against San Jose's new general plan recently. (See below.) Such lawsuits are in keeping with recent history, as school districts have sought to use the courts to force cities and counties to require that developers provide more school construction money.

Even if the bond measure had made it to the November ballot, there's no guarantee that it would have been approved by the angry, frustrated California electorate, which rejected $6 billion in bond issues in June. Earlier school bond campaigns had stressed that school construction creates jobs, but school officials said even that might not have been enough to sway voters this year.

To mount a successful campaign in November, $500,000 would have been needed, said Jim Murdoch, lobbyist for the Coalition for Adequate School Housing, a lobbying group for school facilities. By the end of the summer, he said, only $30,000-$40,000 had been raised.

Murdoch said an *ad hoc* group of educators, builders, and others are working on a strategy for the future. One idea is to lobby legislators hard between November and January, when they are not in Sacramento, by showing them specific needs in their own districts.

At the local level, the absence of a November ballot measure is expected to be felt in growing districts throughout the state. The $1.7-billion state backlog includes 412 different projects. Individual district backlogs range from $230 million in L.A. Unified to $53,000 in San Ramon Unified. One specific example is the Elk Grove Unified School District in Sacramento County, which is expected to lose $15 million to $18 million to pay for half the cost of two new elementary schools, additions to eight other schools, and planning funds for future schools and modernization projects. Elk Grove expects to grow from 33,000 students today to 50,000 in the year 2000.

"It's going to be a very difficult two years," said Kathleen Moore, facilities administrator for the Elk Grove district. Moore expressed hope for another interim state financing program such as the one that existed in 1990-91.

At Santa Ana Unified in Orange County, a fast-growing urban school district, the district expects to lose $30 million that had been slated for the first space-saver intermediate school, a new elementary school, an addition to the elementary school, and three modernization projects.

The space-saver school is permitted under a state law that allows multi-level schools to be constructed in the middle of existing development projects such as apartment complexes or shopping centers. The Santa Ana district plans to build an intermediate school on an 11-acre portion of a recently renovated shopping center in the city (*CP&DR*, April 1994).

Districts Sue San Jose Over General Plan

Eight school districts have sued the City of San Jose because they claim its recently adopted general plan does not assess the impact of schools that thousands of new residents will create.

The lawsuit, seeking a writ of mandate and declaratory relief under CEQA, was filed after a School Impact Task Force failed to resolve problems between the parties.

"It's a meritless lawsuit," said City Attorney Joan Gallo. "The school districts filed it in order to pressure the task force, which seems very inappropriate."

Lou Lozano, the attorney for the school districts, agreed that the task force had not made much progress but said the city had not adequately addressed the problems schools will face under the new general plan. The San Jose City Council adopted the plan on August 16.

The new general plan would create 52,900 new residential units in San Jose by the year 2020. ❑

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Base Reuse
Morris Newman

Army Gives Up Presidio — Sort Of

The U.S. Army has startled San Franciscans by deciding to keep uniformed personnel at the Presidio for at least the next five years. The National Park Service, which is set to take over the park on October 1, lauds the Army for footing some of the conversion bill. But critics, including the Sierra Club, are saying the Army's plan contributes too little to the financial support of the 1,480-acre base.

The army will actually occupy only about 20% of the park's "footprint," and about 300 of the Presidio's 500 buildings, most of which are historic. The military is downsizing its personnel from 4,000 people to 380.

While some San Francisco residents seemed dismayed by the army's about-face, Park Service officials said the decision actually aids the process of turning the Presidio into a national park, because the Army will absorb significant amount of the costs. The Presidio is likely the most expensive of California military bases to maintain because of its many buildings. As an operative base, the Presidio cost the Army $45 million a year and was expected to cost the Park Service $38 million annually. The army's continued presence will shave $12 million off those yearly costs to the Park Service.

"I think the Army will provide a major benefit for a transition to a national park, by reducing cost and reducing capital improvement dollars, and by keeping buildings occupied" that might otherwise deteriorate from neglect, said Don Neubacher, the park service's chief of planning for the Presidio.

In hearings last summer, some members of Congress were pointedly critical of the costs of maintaining the Presidio in the park system, claiming it would be more expensive to operate than Yellowstone National Park. Some members recommended selling off much of the land and buildings on the base to offset costs. Michael Alexander of the Sierra Club's Presidio Task Force strongly rejected the privatization notion, pointing out that the Presidio has the "largest concentration of historic buildings in the entire National Park System," and likened any sale of Presidio buildings to the federal government's sale of redwood forests in the 1930s.

Neubacher added that the army's continued presence actually will have little effect on the Park Service's initial projects at the Presidio. "We worked with the Army, so that their presence does little to affect our first five years," he said. After that the park service plans to continue with converting existing sites into three public uses: Letterman Army Medical Center, which has received an RFP response from UC San Francisco Medical School as a hospital and research center; the old Main Post of the Sixth Army, which will become a "global center" and museum; and Fort Winfield Scott, which is to be used as a conference and training center. About two-thirds of the park will remain open space.

Sierra Club's Alexander acknowledged the Army's presence defrays a major portion of the cost, but is critical for what he described as the army's niggardly contribution toward park costs, particularly in revenues from the Presidio golf course. Military personnel use the course for about 60,000 rounds of golf yearly, and one estimate says the course could generate $700,000 or more if the course were open to the public. Alexander cited claims of a private golf-course manager who said the course could be much more profitable, and that 90,000-100,000 rounds per year was achievable. The golf-course revenues are currently earmarked for a "welfare fund" for military personnel. "Those revenues remain exclusively to the army for five years, and could represent an important amount of money for the maintenance, restoration and rehabilitation of the park," said Alexander, adding, "I suspect very few officers or very few military personnel will play on it, but it will remain a private course (after Oct. 1) and that is unacceptable for a national park."

Neubacher said that the Presidio and the park service will eventually receive a larger share of golf-course revenues, because 50% of the golfers on the course will be public, non-military golfers by 1999.

The park service plans to lease many of the buildings to private operators. The operation will be administered by the Presidio Trust, which hopes to raise $332 million in revenue during the next 15 years. On August 16, the U.S. House of Representatives approved a bill to transfer the Presidio to the Park Service by a vote of 245 to 168, after acrimonious debate, with some Republicans saying it would be too costly to convert the Presidio into a national park. To date, the only tenant is the Gorbachev Foundation, which has two buildings at the former Coast Guard station near Fort Point.

Treasure Island Won't Be Detention Center

In response to a motion by the San Francisco Board of Supervisors, the Navy has canceled plans to give a portion of Treasure Island to the U.S. Immigration and Naturalization Service for use as a detention center for undocumented aliens. Supervisors said the plan was inconsistent with the city's stated intent to use former bases for economic development.

The city plans to take possession of Treasure Island in October 1997.

More in line with the supervisors' wishes is a report commissioned by the Metropolitan Transportation Commission, which recommended that three Bay Area bases — Mare Island Naval Shipyard, Oakland Naval Supply Center and Alameda Naval Air Station — become integrated into the region's seaport development plan. Harbor officials expect a four-fold increase in container shipping in the area by the year 2020.

Mather Airport on the Way

Sacramento County officials plan to create Mather Airport out of the Mather Air Force Base, when the facility closes on November 1. The transition so far has not been smooth: the air force base lacks a commercial air terminal, and the county is seeking an $8.3 million federal grant to help build one.

Separately, an air-cargo operator that had planned to locate a regional hub in the Mather Airport has decided against the Sacramento location, reportedly because the company was frustrated about the lack of certainty about the airport's opening date. The Air Force base was originally scheduled to close a year ago. Airborne Express now plans to build its $3.5 million hub in Fresno, where it will locate 120 jobs.

To date, the largest project at Mather is a $25 million hospital and nursing home, planned by the U.S. Dept. of Veterans Affairs. ❑

CP&DR
LEGAL DIGEST

Judge Blocks 5,000-Acre Specific Plan

Finds Fault With Housing Element Of Yuba County's Specific Plan

By Larry Sokoloff

In another victory for affordable housing advocates, a Superior Court judge in Yuba County has blocked approval of a 5,000-acre specific plan until local officials revise the county's housing element.

Judge Dennis J. Buckley ordered Yuba County to amend its housing element and declared the Plumas Lake Specific Plan invalid because of problems with the housing element. The judge said that building permits and zone changes cannot be granted in the specific plan area until Yuba County complies with his order.

The Plumas Lake site is located in the southern part of Yuba County, about 35 miles north of Sacramento. The plan area, intended for commercial and residential projects, is the largest specific plan ever considered in the county, which currently has a population of approximately 63,000 people. As many as 12,000 homes may be built in the area by a number of different developers.

According to the county's current housing element, there is a critical need for multi-family housing for low-income families, said Ilene Jacobs, an attorney for California Rural Legal Assistance, which brought the suit. About half the county's population has incomes below the federal poverty line, she said.

"My hope is that the county will now look seriously at the plans and goals of the programs that are contained in the housing element and have not been implemented," she said.

Buckley ruled that the Plumas Lake Specific Plan cannot be implemented until it is amended to include language allowing residential densities of 21 dwelling units per gross acre. He also ordered the county to address the problem of a local public utilities district which is not giving priority in water and sewer resource allocation, as required by law. According to Jacobs, the housing element concluded that 21-unit densities are required to make affordable housing financially feasible.

County Counsel Dan Montgomery said the county is working to bring its housing element into compliance with state law. He asked Buckley for a clarification of his order at a hearing on September 22, but Buckley denied the motion. Montgomery also said the county is considering an appeal of the judge's order.

Buckley's ruling was the most significant in a string of victories for the Housing Element Enforcement Project, led by the Alameda County Legal Aid Society. The project provides backup assistance to local legal aid offices that handle housing element cases.

The housing element is a state-mandated section of each city and county general plan. Under law, the housing element must show how each community will meet affordable housing targets established by state and regional agencies. The state Department of Housing and Community Development reviews the housing elements but enforcement generally occurs only through litigation. Until recently, many jurisdictions throughout the state have not been in compliance with the law.

Buckley gave the county 120 days to comply with his order. He said the housing element needs to be amended to include an analysis of at-risk housing units which are about to lose subsidies making them affordable, and that county requirements for mobile home siding and roofing for older units needs to be repealed. He also required the housing element to be amended to include an analysis of how the rules and limited capacity of a local public utilities district works against low-income housing development in the Plumas Lake Specific Plan area. ❑

- The Case:
  Ivory v. Yuba County, Yuba County Superior Court No. 54694
- The Lawyers:
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  For Yuba County: Dan Montgomery, Yuba County Counsel, (916) 741-6401.

Civil Rights

Ninth Circuit Allows Challenge To Tahoe Regional Plan to Proceed

By Larry Sokoloff

Private landowners in the Lake Tahoe region can proceed with a civil rights challenge to the regional land-use plan under a recent ruling by the Ninth U.S. Circuit Court of Appeals. The court ruled in August that a landowners group fighting the plan was not barred by the statute of limitations in filing suit. However, the Ninth Circuit did affirm a lower court ruling that takings claims are time-barred.

The litigation is the latest round in a long-running dispute over land use around the lake, which straddles the California-Nevada state line. Land-use planning in the region is governed by a bi-state agency, the Tahoe Regional Planning Agency. The landowners' group, Tahoe Sierra Preservation Council (TSPC), has been litigating TRPA's regional plans since 1984.

TSPC originally filed suit in both California and Nevada. Subsequently, a federal judge in Sacramento issued an injunction halting all construction in the Tahoe area. As a result of the injunction, TRPA initiated a year-long, multi-party negotiation that resulted in a new plan, which TRPA adopted in 1987. Most participants in the negotiations accepted the new plan, but some property owners continued to litigate, largely because of limitations on commercial building. Subsequently, the original lawsuits were consolidated in U.S. District Court in Nevada.

The property owners filed amended complaints in 1991 and 1992, after the plan was amended. But U.S. District Court Judge Edward C. Reed ruled that the amended complaints were barred by a 60-day limit on litigation contained in the Bi-state Compact establishing TRPA.

On appeal, a unanimous three-judge panel of the Ninth Circuit said the statute of limitations had not tolled under TSPC's claim of a violation of the landowners' civil rights under 42 U.S.C. §1983. The panel based its decision on a U.S. Supreme Court case, *Wilson v. Garcia*, 471 U.S. 261 (1985), that said a single state statute of limitation should apply for civil rights claims, not the 60-day statute of limitations sought by TRPA.

"As expressed by the Supreme Court, that statute is to apply to 1983 claims,"

wrote Judge John T. Noonan Jr. for the Ninth Circuit panel. "All §1983 claims, of course, include §1983 claims based on takings."

The panel overturned Reed's ruling that there was no harm caused to the TSPC by the 1984 Regional Plan. According to TRPA attorney Susan Scholley, the 1984 plan never went into effect.

In the same ruling that said the Tahoe case could move forward, the Ninth Circuit also ruled that TSPC's takings claims were barred because they were not brought within 60 days of a 1981 ordinance and a 1983 resolution. The appellate court said TSPC's takings claim to the 1987 regional plan is also time-barred.

TSPC had argued that in two U.S. Supreme Court takings cases — *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886, 2891 (1992), and *First English Evangelical Lutheran Church v. Los Angeles County*, 482 U.S. 304, 313 n.7 (1987), regulations were amended during the appeal but there was no requirement that a new lawsuit be filed. The appellate court held this was irrelevant because the regulations in the Tahoe case were replaced and not amended.

TRPA has asked for a rehearing. Scholley said the agency is confident that it will prevail eventually but expressed disappointment with the Ninth Circuit's ruling. She said TRPA has already successfully defended the 1987 Tahoe plan in a Nevada case that went to the state's Supreme Court. The case, *Kelly v. TRPA*, 109 Nev. Adv. Opp. 100, *cert. denied*, 62 U.S.L.W. 3442, 3451 (1994), involved a single-family lot owner who was prevented from building. The 1987 plan placed strict limits on the number of building permits to be issued to single-family lot owners. ❑

■ The Case:
Tahoe Sierra Preservation Council Inc. v. Tahoe Regional Planning Agency, U.S. Court of Appeals, No. 93-15114, 94 Daily Journal D.A.R. 11203 (August 12, 1994).

■ The Lawyers:
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For Tahoe Regional Planning Agency: Susan Scholley, TRPA, (702) 588-4547.

REDEVELOPMENT

Poway Failed to Provide Housing Funds, Court Says

The City of Poway failed to finance its redevelopment housing fund sufficiently, and also improperly used redevelopment housing funds to pay for road improvements, the Fourth District Court of Appeal has ruled. However, the court also ruled that redevelopment housing money could be used for "improvement" of low-income housing, not just increases in the number of units.

The appellate court concluded that redevelopment tax increment funds must be set aside for low-income housing if 100% of redevelopment funds are earmarked for bond payments. The decision is the result of a lawsuit brought by Cheri Craig, a low-income resident of Poway, backed by the Legal Aid Society and the National Economic Development and Law Center.

Under state law, redevelopment agencies are required to "set aside" 20% of their tax-increment funds for low- and moderate-income housing. The *Craig* case included two different issues: first, whether bond proceeds are subject to this requirement, and second, whether the use of low/mod funds for improvements to Pomerado Road were proper.

Poway established an 8,200-acre redevelopment area in 1983 and issued bonds — backed by the property tax increment inside the redevelopment area — starting in 1985. The Poway Redevelopment Agency pledged 100% of its tax increment to pay off the bonds. The agency placed 20% of its 1985 and 1986 bond proceeds in the housing fund — a total of $7.8 million. However, the city then chose not to place any tax-increment revenue in the housing fund between 1985 and 1990, claiming that the bond proceeds fulfilled its obligation. If the city had made such payments they would have totaled $5.6 million.

In her lawsuit, Craig claimed that the city's "forward funding" method violated state law. The city, in turn, argued that it had actually over-funded the housing fund by $2.2 million. San Diego County Superior Court Judge Judith L. Haller ruled in favor of the city and Craig appealed.

The Court of Appeal reversed, however. "[W]hen an agency capitalizes its future income stream attributable to the LMI [low and moderate income] Housing Fund, it is required to deposit the corresponding bond revenues into the Fund, in addition to 20 percent of the annual tax increment. The Fund is then responsible for debt service on those bonds," wrote Justice Gilbert Nares for a unanimous three-justice panel. Nares concluded that, under state law, "any interest or other income earned by the Fund would be used to benefit the Fund." By not segregating the housing funds and using them to pay back 20% of the bonds, Nares said, the city was depriving the housing fund of the chance to earn "profits" in years when tax-increment funds exceed bond obligations. The court remanded the case to the Superior Court to determine how much the redevelopment agency's general fund must transfer to the housing fund.

Craig had also sued the city over the use of $240,000 in redevelopment housing funds to help build a soundwall, a sidewalk, and gutter and lighting improvements along Pomerado Avenue. Judge Haller ruled in favor of Craig and ordered the city to reimburse the housing fund by $240,000 plus interest. The city filed a cross-appeal on this issue.

The city had done a survey finding that two-thirds of the affected residences were low- or moderate-income. The city argued that the construction project fell within the redevelopment law's provisions permitting the use of funds for offsite improvements "if the improvements directly and specifically improve or increase the community's supply of low- or moderate-income housing." (Health & Safety Code §3334.2(c)(2).) Craig argued that the money could not be used for purposes that do not specifically increase the amount of affordable housing available in Poway. But the Court of Appeal ruled otherwise. The statute in question, the court said, "did not limit the types of offsite construction projects which could be funded by an agency's LMI Housing Fund."

However, the court then concluded that Poway had not provided evidence that the soundwall and sidewalks had actually improved the neighborhood. "There was, for example, no evidence that the project made the sound problem better or in any other way had a beneficial effect on the homes in the neighborhood," Nares wrote. "The fact that a 'problem' may exist is different from showing an expenditure in fact served to improve the community's supply of affordable housing." ❑

■ The Case:
Craig v. City of Poway, No. D016608, 94 Daily Journal D.A.R. 12965 (September 15, 1994).

■ The Lawyers:
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TAKINGS

Arizona Case Returned to Lower Court For Reconsideration After *Dolan*

In another early indication of the significance of the *Dolan* decision, an Arizona case has been sent back to a lower court for reconsideration in light of *Dolan*'s precepts.

In *Dolan v. City of Tigard*, handed down last June, the U.S. Supreme Court established a rule that exactions must be imposed on development in "rough proportionality" to the development's impact. In the Arizona case, the state Court of Appeals had upheld a development fee system from the city of Scottsdale. A few weeks ago, however, the Arizona Supreme Court ordered the appellate court to reconsider the case in light of the *Dolan* ruling.

The case began when Scottsdale imposed a water resource development fee on new construction as a means of implementing the city's water resource plan, which called for development of several new sources of water. The water resource plan, in turn, was prepared after the state passed the Groundwater Management Act in 1980, which ordered municipalities to work toward more sustainable groundwater practices.

The ordinance assessed a fee of $1,000 per single-family unit, $600 per multifamily unit, and $2,000 per acre-foot of estimated annual use for other development projects. The fees were imposed pursuant to the state's development fee law, A.R.S §9-463.05, which was passed in 1990.

Scottsdale was subsequently sued by the Home Builders Association of Central Arizona and by a group of individual homebuilders including Grupe Development Co. The builders argued that there was no reasonable relationship between the fee and new development; that the fee did not offset the costs of serving new development; and that the fee discriminated against new homebuilders and new residents.

Maricopa County Superior Court Judge William P. Sargent ruled in favor of the builders, saying the fee did not bear a reasonable relationship to the problem, that it discriminated against new developments, and that any benefit received by the new development was remote and speculative.

In a split decision, the Court of Appeals — Arizona's intermediate appellate court — reversed Judge Sargent's ruling. The court first ruled that under Arizona law, the city did not have to meet a strict test. "If the municipality can show that its plans, calculations, and predictions are not 'clearly erroneous, arbitrary, and wholly unwarranted,' we will defer to its judgment and uphold an ordinance as satisfying the broad requirements of §9-463.05."

The court ruled that the city did not need to prove an immediate benefit in order to adopt the fee. The appellate court also concluded that "the enabling statute does not require precision, only a 'reasonable relationship'."

Regarding the discrimination charge, the majority noted that all development fees are discriminatory in some sense. The homebuilders' rationale, the majority argued, "would make the enabling statute itself a contraction: a municipality could not impose a development fee against future developers because it would discriminate between them and past developers. Obviously, the legislature did not intend such a result."

A dissenting judge argued that a higher standard of review should be used to permit independent judicial review of the issues. ❑

■ The Case:
Home Builders Association of Central Arizona v. City of Scottsdale, 875 P.2d 1310.

■ The Lawyers:
For Home Builders Association: Ronald W. Carmichael, Carmichael & Powell, Phoenix, (602) 861-0770.
For City of Scottsdale: Richard W. Garnett III, City Attorney, (602) 994-2405.
For League of Arizona Cities and Towns (Amicus Curiae): J. Lamar Shelley, Shelley & Bethea, Mesa, (602) 964-2674.

VESTED RIGHTS

Damages Claim on Rezoning Time-Barred, Appellate Court Says

A Government Code section limiting lawsuits challenging zoning ordinances to 120 days may also be applied to causes of action seeking monetary damages, the Second District Court of Appeal in Los Angeles has ruled. In so doing, the court rejected as untimely a Beverly Hills restaurant's attempt to overturn the city's withdrawal of building permit.

Beverly Hills issued a building permit to expand Dolores' Restaurant in 1987 to include, among other things, a drive-in restaurant. However, the city quickly withdrew the permit when it determined that the project required approval of the city Architectural Commission.

Two weeks later, the city adopted an emergency ordinance establishing a conditional use permit procedure for drive-in facilities. The interim ordinance was extended three times in 1987 and 1988. In late 1987, the city Architectural Commission approved the project subject to four conditions, including the elimination of the drive-in use. Israel Freeman and Dean Williams, the restaurant's owners, complied with these conditions and opened the restaurant in January of 1988.

Sixteen months later, Freeman and Williams filed suit against the city. Freeman and Williams claimed that a taking had occurred and that they had a vested right to build because the building permit had been issued. They sought damages in excess of $1 million.

The city's final ordinance prohibiting drive-in facilities did not take place until July 1989, more than two months after the lawsuit was filed.

Three years later — in December 1992 — Beverly Hills moved for summary judgment based on three defenses. First, the city argued that the lawsuit was time-barred under Government Code §65009(c), which imposes a 120-day statute of limitations on the adoption or amendment of zoning ordinance. Second, the city argued that the lawsuit should have been filed in a timely manner as a mandamus action. Third, the city argued that the cause of action for monetary damages was barred by government tort claims immunity statutes.

L.A. County Superior Court Judge James F. Nelson granted the city's motion for summary judgment and ruled that the action was moot because Freeman and Williams no longer owned the property.

On appeal, the Court of Appeal affirmed Nelson's ruling. Most important, however, was the court's application of §65009(c)(2) to causes of action seeking monetary damages. "Monetary damage claims are just another way of 'attacking' enactment of a zoning ordinance and, moreover, often of seeking to force reversal of the ordinance," wrote Justice Earl Johnson for Division 7 of the Second District.

If the 120-day review period were not strictly enforced, Johnson wrote, "disappointed parties could 'attack' the enactment of zoning ordinances by filing damage claims months or years later which threatened so much financial cost as to force the legislative body to 'set aside' those ordinances."

Freeman and Williams argued that the 120-day statute did not come into play because the final drive-in ordinance was not effective until 72 days after the lawsuit was filed. Williams wrote: "They should not be barred from challenging the permanent ordinance." But the appellate court refused to allow the restaurateurs to recast their complain as an administrative writ. The court also ruled that the request for declaratory relief is moot because at the time of the city's motion for summary judgment, the plaintiffs no longer owned the property. ❑

■ The Case:
Freeman v. City of Beverly Hills, No. B077421, 94 Daily Journal D.A.R. 114966 (August 19, 1994).

■ The Lawyers:
For Freeman: Leonard Steiner, Steiner & Libo, (310) 273-7778.
For City of Beverly Hills: Gregory Stepanicich, City Attorney, (213) 626-8484.

INITIATIVES

Landfill Initiative Knocked Off Ballot by Ventura County Judge

A Ventura County initiative, designed to force approval of a new landfill, has been knocked off the ballot in advance as a result of a legal challenge by neighboring cities.

Sitting by special assignment, retired appellate judge Richard Abbe ruled the initiative invalid because, among other things, it would award land-use rights to the private trash company that sponsored it. The initiative's supporters chose not to appeal the ruling in time for the November election.

The case involves a controversial proposal to build a new landfill in Weldon Canyon between Ventura and Ojai. The initiative was placed on the ballot by a local group sponsored by Taconic Resources, a San Diego-based trash company. The measure would have changed the county's general plan and zoning ordinance to permit trash disposal in Weldon Canyon, which is currently undeveloped. The measure also would have vested licensing and land-use rights with Taconic Resources.

The cities of Ventura and Ojai sued. The cities claimed a number of defects, but focused on the vesting of rights in Taconic Resources. The cities said this provision made the initiative an adjudicatory measure, as well as special legislation, which is prohibited in an initiative by the state constitution.

In late August, Abbe agreed with the cities and removed the measure from the ballot. He called the initiative "an egregious attempt" to use the political process to benefit a private company.

The case was assigned to Judge Abbe, a former member of the Second District Court of Appeal panel in Ventura, after five Superior Court judges in Ventura County were removed or disqualified.

But Abbe, who had an environmentalist reputation on the appellate court, didn't escape hot water himself. At the first hearing in July, he went out of his way to profess ignorance of the issue. But in doing so he said: "I don't know anything about Ventura County. I live in Santa Barbara. I like it there. I like it down here. I'd hate to see it cluttered with trash."

Those remarks led landfill supporters to ask that Abbe be removed from the case. But another retired appellate justice, Nat Agliano, ruled that Abbe had not prejudiced himself by the remarks. ❑

■ The Case:
City of Ojai v. Dean, Ventura County Superior Court No. 145898.

■ The Lawyers:
For Cities of Ojai and Ventura: Katherine Stone, Myers Widders & Gibson, (805) 644-7188.
For Ellen A. Brown (initiative proponent): Wesley Peltzer, Smith & Peltzer, (619) 744-7125.

CEQA

EIRs Struck Down in Cases From Fresno, Riverside

Bucking a recent trend, two Superior Court judges around the state have found fault with environmental impact reports. And in one case, the EIR ruling may have served the project a serious blow.

Eagle Mountain Landfill

A Superior Court judge's ruling has left the future of the proposed Eagle Mountain Landfill in Riverside County in doubt.

San Diego Superior Court Judge Judith McConnell found the Eagle Mountain EIR inadequate on many counts. Among other things, McConnell found that the EIR had not adequately dealt with the impact of the landfill on neighboring Joshua Tree National Monument. Joel Moskowitz, the lawyer who represented the landfill's opponents, also said McConnell found fault with the fact that Riverside County did not address the impact on a "ghost town" that would be revived by the landfill.

The Eagle Mountain property is owned by Kaiser Resources, successor to Kaiser Steel. The property is leased for $200,00 a month to Mine Reclamation Corp. However, in August, Browning-Ferris International of Housing announced plans to give up its 60% stake in Mine Reclamation Corp., meaning Eagle Mountain will lose its major landfill proponent.

Browning-Ferris pulled out amid frustration about the California permitting process. The company also recently lost a round of litigation involving the Sunshine Canyon landfill in Los Angeles. ❑

■ The Case:
Eagle Mountain v. Riverside County Board of Supervisors, No. 662906, and National Parks and Conservation Association v. County of Riverside, No. 662907.

■ The Lawyers:
For National Parks & Conservation Association: Joel Moskowitz, Gibson Dunn & Crutcher, (213) 229-7273.
For Riverside County: Martin Nethery, Best Best & Krieger, (619) 568-2611.

Fresno Race Track

Fresno County was ordered by a Superior Court judge to prepare an environmental impact report on a racetrack proposed for an industrial area near to a heavily Latino community.

In 1992, the county Board of Supervisors voted 3-2 to approve a rezoning and conditional use permit for a race track proposed by landowner Jerry Turner in an area southeast of Fresno. The county also issued a negative declaration. But residents of the unincorporated community of Malaga sued, saying the track proposal could have a significant effect on them.

Luke Cole, a lawyer for California Rural Legal Assistance who represented the Malaga residents, claimed that the community had suffered for decades from institutional racism. The racetrack decision, he said, "is a clear case of white planners planning noxious and unwanted land uses in a Latino neighborhood."

For his part, property owner Turner seemed undaunted by the ruling. "If they want an EIR, we'll certainly get an EIR. That's no problem," he told the *Fresno Bee*. ❑

■ The Case:
Concerned Citizens of Malaga v. County of Fresno, No. 469847-8.

■ The Lawyers:
For Concerned Citizens of Malaga: Luke Cole, CRLA, (415) 864-3405.
For Fresno County: Kevin Briggs, Deputy County Counsel, (209) 488-3479.

Housing Market Returns to Form, But Problems for Cities Loom

Continued from page 1

and the Antelope Valley in L.A. County, "builders who would normally buy raw land are now buying entitled, 'finished' lots, simply because you can buy those lots so cheaply," Lowe said. "You are buying them at the value of the improvements on them, because the land has no almost no residual value."

Speculation would normally boost the value of land quickly. But speculation is unlikely because of the huge number of residential lots owned by the Resolution Trust Corp., which has effectively depressed land prices by selling residential lots at below-market prices. (Lowe reports that properties at a recent, well-attended RTC auction in Southern California went largely unsold — a suggestion that builders are unwilling to pay more than the very bottom of the market.)

Another surprising event is the high level of activity in urban infill. Even Kaufman & Broad, the archetypal suburban subdivision developer, is actively involved in infill projects in San Jose. Again, the motivation is economic: urban land prices have fallen to the level where it is profitable for home builders to develop lots.

The current state of real estate finance is also likely to have a subtle but important role in the California countryside. Because of the decline of traditional sources of home construction lending, such as the S&Ls, many projects cannot find financing. Few lenders are available to the very small "infill builder," who wants to build a handful of lots. Perhaps more importantly, lenders so far seem unenthusiastic about financing large-scale master-planned communities and new towns, where the markets are unproven and the risk is high.

"The market is in a tenuous position, coming out of a recession. Nobody likes to overextend themselves (financially) in a community with unknown risk," said Eric Elder, vice president of marketing and sales for Kaufman & Broad. The companies in the strongest position are publicly owned companies who get their capital from Wall Street, like Kaufman & Broad, which prefers to build subdivisions of about 60 to 300 units in well-established markets, where units can sell quickly and the builder does not become bogged down in unsold inventory. If that trend of "mid-sized" development continues, it suggests that the housing boom may not immediately provide the awakening kiss to dormant New Towns.

If land economics is favorable for a spurt of new home building, the same phenomenon may not be good news to many cities, which are poorly prepared to handle a high volume of new homes.

The experience of one housing boomtown, the Town of Windsor in Sonoma County, provides a revealing snapshot of the fiscal and infrastructure impacts of successive housing booms. While still an unincorporated area, Windsor experienced a nine-fold increase in home building from 1987 to 1989, when the county approved 1,043 building permits for the community. In the past decade, the population has jumped from about 7,700 people in 1987 to more than 17,000. To gain control of homebuilding, local residents incorporated the town in July 1992, and approved a general plan with a strong emphasis on infrastructure development.

Since that time, the town has floated bonds to expand wastewater facilities, build a new high school and improve the interchange between Windsor Road and Highway 101. The city has also placed a moratorium on applications for subdivisions of five or more housing units. Despite the planning efforts, planning director David Woltering acknowledged that the town's infrastructure development is still "very much in a catch-up mode," and has yet to overtake the impacts of homes built in the 1980s.

For many cities, the housing revival is also a mixed bag. The current market is strongest in starter homes and "first-time move-up," which are the lowest price categories. "This recovery is at the low end of the market. It's not the kind of housing that cities want," said Cynthia Kroll, a scholar at the Center for Real Estate Economics at UC Berkeley. K&B's Elder says market research confirms the market trend toward starter homes. Prices obviously vary regionally, with starter homes in the Central Valley and Fresno area going in the $80,000 range and comparable homes in San Jose and Orange County selling in the high $100,000s. Yet because of the current property tax structure, only homes of $300,000 or more can fully offset their impact on local infrastructure, according to John Landis, a professor of regional planning at UC Berkeley.

Indeed, Landis predicted that the housing recovery is going to be bad news for cities that rely wholly on impact fees to finance infrastructure development, as opposed to cities with long-term infrastructure plans, who rely partly on bonding.

Cities that govern homebuilding through specific plans, such as the cities of Simi Valley and Thousand Oaks in Ventura County, are less likely to fall behind in their infrastructure needs than cities that simply process permits and collect fees, such as the cities in the fast-growing areas of Riverside County, the Bay Area and the Antelope Valley region of L.A. County.

"With specific plans, you look at the whole relationship of service needs to improvements done by developers, and their housing fees work pretty well, but where growth tends to be totally subsidized by fees, the structure is not adequate to covering the costs," he said. ❑

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Cynthia Kroll, Center for Real Estate Economics, UC Berkeley (510) 643-6112.
John Landis, professor of regional planning, UC Berkeley, (510) 642-5918.
Eric Elder, vice president of marketing, Kaufman & Broad Home Corp., (310) 443-8000.
David Woltering, planning director, Town of Windsor, (707) 838-1000.
Cary Lowe, Paone Callahan McColm & Winton, (714) 955-2900.

Localities Often Use CEQA For Planning, Survey Shows

Continued from page 1

In the survey, Olshansky asked a wide range of questions about use of CEQA, general plan revisions, and the attitudes of local planning directors toward both planning tools.

Most planning officials surveyed said they view CEQA positively — an attitude that cut across all categories, including region, population, rate of growth, and median income. While 87% of these officials said CEQA helps ensure a thorough analysis of environmental impacts, only 61% said it actually helps protect the environment and two-thirds said the law "has given too much power to NIMBYs."

Furthermore, the planning officials surveyed ranked their local zoning ordinance as far more important in the day-to-day decisions made by their department.

Use of CEQA

Olshansky's survey found that, popular views notwithstanding, a CEQA review rarely leads to an EIR and results in litigation in a very small number of cases. The survey also found that two-thirds of all projects requiring EIRs were eventually approved. More than half of those projects required statements of overriding consideration for approval.

Overall, Olshansky estimated that local governments completed between 30,000 and 34,000 negative declarations in 1990 and initiated between 1,600 and 1,800 EIRs. The average cost of EIRs completed in 1990 was $38,000, and the average jurisdiction spent $164,000 on EIRs. But this figure skewed upward because of a small number of expensive EIRs, presumably on large projects. The median cost of preparing EIRs by the typical jurisdiction —the 50th percentile, rather than the numerical average — was only $60,000.

According to the survey, the average jurisdiction received 85 development applications subject to CEQA in 1990. Of those 80% were disposed of via negative declarations, and slightly more than half of those involved mitigated negative declarations. Only 4% of these projects led to EIRs, or approximately 3.5 to 4 EIRs per jurisdiction per year. And the average jurisdiction has been subject to only 1.3 CEQA lawsuits in the previous five years (the period 1985-1990). Counties were more likely to use negative declarations than cities, and far more likely to be involved in CEQA litigation than cities.

These average figures are somewhat skewed because a small number of large jurisdictions process a huge number of development projects subject to CEQA. Median figures show similar results with some interesting twists. The median number of projects subject to CEQA was 30, indicating that many small jurisdictions process only a few projects per year. The percentage of projects disposed of via negative declarations was 83%. But median figures revealed that smaller jurisdictions are less likely to use mitigated negative declaration and more likely to use EIRs.

The survey also tried to find correlations between CEQA activity and community characteristics such as population, growth rate, and demographics. Olshansky concluded that those communities that do more EIRs (and thus use negative declarations less often) have a higher percentage of college graduates, lower densities, more CEQA-related lawsuits, and more Republicans. "This could be because these communities have concerned populations that demand high standards of their government, or that they live in more environmentally desirable areas that necessarily demand higher levels of scrutiny in the development process," Olshansky concluded. "Lawsuits, or the threat of lawsuits, is one way that these citizens enforce these concerns."

Olshansky's survey found that almost 80% of all EIRs deal with private development projects, while only 20% deal with public projects. More than 30% of all EIRs deal with single-family residential projects.

The survey found that 86% of EIR costs were funded by private developers, and that more than 80% of the total cost of EIRs went to outside consultants. Only 13% of jurisdictions had established local CEQA significance thresholds.

General Plans and CEQA

Among Olshansky's most interesting findings was his conclusion that jurisdictions with older general plans are more likely to use CEQA as a planning tool.

The survey found that the average cost of a general plan or general plan revision was $208,000, and the average time required was about two years. The median cost was $120,000, indicating that a small number of jurisdictions spend very large sums on their general plans. About 10 jurisdictions indicated they had spent $1 million or more on general plans. In contrast to EIRs, which are mostly prepared by consultants, half of general plans are prepared in-house by planning agency staff.

Olshansky found that approximately 8% of jurisdictions complete general plan revisions every year, leading to his conclusion that general plans are revised, on average, every 12 years.

A large number of general plans — perhaps as many as a third of the statewide total — were revised between 1987 and 1991. And perceptions of local planning officials about the effectiveness of the general plan is strongly tied to the age of the plan. Three-quarters of those whose plans had been revised since 1987 said their plans are "effective as a guide to day-to-day decision-making," compared with less than 30% of those with a general plan dating back to 1980 or before.

Significantly, most of those with pre-1980 general plans overwhelmingly (60%) agreed that CEQA is more important than the general plan in day-to-day planning decisions. Of those with post-1980 plans, only about a third agreed that CEQA is more important.

Olshansky's survey found that newer general plans tend to be found in smaller cities with less staff, less growth, and less CEQA activity. The average population of a jurisdiction with a pre-1984 general plan was 100,000 — more than twice the population of the average city with post-84 plan. ❑

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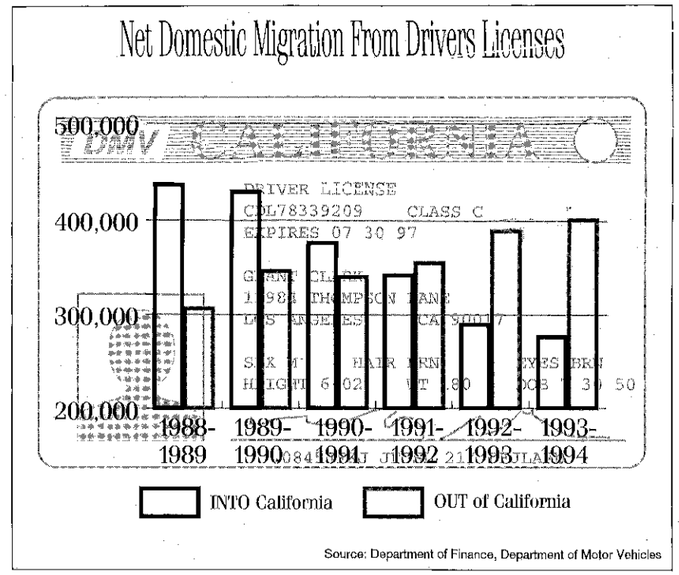
NUMBERS

Stephen Svete

California's Leading Export: Californians

Do the freeways feel just a touch less crowded these days? Are you sensing that there is just a bit more elbow room in the supermarket aisles? Did you get a campground reservation without a three-month advance reservation? If so, you may be experiencing a benefit of California's three-year old trend of "net domestic outmigration." That's when four of our fellow Golden Staters move to Nevada or Colorado, and only three New Yorkers and Michiganders move here to take their places.



California lost a net total of 125,000 registered drivers to other states in the fiscal year ending June 30 of this year. This represents a nearly tenfold increase in domestic outmigration from FY 1992, which was the first year California logged a net loss of drivers since 1974. But even though the exodus has now reached record levels, the state's overall population continues to grow. That's because of continued high birth rates and foreign in-migration (both documented and otherwise).

The outward flow is no surprise when one considers that migration is highly correlated to the economy — and particularly to job growth. But migration is a "lagging indicator" of the economy; in other words, it's a statistic that has more to do with where we've been than where we're going. That's because people move to other states for job opportunities as a measure of last resort.

So even if the current buzz about a turnaround in the recession really pans out, we can expect the domestic outmigration pattern to continue for at least two more years.

There is even evidence buried in the data that might support the notion of a state economy in rebound. For one thing, the outmigration trend showed signs of decelerating. The raw increase in outmigration dropped from a recent high of 87,000 in 1993 to only 25,000 in 1994, a decline of 71%. Another decline like that and the outmigration trend would reverse.

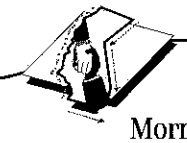
Another hint — and this if for those really reaching for positive signs — is in the comparison of trend lines of the "ins" (those who moved here from other states) and the "outs" (those who moved from California). Whereas the drop in "ins" grew by 4.5% between 1993 and 1994, the increase in "outs" grew by only 3%. This may indicate that it is becoming easier for unemployed Californians to find work in the state.

Other internal shifts in the data are less encouraging. In 1992, when the domestic net migration pattern first went negative, many demographers took heart in the fact that the two youngest age-cohort groups (18-24 and 25-29) still showed net positive patterns, showing that young people who would build the state's future economy were still believers. But this too, has changed. In two years, the 25-29 group has gone from a net positive 10,600 to a net negative 4600. The 18-24 set was the only group to remain net positive, and even they dropped from 35,800 in 1992 to 25,000 this year.

Furthermore, the age-cohort group that sent the largest net numbers out of the state shifted from the 45-64 group (-26,700 in 1992) to the 30-44 group (-73,000 in 1994), illustrating growing pessimism among early to mid-career professionals. Since this younger age group represents the backbone of the economy and the heart of the socio-political culture, this statistic indicates destabilization in both arenas.

The 1994 geographic pattern of domestic migration held steady from 1992. Generally, Californians move to other Western states, whereas we remain a big draw for the Northeast and Texas. This year, Nevada took over the top slot from Oregon for net gains (+26,651), but New York held its position as the largest net importer of residents to California (+4,670). The state of Washington took over from Texas as the place with which we share the strongest migratory relationship. All together, the two states traded 50,247 drivers.

So the exodus continues, with possible signs of a trend reversal waiting in the wings. In the meantime, Californians continue to flee to the rest of the West, perhaps seeking the last great place. And as the freeways clear out a bit here, commutes are likely becoming just a bit longer in places like Spokane and Reno. ❑



DEALS

Morris Newman

Bond Deal Meets Reality in Mission Valley

Suppose that a city floated an infrastructure bond and everything, — I mean everything — went wrong. Suppose that the bankruptcy of a single developer caused the city to default on its bond payments. Suppose that a single large bondholder stubbornly refused a deal to restructure the debt that nearly every other bondholder had agreed to, thereby quashing any ready solution. Suppose several creative attempts to fix the problem bond failed. What then?

For the City of San Diego, the result so far has been a city left squirming between two rather uncomfortable choices: taking an "ultimate loss" on the bond; or acquiring the land through condemnation, selling it to somebody else and hoping that the new owner can make the payments, while it shoulders the costs in the meantime.

Welcome to bond meltdown. It's a rare malady, even in the worst real estate market in a half century. In fact, of the $40 billion in debt that California local governments issue each year, almost none results in default. Still, bond meltdown exerts a sort of morbid fascination on cities, like a spectator slowdown near a freeway accident. The feeling is, "There, but for the grace of God, go I."

"On September 2, San Diego defaulted on a $1.6 million bond payment."

In 1987, the city issued $24.1 million in bonds for the San Diego Special Assessment District No. 4007, First San Diego River Improvement District, which is located in Mission Valley. The bonds are intended to fund infrastructure for Park in the Valley, a commercial mixed-use project with a hotel, office building, and retail. The parcels were owned by three partnerships, of which developer Don Sammis was general partner. The partnerships, which had been responsible for 45% of the bond payments, defaulted on their payments in April 1990 and filed for Chapter 11 bankruptcies the following September.

To meet its bond payments, the city relied on a $2.4 million reserve fund, which began to run dangerously low by 1993. Running out of time to make a payment in September 1993, the city worked an extraordinarily creative deal: the Metropolitan Transit Development Board, a 14-member commission which governs local transit activities, agreed to contribute $1 million into the reserve fund, making it possible for the city to make its payment. The board has plans to buy about five acres of land in Mission Valley for a future light-rail station, and the bond payment was intended as a sort of down-payment on the land.

For the city, the one-time payment by the transit authority helped buy time to negotiate with 135 bond holders, in the hope of restructuring the debt payments to a lower level. In July of this year, the city took an advisory poll of the bond owners to see whether they would approve the restructuring. Of those which responded, 95 bondholders said they would agree to a new deal; one abstained, and two bondholders voted against it. Unfortunately for the city, one of the two dissenting bond holders was an institutional investor (which the city will not identify) which controls about $11 million in bonds.

On September 2, the city at last defaulted on a $1.6 million bond payment, of which $850,000 was principal and $773,713 was interest. (City Treasurer Connie Jamison said she was following the dictates of the Assessment Bond Act of 1915, which instructs city treasurers to notify city councils of the possibility of an ultimate default, if back taxes and delinquent assessments exceed the value of the parcels.)

San Diego officials scheduled a new round of talks with bondholders in September, and the City Council scheduled a public hearing on October 4 to decide between two unattractive choices. The first choice is to terminate the bond issue, and to pay bond holders a pro rata share out of the reserve fund, currently at $773,713; the city would continue to make *pro rata* payments in the future, from the revenue provided by the surviving property owners in Mission Valley.

The other solution is for the city to condemn the land in a foreclosure; a court date has been set for October. Assuming that the court approves the foreclosure, the city plans to sell the land to a new developer, which would presumably reassume the bond payments, perhaps by as early as spring 1995. The downside, presumably, is that the city itself would have to make up the difference in the bond payments out of its general fund before a new developer could be found.

In this column, I often play Monday morning quarterback, and figure out what cities should have done to avert their troubles. But here the armchair city manager is stumped. What could the city have done differently to avoid the San Diego bond meltdown? Clearly, the city was particularly vulnerable to failure because the bond payments rested with a single developer, a homebuilder, during a very weak market in commercial real estate. But many bonds, particularly Mello-Roos, routinely rely on a single developer to make debt service. The city was also exposed to risk by selling a large portion of the bond measure to a single institutional investor. But does anyone really expect a city treasurer to say, "No, I refuse to sell nearly half my bond issue to a single investor, because in the event of a default, they could prove uncooperative?"

The question then turns to what recommendation we might make to the San Diego City Council. Clearly, the idea of terminating the bond seems worth avoiding. On the other hand, the idea of condemning the land and finding a new buyer is costly, time consuming and may saddle the city with additional costs, if the city chooses to continue the bond payments. The value of doing so might be questioned, because the city is not likely to suffer any loss of its credit rating, according to L. William Huck, partner of Stone & Youngberg, the city's bond underwriter. Credit rating aside, taking the property seems the better idea, because it will spare the city the onus of having terminated the bond. But taking the property means finding another developer to take Sammis' place, and if the real estate market does not improve soon, the entire scenario could repeat itself. All we can do is to shake our heads and say, there but for the grace of God, goes our own infrastructure financing. ❑