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Environmental Politics

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Bernard J. Frieden

Several studies have analyzed the effects of environmental regulation on housing costs, but they have all been incomplete for several reasons. First, most of them have tried to isolate environmental regulations from the total regulatory process, and as a result have reached narrowly based conclusions. It is important to see environmental reviews as part of a much larger process of public regulation. Second, most of these studies have focused on the cost of delay resulting from environmental regulations. This is only one of many costs, however, and others are more important.

A third point to consider is that environmentalists have allies, and they rarely work alone. When they do work alone, they very seldom win. To understand why so many developments are blocked it is important to know who the critics and opponents of development are. Even though many of them may march under the environmentalist banner, they are a loose coalition. People oppose development for different reasons. To label all protest environmentalism is a mistake.

Three different case studies in northern California illustrate these points. The subjects of these case studies have been chosen from a group of large residential developments that either have been held up for a long time or blocked as a result of political controversy. There is no shortage of such developments in northern California—the region is becoming a graveyard of large development proposals.

Making Moderate Cost Housing into Estate Lots/Case Study One

Two of the developments studied are just across the bay from San Francisco, with views of the water and close proximity to the Oakland Bay Bridge. The first is in Alameda County in the foothills of Oakland. Planning began in June 1971 for a parcel of 700 acres —the last remaining large piece of open space in private hands in the city. The developer proposed to build 2,200 housing units, about one-half single-family units and one-half apartments. Most of the land (480 acres) was going to remain in open space and parks. The developer decided to either dedicate a park to the city or let the homeowner association manage it. He planned to cluster most of the apartments around a local retail center and also to reserve an 8-acre school site. This development proposal would have involved considerable leveling, cutting, and filling of open land in the foothills, and it also would have mandated construction of a four-lane street through the area.

Neighborhood opponents of the proposal organized very quickly, and the San Francisco chapter of the Sierra Club began to oppose it as well. The main arguments against it were that it would destroy the last large open space left in the city that was still in private ownership, ruin a pleasant view for people who lived nearby, impose heavy school costs which the city could not afford and which the tax returns from the development would not cover, and destroy wildlife in the area. Studies by the city of Oakland found that although the project would bring net tax benefits to the city government, it would bring losses to the local school district. A bond issue would be required to finance the needed new schools.

The first phase of consideration for this proposal led to city approval. The planning commission and the city council held public hearings. Controversy surfaced, but despite the opposition the planning commission approved the developer's application for a planned unit development. The Oakland city council moved first to help offset the school costs, and then they too approved the planned unit development application in the fall of 1972, about a year and a half after the developer made his first proposal.

In the second phase, opponents of the proposal turned to the courts. Immediately after city council approval, the neighborhood opponents and the Sierra Club brought a law suit against the city and against the developer asking for the approval to be rescinded on the grounds that the city had not complied with the California Environmental Quality Act and also had not complied with a provision of its own planning code that called for a specific city council finding that the residents would be adequately served by new or existing facilities. In June 1973, the court ruled against the city council's action. It was not clear at the time prior to the council's action whether the California Environmental Quality Act applied to private developments, and the California Supreme Court had ruled only about a month before the city council action that it did. There were belated attempts to draft an environmental impact review, but they were hasty, and they showed the signs of haste. Although the court ruled against the city, the development was still alive provided that the various processes were complied with. As the developer continued his negotiations, particularly over school costs, he decided to offer a school site with improvements to the school district. A month after he made that offer, opponents started another lawsuit to prevent the dedication of a school site without a public hearing. It became clear that opponents were turning to the courts in their search for every possible opening that might block the project.

The third phase was one that can come up in many development proposals under the category of unforeseen events. The developer had spent a great deal of time negotiating with the school superintendent over how to solve the school problem. In November 1973 the school superintendent was assassinated. Negotiations with the school department were suspended, and things went back almost to square one.

The developer started work on an environmental impact review and also began to restudy his plan to see if he could make it more acceptable to its opponents. He considered cutting the density in half, but he found that he would still have to do so much cutting and filling that the project would lose its economic feasibility. The developer finally realized that he would have to make drastic changes in his plan to placate the opposition. In place of the original 2,200 units, he devised a new plan in 1976 to sell 100 estate lots and to build from 150 to 200 single-family houses on the remainder for a total of 250 to 300 units in comparison to the original 2,200. The four-lane road was no longer necessary, and the developer had reduced the amount of cutting and filling. This plan was presented as an informal proposal to city officials who then discussed it with Sierra Club and neighborhood opponents. They brought back the word that the opponents would not fight the new proposal.

What had the opponents achieved? They prevented grading and earth moving from spoiling their view. They preserved open space, but only to look at not to use. The city park was eliminated, and community open space was no longer provided. The 480 acres of open space originally proposed had been converted into larger lots for the people who would buy or build houses. An analysis of the compromises the developer made and the resulting price changes is revealing. The 1972 plan called for 2,200 units, with the single-family attached houses to be sold for about $33,000, and the apartments for about $24,000. The 1976 plan offered 100 lots for estate homes. The lots alone will cost more than the houses themselves would have originally—from $35,000 to $75,000. In all probability, families paying that much for a lot will put on it a house worth at least $100,000. What housing remained in the plan consisted of 150-200 single-family houses, ranging in price from $40,000 to $60,000. The ultimate result was a deep cut in the number of units—to about one-tenth the original housing—combined with an increase to three times the original price on the average. What started as middle-income housing emerged as luxury homes.

A few conclusions can be drawn about this particular case. First, the developer and his opponents made compromises at the expense of someone who was not there: the housing consumer. The price impact of these compromises is especially clear. One can also conclude that small groups of opponents can be very effective. They have many channels for slowing or stopping development even when local government gives its approval, as it did in this case.

On the basis of this experience and others which are similar, it appears that the solution so many people in growth management propose—providing needed housing by in-fill development of passed-over sites—is one of the most difficult solutions of all. Mayor Wilson of San Diego, as well as other local officials, contends that the way to save tax dollars on public services and facilities is to build in-fill developments rather than to urbanize outlying land. Passed-over sites such as this one, however, are often very difficult to build on; further, there are a great many neighbors around who object to new housing. Although in-fill housing development may make very good sense environmentally, politically it is so troublesome that in many cases it becomes impossible.

Everyone Learns Blocking Tactics/Case Study Two

The second case study, on the shoreline of the East Bay across from San Francisco, can be cited to argue that the fastest growing sector of the housing industry is the legal sector. The original heavy investment for this development was made between 1965 and 1968 when the developer spent a substantial sum for a landfill operation and dike construction to prepare his site for development. At that time he proposed building 11,000 housing units, but this provoked a local controversy and he withdrew the plan. The current plan and the current controversy began in 1972 when a new subsidiary of the former owner came forward with a plan to build about 9,000 housing units, mostly condominium apartments, in addition to neighborhood stores, offices, and an industrial park on the 900-acre site. The developer planned an extensive open-space lagoon and marina system and many local amenities. The housing was in the moderate-income range of the low $20,000s to the high $30,000s per unit.

The unforeseen event in this case arose immediately after the developer made his proposal. He and many others had counted on the fact that a second bay bridge was going to be built, and had it been built it would have provided direct access from the site to downtown San Francisco. But the bridge itself became controversial and was put on a referendum, which the voters turned down in 1972. As a result, one of the key public works assumptions behind the plan was suddenly negated.

The developer nevertheless went ahead trying to get approval for his proposal. In the summer of 1972 the planning commission held a series of public hearings—all very well attended and all controversial because there was much opposition. The main issues were high density (the proposed population was equal to about a quarter of the city's entire population at that time) and the additional traffic that would be generated, which would have to use existing old bridges and pass over several bottlenecks between the site and the mainland. This was of particular concern since the second bay bridge was no longer a reality. There was also slight concern over the question of airport noise because the site was not too far from Oakland airport.

The planning commission agreed to the proposal but only after reducing the permitted density. The local government was moving toward formal approval, when voters entered the picture directly. Opponents of the proposal got an item on the ballot in March 1973 prohibiting all further construction of multifamily housing in the city, which won a majority vote. The developer withdrew his request for rezoning and went back to restudy his plan. About 6 months later he came in with a new plan, this time for about 5,000 units of single-family housing with a few duplexes. The price levels per unit began to rise.

In this second phase, when it appeared that the developer was in the process of compromising his differences with the city government, officials of nearby Oakland airport emerged as new and formidable opponents. At issue was the possibility of future complaints about airplane noise over the site. Although other housing already existed closer to the airport and any airplane noise was likely to be within normally accepted limits, airport staff apparently were concerned that future residents would nevertheless complain about noise and might even try to interfere with airport operation. The developer hired an aeronautical consultant to review Oakland airport's plans and studies. The consultant was able to pick holes in these plans, because they were based on very optimistic assumptions about how much air traffic Oakland airport would have in the future and very pessimistic assumptions about how long it would take to retire the older and noisier jet planes before the newer and quieter ones came in.

The developer also had an environmental impact review prepared for his new proposal, and that review concluded that airport noise might indeed lead to future complaints. Experience elsewhere had shown that highly educated and well-off people, such as the potential residents of this community, tend to complain more than others about airport noise. In the event of a severe problem, the airport had a potential solution, but at this point regional agencies began to get involved in the controversy. The airport could have avoided the entire noise problem by building a new runway pointing out into the bay so that planes could take off over the water instead of over the land. But the San Francisco area has a special Bay Conservation and Development Commission which regulates landfill operations in the bay, and its mission is to protect the environmental quality of the bay. Commission staff gave notice in advance that they would oppose landfill projects undertaken just for the sake of solving airport noise problems. Airport officials could foresee that this solution to the problem might be denied.

Meanwhile, the developer negotiated with the city council. The council did not give him the rezoning that he wanted, but it did approve a lower density zoning for the first part of his project so he could get started. Another regional agency entered the controversy—the county Airport Land Use Commission. It found the approved zoning "not in the best interest of the airport." This commission's finding required a four-fifths vote of the city council to override, but local government came to the rescue and did override the finding. It now appeared that the developer could proceed.

Airport officials decided to try another approach. The airport brought a lawsuit against the city and against the developer alleging that both the city's general plan and the environmental impact review were inadequate. The case went to trial, and the developer discovered that he might lose. But he also discovered that Oakland airport was in the process of expanding its terminal and that the airport itself was required to file an environmental impact review. The developer started a suit of his own alleging that Oakland airport's environmental impact review was inadequate. In the summer of 1975, the airport won its case, the court finding the city's general plan and the environmental impact review for the development inadequate. A year later the developer won his case—the court also found Oakland airport's environmental impact review to be inadequate and stopped it from proceeding with its terminal expansion.

All of this was leading to a clear, no-exit deadlock with everyone blocking everyone else: the Bay Conservation and Development Commission blocking landfill in the bay, the airport blocking the developer, the developer blocking the airport. The developer prepared a new plan. He cut the density of the project still further, and started work on a new environmental impact review, the third for this project. The development plan called for fewer units at correspondingly higher prices, keeping in line with the zoning of the first stage that the city council had already approved.

In July of 1976 the developer and airport officials announced an agreement to stop the lawsuits, and this conflict appears to be moving towards resolution. Again, however, the pattern of compromise worked against the interests of moderate-income homebuyers. This proposal started with 9,000 units in the price bracket of $21,000 to $37,000. Each time the developer revised his plans, the new price range began at or above the upper range of the sales prices in the previous plan. His first revision started at $38,000 and worked upwards from there. By April 1976 his proposal was for one-third the units he originally had in mind at roughly three times the price.

Several conclusions may be drawn from this case study. First, many agencies can block or reshape housing developments. But it is clear that none of these agencies are concerned with meeting the area's housing needs. The Bay Conservation and Development Commission is concerned with protecting the bay. The county Airport Land Use Commission is concerned with protecting the airport. Local government is concerned with protecting present residents and their interests. A metropolitan council of government played a minor role in this controversy, but it was concerned mainly with the airport and traffic impact. No public agency was noticeably concerned with the need for housing or the interests of consumers.

Second, the environmental impact review process is open to many people including those whose concerns have nothing to do with protection of the environment. Through the review process, Oakland airport could directly challenge the development, which was not even in Oakland. Airport officials were hardly concerned with protecting the environment. In fact, they were the very people who were responsible for noise pollution if there was a pollution issue at all. But this process was open to them, as it was open to the developer to retaliate and create the deadlock. A third conclusion is that technical studies can be very political and far less scientific or objective than most people assume they are. As stated earlier, the developer's consultant, working alone, uncovered very questionable assumptions in a major technical study presented to the public by Oakland airport. And fourth, we see again the same pattern of compromise at the expense of the person who is not there, the housing consumer: reduce the number of units and raise the prices.

Environmental Virtue Doesn't Win/Case Study Three

The third case study concerns a development just south of the city of San Francisco, also on land that had been bypassed earlier. The site was a mountaintop and its nearby foothills. The developer started going through routine regulatory processes in the fall of 1971. Before a developer in California can set up or redraw service districts, a special county commission must review service needs. Also, since the developer wanted to sell some of the land for a county park, he had to deal with the county Park and Recreation Commission. Two years were spent with these more or less routine regulatory actions. The developer presented his major plan in December 1973. It called for 11,000 housing units, mostly apartments, plus an industrial park and some office and retail development. As in the first case, most of the site was to remain in open space, and further, the parent firm of the development subsidiary intended to sell the county an equally large site for a park on top of the mountain.

In January 1974, the developer began to negotiate with county officials, the planning commission primarily. A few months after the talks started, he agreed to eliminate two canyons from the area to be developed on the grounds that these were especially sensitive environmentally. The compromises began. He produced a second plan that reduced the development from 11,000 to about 9,700 units. In September, he prepared a third plan cutting down still further to about 7,700 units, all in an effort to get county approval and to placate opponents. This third plan became the one that was considered at length in the environmental impact review and a long series of public hearings before the planning commission and the county supervisors. The plan was very elaborate: many recreation facilities, a bus system to connect to a nearby transit station, clustered housing, and rents compatible with family incomes of $15,000 to $20,000. The planning commission began its hearings in June 1975. It held 11 public hearings marked by tremendous controversy, big turnouts, and impressive theatrics. Supporters of the development were mainly building trade union members who wanted the jobs it would create. The opponents were mainly residents of nearby blue-collar communities who wanted the site kept open for recreational use, in addition to some environmentalists concerned about wildlife and open space, and some San Franciscans who were afraid that people living in the new development would crowd their bus lines and transit system. Despite all the opposition the planning commission did approve the development, attaching some conditions to it, including that the developer set aside about 1,100 units for subsidized low- and moderate-income housing as subsidies became available.

Starting early in 1976, the county supervisors held their hearings for about 3 months—six hearings equally controversial and dramatic. After the hearings, the supervisors refused to approve the plan as presented. Instead, they voted three to two in favor of a plan that would approve all the development except the one critical area in a saddle section just below the mountaintop where the developer wanted to put most of his housing. Thus, the plan as approved gave him permission to build only about 2,200 units and in effect killed the proposal. The developer later went to court to try to reverse the decision.

The key opposition group of blue-collar and low-income citizens who lived near the site worked with the environmentalists, although some of their spokesmen derided concerns about "bugs and flowers." Instead they wanted to continue using the mountain and foothills for picnics and recreation while also blocking a new group of upper-middle-income people from living in their backyard and changing the character of their community. Although the opposition group was small, it was effective.

The pattern of compromise in this case is also worth noting. The first three stages represent the developer's compromises starting with 11,000 units, down to 9,700, then down to 7,700. The last one for 2,200 units was not a compromise; it was what the county supervisors approved and what gave the developer so little that the development appears dead.

This final case study also suggests environmental merit does not necessarily win many points in a political controversy. By most environmental standards, the plan was very sound. It was an in-fill development; it was close to job centers; it was near transit; it offered a local bus system; it minimized the use of the automobile; it did not threaten the coastline; it did not threaten the bay shore; it did not threaten farmland; it protected the mountaintop; it protected environmentally sensitive canyons; and it clustered the housing. These are all big issues in northern California. If one compares this type of development with its likely alternative, which is small, scattered sprawl-type subdivisions somewhere in the southern part of the county, anyone who is serious about environmentally sound growth management would favor the former. It is clear that environmentalism is only one of many causes of objection. In this case the plan was not killed because it was objectionable environmentally, but for other reasons. Even environmentalists, however, have different and sometimes conflicting objectives. In this case they were much more concerned with preserving open space than they were with getting an environmentally sound type of development in the county.

Another point is that once again there was no forum for weighing the region's housing needs against other considerations. Through all the public hearings, the question of how much housing the region needed got practically no attention. Neither the planning commission nor the board of supervisors made an issue of it. The developer's main allies were building trade unions concerned about jobs; so the issue became jobs versus open space. It never became housing versus open space. The same pattern of compromise existed: cut down to fewer units. In this case, the developer did not announce price revisions, but undoubtedly he would have had to raise the prices as he cut the number of units.

These studies suggest several general conclusions. One is that the housing consumer has no advocate in development controversies. Second is that the developer stands pretty much alone—he has very little legitimacy in political conflicts. His labor allies can help; sometimes they will.

A third conclusion is that the pressures of opponents may well produce developments of lower quality and higher cost. A rational homebuilder response to these pressures would be to avoid large developments because they are the most controversial; avoid in-fill developments because there are neighbors to object; build low density high-cost housing since this is most acceptable both to residents who are concerned about tax impact and to environmentalists who are concerned about open space. Providing community facilities, local parks, open space within a development, public transit, or community services do not help very much in a controversy, and they cost a great deal of money. A rational response would be to return to something like the 1950s style of simply building expensive houses on large lots and keeping each development small. This pattern of housing development would benefit the interests of objecting neighbors and of environmentalists. They would get most of what they want. But housing consumers would pay a very high price for it, and low- and moderate-income families would take a bad beating.

The final question that must be asked is this: Can developers satisfy their critics while still serving a broad market? Put another way, are politics and local housing economics in too great a conflict with each other? Developers may be able to make compromises that will get them political approval in these cases, but how much longer can they make these compromises and continue to sell houses to anyone but the very wealthy?

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In 1975-1976 he held a Guggenheim Fellowship while on leave at the University of California, Berkeley, studying local growth management and national housing needs for a forthcoming book. His most recent book, co-authored with Marshall Kaplan, is **The Politics of Neglect: Urban Aid from Model Cities to Revenue Sharing.**

Dr. Frieden has also been a consultant to government and industry and a member of White House advisory groups in housing and community development.