

East Palo Alto's University Circle Project

(4 September 1991)

Revision dated 3 December 1991

Thanks to Lillian Smith, concerned East Palo Alto resident, for sharing her treasure trove of newspaper clippings and other documentation.

Amy Huyck, P.O. Box 61763, Sunnyvale, CA 94088-1763  
(408) 730-1922

## Table of Contents

### GENERAL BACKGROUND

---

<b>Introduction</b>	1
<b>Background - East Palo Alto</b>	2
<b>The basic program</b>	3
Goals	
Agency formation	
"Blight" - project area	
Plan and back-up reports	
Eminent domain	
Relocation	
<b>Finance</b>	7
Tax increment	
Financing methods recommended for University Circle	
Risk	
<b>Community benefits</b>	10
Increased tax base	
Housing	
Jobs and job training	
Day care facility	
Public works facilities	
Redesigned freeway connections	
Alleviating blight through bodily removal of residents	
Alleviating crime	
Community Redevelopment Fee	
Benefits for developer	

### OPPORTUNITIES FOR CURRENT OWNERS

---

<b>Generally</b>	13
"Private enterprise acting alone"	
"Owner participation"	
<b>Katz-Hollis report justifying the need for public assistance</b>	14
"Impediments" to development	

Table of Contents (continued)

<b>Legality of redevelopment plan</b>	17
Validation actions	
Was public assistance necessary?	
Was the plan economically feasible?	
<b>Who oversees California Community Development Agencies?</b>	22
<b>Plan amendment process -- another possibility for private enterprise acting alone?</b>	23
"Final Modified Redevelopment Plan"	
Changed conditions, new facts	
<b>Owner participation</b>	24
Right of owners to participate	
University Circle owners' group plan	
Plan rejection	
Factual setting:	
Exclusive agreements with developer	
Role of City's legal staff	
Re-opening owner participation option	
<b>Original 1987 renderings</b>	27
Scale and design of project	
Criteria for selecting developer	
<b>Alternative programs - a list of State of California and federal legislation</b>	28
<b>Alternative programs in the United States</b>	29
Non-profit community development corporations	
Community Land Trusts	
Parents Against Drugs	
Learnfare, Workfare, Bridefare	
<b>Discussion</b>	33

## Introduction

Planning is underway for the redevelopment of three sections of East Palo Alto, California. The City's Redevelopment Agency proposes to transform the current business district, apartment buildings with over 2,000 residents, abandoned buildings, fields with abandoned greenhouses and vacant land. This paper focuses on one section, University Circle. The existing business district and about 95 apartment units are located here. The Agency proposes to clear the site and construct a four-building complex. Three buildings have been designed to house the world headquarters of a leading computer software engineering firm, Adobe Systems. The use of the fourth building is unknown.

The data presented herein supports these conclusions:

**Community benefits.** There has been no showing that within a reasonable time frame the project would bring a net increase to current City residents in capital, jobs or housing. The public works improvements envisioned would not serve the East Palo Alto community at large.

**Legality of plan.** Under California's Community Development Law, a redevelopment plan may be adopted only if the Agency can show:

- the "project area" is "blighted"
- public assistance from the Redevelopment Agency is necessary
- with public assistance the Agency's redevelopment plan is economically feasible.

In the following pages, I gave little attention to the topic of "blight" and concentrated on the East Palo Alto Agency's response to the other requirements. The Agency did not give "substantial evidence" of the necessity of public assistance or of the economic feasibility of its plan.

**Owner participation.** After the Redevelopment Agency's schematic plan was adopted, the current University Circle property owners submitted a variety of more detailed proposals (consistent with the "owner participation" provisions in law). The Agency rejected their work without criticism of its merit. Rather, it responded that the owners had missed the deadline to submit this. I supply background information to help understand why the Agency's took this position.

**Alternatives.** As the University Circle project is still in the planning phase and may in the end fail to receive all necessary approvals, later chapters look at alternative redevelopment

programs:

Other programs under California law;  
Federal programs

Non-profit "community development corporations"  
and other "human development" organizations in  
the United States.

The final chapter gives a commentary on the program selected by East Palo Alto.

Numbers in parentheses that appear throughout this report refer to source documents available to the reader upon request.

### Background - East Palo Alto

East Palo Alto, a 2-1/2 square mile area with some 25,000 residents, should not be confused with Palo Alto where one finds Stanford University, a linear accelerator, and some of the most expensive residential neighborhoods in the country. East Palo Alto is a drug center. Turf wars are fought here by well organized, well financed and heavily armed individuals. Some carry Uzi machine guns. (1) A reported 22 homicides were committed in the City last year, whereas other cities its size in San Mateo County counted 0 or 1. (2) In recent years, 40 to 50 per cent of East Palo Alto's annual expenditures supported police services. (3) Other California cities its size, on average, spent only about 17 per cent of expenditures on police services. (4)

Citizens presented ultimatums at a City Council meeting on 3 September 1991. If the Council did not take appropriate action in response to crime, they would take the matter into their own hands. This was to be the last time they would ask the City Council for help; they would go elsewhere--to the County, the State, the National Guard. One Council member asked his colleagues to consider declaring a "state of emergency" in East Palo Alto. (5)

The City's fiscal resources are spent. In a City Council meeting in July, 1991, the City was faced with the need to pay a \$150,000 obligation and the Mayor mentioned the possibility of cutting out the Public Works Department to help make ends meet. (6)

While citizens agree that East Palo Alto needs some form of economic development, there is wide divergence of opinion on the means of attaining it. The people are divided into three camps:

In the first are those in favor of the proposed redevelopment scheme. They say that this is the only way the City will come out of its financial difficulties.

In the second are those who favor redevelopment, but do not believe the specific plan being proposed will actually accrue benefits to the citizens of East Palo Alto. They claim that because the existing business district will be flattened there will be a net loss of jobs for City residents.

The third camp is comprised of those who think the scheme will bring so little return to City residents that certain City officials would not have gone along with it unless money was passed under the table. This surfaced in a 5 August 1991 public forum when a citizen shouted out to the Mayor, "Put that money to good use and not in your pocket!" (7) Citizens conferred privately. "East Palo Alto's middle name is 'Corruption,'" said one. "C.I.A. stuff," mused another. Yet another analyst said: they are trying to break the City; they will spend so much that the City will not be able to pay its obligations to the County; the County will take it over; and when the area loses its status as an incorporated City, it will lose its rent control policy which the County does not have; and all of the poor people will not be able to pay the rents and will be forced to move. This is a plot to get rid of the poor.

Citizens cheering the proposed redevelopment plan speak as if the City has nothing to lose. This may underestimate the achievement of City fiscal management in past years. It is only recently that the City Council has authorized substantial expenditures without the ability to fund them. This has "deeply appalled" a former Mayor, who reported in January, 1991 that the City General Fund was approximately \$800,000 in arrears for the 1990-91 fiscal year. (8) Prior to this spending trend, annual General Fund deficits were slight. The City claimed that its 1989-90 fiscal year expenditures equaled its revenues. (9) According to data from the State Controller's Office, the shortfall for the previous year, 1988-89, was only \$53,000, and for the year before that, \$222,000. (10)

### The basic program

California's Community Redevelopment Law, drawn up in the 1960's, is set forth in the Health and Safety Code, Sections 33000 et. seq. (available in some local libraries; 11).

Under this program, an Agency's role is in acquiring and developing building sites: it generally is not authorized to

construct buildings. (12) It may clean up toxic waste, carry out public works projects, build playgrounds and parks. (13) It is then required to sell or lease the property within a reasonable period. (14) It may sell the property for less than fair market value. (15) The new owner, usually a professional developer completes the project and the developer may sell, lease or rent all except any "affordable housing" on the site for as much as the free market will allow.

The State Legislature has established goals for its redevelopment program: "... a fundamental purpose of redevelopment is to expand the supply of low- and moderate-income housing, to expand employment opportunities for jobless, underemployed, and low-income persons, and to provide an environment for the social, economic, and psychological growth and well-being of all citizens." (16)

The Legislature explains why it believes this program is needed. The explanation, in part, reads:

"(a) Hazardous, congested, and insanitary housing debilitates occupants' health to the point of impairing motivation and achievement.

"(b) Lack of employment opportunity creates despair and frustration which may precipitate violence..." (17)

To begin the process, a California Redevelopment Agency is formed. In most cities, members of the City Council serve as members of the Agency. (18) In those cities, then, the same people are both the Redevelopment Agency and the "legislative body" responsible for accepting or rejecting the Agency's proposals.

In East Palo Alto, all five City Council members are also the Redevelopment Agency members. A majority of three has often pushed the University Circle project forward, despite objections from the others. A "majority" member has accused his fellow Council members of finding "a thousand reasons not to do something." (19)

A city's Planning Commission recommends the boundaries of a "project area" to an Agency. Absent "blight," there can be no project area. (20) The Law defines blight in detail. (See 21.) Two pieces of this definition are mentioned here:

--The State's "purposes" of redevelopment are not accomplished simply "by moving blight a few blocks down the street." (22)

--A key to recognizing the presence of blight is "a prevalence of depreciated values, impaired investments, and social and economic maladjustment." (23) The courts have been careful to clarify, however, that an area should never be declared

blighted "just because the public agency considers that it can make a better use of planning of an area than its present use or plan." (24g) In Sweetwater v. City of National City, the court found insufficient justification for redevelopment in a showing that an area is "not being put to its optimum use, or that the land is more valuable for other uses." (24g) One test of whether an area can elude a designation of "blight" is whether it is "at least marginally profitable." (24h)

An Agency then prepares or causes to be prepared a redevelopment plan, which proposes the project area boundaries and a conceptual development design. Certain reports are required by law to more fully justify and explain a redevelopment plan. (25)

The East Palo Alto City Council adopted the University Circle plan on 5 December 1988. (26) Its primary back-up reports were the Katz-Hollis report of November, 1988 (stating that public assistance was necessary and that the plan was feasible) (27) and the Final Environmental Impact Report of 28 November 1988 (28d).

At that time, the plan called for a hotel-, retail- and office complex with a day care center. Consultants later deemed this plan economically infeasible. A new scheme has been proposed, although the original redevelopment plan has not yet been amended. The Agency proposes to offer a "Final Modified Redevelopment Plan" at an unspecified time. (29)

After a plan is adopted, an Agency may invoke the power of eminent domain to acquire property in the project area. It may not acquire through eminent domain "any real property on which an existing building is to be continued... in its present form and use unless such building requires structural alteration, improvement, modernization or rehabilitation..." (30)

The Law provides for relocating "displaced persons" in "comparable replacement dwellings" and for paying moving expenses and certain other expenses. (See 31.)

Although the University Circle plan was adopted almost three years ago, to date the question of where to relocate existing homes and businesses has not been resolved. As of a 25 November 1991 public meeting there was no relocation plan on the table. (32)

Community Development Law specifies that an Agency's site preparation work, if in excess of \$2,500, "shall be done by contract after competitive bids." (33) Nothing compels a developer, in contrast, to offer the building construction work for competitive bidding, although to "[t]o the greatest extent feasible, contracts for work to be performed in connection with any redevelopment project shall be awarded to business concerns



which are located in, or owned in the substantial part by persons residing in, the project area." (34)

At University Circle, the Agency plans to acquire all of the site (reportedly, 22.8 acres in all with 11.4 acres of buildable land). (35) But while a simple majority has moved project planning ahead, it would take approval from two-thirds of the City Council to legally commence eminent domain proceedings. (36) Thus, the plan may be on hold until the balance of power shifts. The terms of three Council members end in November, 1992.

(To avoid mistaken identity, it should be said that those Council members most supportive of this project are Nevada Butler, Pat Johnson and Warnell Coats, and those who have urged further consideration of community benefits are Sharifa Wilson and William Vines. The developer is De Monet Industries, Inc.)

## Finance

**Tax increment.** Although a California Redevelopment Agency may receive State and federal funding, its primary source of funding is often bond issue. How does it pay off the bonds? If redevelopment in a project area leads to increased property- and sales tax revenue, this "tax increment" above and beyond the original, base-year tax revenue from the property may be used to pay the Agency's debts. The "base year" is the year an Agency's redevelopment plan becomes effective. (37)

An Agency does not receive all of the "tax increment." The "taxing agencies" to whom shares of property taxes would normally be distributed must be considered. Taxing agencies include school-, fire- and sanitation districts, the City and the County and others. Law prohibits an Agency from causing "a significant financial burden or detriment on any taxing agency deriving revenues from a project area." (38b) In addition, 20 per cent of the tax increment allocated to an Agency is required to be used "for the purpose of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable cost." (39)

The city in which an Agency is located, like the other local taxing agencies, negotiates for the portion of the tax increment it needs to keep the Agency from causing it undo burden. In our case, it appears the City of East Palo Alto will be allocated none of the tax increment. (40) This is significant because the City's General Fund will not receive any property tax from the project area for as long as the Redevelopment Agency is paying off its bond obligations or other debts. On average, it takes a California Redevelopment Agency 35 years to pay off its bond obligations, according to a publication from the California Redevelopment Commission. (41) In inflationary times, if the City is to maintain current levels of services, it will have to rely on increases in tax revenue from areas outside of the project area or on increased fees for services or other sources.

Other local taxing agencies that will lose new tax revenues are the school districts. They are slated to receive base-year tax revenue plus merely a 2 per cent increase each year for the life of the project. (40a) The schools, however, have a safety net. The State of California sets a minimum amount that must be budgeted per student per school year, and if districts cannot cover that amount the State makes up the difference. (42) This is discussed more in the last chapter of this report. (Note that different reports written in the same week give wildly different information about the amount of tax increment to be shared with school districts. I used data from the most recent report here, but may later revise this paragraph. 43)

East Palo Alto Agency, William Euphrate, outlines possible financing methods for the University Circle project. One of these (albeit not the alternative most highly recommended by the report) is for the Agency to "in effect sell the equivalent of a municipal 'junk' bond" and "take full financial risk" in event of default. (44c) Because the "base year" for the project has not been established and tax increment revenue could not come for some time, the Euphrate report recommends financing options that do not use tax increment monies: sale of Mello Roos- or special assessment bonds. (44c-e) A telephone conversation with Martha Riley of the California Debt Advisory Commission provided the following explanation of these financing opportunities:

A Mello Roos district is a benefit district similar to an assessment district. A Mello Roos district may issue bonds and levy "special taxes" with which to meet the bond obligations. It may build schools or public works projects, or provide a service (for example, it could pay salaries of firemen). The Mello Roos bonds are a viable alternative only if the electorate approves a "special tax" to finance payment of the bond obligations. Usually the tax must be approved by a two-thirds vote. (45)

("Mello Roos" and "Marks Roos" have substantially different meanings and should not be confused. See 45.)

The Euphrate report also recommended issuing special assessment bonds. A municipality may issue special assessment bonds for precisely defined public works projects with a majority vote of approval by the legislative body. (If citizens protest, a four-fifths vote may be required.) Special assessments on property allow for the repayment of this debt. (45)

Both of these bonds are "backed by land." They depend on people paying the taxes. If the land is not developed as planned there is a possibility that not enough tax revenue could be generated to cover the bond obligations. (45)

The bond market is somewhat self regulating in that informed people will not buy municipal bonds "if the community does not have the resources to back them up." (45)

**Risk.** Reviewing a case involving California Redevelopment Law, a judge related this concern: "The promoters of such projects promise that in time everyone will benefit, taxpayers, government entities, other property owners, bondholders; all will profit from increased development of property and increased future assessments on the tax rolls, for with the baking of a bigger pie bigger shares will come to all. But the landscape is littered with speculative real estate developments whose profits turned into pie in the sky; particularly where a number of communities have competed with one another to attract the

same regional businesses." (24j)

Another concern with the investment a Redevelopment Agency makes is the cost of doing business. Three out of four California cities have California Redevelopment Agencies and together in fiscal year 1989-90 they spent \$3,081,473,358. Less than 30 cents of every dollar was spent on professional planning and design, construction costs and real estate purchases. Over 70 cents per dollar was spent on administrative costs, financing costs and "all other" costs. (See pie graph on next page and also References at 46.)

What might make the plans of the East Palo Alto Redevelopment Agency especially speculative is that the Agency is far from being in a position to receive optimal terms of bond issue or any other indebtedness it would incur to finance its work. We are not here considering a city like Palo Alto whose rating for some types of bonds is Double "A" Plus. (47) Since its incorporation in 1983 East Palo Alto has not issued any bond. (48)

The mere magnitude of the East Palo Alto Agency's proposed contribution to the redevelopment project is enough to warrant careful financial analysis. Initially it was estimated that the project would cost \$51 million (excluding interest on bond issue) plus \$87.5 million for interest, for a total of \$127 million. It was further estimated that 40 per cent of the total cost would be paid by the Redevelopment Agency: \$51.256 million. (49)

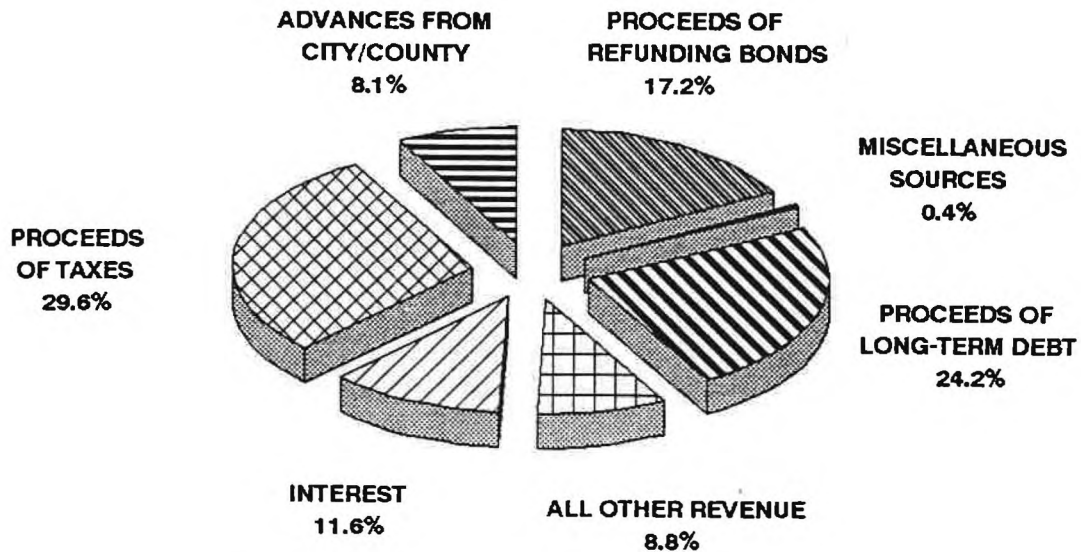
The Agency has already spent well over \$1 million on professional services and administrative costs for this project which may never go forward. (50) (Apparently the developer has loaned most or all of this money to the Redevelopment Agency. 51) The Agency originally budgeted \$3.35 million for administrative costs over the entire estimated life of the project, 35 years. (52) In the 1989-90 fiscal year alone, \$1.39 million were spent on planning and lawsuits in connection with East Palo Alto redevelopment: \$655,991 for University Circle, \$688,713 for the Ravenswood project and \$48,932 for an unspecified "Administrative Fund." (50) Figures for the most recent fiscal year, 1990-91, will not be available from the State Controller's office until well into 1992.

Although redevelopment accounting and General Fund accounting are kept separate from one another, General Fund monies legally may be funneled to the Agency to pay redevelopment debt. (53)

The following graphs illustrate the proportional share of the major categories of revenues and other financing sources to total receipts, and the major categories of expenditures and other financing uses to total disbursements.

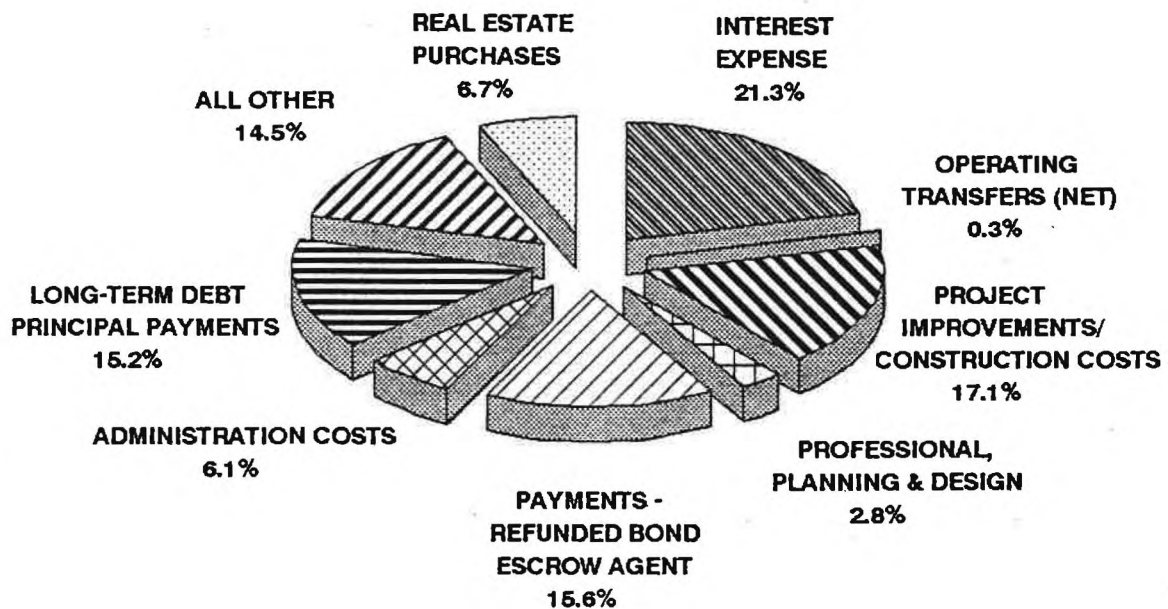
### REVENUES AND OTHER FINANCING SOURCES

\$3,600,283,724



### EXPENDITURES AND OTHER FINANCING USES

\$3,081,473,358



## Community benefits

What will the City of East Palo Alto gain as a result of the University Circle project?

**Increased tax base.** If successful, the project would eventually lead to higher property tax revenues for the General Fund, but as mentioned earlier, it would not bring an increased return to the General Fund for 35 years, or however long it takes to pay off the investment in redevelopment.

**Housing.** Housing was not included in the developer's original University Circle design, but 20 per cent of the Agency's share of the tax increment is required to be used for providing housing at "affordable" cost. (54) After existing housing is demolished will there be a net gain in the number of "affordable" housing units? Will the new units be constructed within the project area? within the City? The public has not yet received answers to these questions.

**Jobs.** The selected tenant, Adobe Systems, plans to move 500 people to the new complex from office space in another city. (55) This will not necessarily increase the number of jobs available to East Palo Alto residents. The reason Adobe gives for wanting to move to East Palo Alto is that it is currently occupying a number of buildings that are not in the immediate vicinity of one another. Moving here, it could operate out of a more convenient complex. (56)

The National Economic Development & Law Center once estimated that, considering the numerous concerns in the existing business district would be demolished, there would be a net loss of eight jobs for East Palo Alto residents. (57)

**Job training.** At a 5 August 1991 public forum, an Adobe Systems representative stated that it would offer any available jobs to the most qualified applicants. (56) The president of United Mothers Against Drugs expressed her concern that many local residents would need job training in order to qualify to work in the new office buildings. She asked whether Adobe would establish a job training program. Adobe responded that this was something it would consider. (56) The redevelopment program does not list job training among its 15 goals. (58f&g)

(County programs devoted to job training and placement have recently offered decreased levels of services. 59)

**Day care center.** The University Circle plan as adopted in 1988 calls for a day care center. Local residents expressed their pleasure with this idea, saying that the City needed a day care facility. Later it was learned that the day care center would be reserved for use of guests of the hotel and employees in the complex. (60)

**Public works facilities.** The plan's Final Environmental Impact Report lists proposed public works improvements. (See 61.) The Katz-Hollis report gives the estimated costs of these improvements. (See 62.)

**Redesigned freeway connections.** This project will "exacerbate traffic congestion." (63) The redevelopment plan proposes to improve local street connections with the freeway. At the 11 July 1991 Planning Commission meeting, City staff suggested that the interchange could be only at the planned location [not in a less densely built area south of the business district] because of Caltrans' policy that interchanges should not be spaced less than one mile apart. (64) Staff did not say that this is merely a Caltrans recommendation (65) (also merely a recommendation by AASHTO, the federal counterpart to Caltrans) and that closer spacing is often achieved in urban areas--notably, areas surrounding this one. (66)

At this meeting, a member of the Planning Commission complained that the Planning Commission had not been consulted regarding the interchange plan which was then almost in final form.

**Alleviating blight through bodily removal of residents.** There is a concentration of drug dealers on Manhattan Avenue in the project area. (67) Relocating them may benefit the City as a whole, but this flies in the face of statutory and case law holding that the purposes of redevelopment are not served by simply moving blight down the block. (68) Also, because people come to East Palo Alto from other areas to buy and sell drugs, the relocation of existing inhabitants might have less than the hoped-for effect on the drug trade.

**Alleviating crime.** The Katz-Hollis report states, "It is also anticipated that redevelopment activities will improve crime conditions in the Project Area. Improved vehicular circulation in the Area should improve police response time, but even more importantly, the removal of buildings with defective design and other features which may attract crime (i.e., dark spaces) in addition to improved street lighting and design review procedures which take this issue into consideration will serve to mitigate criminal activities in the Project Area." (69)

**Community Redevelopment Fee.** In an agreement between the Agency and developer (called the "Disposition and Development Agreement" or "DDA"), the developer agreed to pay a \$7.2 million Community Development Fee to the Agency to be used for "the City's social and economic programs" and for mitigating specific "Project impacts identified in the EIR." (70) The agreement, however, provides that the Agency "shall reimburse" the developer for part of the Community Redevelopment Fee and the developer will reimburse the Agency for something else, each thing dependent on circumstances, and so the amount of the developer's contribution to "social and economic programs" is

currently unknowable. (71)

Just which social programs the Community Development Fee might support is not stated in relevant documentation. California Redevelopment Law anticipates that human development will flow from building development: it gives authority to the Agency to assist in the development of building sites (72) and does not allow much opportunity for subsidizing programs outside of this sphere. After-school programs have spun out of the work of California Redevelopment Agencies, but these are exceptions, contrived in a loophole of State Law. (73)

**Benefits for developer.** At one time, the agreement between Agency and developer suggested the net profits on the sale of the project would be on the order of \$50 million, and the developer would share some of that with the Agency (74)--just how much is, again, dependent on events that may or may not happen.

At first the developer was to purchase 2.7 acres of land in the project area (primarily roads and right of way) from the Agency for \$3.6 million (75) and later it was decided the Agency would give that land outright to the developer (76).



### Opportunities for current owners, generally

Under Community Redevelopment Law, there are two opportunities for owners of "blighted" areas to redevelop their property:

1) The State of California gives current property owners the first chance to redevelop their property--so long as they can accomplish the State's redevelopment goals. This opportunity comes before a redevelopment plan has been adopted by an Agency:

"Every redevelopment plan submitted by the agency to the legislative body shall be accompanied by a report containing all of the following..." That includes "an explanation of why the elimination of blight and the redevelopment of the project area cannot reasonably be expected to be accomplished by private enterprise acting alone..." (77)

If it is feasible for "private enterprise acting alone" to prevail the Agency cannot justify adopting a redevelopment plan. (78)

2) In the event that it is reasonably unforeseeable that the owners acting alone would accomplish the State's goals and an Agency goes ahead and adopts a redevelopment plan, the owners still have another chance to develop the property. They are bound now, however, to carry out the redevelopment in conformance with the Agency's plan. (79) This is "owner participation" and it happens in two ways. Either the Agency gives financial assistance to owners to remodel their buildings (e.g., downtown facade improvement programs) or the Agency purchases the property from the owners and brings together parcels in a land assembly project, in which the owners may also be allowed to participate. (80) In the latter case, it becomes apparent that the former owners do not have an absolute right to participate. Whether an Agency selects former-owner-developers or a professional developers is left to its "reasonableness and good faith." (See page 24 herein.)

### Report justifying need for public assistance

A consulting firm, Katz, Hollis, Coren & Associates, Inc., prepared the report that ostensibly justified the need for Agency assistance in the redevelopment of University Circle. It found unusual "impediments" to development of the project area:

"Deficient infrastructure conditions in and around the Project Area (including substandard streets, inadequate public utilities and poor circulation networks) have been blighting influences that have discouraged private investment from taking place to date, and are improvements typically provided by most municipal jurisdictions. If the City were to require a private developer(s) to assume these additional costs, it could further dissuade private investment in the area, since there are competitive development sites outside the City available without such additional costs." (81)

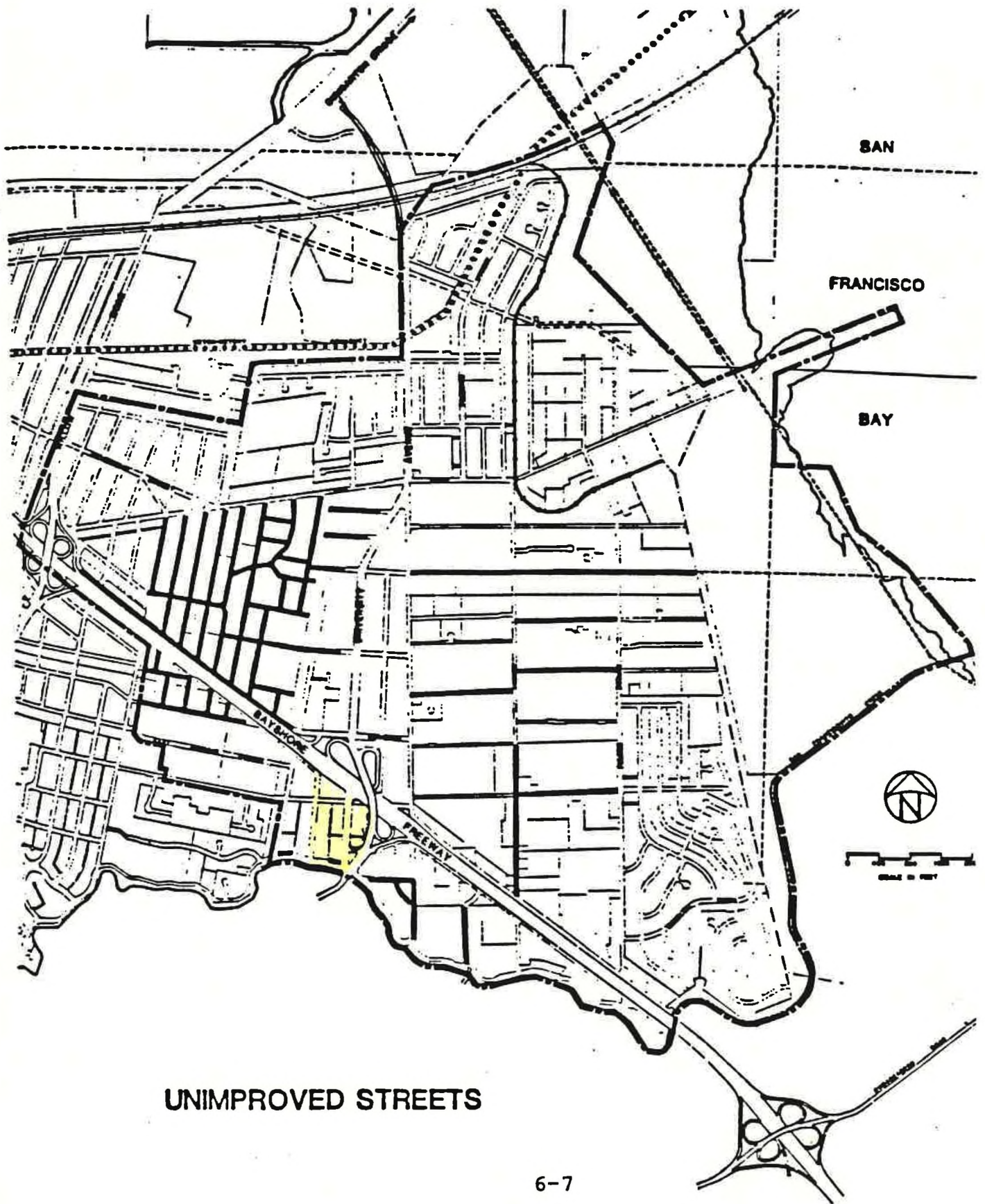
The report goes on to list the "impediments" to private development:

The street lighting is "old."  
The utilities are "overhead."  
Storm drainage is "inadequate."  
The streets are undergoing "constant deterioration."  
Streets "in and around the project area" are "seriously deficient insofar as they lack curbs and sidewalks, paved shoulders and/or adequate storm drainage facilities."  
Traffic is "congested."  
Intersections are "dangerous" due to lack of traffic signals, overgrown hedges, excessive speed and volume of traffic and because "sidewalks are too close to traffic."  
There are "many" traffic accidents.  
Vegetation is "unhealthy."  
Open space is "insufficient." (82)

The Katz-Hollis report states it relied on information in the 1986 Circulation Element and Land Use Element of the City's General Plan for its information about lack of curbs and sidewalks. (83) The 1986 Circulation Element contains a map, reproduced on the next page herein, showing which streets in the City lack curbs sidewalks, paved shoulders, and/or storm drainage facilities. There is a portion of one short block in the project area that falls in this category. All of the other streets in the project area apparently have all of those things. A drive through the project area today will confirm there are sidewalks along every street except a portion of a block of Woodland Avenue.

Woodland Avenue is a residential street. It is not a street

**FIGURE 3  
UNIMPROVED STREETS**



that has sidewalks even as it winds through high-value real estate in Menlo Park. The lack of sidewalks along a portion of Woodland Avenue in the project area, then, is not unusual, especially when one considers that between Atherton and East Palo Alto there is an unincorporated area of pricey neighborhoods with no sidewalks and whose roads are a bumpy patchwork of asphalt. (84) Residents chose these circumstances to help retain the rural quality of the neighborhood and lessen taxes. (85)

The Katz-Hollis report relied on the 1986 Circulation Element also for its information about the traffic accident rate in the project area. (86) The Circulation Element indicates that the University Circle area "was the scene of numerous accidents." (87) It does not mention the source of this information.

Traffic accidents statistics for East Palo Alto are readily available. Usually either city traffic engineers or police departments send Traffic Collision Reports or data to SWITRS (Statewide Integrated Traffic Accident Reporting System) in Sacramento. SWITRS puts the data in computer memory and publishes annual reports. When traffic engineers look at accident data they like to have at least ten years worth of data in order to accurately identify trends. (88) East Palo Alto was incorporated in 1983, so we start with 1984. SWITRS data for the years 1984 through 1989 indicates that East Palo Alto's accident rate was average among other cities in the County of its approximate size. (89) In 1988, the year the Katz-Hollis report came out, the city had the second lowest accident rate of the seven cities in its population range. (90)

The Katz-Hollis firm, in investigating the traffic accident rate, focuses on the project area only. The City Traffic Engineer does not keep a yearly pin map of specific accident locations. (91) The City Traffic Engineer told this author that when he receives the SWITRS printouts every year he puts them in a pile. He explained his office does not have enough staff to analyze the data. (92) How did the preparers of the Circulation Element conclude that there were "numerous" traffic accidents in this area? It appears the Katz-Hollis report relies on a City report that, while possibly true, lacks supporting data.

By pushing a few computer keys, the staff at SWITRS can organize and reduce its voluminous data according to requests for a wide range of specific types of information.

Concerning the "old" street lamps, the Hollis report does not say how many years of useful life they have left or if there is any problem with them.

Regarding the "guzzling storm drain," if a storm drain "guzzles" doesn't that mean it's working fine?

There is a claim of traffic congestion. The nearby Silicon Valley would also seem to have its share of traffic tie-ups. No information in the Hollis report indicates congestion is worse in the project area than on other Bay Area roads.

The Hollis report shows us "unhealthy vegetation" in a photograph of a roadway median planted with a patch of low groundcover. (93)

The Katz-Hollis report states that the sewers are "inadequate," with no further explanation. Are they inadequate now or are they inadequate because the network of underground lines is not located in the right place for the new development?

The overhead utilities are to be put underground.

The Katz-Hollis report does not explain why a "parking structure containing between 2,000 and 3,000 spaces" at a cost of an estimated \$33 million is necessary to upgrade parking facilities to levels found in other communities. (94) The Final Environmental Impact Report does not fully explain this either: "Parking Needs... East Palo Alto has used the County of San Mateo Parking Code in the past to determine parking requirements. Some of the County rates may be overly conservative for a large mixed-use complex." (95)

In this way the Hollis report arrives at its conclusion that the public works facilities are substandard, and therefore, the developer needs Agency assistance. The report contains no indication that the researchers went to "private enterprise" to ask what it could do. It does not acknowledge that other types of redevelopment programs, which do not rely on tax increment dollars, have been successful in areas similar in character to this project area. It indicates no one knew how much Agency assistance the developers would need. (96) It just knows they need it.

## Legality of plan

The University Circle plan was adopted on 5 December 1988. Parties wishing to attack the validity of the plan had 60 days from the date of adoption of the ordinance adopting the plan to file a "validation action" with the court. (97) Within the time period prescribed by law, three suits were filed. The City of Menlo Park, the City of Palo Alto and a neighborhood group from Palo Alto sued the Agency, City Council and University Circle developer.

These lawsuits primarily questioned the sufficiency of the Final Environmental Impact Report accompanying the redevelopment plan and the proposed heights and sizes of buildings in the complex. They did not raise the issue of the feasibility of "private enterprise acting alone." (98) The time to raise that issue was during the legally prescribed period for bringing a validation action, which has passed.

**Was public assistance necessary?** Yet there is a lingering question concerning rights of "private enterprise." Courts have held that Redevelopment Agencies should review "substantial evidence" in making their findings and determinations required under California Redevelopment Law. (99) The Katz-Hollis report does not contain sufficient facts on which anyone could base a conclusion regarding the latent ability of private enterprise. The report also is misleading. It indicates that public works facilities are inadequate and then states that streets "are seriously deficient insofar as they lack curbs, sidewalks, paved shoulders, and/or adequate storm drainage facilities." In addition, most of these streets..." (Emphasis added. 100) The Katz-Hollis report does not say that these facilities were inadequate, but it suggests that.

A good faith effort to determine the strength of "private enterprise acting alone" might include the following steps:

- I. Inviting citizens groups to submit development proposals before plan adoption. Just because owners have not developed their properties in accordance with certain standards does not mean they can not.
- II. Seeking advice from independent citizens groups who have succeeded in rebuilding and revitalizing neighborhoods. Mary Nelson, the founder of one such group, has written, "So many people have asked us for information, or come to visit. So many have asked us to share what we've learned." (See chapter discussing "community development corporations.")
- III. Looking at hard evidence regarding building activity. 1988 was the approximate beginning of a period of

increased appreciation of the value of East Palo Alto real estate. This 2-1/2 square miles of land had been one of the last areas in the region where homes were moderately priced, but that was discovered. (101) The place is booming, a County auditor said recently. (102)

The following figures are the average prices of single family residential units listed in multiple listings (103):

1986	-	\$ 94,576
1987	-	95,773
1988	-	107,529
1989	-	134,001
1990	-	163,048

While it might not be fair to say the Redevelopment Agency should have predicted this period of booming real estate investment, it is now part of the scenery. Three years after plan adoption in 1988, it might be difficult to show that developers would not invest in East Palo Alto real estate without Agency assistance--even with the crime problem. In fact, a Planning Commissioner argued in July of 1991 that East Palo Alto contained some of the most valuable real estate for commercial development in the entire San Francisco Bay Area region (and therefore, it would be a wasted opportunity to put mere housing there). (104) Further, representatives of Adobe Systems have said they looked at 16 other sites on the Peninsula before deciding they liked this one best. (105) (This is a prominent site visible from a freeway. Also, it is close to wealthy neighborhoods of Palo Alto.)

A consultant to the City, Keyser Marston Associates, Inc. ("Real Estate Predevelopment & Evaluation Services") disagreed with the Katz-Hollis assessment. A 5 June 1990 memorandum from Keyser-Marston to the Redevelopment Agency included this conclusion: "KMA finds no economic justification for future Agency subsidy of the De Monet project, through tax increment dedication, bonding, or other means, for the capital costs included in this analysis." (106)

Acting on the Katz-Hollis report's representations, however, the Agency adopted its University Circle plan and later entered into a contract with the developer (the "Disposition and Development Agreement").

In its ordinance adopting the plan, the Agency declared: "The elimination of blight and the redevelopment of the Project Area could not reasonably be expected to be accomplished by private enterprise acting alone without the aid and assistance of the

Agency. This finding is based upon the existence of blighting influences, including the lack of adequate public improvements and facilities, and the inability of individual owners and developers to economically remove these blighting influences without substantial public assistance." (107)

Should a reasonable person have realized that the Katz-Hollis report's description of the "impediments" to development was overblown? The Agency and public may have justifiably relied on the City Attorney's office to ensure that basic law governing the plan adoption process was followed.

Did the project area property owners suffer as a result of reliance on the City Attorney in this regard? Their first-right to develop the property was lost and for the past three years they have had to put planned property improvements on hold, as it would not make sense to improve property soon to be demolished.

In law, the elements of "fraudulent misrepresentation" include false representation, concealment or non-disclosure; intent to induce reliance; justifiable reliance and resulting damage. (108)

Fraud may exist without intent to commit fraud. "Constructive fraud" (as opposed to "actual fraud") consists in "any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another..." (109)

"Actual fraud" may consist in the "suggestion, as a fact, of that which is not true, by one who does not believe it to be true." (110)

It appears that a lawsuit alleging that a report is fraudulent may be brought even though a redevelopment plan has emerged intact from a "validation action." Actions validating redevelopment plans are conclusive only as to matters which "were or could have been" adjudicated in the proceedings." (Emphasis added. 111) Fraud by definition involves something hidden. Undiscovered fraudulent statements in a report could not be adjudicated in a validation proceeding.

A suit alleging fraud may be brought within three years of the date the fraud was discovered. Or, there is this remedy: "It is not incumbent upon one who has been defrauded to go into court and seek relief, but he may abide [sic] his time and when enforcement is sought excuse himself from performance by proof of fraud..." (112)

There certainly seems to be room to argue that the Katz-Hollis report was fraudulent insofar as its statements and conclusions concerning the viability of "private enterprise."



**Was the plan economically feasible?** Perhaps another section of the Katz-Hollis report is fraudulent. This describes the economic feasibility of the plan. Law requires an Agency to submit a report the local legislative body explaining the "proposed method of financing the redevelopment of the project area in sufficient detail so that the legislative body may determine the economic feasibility of the plan." (113)

The Katz-Hollis report gave such an explanation: "With estimated tax increment resources totaling \$128.5 million... over the life of the Project, all estimated costs are fully fundable, and implementation of the Project appears feasible." (114) What the report failed to consider was the percentage of the tax increment that would be allocated to the taxing agencies (such as school and fire districts). The Katz-Hollis analysis indicated that 20 per cent of the tax increment would go to affordable housing purposes and the Agency would get the rest. (115)

Yet the Katz-Hollis report admits that this had not been thought through: the estimated amount of tax increment allocated to the Agency did not take into account "any payments which may be made by the Agency to affected taxing agencies to alleviate financial burden or detriment caused by the Project. Any such payments the Agency may elect to make could potentially reduce the funds available for Project activities..." (116)

It was true that, before 1984, Agencies were required only to "consider" sharing tax increment funds with schools (117), and before 1977, too they had only to "consider" tax sharing with fire districts (118). But when the City Council received the proposed University Circle plan, a condition of plan adoption was a "determination" that the "effect of tax increment financing will not cause a significant financial burden or detriment on any taxing agency deriving revenues from a project area." (119) Reasonable tax increment sharing with taxing agencies was a requirement and not something, as the Katz-Hollis report suggested, that the Agency "may elect" to do.

On this foundation the fiscal integrity of the plan rested. The plan was adopted and the right of owner developers to freely determine their destiny foreclosed.

After plan adoption, two consulting firms concluded the plan was economically infeasible.

I. William Euphrate wrote to the developer on 2 March 1990: "It appears that there will be no funds available for project mitigations [of adverse environmental impacts] or relocation expenses." "... the Agency will have very little left over for other projects after financing initial infrastructure improvements." (120)

II. Keyser Marston Associates, Inc. concluded in its 5 June 1990 report that the proposed office and retail project was feasible, but that the hotel project was not. (121) (The "standard industry measures" Keyser Marston used for testing project feasibility are described at 122.)

On the date the settlement agreements in the validation actions were executed (22 July 1991), the Mayor of East Palo Alto admitted in public session that no economic feasibility study had been performed in connection with plan as modified by those settlement agreements:

WILSON: "... There's been no financial analysis that I've seen. These numbers that Agency member Coats is quoting, this is the first time I'm hearing these numbers..." "So you're saying there has been no financial analysis of the downscaled model?"

COATS: "I'm saying that there has been a downscaling of the building. There has been no financial analysis that--you know--on our part, yeah. But there has been a downscaling of the building, that complex, yes. As part of what was negotiated with Palo Alto, uh, the building was downscaled. As a matter of fact this project has been downscaled from 18 stories, which was the original proposal down to what is now nine to ten stories. We did a number of financial analyses on the original project. It is--it has been downscaled, correct." (123)

On the same date, 22 July 1991, the developer received from the Agency an extension of time to come up with a feasible hotel project: "... the Feasibility Period shall be for a period of nine (124) months from the Final Modified Approval Date..." (125) The Final Modified Approval Date is the day all plan amendments have been approved. Having the Feasibility Period come after adoption of the final plan is, again, clearly contrary to the law that says economic feasibility must be determined before plan adoption.

Another law is relevant: "If the plan provides for the expenditure of any money by the community, the legislative body shall provide for such expenditure at the time of or in connection with the approval of the plan." (126)

**Who oversees California Redevelopment Agencies?**

The California Legislature requires Redevelopment Agencies to commission a yearly "independent financial audit report" that shall "include an opinion of the agency's compliance with laws, regulations, and administrative requirements governing activities of the agency." (127) Who reviews this report? "Every redevelopment agency shall present" this report "to its legislative body." (128) Where the legislative body is composed of Agency members, in effect the Agency members and the City Attorney's office review their own report.

Redevelopment Agencies are required to submit information regarding their financial transactions the State Controller's office and information regarding bond issue to the California Debt Advisory Commission, but neither of these State agencies serves a police function. According to Dean Misczynski at the Senate research office, no State agency oversees California Redevelopment Agencies. (129)

Misczynski authored legislation last year aimed at correcting problems in the municipal bond industry (130), but stated in September, 1991 that the Senate research office is not currently investigating Redevelopment Agencies. Misczynski added that Counties frequently bring suits attacking redevelopment plans in attempts to protect their rights to adequate shares of tax increment.

Plan amendment process -- another possibility for "private enterprise acting alone"?

The East Palo Alto Redevelopment Agency has proposed to amend the University Circle Plan to bring it into conformance with the validation action settlement agreements. This is scheduled to occur in the six month period immediately following 22 July 1991, or as soon after that "as reasonably possible." (151)

The process of amending a redevelopment plan is similar to that for adopting it in the first place. Back-up reports, a public hearing and public notice of that hearing are required. (152) This process shall occur "to the extent warranted by a proposed amendment." What does that mean? Courts have established helpful precedent. An appellate court judge, in a case involving the Redevelopment Agency of San Francisco, reasoned that new investigation is properly prompted by "changed conditions" or "new facts"--things that could not have been adjudicated in a validation proceeding. (153)

The University Circle developer is confronted with a changed condition of great import: less tax increment money to finance redevelopment. It appears, then, that the amendment process should include reconsideration and a new determination of whether the project is feasible for the developer.

Are there changed conditions or new facts to warrant reconsidering whether private enterprise, without Agency assistance, could carry out the University Circle redevelopment? If future research revealed that the condition of the public works "infrastructure" in the City was actually not a deterrent to development, this would be a "new fact." A "changed condition" is the surge of investment in the East Palo Alto real estate market.

### Owner participation

A section of the Health and Safety Code reads: "Every redevelopment plan shall provide for participation in the redevelopment of property in the project area by the owners of all or part of such property if the owners agree to participate in the redevelopment in conformity with the redevelopment plan adopted by the legislative body for the area." (131)

According to one judge, the wording--participate in redevelopment of all or part of such property--contemplates that participation need not be extended to all owners of the property. "This, or course, imposes upon the agency a duty of reasonableness and good faith, if they wish to make participation available to part of the owners of the property embraced in the redevelopment project." (132)

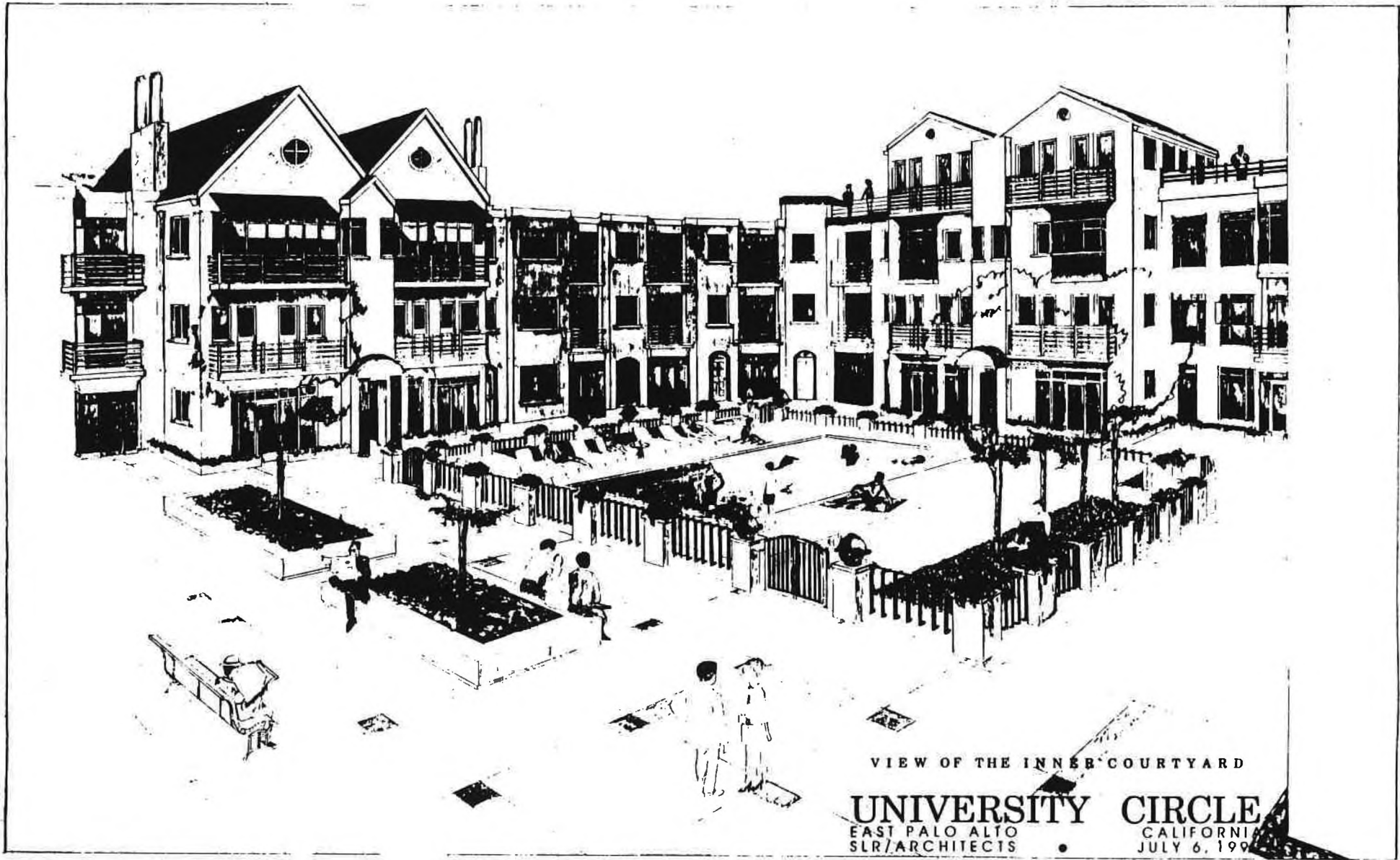
In another case, a judge noted that "...the final plan necessitates assembly of large plots to carry out the proposed uses in certain areas of the project and requires prospective owner-participants to qualify as financially responsible, and thus in some cases renders it impossible for small property owners, such such, to separately participate with the same status [as professional developers]..." (133)

University Circle owners submitted a Proposal to Develop Within the University Circle Project Area, dated 24 August 1990. This 60-page report was put together by a citizens' group and a consulting firm after months of meetings and study. These pages contain architectural renderings of proposed neighborhood designs (see next three pages), columns of financial data that allow comparison of the feasibility of different development schemes, letters from interested financiers, the performance record of the consulting firm and literature describing the background and qualifications of the consulting staff. In its opening paragraph, the report states, "Lessons were learned years ago by various cities in positions similar to East Palo Alto[']s] which in using redevelopment to remove blight, ultimately removed the indigenous community. The University Circle Group Association ("UCG"), as a representative of the East Palo Alto community, wishes not to be displaced, ignored, nor lose its legal property rights. Therefore, pursuant to the East Palo Alto Redevelopment Agency's Owner Participation Resolution, UCG hereby submits its redevelopment proposal for the University Circle Redevelopment Project Area." (134)

The citizens' plan was rejected. Agency staff wrote: Section 2.B.2 of the Owner Participation Rules identifies the process with which the... [owners' group] must comply in order to carry out its obligations under the Rules. Since the fourteen-day notification and forty-five-day proposal review periods provided for in Section 2.B.2 have elapsed, staff recommends

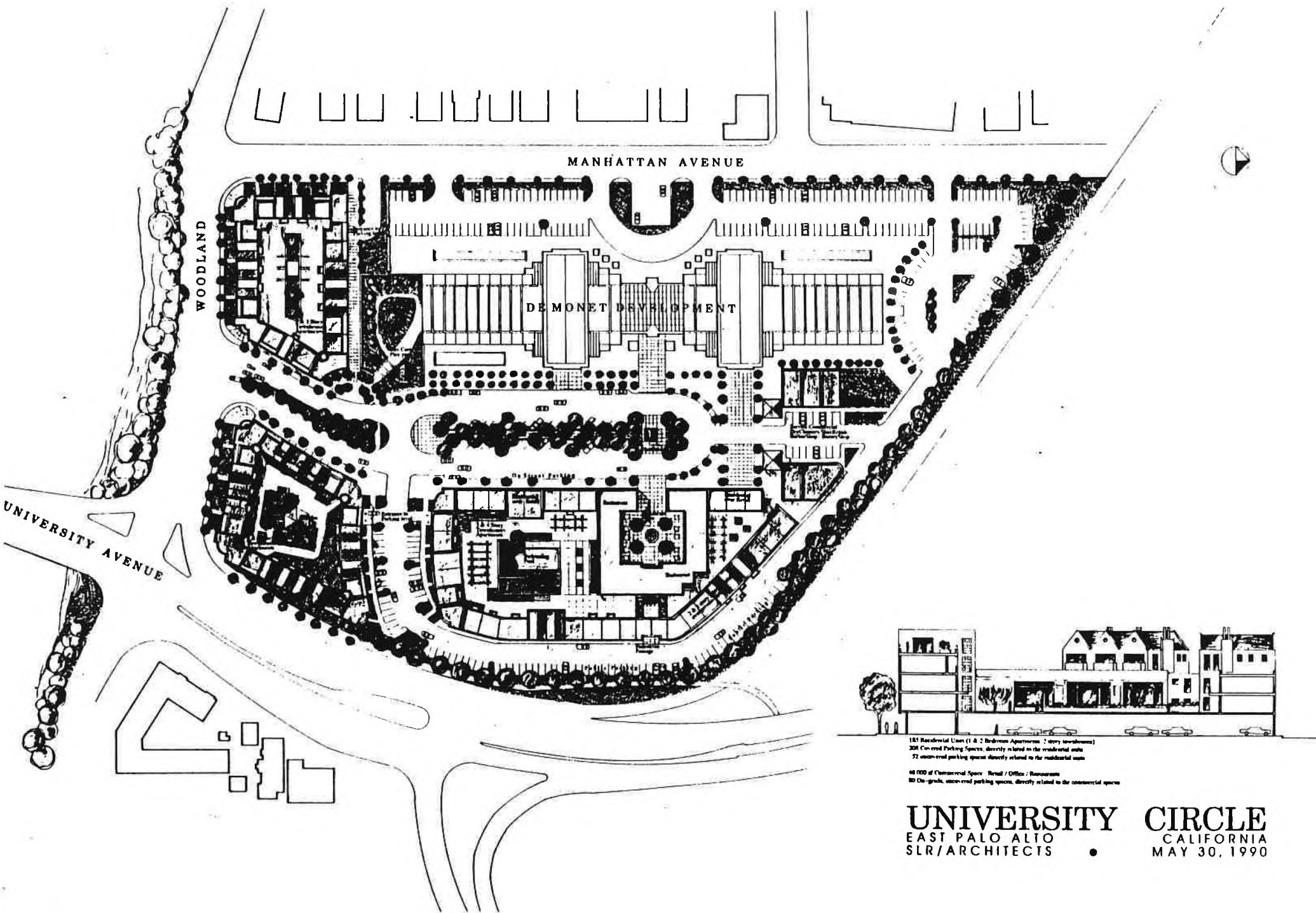


SLR/ARCHITECTS  
1935 University Ave  
E. Palo Alto, Calif  
415 328-6559 94303



VIEW OF THE INNER COURTYARD

**UNIVERSITY CIRCLE**  
EAST PALO ALTO CALIFORNIA  
SLR/ARCHITECTS • JULY 6, 1999



MANHATTAN AVENUE

WOODLAND

DE MONET DEVELOPMENT

UNIVERSITY AVENUE



181 Residential Units (1 & 2 Bedroom Apartments, 1 entry townhome)  
 208 Covered Parking Spaces, directly related to the residential units  
 72 uncovered parking spaces directly related to the residential units  
 48,000 sq ft Commercial Space: Retail / Office / Restaurant  
 80 On-grade, uncovered parking spaces, directly related to the commercial space

**UNIVERSITY CIRCLE**  
 EAST PALO ALTO CALIFORNIA  
 SLR/ARCHITECTS • MAY 30, 1990



(i) that the Agency deem the owner participation process for the Project Area concluded; (ii) that, based on this report, the Agency reject the UCG proposal as presented; and (iii) that the Agency direct staff, upon execution of the Disposition and Development Agreement with DeMonet, to notify UCG of its option to negotiate with DeMonet a limited partnership or other interest in the Project." (135)

The National Economic Development and Law Center in Berkeley offered comments about this. It had worked with the citizens' group, providing technical assistance from January, 1990 to August, 1990. It ceased its work in late August "because of the intensity of the political climate..." (136) Its final report stated that the citizens efforts were "thwarted by the political crossfire between the community and the City" and gave rise to "doubts as to whether the political climate of East Palo Alto will permit linkages and partnerships between City agencies, the private sector and nonprofits to be forged in the near future." (137)

The setting into which the owners' plan fell included the following facts:

Over a year and half before the Redevelopment Agency's University Circle plan was submitted for approval, the Agency and a developer entered into an agreement to negotiate exclusively for the purpose of conveying "title to the Site to Developer" and for "construction and development" by the Developer. This agreement also provided that the Developer would pay the Agency \$600,000, in three installments (138):

- as consideration for entering into this agreement within 5 days
- to pay costs of consultants, additional staff, actions and studies
- to pay additional consideration when all approvals had been granted and various documents executed.

Nowhere in the "Agreement to Negotiate Exclusively" does it specifically say the Developer would be reimbursed for these payments, but it does say "...tax increment financing... will be utilized as permitted by law in the redevelopment portions of the Site" (139), and law permits use of tax increment financing to pay Agency obligations. A later agreement--this one signed after adoption of the redevelopment plan--specifically provided for the developer to be reimbursed by the Agency for pre-development costs (plus interest) in an amount not to exceed \$6.2 million. (140)

Usually it is cities--not developers--who lend money to their Redevelopment Agencies to cover the costs of plan preparation. (141) Cities may issue bonds before adoption of a redevelop

ment plan to raise money to pay staff and consultants to draw up the plan and related documents. The City of East Palo Alto may have lacked the financial standing to do this. However, law permits cities to borrow money "from any private lending institution for any redevelopment project for any of the purposes of this part." "This part" includes all of California Redevelopment Law in the Health and Safety Code. (142) Presumably the developer or developer's bank was the private lending institution in this case.

Another feature of the factual setting surrounding the citizen group's plan was the activity of the City's legal counsel. The Law Center in Berkeley has reported that in the Spring of 1991 the City learned that an attorney representing the City was also representing the developer in another matter. The law center concluded, "...the role of the City's legal staff should not be underestimated..." (143) A City attorney did step down from his position after the City recognized the situation. (144)

Recently, two Agency members breathed life into the owner participation option. They argued at length that the redevelopment process had been put on hold by the lawsuits, and therefore, the time for owners to pursue the owner-participation option should not have tolled. "I am reminded of the notion of the art of compromise," said one, who, to win the opportunity for owner participation and another provision, agreed to vote in favor of all other amendments to the Agency's agreement with the developer, the DDA. (145)

The Council voted unanimously to approve a list of amendments to the DDA, including the two new provisions, and the City Attorney was instructed to "wordsmith" the two new amendments and come back after the August recess with the final language. (146)

The "First Amendment to Disposition and Development Agreement" was executed sometime during the August recess. On the signature page was a space for only one Agency member's signature. This document was signed by one Agency member, the developer, City Clerk and City Attorney. (147)

The "First Amendment to Disposition and Development Agreement" established that the citizens' group could participate in the development of the hotel site only if it paid, within 30 days of the just-mentioned Agency meeting, the developer's costs to date in connection with this site. These costs total hundreds of thousands of dollars. The payment was required to be made in "readily available U.S. funds" and to include interest at a specified rate. (148)

As a condition of participating, then, the citizens' group, who had already paid for preparing its own plan, would have to pay

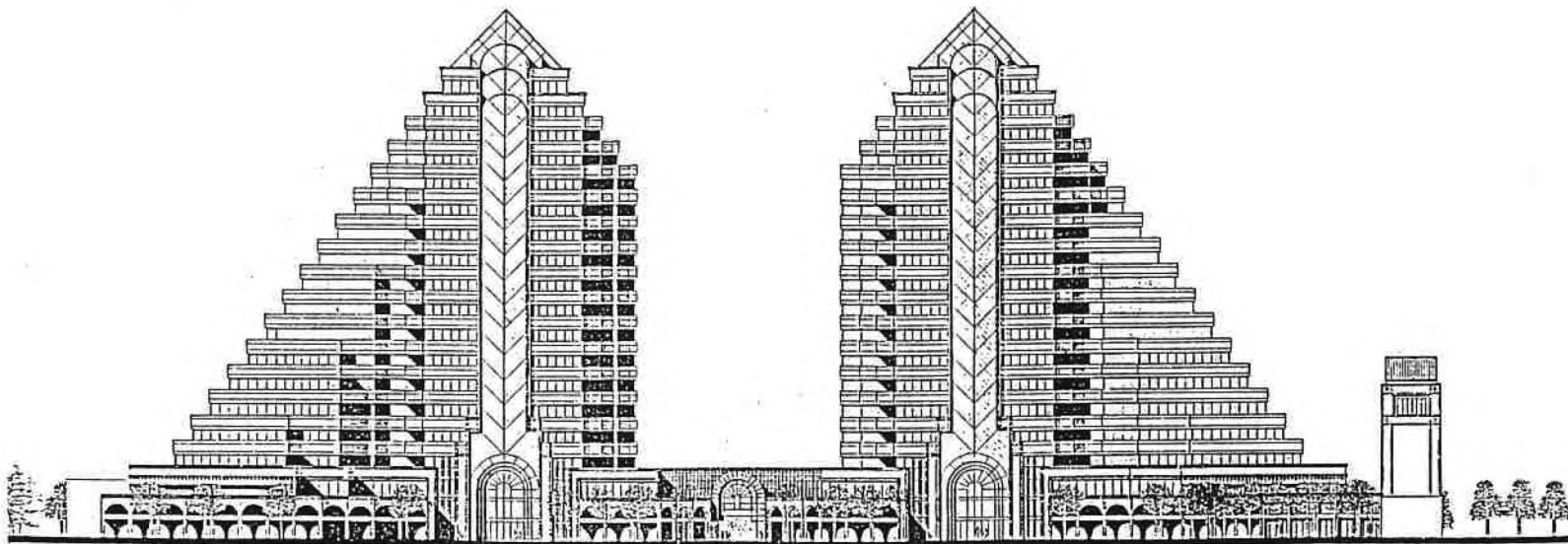
for some of the developer's planning costs to date, and even though the validation actions had nothing to do with the citizens' plan, it appears the citizens' group would have to pay for that pre-development cost too.

The 30-day owner-participation-option period expired while the Redevelopment Agency was still on recess. At the next meeting, a City Council member asked to see the wording of the DDA as amended. The City Attorney apologized for forgetting to bring the amended DDA language and explained that "The DDA has not been passed out to anyone." (149)

### Original 1987 renderings


On the next two pages are renderings of the developer's 1987 University Circle proposal. One objection to the project brought out in the validation actions concerned its size. "The total net square footage of the De Monet Project is estimated at 1.2 million square feet, or an amount which is over one-half the square footage of the Empire State Building. Yet, this massive development is proposed on only 11.4 acres of land with difficult ingress and egress, and virtually no public transportation." (150) The plaintiff's were successful in winning a concession of some size reduction.

In an informal conversation after a 5 August 1991 public forum regarding University Circle, the Mayor indicated that the plans were not final, but he thought the development would look glamorous, that drivers on the freeway would be able to see it and that it definitely would have "a look" to it.



---

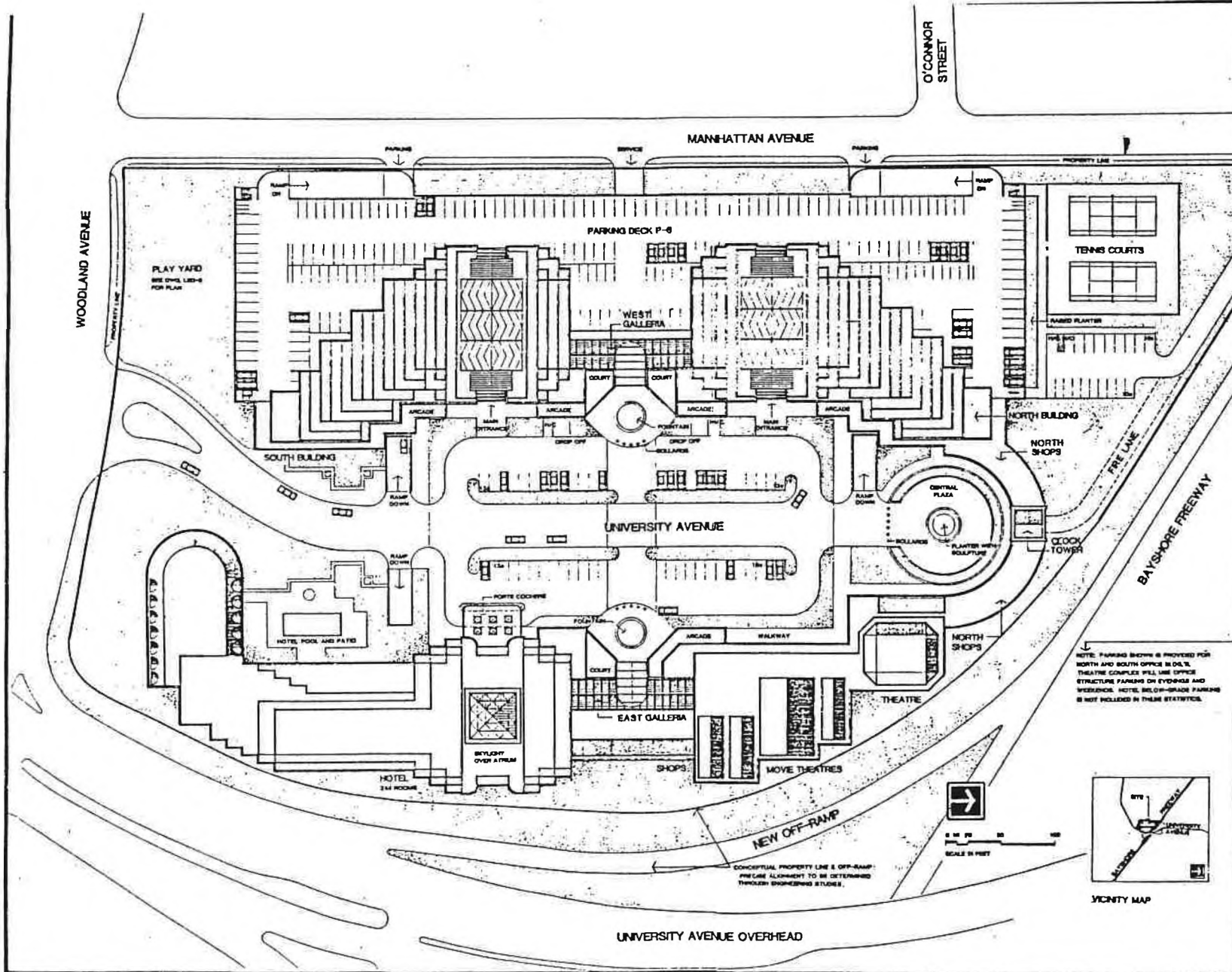
University Centre  
East Palo Alto California

 Hoover Associates  
Architecture Planning Interiors • Palo Alto, CA

A Development of **DeMonet**  
INDUSTRIES



HOOPER ASSOCIATES  
ARCHITECTS PLANNERS  
3700A BALBOA BLVD. SAN DIEGO, CA



**FINAL PHASE STATISTICS**

**SITE**

SITE AREA:	11.8 ACRES OR 512,000 SQ. FT.
BUILDING FOOTPRINT:	461,130 SQ. FT. (INCLUDES PARKING STRUCTURE)
PAVED AREA:	91,000 SQ. FT.
LANDSCAPED AREA:	34,864 SQ. FT.

**BUILDINGS**

OFFICE BLDGS:	
NORTH BUILDING:	341,000 SQ. FT.
SOUTH BUILDING:	341,000 SQ. FT.
TOTAL:	682,000 SQ. FT.

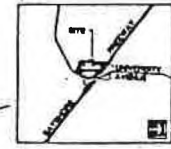
**RETAIL AREAS**

WEST GALLERIA SHOPS:	14,000 SQ. FT.
EAST GALLERIA SHOPS:	14,000 SQ. FT.
NORTH SHOPS:	43,700 SQ. FT.
NORTH & SOUTH BLDG. RETAIL:	82,800 SQ. FT.
INCLUDES DAYCARE (12,000 SQ. FT.), ATHLETIC FACILITY (12,000 SQ. FT.) & 2ND FLOOR RESTAURANT/RETAIL (24,700 SQ. FT.)	
TOTAL:	154,500 SQ. FT.
THEATRE COMPLEX:	40,118 SQ. FT.
HOTEL:	180,180 SQ. FT.
TOTAL HOTEL BLDG. AREA:	228,180 SQ. FT.
PARKING STRUCTURE:	176,500 SQ. FT.

**PARKING**

STANDARD:	1,000
INCLUDES 30 HVC STALLS	
COMPACTS:	740
RESERVED STANDARD:	40
RESERVED COMPACTS:	
TOTAL PARKING:	1,780
% COMPACTS:	30%
STANDARD STALLS:	1% OF
COMPACT STALLS:	2% OF
AREAS OF	

NOTE: PARKING SHOWN IS PROVIDED FOR NORTH AND SOUTH OFFICE BLDGS. THEATRE COMPLEX WILL USE OFFICE STRUCTURE PARKING ON EVIDENCE AND SPENDING. HOTEL BELOW-GRADE PARKING IS NOT INCLUDED IN THESE STATISTICS.



VICINITY MAP



CONCEPTUAL PROPERTY LINE & OFF-RAMP PLEASE ALIGNMENT TO BE DETERMINED THROUGH ENGINEERING STUDIES.

**UNIVERSITY CENTRE  
EAST PALO ALTO CALIFORNIA**

A DIVISION OF  
**DeMonet**

**SITE PLAN  
FINAL PHASE**

SCALE:	AS NOTED
DATE:	1/28/81
PROJECT NO.:	1040
REVISED:	SD-2

Alternative programs--a list of State of California and federal legislation

Other community development opportunities involve: assessment districts; special tax districts; a tax increment district for local officials apart from Redevelopment Agencies; programs under the U.S. Department of Housing and Urban Development and under the California Housing Finance Authority; HUD Section 8 rent subsidies; business development programs; training and educational programs. The legislative authority creating specific programs is cited below. (This list is incomplete.)

The Improvement Bond Act of 1915  
Streets and Highways Code, Sections 3500 through 8887

The Municipal Improvement Act of 1913  
Streets and Highways Code, Section 10000 through 10706

Communities Facilities Law of 1911  
Health and Safety Code, Section 4600 et seq. (154)

The Mello-Roos Community Facilities Act of 1982  
Government Code, Sections 53312 through 53345 (155)  
Depends on voter approval of special tax.  
May be used to finance specified public services  
as well as public improvements.

Seymour Infrastructure Financing Districts Act  
Government Code, Sections 53395 through 53397.11 (156)  
Enacted in 1990.  
Provides mechanism for local officials apart from  
Redevelopment Agencies to raise tax increment  
revenue. (157) The Legislative Counsel has raised  
the possibility that this Act violates the provision  
in the California Constitution that gives authority  
to raise tax increment revenue to Redevelopment  
Agencies only. (158) This policy, nevertheless,  
appears to be the alternative of choice to a group  
in Santa Cruz County, California.  
For further information, see (159).

Community Development Block Grants  
U.S. Dept. of Housing and Urban Development  
While funding levels have been cutback for some  
time, recent activity is encouraging. (160)

National Affordable Housing Act  
Enacted in November 1990  
U.S. Dept. of Housing and Urban Development  
HOME program

California Housing Finance Authority  
Housing finance programs

Employment and Economic Incentive Act  
Government Code, Sections 7080 through 7099 (161)

**Not enacted...** American Competitiveness bill  
Introduced by Congressman Tom Campbell  
HR 2523 (162)

Training and Fellowship Programs for Community  
Development  
U.S. Code, Title XX, Chapter 23, Section 801 et seq. (163)

School Dropout Demonstration Assistance Act of 1988  
U.S. Code, Title XX, Chapter 47, Section 3241 et seq.  
(164)

Drug-Free Schools and Communities Act of 1986  
U.S. Code, Title XX, Chapter 47, Section 3171 et seq.  
(165)

#### **Alternative programs in the United States**

This discussion describes grass-roots, non-profit "community development corporations" and other progressive human development organizations. (Most of these organizations were described in a 28 May 1990 article in National Review.)

"By forming nonprofit community development corporations (CDC's) that address local problems, neighborhoods from Bedford-Stuyvesant in New York to Watts in Los Angeles have built new housing, opened health centers, created new businesses, and attracted new investment." (166)

A Report to the Ford Foundation states: "Our inherent thesis is that America's government and private leaders should elevate CDC's to a central position in domestic policy making. The problems of the American poor and underclass, which CDC's seek straightforwardly to address, have confounded traditional liberal and conservative formulas. Neither heavy government spending on the one hand, nor supply side economics on the other, has 'solved' problems that lie deep in community and social disorganization. CDCs have learned to prosper on the rocky soil of even the poorest neighborhoods... CDC's are no longer a theoretical, untested model. From their roots in the 1960s, they have grown and flourished over a quarter of a century." (91b) In the mid-1980's there were an estimated 3,000 to 5,000 CDC's nationwide. (167)

Bethel New Life, Inc. is one of these groups. In 1979 the small congregation at Bethel Lutheran Church voted to begin a housing ministry and kicked off the campaign with \$5 contributions toward a \$5,000 goal. (168) Few communities could claim that their problems are more difficult than the problems faced by these residents of West Garfield Park in Chicago. In the 1960's, "as scores of Chicago factories closed their doors, West Garfield became a casualty of industrial decline, racial tension, and poverty... Absentee landlords allowed apartment buildings to deteriorate until thieves moved in to tear out the plumbing and sell the bricks for scrap. More than 15,000 of the neighborhood's 45,000 residents moved away, and commercial strips lost their vitality for lack of investment and customers. By 1979, the area was losing 200 housing units to demolition each year, and it had no major grocery store, few good doctors, no local bank, and too few jobs." (169)

Today, Bethel New Life oversees: its employment center (placing 500 people per year), its elementary school (where students consistently perform above grade level in reading and math), its Wholistic Health Center (serving 1,000 patients a month), its In-Home Care Program (providing chore and homemaker services to almost 1,000 seniors each week), its Recycling Center (which has put over \$1 million into residents' hands), its day care and after school programs, and more.

Bethel's "sweat equity" program allows neighborhood residents to work off the equivalent of the downpayments on their new homes. Nathaniel Thomas of Bethel's "sweat equity" program explains: participants give 750 hours of labor; they are responsible for daily clean-up, nightly security and finishing work (drywall, painting...) involved in home construction. "Anybody can throw rocks or operate a broom."

Asked who organizes the citizen work force, Thomas replied: "Most of what we do here at Bethel is based on the premise of enabling people to do for themselves. Rarely does Bethel do more than facilitate, assist and guide." Bethel holds initial orientation meetings for groups of at least two or three families who will work on a house together. "They basically schedule themselves. Some work days, some evenings." The major construction is handled by contractors. (170)

According to Ron Price (who helped develop the sweat equity program at Bethel) the average Bethel home sales price is \$71,000, \$73,000 for a detached home.

Price advised that East Palo Alto should become a partner with a CDC. "If the City brings in an outside developer, the developer will charge you more than if you had your own construction management firm." (171)

Asked what effect Bethel's building developments have had on



crime, Ron Price answered that "they purport" the crime rate is lower in these areas, but that is not necessarily true. Unless there is "human development" the efforts you make will be in vain, not appreciated and torn down.

Bethel uses a "wholistic" approach. Its Guide to Community Development states, "'We came to realize that just providing affordable housing wasn't enough--that you couldn't pay your rent if you didn't have a job; and that you couldn't hold a job if you were sick or had a sick mother or father at home,' says Mary Nelson." (172) She left a career as a grammar school teacher to start this organization.

Another famous CDC was the brainchild of Genevieve Brooks and the South Bronx Desparados. They have built eleven acres of modular style homes where once were "graffitied-out" structures and rubble. This phenomenon was featured on The MacNeil Leher News Hour. Brooks, standing on the sidewalk in front of a tidy residential neighborhood, said that she wanted "to show you that we are a proud people... the government didn't rebuild Vice Street, the people did. We decided we had to do it for ourselves." With the help of sympathetic neighbors, federal tax credits and State backed mortgage guarantees, "we finally took it block by block." "...You can only rejoice that here is a community growing up," said Genevieve Brooks. The narration concluded, "If you want to see what works, come to the South Bronx... If they can do it in the South Bronx, they can do it anywhere." (173)

In Kansas City, Missouri, a seven-acre site with an abandoned, falling down hospital was so blighted that a film crew used it as a setting for a documentary about life after a nuclear disaster. Since that time the local Baptist Ministers Union and the Community Development Corporation of Kansas City joined together and developed a shopping center complex that created 250 new jobs. (174)

For information about CDC project financing see 175.

"Community Land Trusts (CLT) are another important way to provide stewardship over a community's land... In a land trust, the community holds the land, while the owner holds title to the structure. The community (in a trust) decides how the land should best be used--parks, housing, business. The land trust (and limited equity coops) are ways to shield residents from rising land costs due to speculation, and from subsequent displacement." The Community Land Cooperative of Cincinnati and the South Atlanta Land Trust are examples of organizations that practice this scheme. (176)

Frances Walker, President of Parents Against Drugs in Pennsylvania focuses on human development. She and a staff volunteered to begin PAD "before we even got a penny." Every day,

she says, she gets a new idea for a program. PAD collaborates with organizations with resources, helping them design programs. There are many already: a young entrepreneurs program, student intern program at a hospital, free medical services, after-school tutoring, summer computer camp and parent education, to name some. There is still "open blatant drug selling" in the neighborhood, but for whatever reason, the drug pushers seem to respect the kids in the program and do not bother them. (177)

Other community development programs invest in training and educating welfare recipients. In this regard, see (at 98) a 19 August 1991 Time magazine article about the Learnfare, Workfare and Bridefare programs launched by Wisconsin Governor Tommy Thompson. (178)

See the References regarding--

Prison literacy programs in Morristown, Tennessee (179)  
and Alameda County, California (180)

Focus Hope, a machinists' training institute in Chicago  
(181)

Step 13 in Denver where homeless alcoholics help themselves (182).

## Discussion

**No performance requirements / reliance on good faith.** California Redevelopment Agencies may issue tax increment bonds without voter approval, take property through eminent domain proceedings and dictate the site layout, building "uses" and "look" of new developments. In this connection, a judge coined the phrase, "the extraordinary powers of community redevelopment." (183) While the State holds Redevelopment Agencies accountable for reporting their accomplishments, it does not hold them accountable for actually accomplishing the State's program goals.

History has shown that struggles over rights to property are usually not motivated by high principle or concern for the social development of the opposing side. East Palo Alto's own history has demonstrated this. A former East Palo Alto Mayor wrote: "There have been, over the years, many different ways to dispossess and disenfranchise the citizens of East Palo Alto. For example, the county locating the majority of the junkyards and the county's major hazardous waste treatment plant in East Palo Alto; the City of Palo Alto annexing our land to the south and the City of Menlo Park annexing our land to the north." (184)

The California Legislature in the 1960's, however, made clear that it respected human nature. It merely requires Agency members to review an independent consultant's opinion about whether their redevelopment plan comports with Redevelopment Law. Struggles over property that result from Community Redevelopment Law are to be resolved by the "reasonableness and good faith" of the most powerful contender, the Redevelopment Agency.

If current property owners object, they are allowed 60 days in which to bring a lawsuit, an undertaking that, for owners of a truly blighted area, is foreseeably difficult. They may then pursue this as far as their spare energies and finances will go while their opponent relies on the possibility of future tax revenue to cover his costs of suit. Three lawsuits were brought alleging that the University Circle plan in East Palo Alto was invalid. At the conclusion of one, a City Council member from a neighboring city was quoted as saying, "This is like a poke in the eye with a sharp stick." (185)

**No requirement that redevelopment serve residents of blighted areas.** A goal of California Redevelopment Law is to increase the supply of jobs, in recognition that "Lack of employment opportunity creates despair and frustration which may precipitate violence." (186) But, the Law does not go one step further and declare that the purpose of creating jobs under its scheme is to serve residents of a blighted area or even residents of the city containing the blighted area. The Law states a fundamen-

tal purpose of redevelopment is "to provide an environment for the social, economic, and psychological growth and well-being of all citizens." (Emphasis added. 187) As the Law stands, the newly created jobs may be filled by employees of firms that are relocating (such as Adobe Systems) or by those who take part in the substantial human migration to California each year. (188)

Adobe Systems, with offices in Tokyo, London, Munich, Amsterdam, Boston and other U.S. locations, and with sales last year of \$168 million (189), is in line to accrue the benefits of the University Circle Project, as is the developer, who once estimated its net profit from the project at \$50 million. Those considered to be suffering from the debilitating effects of blight will be asked to leave (if the plan is ever realized).

**No spending limits / knowledge of finance not a prerequisite to decision making.** According to Dean Misczynski of the Senate Research Office, other financing programs in California do not allow as much revenue to be generated for redevelopment as this one. (190) Because it creates a relatively easy way to amass mammoth sums of money, this has become the redevelopment program in the State. As mentioned earlier, three out of four California cities have California Redevelopment Agencies.

In these cities, small groups of public officials decide how to spend millions--sometimes billions (191)--of dollars with very few limitations upon their discretion. Even with the best of intentions, they may lack the sophisticated understandings necessary to review the work of financial consultants (who may be playing advocacy roles for certain groups).

Most City Council members could not draw up a chart comparing the cost of redevelopment under this program to the cost of providing the facilities and services another way. I have never seen such a chart by any hand in connection with the University Circle project or any other.

**No requirement to test the strength of private enterprise.** The Law establishes no criteria to help Agencies judge the viability of "private enterprise acting alone." Once an Agency is formed, Agency members have little incentive to explore this topic: an Agency that expresses confidence in private enterprise destroys its reason for being. As of the date of a recent report (192), roughly 340 of 456 cities had determined private enterprise alone could not accomplish the State's redevelopment goals--their help would be needed!

A court case lends support to this position. In re Bunker Hill Urban Renewal Project 1B, the judge wrote, "It is urged that given time, redevelopment of the project area would take place 'without public intervention,' and that therefore the finding of blight is unwarranted and unsupported. Such speculative

argument cannot prevail..." (193)

Thus, a California Redevelopment Agency begins its program, and can only begin its program, with a vote of no confidence in the citizenry. How different this is from the Bethel's sweat equity approach that pushes people so hard some drop out and some who do complete the 750 hours of community service say they did it once, but they would never do it again.

It might be argued that "private enterprise" is incapable of accomplishing redevelopment because it has had its chance and an area remains "blighted." However, once owners of land in a "blighted" area understand that the threat of eminent domain hangs over them, they could be expected to give more consideration to how they might develop their property. Extending a second chance has long been part of customary professional ethics and practice in a wide variety of applications. Your phone is not immediately disconnected, for example, if your payment is late; you receive a warning notice.

**No requirement to accept a feasible owners-plan.** Every redevelopment plan "shall provide for" owner participation. (194) "Provide for" is not the same as giving the current owners the first-right to participate. East Palo Alto's experience, thus, is consistent with State Law--here, agreements were executed that freely admitted none but a developer who has been paying some of the Agency's bills and the Agency to determine the disposition of project area property. "Grass-roots" citizen developers and "owner participants" were thereby excluded in favor of a non-resident developer with an infeasible plan.

For a fee of hundreds of thousands of dollars, if paid in readily available U.S. funds within a 30 day period, current owners might possibly have been allowed to participate to a limited extent in a predetermined program of property redevelopment. (195) This fee would cover the developer's planning and legal costs to date, which the owners had no part in and would derive no benefit from.

How different this is from the methodology of the Chicago-Orleans Housing Corporation: "Since the COH's goal was to create a community as well as to supply decent housing, it searched for a design that would foster a community spirit... As one of its first steps, the church leaders had initiated a survey of 1,500 residents in both nearby Sandburg Village and Cabrini-Green Homes to discover their housing preferences." (Non profits with Hard Hats, 196).

**The result: no benefits for City residents.** Not even on paper is there a showing of how the University Circle development will further the goals of California Redevelopment Law. The East Palo Alto Redevelopment Agency makes only one claim

concerning community benefits. It repeatedly tells the public that the City will receive a \$7.2 million "Community Redevelopment Fee." (197) Yet the Agency loses sight in public meetings of what the community must pay to receive this benefit. What has been regarded as "community development" during the 35-year project life consists of the City contributing many millions more than it gets back. A conservative estimate of the Agency's net contribution (based on the original redevelopment plan) is \$74 million. (198)

The resounding claim of proponents of redevelopment pursuant to Community Redevelopment Law is that it will improve the economy, and improving the economy will bring benefits in ways that can't be measured. (199) East Palo Alto echos with the Number One promise of its Redevelopment Agency: "elimination of areas suffering from economic dislocation and disuse." (200)

Indeed, benefits from the project may "trickle down" to City residents in 35 years or so. But this economic theory falls further and further into disregard in our country as the gap between rich and poor widens. (201) It is also to be questioned whether East Palo Alto can wait that long. Citizens pick bullets out of their houses and gardens and bring them to City Council meetings. They say they don't complain about much of anything else, but they would like to see something done about this. They do not sound ready for a delayed-benefits package. (202) While General Fund receipts of property tax dollars from the project area will be kept at base-year levels for decades, the developer agreed in July of 1991 to contribute \$500,000 toward law enforcement (as part of the Community Development Fee) (203), which would cover, say, one fifth of the proposed police department budget for the 1990-91 fiscal year. (204) It is as if the solution of the crime problem can be put on hold to allow more important projects to come first, or as if there were no steps that could be taken in remedy.

In its reasonableness and good faith, the Agency did not insist on a job training or hiring program for City residents. Soon we will be able to study the reasonableness and good faith of the corporate tenant. A corporation should adopt some policy to benefit City residents who after all may be called upon to contribute millions of dollars so that the corporation can ease in to an affordable environment.

As for relocation housing, the Agency seems to be saying--just keep singing about that mansion in the sky.

**Schools' contribution.** A justification for allowing Redevelopment Agencies to collect tax increment funds is that the Agency's work created this additional tax revenue. Another party makes a significant contribution to redevelopment. When Agencies share little or no tax increment funds with school districts, the Agencies benefit from the contributions the

State's education fund makes to schools to maintain a certain level of funding per student. This contribution save Agencies from making what would be its largest contribution to a taxing agency. (School districts often receive 40 or 50 per cent of the "base year" local-tax revenue pie. 205) It has been estimated that Agencies could keep only about one-third of the tax increment they create if it were not for assistance from the State's education fund. This is a rough analysis explained to me by a citizen financial analyst at the Aptos Chamber of Commerce. (206)

What will happen to California Redevelopment if the State's education fund runs dry?

**Conflicting programs.** The California Community Development program is designed to offer incentives to developers. Roughly ten percent of California cities, meanwhile, have adopted inclusionary unit/affordable housing requirements, which discourage development. (207) If Assemblyman Dan Hauser's AB 1883 passes, local governments will be required to adopt an inclusionary-unit zoning program. (208) Inclusionary zoning would require any builder of a development of a certain size to provide a certain number of affordable housing units or pay an in-lieu fee therefor. The developer is required to do this at its sole expense. In a 1988 report concerning this policy in Santa Cruz County, a simple argument yields the conclusion that a developer building an inclusionary unit does so at a loss. (209) Santa Cruz County's inclusionary unit law is contained within the County's population growth limitation law and in fact it has been successful in slowing building development. (210)

The State requires each local government Housing Element to provide for a specific number of affordable housing sites. It becomes very attractive to municipalities to adopt inclusionary unit policies in order to explain to the State that they are doing what they can to supply the amount of affordable housing the State believes they need. (211) East Palo Alto does not have an inclusionary unit policy, but its neighbors, the cities of Menlo Park and Palo Alto, do. In Palo Alto a condition of obtaining a residential subdivision map is a payment to cover making one in three of the housing units "affordable." (212)

The question naturally arises, if we did not have this and other policies serving to discourage development, wouldn't there be more development and less need for California's development program?

(For case citations that might be helpful to those studying the legality of these exactions, see 213.)

**Is California Community Development the program East Palo Alto needs?** The State's program is predicated on the idea that

building development, by itself, will lead to human development. If this has been demonstrated to be a cost effective human development program, I would very much appreciate receiving a copy of the supporting data.

-o0o-