

# Chatten-Brown & Associates Articles

## Environmental, Land Use, Municipal, and Natural Resources Law

Volume 12, Number 1  
October 2002



### **A River Tale - The Cornfield to Taylor Yard: From Industrial Development Plans to State Parks' Acquisition**

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**For many years, the Los Angeles River has been the butt of jokes.** While originally a meandering river that was the birthplace of Los Angeles, the River is commonly seen as a "storm drain," used for movie shoots (e.g., Terminator II), and even proposed for use as a freeway. Still, there are parts of the River that are still "natural", such as the area by the Sepulveda Basin, and by Atwater, where the groundwater is too high to cement the River bottom.

The possibility of returning the River to a living force caught the imagination of poet Lewis MacAdams. In 1985, Lewis MacAdams created "performance art" at the LA River, and in 1986 founded Friends of the Los Angeles River ("FoLAR"). In the early 1990's, FoLAR convened the first conference on restoring the LA River. Since then, a dramatic rethinking has occurred regarding the River's role in LA's future. This article chronicles the events that turned plans for two forty acre industrial developments into two urban State Parks.

On one side near the River is the Chinatown Cornfield. Across and a short distance up the River is Taylor Yard. Together these properties represent two of the best known recent public acquisitions by California Department of Parks and Recreation. With these acquisitions, Governor Davis has made good on his promise to bring parks to the people, refocusing the emphasis at State Parks from primarily preserving pristine open space and unique natural resources to siting parks in park poor urban cores. River advocates have seen the beginning of their vision to give the River an emerald necklace and two developers cut short what would have been protracted legal and political battles.

## **CORNFIELD AND TAYLOR YARD: BATTLE FIELD OR PLAY FIELD?**

The Chinatown Cornfield (so named because either it was used for growing corn by Native Americans and early settlers or it is where corn spilled off from trains at the railyard) is a 40 acre site between Broadway and Spring Streets in downtown Los Angeles. It lies at the northern end of Chinatown, between Chinatown, the primarily Latino communities of Solano Canyon and Lincoln Heights, and the William Mead Housing Project, the oldest public housing project in Los Angeles. The surrounding communities are among the most culturally and ethnically diverse and historical communities in Los Angeles, with extensive residential, tourist, and retail development, as well as churches, schools, and community buildings. The site is close to, but not immediately adjacent to the Los Angeles River. However, a site being used by MTA for rail construction would come available in the future, and the Cornfield could be connected to the River.

During most of the 20th Century, the Cornfield and Taylor Yard sites were used by the railroads. All active rail uses were terminated at the Cornfield in the late 1990s, and dramatically reduced at Taylor Yard. Union Pacific still owned both properties. At Taylor Yard, a forty acre parcel of the 165 acre site was no longer needed by the railroad, and was already remediated, ready for development. The rest of the land would become available at various times in the future.

In contrast to Taylor Yard, the Cornfield was weed filled, strewn with debris, and encampments for the homeless. Then Mayor Riordan, and then Councilmember Hernandez, wanted to bring both properties back into productive use. Both sites were zoned industrial. The City enticed Majestic Realty, the largest owner and developer of commercial space in Los Angeles County to propose an industrial development for the Cornfield, and Lennar Properties decided to develop the forty acres at Taylor Yard.

The proposed Cornfield project consisted of four buildings totaling 909,200 square feet of light manufacturing and warehouse use. The mix of uses was to be no more than 50 percent light manufacturing with the rest warehouse. The proposed uses were consistent with the surrounding zoning and commercial and industrial uses which included vacant and developed sites with one- to four-story buildings with food product distribution, warehousing, wholesale businesses, and light manufacturing uses. At Taylor Yard, industrial uses were to be complemented by some retail and a movie theater, which were attractive to many in the surrounding communities of Cypress Park, Glassel Park and Mount

Washington.

To Majestic and Lennar, and many City officials, the reuse of long dormant land seemed like a win/win for the community. But some members of the community were concerned about potential impacts such as air pollution and traffic from the projects. FoLAR had another vision for both properties. At the Cornfield, FoLAR envisioned a central park for the City, with active and passive recreation, and historical and cultural elements and at Taylor Yard, the goal was to develop it into a 165 acre river park, with flood prevention, habitat restoration, and active recreational uses on the 40 acres that already was available.

The Cornfield had been part of a study on how to turn some of the most intractable sites along the River into part of a River Parkway. Arthur Golding, a USC professor of architecture and planning worked with FoLAR and the community to devise a conceptual plan to turn the Cornfield into a public park, with a school, housing, and other uses. Similar plans were developed by Golding and others for Taylor Yard. And \$45 million was set aside by the state for acquisition of property at Taylor Yard.

Despite FoLAR's view of the clear need for a park at the Cornfield, it was difficult to envision how its dream could be achieved. Since the land already was zoned for industrial use, the only discretionary act required for the project was a site review plan. (Los Angeles Municipal Code ("LAMC") Section 16.05.) The purposes of site plan review are to promote orderly development, evaluate and mitigate significant environmental impacts, and promote public safety and the general welfare by ensuring that development projects are properly related to their sites, surrounding properties, traffic circulation, sewers, other infrastructure and environmental setting; and to control or mitigate the development of projects which are likely to have a significant adverse effect on the environment as identified in the City's environmental review process, or on surrounding properties by reason of inadequate site planning or improvements. LAMC Section 16.05 A.

In order to grant site plan review approval the Director of Planning must first comply with the requirements of the California Environmental Quality Act ("CEQA"). The Planning Department concluded that all potentially significant environmental impacts were mitigated to a level of insignificance and, therefore, a Mitigated Negative Declaration, MND-99-0319 SPR (Revised), was prepared on April 25, 2000. Initially representing only FoLAR, CB&A asserted to the City that the MND was inadequate, and demanded preparation of an EIR that would consider the alternative of a park. FoLAR organized a Chinatown Yards Alliance,

which evolved into a diverse coalition of environmental, community, and civil rights groups all dedicated to achieving the same objective-- turn the Cornfield into a public park. As the public interest built, NRDC, Environmental Defense, and eventually the Center for Law in the Public Interest, joined the legal team. Likewise, a grassroots organization, The Coalition for a State Park at Taylor Yard was convened by FoLAR.

On May 23, 2000, the Planning Department adopted the Mitigated Negative Declaration and approved the site plan for the Cornfield. On June 6, 2000, FoLAR and others filed an appeal to the then newly-formed Central Area Planning Commission. On July 25, 2000, the Central Area Planning Commission heard the appeal and voted to deny the appeal.

Under the then newly-effective Charter no further administrative appeal was available. under Charter Section 245, Appellants lodged an appeal anyway, arguing that Public Resources Code Section 21151(c), granting a right to appeal to an elected body the certification of an EIR by a non-elected body, should be extended to action on a Negative Declaration. While the City did not accept this argument, in August 2000, Councilmember Mike Hernandez successfully made a motion for the Council to assert jurisdiction in an effort to add some additional mitigation under Charter Section 245. Essentially, the mitigation that the Council imposed was to make the eight acres on the bluff into a community park.

### **FROM THE CHINATOWN ALLIANCE'S PERSPECTIVE**

None of the members of the Alliance would agree that the additional mitigation would suffice. It was agreed that a lawsuit should be filed representing a selective number of organizations that belonged to the Alliance. FoLAR, as the convener of the Alliance, was the lead petitioner. Two national environmental groups, Natural Resources Defense Council ("NRDC") and Environmental Defense (Formerly "EDF") were named, but so were a number of local groups, including the Chinese Consolidated Benevolent Society of Los Angeles (representing all of the "tongs" or families of Chinatown), Concerned Citizens of South Central Los Angeles (to show the breadth of the environmental justice concern, and Northeast Renaissance Corporation. Though the number of petitioners showed the broad array of opposition to the Project, and generally made members of the Alliance feel represented, it did create logistical problems, particularly when efforts moved from litigation to settlement.

Settlement always was the goal of the Alliance -- to persuade Majestic to sell the property to the State, or another entity that would maintain it for use as open space, and other compatible uses that would be supported by

the community. The Alliance was told Majestic didn't believe that anyone would put up the money. There was no money in the State Budget identifying open space acquisition at the Cornfield, and the City certainly was not going to acquire the land for a park. Then, in March of 2000, Proposition 12 passed. Speaker of the Assembly, Antonio Villaraigosa, had included almost \$100 million for an LA River Parkway in Proposition 12. There still wasn't money designated for acquisition of the Cornfield, but the dynamics of the situation changed. Others began to understand that the vision of the Alliance was not an impossible dream.

In the meantime, the litigation went forward, with full briefing on the issue of whether there was substantial evidence in the record to support a fair argument that development of a forty acre warehouse and industrial project, adjacent to Chinatown and a number of other residential communities may result in a significant adverse environmental impact requiring preparation of an Environmental Impact Report.

Alternative uses of the site only had to be analyzed if an EIR was required, so the "lost opportunity" wouldn't get the Alliance an EIR. However, a major argument on the federal side was the environmental justice impact of losing an opportunity for parkland in a park poor area.

### **THE CORNFIELD CONTROVERSY FROM THE DEVELOPER'S PERSPECTIVE**

There is a significant shortage, and therefore, a significant demand for industrial and warehouse space in central Los Angeles. Further, there are very few large undeveloped sites in the immediate vicinity of downtown Los Angeles. The site appeared, from a developer's perspective to be a classic brownfield, with both the obstacles and opportunities inherent in such projects.

Given the zoning, the location, the site condition and the availability of some funding and incentives, as well as the potential to create almost 1,000 jobs, the site appeared to ideal for redevelopment for industrial location, notwithstanding the development challenges. Obviously, the project opponents sought a different land use for the site. Although the site lay fallow and blighted for a number of years, the environmentalists had begun to focus on alternative land uses somewhat prior to the developer's proposal. Site plan review in the City of Los Angeles is intended to be a relatively minor discretionary process that triggers environmental review under CEQA and ensures appropriate site development. It is not intended, nor is it the appropriate process, to change zoning, limit the uses permitted under existing zoning or to require an

alternate land use.

It appeared clear that the opponents would be undeterred even if the trial court upheld the City's adoption of the mitigated negative declaration and that the efforts to stop the project would continue on several fronts for as long as the opponents had any avenue open, including appeals and battles on other fronts including project funding. So a trial court victory for the developer would not necessarily mean that the project could proceed in the short run.

### **THINKING ABOUT SETTLEMENT ON THE CORNFIELD**

While the litigation proceeded full steam, settlement discussions that began in fits and starts eventually became focused. Based on the positions of the parties in the dispute, it did not appear that a Solomonic solution of splitting the site would be possible. The uses sought by each side would not be compatible with the other's proposed use. Therefore, given the possibility of a protracted fight with attendant time delays and transactional costs, let alone the possibility that either side could lose in Superior Court, it seemed worthwhile to explore a unique "coin-toss" approach with, in effect, a winner take all outcome.

The initial thought of developer's counsel was to explore providing an option for petitioners to purchase the site in exchange for immediate dismissal with prejudice of the litigation and a covenant not to oppose development of the site in the event the option was not exercised. As it turned out, there were some difficulties with the initial concept—although the ultimate outcome followed this basic concept with refinements. The developer had a strong preference for development of the site, while petitioners had no real experience with site acquisition and did not have tens of millions of dollars available.

Initially, petitioners were confident that the money for site acquisition would be made available, and the quarrel with Majestic was over the deadline. But then the state began hemorrhaging money with the "energy crisis." If petitioners agreed to dismiss the suit at any point, they could lose the biggest leverage they had. In addition, a Phase I environmental analysis obtained by petitioners indicated the property would not be burdened with clean-up problems that would make acquisition infeasible. However, further study was needed. While these realities posed significant risks for petitioners, an EIR would not get them what they really wanted, acquisition of the land. Therefore, with great trepidation, and after carefully testing the political waters in Sacramento, petitioners' counsel recommended to the Alliance that they conceptually agree to the

terms of the settlement.

Once the concept of a settlement was accepted, then the many details involved in finalizing a settlement had to be addressed. The Trust for Public Lands ("TPL") was brought in to do the transaction, in the state's stead, because the state could not commit itself in the time required. Indeed, the state arguably could not acquire contaminated property and the site had not yet been remediated.

Just days before the Superior Court hearing, the parties finally concluded negotiations on the settlement agreement. In the key component of the settlement, the developer granted to the Trust for Public Land ("TPL") the right to acquire the property by September 2001. Further, as part of the settlement, the developer agreed to assist TPL and petitioners to secure the public funding and not take any actions to oppose public funding for the acquisition. The parties agreed to enter into a stipulation to stay the litigation, until November 30, 2001. In the event TPL acquired the Property during the stay period, petitioners agreed to dismiss the litigation with prejudice. If TPL did not acquire the Property during the stay period, petitioners were obligated to dismiss the litigation with prejudice. However, in the event that the developer took certain prohibited actions, such as opposing public funding, then petitioners would not be obligated to dismiss the litigation and the litigation could proceed.

The developer had the right under the settlement to continue to seek additional approvals for the project from the City and other governmental agencies, and in the event that TPL failed to complete the acquisition of the Property, petitioners agreed to not oppose the development of the project. At the very end of 2001, TPL was successful in efforts to both acquire the Cornfield property from Majestic and convey it to the State of California.

## **THE TAYLOR YARD TRANSACTION**

Like the Cornfield, litigation was filed by FoLAR and others challenging a mitigated negative declaration adopted by the City. A key difference is that settlement did not occur prior to the hearing on the merits at which FoLAR prevailed in Superior Court.

Having followed the events at the Cornfield, the Taylor Yard developer then turned to Latham & Watkins to explore potential resolution of the matter. With state funding already earmarked for park acquisition at Taylor Yard, and with little incentive for petitioners to negotiate, the developer soon was faced with a lengthy process of appeal or seeking new entitlements which would still be vigorously opposed by FoLAR. The

developer, therefore, focused its attention on direct discussions with the state for potential disposition of the property. With a realization by all sides that timing was a critical factor, the state acquired 30 acres of the site from Lennar in December 2001 and soon followed with acquisition of the additional 10 acres directly from Union Pacific.

## **LESSONS LEARNED**

The Alliance and the Coalition wanted an opportunity to create a very different vision for the Cornfield and Taylor Yard. While CEQA litigation could require the preparation of an environmental impact report, it could not assure the sites would be acquired and developed for public use. The Cornfield developer believed that the petitioners would not stop the series of challenges to the project even if petitioners lost in Superior Court. Therefore, in the settlement each side gave the other party something that only it could give—something that could not be achieved even in the event of success in the litigation. The Cornfield developer gave an option for land acquisition. If the acquisition did not occur, petitioners gave something that the developer wanted--certainty that it could then go forward with the project free of further opposition or challenge from petitioners.

The obvious comparison of the Cornfield and Taylor Yard situations relates to timing. In the case of the Cornfield, settlement on the eve of trial created a circumstance where both sides had something to give and had risk. With Taylor Yard, the leverage had shifted to petitioners by the time serious consideration was given to a potential disposition of the property, and the State funding already was available.

These two efforts to resolve ongoing litigation and disputes achieved long term resolution with some degree of satisfaction on all sides. Now protected as parks, the Cornfield and Taylor Yard may present models for others. Taylor Yard appears to be the more traditional approach to these disputes with the resolution occurring due to long term planning for park acquisition and no movement toward settlement until after litigation. In the case of the Cornfield, settlement with the winner take all approach prior to a hearing on the merits could serve as a way of bringing an early end to land use disputes. Without doubt, fortunate circumstance of adequate public funding made these outcomes possible.

Jan Chatten-Brown, of Chatten-Brown & Associates, was lead counsel for the petitioners in both the Cornfield and Taylor Yard cases. William F. Delvac, of Latham & Watkins, represented Majestic Realty throughout the administrative and litigation process, and first posed the settlement approach ultimately adopted, with some variation. He represented Lennar

Partners in the settlement only after the litigation resulted in the requirement for an EIR at Taylor Yard.

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