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Walnut Creek Ruling May Affect Initiatives

A judge's decision to strike down Walnut Creek's Measure H growth-control measure has touched off furious debate over whether the ruling will put a damper on land-use initiatives in the Bay Area.

On Jan. 16, Contra Costa County Superior Court Judge Richard L. Patsey issued a preliminary ruling saying that Measure H, an initiative limiting growth in the city until traffic conditions are improved, was inconsistent with Walnut Creek's general plan and therefore invalid. However, at its Feb. 3 meeting, the Walnut Creek city council voted to appeal Patsey's decision to the Court of Appeal.

Though a Superior Court judge's ruling has no legal jurisdiction over other cases, citizen activists in Walnut Creek and elsewhere in the Bay Area say it will discourage other initiatives from being placed on the ballot. Larry Orman, executive director of People for Open Space, estimates that 25-30% of the ballot measures in Northern California would be declared invalid under the Walnut Creek ruling.

At a meeting in late January, the council instructed the staff to search for alternative courses of action besides an appeal, including steps to bring the initiative's policies into conformance with the general plan. Only two of the five city council members are Measure H supporters.

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Court Battle Near End On L.A. County Plan

After 14 years of litigation, Los Angeles County and a coalition of planning and environmental groups appear to be close to an agreement over how the growth of the county's outlying areas should be managed.

In March and April, the Planning Commission and Board of Supervisors are scheduled to consider a revision of the county's general plan which was prepared under the supervision of L.A. Superior Court Judge Norman Epstein. The new plan calls for a much stronger link between new development proposals and infrastructure needs.

In theory, the new plan is not very different from the 1980 plan, which is being challenged in the suit by the Coalition for Los Angeles County Planning in the Public Interest. The difference, those involved agree, is that the new plan includes a strong implementation system that quantifies infrastructure needs created by new development.

"I think it's an excellent proposal, well suited to the L.A. County philosophy," said James Kushner, a Southwestern University law professor appointed by Epstein as referee in the case. "It has an integration of the control methodology with a market theory."

"On paper, the county plan now is quite excellent," agreed Carlyle Hall, an attorney from the Center for Law in the Public Interest who has represented the plaintiff in the case. "The question is, once the county has it, what are they going to do with it?"

The centerpiece of the new plan is the so-called "Development

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State Aids Localities On Public Real Estate

With local governments around the state getting deeply involved in developing surplus real estate as a means of raising revenue, the state Commerce Department is making a big push to become adviser, information clearinghouse, and, on occasion, silent partner in these "public real estate" projects.

Al Gianini, director of the department's Office of Local Development, has been distributing questionnaires to local governments seeking detailed information on their involvement in real estate development in hopes of building a database of information on this burgeoning topic.

"Everyone's extremely enthusiastic about this project," he said. In fact, he noted, about half of the 150 local governments already contacted have been involved in land development of some sort.

That figure shouldn't be surprising. Cities, counties, and school districts all over the state are beginning to realize the value of their surplus property. Instead of selling it to raise cash, as they would have done in the past, these jurisdictions are leasing the land to private developers and getting a piece of the resulting profits. The resulting yield usually doesn't amount to much money within huge local government budgets, but it is exempt from Gann limits and can serve as a useful deficit-plugger.

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COURT CASES

U.S. Supreme Court May Be Impatient to Decide Zoning Case

The latest "inverse condemnation" case from California led to lively questioning during an hour-long oral argument at the U.S. Supreme Court in mid-January — but lawyers involved in the case are reluctant to predict how the case will turn out.

However, some lawyers who witnessed the court in action did sense that the justices are impatient to resolve the inverse condemnation issue once and for all. *First English Evangelical Lutheran Church v. County of Los Angeles* is the fifth case the court has heard on this issue since 1980.

"It's impossible to figure out how the court is going to vote based on oral arguments," said Gus Bauman, litigation counsel for the National Association of Home Builders. "But my personal feeling is that there is pressure on this court not to duck this a fifth time."

"Inverse condemnation" involves the question of whether a property owner whose land has been "taken" by a restrictive land-use regulation is entitled to damages from the municipality under the Fifth Amendment of the U.S. Constitution.

In 1979, the California Supreme Court ruled that the legal remedy for a regulatory "taking" is invalidation of the regulation, not damages. Since then, the U.S. Supreme Court has grappled with the question in four cases, including three from California, but so far has not resolved it.

First English Evangelical involves L.A. County's prohibition on construction in parts of Tujunga Canyon after severe flooding washed away many buildings, including those belonging to the First English Evangelical Lutheran Church's retreat, during storms in 1978. The prohibition prevented the church from reconstructing the buildings.

The case is one of two important land use cases heard by the court this year. (*CP&DR*, December 1986.)

Michael Berger of Santa Monica, the church's lawyer, said his strategy was to persuade the court to leap over the question of whether a taking occurred to the more controversial issue of damages. And both Berger and Jack R. White, who argued the case for L.A. County, agreed that several justices appeared impatient to do just that.

White said he was surprised that only one justice, Sandra Day O'Connor, seemed interested in the public safety aspects of the case. "Don't you believe local government has a right to regulate for flood control to protect the public?" she asked Berger at one point.

Eyewitnesses paid close attention to the questioning of newly seated Justice Antonin Scalia, a conservative with an intense interest in government regulatory agencies at the federal level. In fact, during questioning Scalia drew an analogy to federal regulation by asking whether a compensation ruling in this case would "leave anything standing between your position and the U.S. government paying compensation every time the FCC or some other agency's regulation is struck down."

The court probably will decide the *First English Evangelical* case shortly before the end of its current term in early July. It is expected to hear *Nollan v. California Coastal Commission*, the other California land-use case on this year's docket, some time in the spring.

First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, U.S. Supreme Court No. 85-1199.

Contacts: Jack R. White, lawyer for county, (213) 620-0460.
Mike Berger, attorney for church, (213) 451-9951.

San Francisco Downtown Transit Fee Upheld by Appellate Court

San Francisco's $5-per-square-foot downtown transit impact fee has been upheld by the First District Court of Appeal, an intermediate appellate court in San Francisco.

Russ Building Partnership, a development company, challenged the fee as an unconstitutional evasion of the Proposition 13 limits on property tax. But in the court opinion, issued in late January, Justice Harry Low compared the transit fee to other development "impact" fees imposed by municipalities around the state.

City supervisors adopted the fee in 1981 as a means of paying for additional downtown transit service, which the city claimed was needed because new office buildings were bringing more commuters into the downtown area. According to city spokesmen, San Francisco has collected $25 million in fees from 69 new building projects and believes it is entitled to collect a total of $79 million from 163 projects.

"Developers have been required to pay for streets, sewers, parks, and lights as a condition for the privilege of developing a particular parcel," Low wrote. "There is little difference between these public improvements and the benefits to the public from the increased transit services paid for by the transit fee."

A lengthy string of California court cases has established a municipality's right to impose development fees, so long as they are used for purposes that are "reasonably related" to the project at hand.

However, Allan Littman of Pillsbury, Madison & Sutro, attorney for Russ Building Partnership, called the fee "an end-run around Proposition 13" and said he plans to petition the Court of Appeal for a rehearing, a necessary step before an appeal to the state Supreme Court is pursued. He said the fee is really a "special tax" under Proposition 13, which would require the approval of two-thirds of the voters.

The court case, which has been going on for several years, featured complex technical wrangling between the two sides over how the amount of the fee was determined and what the actual impact of the new office buildings is on the transit system. However, the appellate court decision appeared to center around the underlying legal issue of the constitutionality of the fee.

Russ Building Partnership v. City and County of San Francisco, A030997, First District Court of Appeal (San Francisco).

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Reagan Library Plans Stir Controversy in Santa Clara County

A proposal to build the Ronald Reagan Presidential Library on the Stanford University campus is running into opposition from environmental groups and other local residents and employees who fear it will disrupt one of the last undeveloped hills in the Palo Alto area.

In fact, public opposition has led the Santa Clara County Planning Commission to schedule a meeting in February to reconsider its tentative approval of the 115,000-square-foot library, which came in December.

The Ronald Reagan Presidential Foundation is planning to build the center on currently undeveloped land, located in an unincorporated area outside Palo Alto, which it plans to lease from Stanford.

But local opponents fear that the library will be an intrusion in the hills; will cause more traffic than surrounding roads can handle; and will constitute more of a tourist attraction than an academic center.

The library's backers expect it will draw 700-1,000 visitors a day.

One condition proposed by staff is a strong round of design review to assure that the building is not an imposing structure but, rather, one that fits sensitively into the hillside. "This is something we intend to push very hard for," said Robert Sturdivant, chief planning officer for the county.

Actually, the planning commission's tentative approval was not a vote on the project itself, but an interpretation of the general plan favorable to the library. Before library plans could proceed, the commission had to determine that it would constitute a "low-intensity use" as called for in the general plan. Eventually, approval of the library site will be linked to county approval of an updated Stanford master plan.

Contact: Robert Sturdivant, Chief Planning Officer, Santa Clara County, (408) 299-2521.

L.A. County

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Monitoring System," or DMS — a computerized method of calculating infrastructure capacity and needs, so that the county will be able to determine where new growth is appropriate and how much developers should be charged for additional infrastructure. (Infrastructure in this case refers not only to sewers and roads but also "social" support services such as schools and libraries.)

"This General Plan is not the domain of planners in a real sense but the domain of service providers," said Principal Deputy County Counsel Charles Moore, who has been working on the case.

It will be used in such areas as Malibu and the Santa Clarita, Antelope, and East San Gabriel valleys — though it is unclear at this point how it will apply to Malibu, where the Coastal Commission recently approved a local coastal plan as the blueprint for development there. (*CP&DR*, January 1987.)

Last year, in an attempt to satisfy Judge Epstein, county supervisors passed an interim development program. But said Kushner, "it didn't have any standards, it didn't cover commercial and industrial growth. The court rejected that, and I was appointed."

Kushner also served as court-appointed referee in the lawsuit against the City of Los Angeles, also brought by Hall, which eventually forced the city to undertake a massive rezoning effort so that zoning would be consistent with the city's general plan.

According to Kushner, the implementation policies worked out since then include:

- The DMS. Through computerized applications, it considers everything already built, how much infrastructure capacity is left, and how much the new proposal will require. "That's a big step to real informed decision-making," Kushner said.

To Hall, this is particularly important because it will bring into the open what he calls the "back-door planning" he claims the county has historically engaged in. "The main thing is to quantify what is going to happen — that there be standards ascertainable and publicly disclosed," he said.

- A requirement that if no infrastructure capacity exists, the developer must pay for additions to the system.
- Access and locational standards to prevent "leapfrog" development. Development cannot occur more than one mile from existing access or infrastructure even if the developer is willing to pay the bill, or more than five miles from existing commercial or employment centers.
- Ultimate residential building caps, which received the most newspaper publicity. "It's a limit, of course, but we're not trying to reduce the development level," said Kushner. "It's a device to make sure that development keeps pace with the plan."

The coalition which filed the suit includes the Sierra Club and other environmental groups, the Malibu Township Council, and several professional planning and design groups. It is chaired by Cal Poly Pomona planning professor Sherman Griselle.

Contacts: James Kushner, Southwestern University School of Law, (213) 738-6700.
Charles Moore, L.A. County, (213) 974-1845.
Carlyle Hall, Center for Law in the Public Interest, (213) 470-3000.

PEOPLE

Anita Landecker is leaving her job as director of the Los Angeles Community Design Center to head California operations for the Local Initiatives Support Corporation, which will move its main West Coast office from San Francisco to Los Angeles.

LISC is a nationwide organization that provides loans to nonprofit groups, such as the Community Design Center, that work on low-income housing and local economic development efforts. Its $100 million budget is raised through local philanthropic contributions, which are matched by the Ford Foundation.

Meanwhile, **Channa Grace** is serving as acting director of the Community Design Center while the organization looks for a new director. Applicants have until Feb. 20 to write: Los Angeles Community Design Center, 634 S. Spring Street, Suite 300, Los Angeles, CA 90014, Attention: Executive Committee. Telephone: (213) 629-2702.

Vincent Muzzi, a leading opponent of San Mateo County's recently enacted coastal initiative, was appointed to the county planning commission over the objections of environmentalists.

Muzzi, a Hillsborough lawyer, comes from a family that owns 2,000 acres of coastal farmland and other property in the county and contributed $40,000 to the campaign opposing Measure A, an initiative protecting coastal land approved by the voters in November.

Muzzi was nominated by Supervisor **Tom Huening**, also an opponent of Measure A, and appointed on a 3-1 vote. A Sierra Club spokesman called the appointment "a slap in the face of the voters," but Huening said he expects Muzzi to uphold Measure A "because it is the law."

ECONOMIC DEVELOPMENT

State May Pick Up Slack in Guaranteeing Small Business Loans

The Los Angeles office of the Small Business Administration and state Sen. Alan Robbins are working on a plan that would bring the state government into the business of guaranteeing SBA loans.

Under a bill being prepared by Robbins' office, the California Small Business Investment Office would be created to issue a mix of tax-exempt and taxable bonds that would be used as a revolving fund of somewhere around $100 million to guarantee the loans.

According to Hawley Smith of the SBA office in L.A., Reagan-era budget cuts have eaten into the federal government's ability to back the loans. He said the agency once backed 90% of the amount of the loan, but that has been dropped to 85% in recent years and could be cut back still further.

"It may be a hindrance in providing funds for small businesses," he said.

Terry Burns, an aide to Robbins, said the federal government has been insuring up to 15% of the small business loans in the country. With budget cuts, she said, "that's likely to be dropping back to 5-10%."

Burns said that the bill was introduced late in the last session of the Legislature but received little attention. This year, she said, it has received a positive response from influential legislators.

Of course, for several years the Reagan Administration tried to do away with the Small Business Administration altogether. However, with the recent appointment of former Sen. James Abdnor to head the agency, its continued existence seems assured, at least for a while.

Contacts: Hawley Smith, SBA Los Angeles, (213) 894-2956.
Terry Burns, Alan Robbins aide, (916) 445-3121.

Exposition Managers Make Plans to Fight for Bed Tax Funds

Since the passage of Proposition 13 eight years ago, California cities have turned to increases in hotel room taxes as an easy source of additional revenue. But now exposition and trade show organizers are out to change that.

The Ohio-based National Association of Exposition Managers (NAEM) has undertaken a national campaign to make sure bed tax is used for visitor-related purposes — visitor's bureaus, construction of convention centers, providing security forces for expositions — rather than placed in a city's general fund. The group is distributing "Early Alert Kits" to exposition managers around the country, providing instructions on how to lobby local governments.

NAEM's strategy centers around proving the overall economic value of conventions and shows to each local community.

According to included in a kit, the national average bed tax is 8.71%,with the range extending from 4% (Honolulu) to 13% (El Paso). Among large California cities, Los Angeles was the highest (11%) and San Diego the lowest (7%).

Contact: Don Walter, Executive Director, NAEM, (216) 562-8255.

Public Real Estate

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Probably the most active local government in the field has been Los Angeles County under James Hankla, who has served as chief administrative officer during the last two years. In fact, the City of Los Angeles recently approved a joint city/county/state proposal to construct (and split the profits on) a private office building across from L.A. City Hall, which will probably be occupied mostly by lawyers.

Also, a number of real estate consultants and big accounting firms are now trying to build part of their business around helping public entities go into the development business. A consulting team led by Deloitte Haskins & Sells, the accounting firm, has recently completed a $250,000 study for Orange County on how to establish a "real estate revenue" program.

Michael Peltz, economic development director in Hayward who formerly worked in the Commerce Department, says the idea for local assistance in the area grew, in part, out of the department's role in administering the small-cities block-grant program. "Some city block grant funds can be used for commercial real estate projects on public property," he said.

Gianini said the Commerce Department's involvement will eventually include four areas:

- The clearinghouse of public development projects around the state, which will include a synopsis and a contact person for each case.
- A quarterly newsletter, *Public Real Estate Digest*, scheduled to make its debut in March.
- Conferences and workshops on topics related to public real estate.
- Assistance on development projects involving state-owned land. Most of the state's land is owned by the Department of General Services and CalTrans, which already has an active program for developing real estate on land near freeways.

"We might fund some of the studies, depending on the property," Gianini said. "We could pay for a sewer line, or assist a business coming in."

Contact: Al Gianini, Office of Local Development, (916) 322-1398.

Consortium of Developers Picked for L.A. Redevelopment Project

A consortium of developers has been awarded "exclusive negotiating rights" on a $300 million mixed-use project in the South Park redevelopment area in downtown Los Angeles.

The selection means that South Park Consortium will have seven months to come up with preliminary plans for the area, which the Community Redevelopment Agency has designated for close to 2,000 residential units, a neighborhood retail center, a museum, a health club, and 775,000 square feet of office space.

The South Park area, located just south of the booming new financial district in downtown L.A., has had a checkered history in the last couple of years. Under a CRA plan now some 15 years old, the area was supposed to be a residential district with a large "Central Park" to complement the expected office growth nearby. However, as time went on, land prices in the area skyrocketed. The only new residential project proved to be a tough sell, and tall office buildings began spouting up nearby.

Finally, CRA called in a team of experts from the Urban Land Institute to reassess the residential/park idea. The ULI panel, however, concluded that a residential district was still possible in South Park.

According to the CRA, the development consortium will have to advance $58 million for the project, which will be put together with $14 million from CRA to purchase the three-block site.

Revived Lawsuit Seeks to Impose Stricter L.A. Air Standards

A lawyer from Santa Monica has reactivated a three-year-old lawsuit seeking to take the Environmental Protection Agency to task for not pushing air quality officials in Los Angeles hard enough to meet federal pollution standards.

A settlement was reached more than a year ago in the suit, filed by Mark Abramowitz, a director of the Coalition for Clean Air. But Abramowitz filed a new brief in the case in late January, telling the *Los Angeles Daily Journal*, "I have determined that EPA has totally failed to comply with the agreements."

The suit had been stayed twice by the Ninth U.S. Circuit Court of Appeals, the intermediate federal appellate court in San Francisco, so the settlement plan could be worked out. In the new brief, Abramowitz is asking the court to order the EPA to reject the South Coast Air Quality Management District's air quality plan and write one of its own instead.

The earlier settlement, known as the Responsible Extra Efforts Program, called for EPA to take a closer look at the efforts made by the AQMP to meet federal air quality standards.

But Abramowitz now says that the South Coast AQMP has not taken all steps possible to alleviate air pollution in the Los Angeles area. In particular, he pointed to the AQMP's rejection in late 1985 of a plan drawn up by the staff to require employers with 700 or more workers to implement ride-sharing programs.

"It sort of seems ludicrous to me that an area can say (that it can't meet the goals) and at the same time can't make a showing that they have done everything possible," Abramowitz told the *Daily Journal*.

Originally, metropolitan areas around the country were supposed to meet federal air quality standards by 1982. Then the deadline was extended five years, to the end of this year, though no one expects Los Angeles to make that deadline, either. The law would allow the EPA to impose a building moratorium on the region if the deadline is missed. The Reagan administration is not expected to be hard on cities such as L.A. that miss the deadline.

In fact, the only threat of such punishment came in the early '80s, when then-EPA chief Anne Gorsuch threatened to come down hard on Southern California if smog inspections were not made mandatory. But that tactic was used only as a means of pressuring Congress to weaken a law that required a cutoff of federal highway aid to dirty-air cities without smog laws.

While acknowledging that L.A. has no chance of meeting the air-quality deadline, Abramowitz said the Responsible Extra Efforts Program "was designed to push as far as we could go." He said it should have led local officials to consider state-of-the-art pollution control programs previously rejected as too stringent or expensive, such as the use of alternative fuels by autos and industry.

Colfax Makes Snow-Closure Point Part of Economic Strategy

How's this for an economic development strategy? The city of Colfax, in Placer County, tried to get CalTrans to relocate the Interstate 80 snow-closure point to its interchange from the Applegate interchange seven miles to the west.

Business leaders in the mountain town said the move would bolster the local economy and provide better service for travelers during snowstorms. But in a way, it's the same old growth/no-growth conflict: The closure point was in Colfax until 1980, when it was moved because local residents complained about resulting congestion.

CalTrans turned Colfax's request down, but the mayor, Bari McDaniel, told the Sacramento Bee that the city's lobbying effort would continue.

BRIEFS

Newspaper real estate reporting was skewered in the January/February issue of *Columbia Journalism Review*, the nation's most prominent journalism magazine. *CJR's* associate editor Mary Ellen Schoonmaker writes that newspapers — and especially their real estate sections — often go soft on developers because more development means higher circulation and because developers are a lucrative source of advertising dollars.

Her targets include real estate sections of *The New York Times* and *L.A. Times*, and she details the advertising boycott Dallas builders imposed on the *Times Herald* (then owned by Times Mirror, the *L.A. Times's* parent company) when that newspaper dared to start a "real" real estate section, as opposed to one that just included advertising. Schoonmaker gives high marks, however, to San Francisco *Examiner* political reporter John Jacobs and urban planning writer Gerald Adams for their series "Inner Circles" on money, politics, and real estate in San Francisco.

The Los Angeles-Long Beach light rail line has led to a legal battle between the Los Angeles County Transportation Commission, which is building the line, and the City of Compton, which lies along the route.

First, Compton filed a complaint with the Public Utilities Commission asking that more environmental studies be done before light rail construction begins in the city. City officials are trying to get LACTC to reroute freight traffic off the light-rail route, which runs through downtown Compton. Subsequently, LACTC, which claims it has resolved as many of the freight problems as it can, filed suit to force Compton to issue permits needed to do the initial construction work in the city.

The first non-sports project proposed for the controversial North Natomas area of Sacramento has been rejected by the city Planning Commission there.

Only a few months after the city finally approved the much-fought-over community plan for the area, Los Angeles-based Centennial Development Fund sought a plan amendment to allow a six-story hotel, six office buildings, and four restaurants on a site now designated for light industrial use. However, on Jan. 8 the Planning Commission rejected the idea by a vote of 5-2.

Centennial has appealed the decision to the City Council, but the council won't be able to rule on the appeal until the city's new General Plan is approved — a process that will take at least six more months.

Planning Director Marty Van Duyn said the city sought an extension from the state Office of Planning and Research on its General Plan revision, at least partly to counter environmentalist lawsuits on the North Natomas plan. However, he added, a condition of the OPR extension was that the city could not consider plan amendments in the interim.

A workshop on urban design for city planning staffs, design professionals, and others interested in the field is scheduled for March 5 at the Pacific Design Center in West Hollywood. Part of the purpose is to lay the groundwork for a network of urban design professionals in Southern California. Tentative lunch speaker is Sam Hall Kaplan, design critic of the *Los Angeles Times*. For more information call Community Development Department, City of West Hollywood, (213) 854-7475.

Walnut Creek

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After that meeting, however, Measure H's supporters began an intense lobbying effort which included letters and the distribution of leaflets advertising council members' home and work telephone numbers.

Then, at its meeting on Feb. 3, the council voted to appeal Judge Patsey's ruling *and* try to remedy the legal defects in the general plan which had led to decision. This latter decision involves two steps: changing the general plan policy statements with which Measure H conflicts, and adopting Measure H as a zoning ordinance. Patsey had interpreted Measure H as a general plan amendment, not a zoning ordinance.

"There's no question about the chilling effect this will have," said Orman, one of the Bay Area's leading advocates of initiatives. "This cries out for an appellate ruling, and my fear is Walnut Creek will do its local political thing instead."

But Dan Curtin of McCutchen Doyle Brown & Enersen, who worked on the case with his colleague Sanford Skaggs, said that the effect is not likely to be that great. "My position is that it does make it a little more hard — but then again anybody writing laws ought to be writing them correctly," said Curtin, who was Walnut Creek city attorney until 1983.

Citizens in Walnut Creek have been among the most active in the state in using the initiative process to impose growth restrictions — and perhaps the first to tie an initiative directly to traffic conditions.

Measure H was passed in November 1985. It imposes a ban on construction within the city unless the levels of service at 75 key intersections in the city do not exceed 85% of capacity. (Some structures, such as small commercial and housing projects, parking garages, hospitals, and schools, are exempt.)

The city council had adopted an "action plan" to integrate Measure H into the city's other planning documents when a lawsuit was filed by Dean Lesher, the outspoken publisher of the Walnut Creek-based Contra Costa *Times*. Curtin, Lesher's lawyer, said the publisher brought the suit because he opposes the measure in principle and because of his eventual plans to expand his publishing plant.

Judge Patsey ruled that the ballot initiative should have been written in the form of a general plan amendment, and that it is inconsistent with 11 overall policies in the general plan, such as the one calling for city policies "to enhance Walnut Creek's subregional position as the administrative and professional office center of Central Contra Costa County."

"It already is one," argued Mark Weinberger, the city's attorney on the case, noting that those objectives were written in the early '70s. "The general plan goal has already been attained."

Weinberger also told the court that Measure H amounts to a general plan amendment even though it was not advertised as one. But Curtin insisted — and the court agreed — that in reality Measure H was a zoning ordinance or measure regulating land use inconsistent with the general plan, not an amendment.

Orman questioned how practical it would be to write an initiative under those circumstances — since ballot measures are often written in dissatisfaction with the city's existing land-use policies.

"Do I have to, as a citizen, rewrite the whole general plan in an initiative?" asked Orman.

Curtin responded by saying that in the Measure H case, the initiative-writers simply should have rewritten the 11 policy statements so they did not conflict with the traffic provisions.

Furthermore, Patsey ruled, this error cannot be fixed simply by amending the general plan to agree with Measure H. He relied on a Court of Appeal ruling, *deBottari v. Norco City Council*, 170 Cal.App.3d 1204 (1985), in which a referendum measure was found to be inconsistent with the general plan. In that case, the court ruled that to amend the general plan after the fact to conform with the referendum would "destroy the general plan as a tool for the comprehensive development of the community as a whole."

Apparently, this means that if the city council in Walnut Creek wishes to avoid an appeal, it must do pretty much what Curtin claims the Measure H people should have done initially — rewrite the general plan's policy objectives first, then include the traffic provisions of Measure H as an amendment.

Lesher Communications v. City of Walnut Creek, Contra Costa Superior Court No. 282,115.

Contacts: Dan Curtin, lawyer for Dean Lesher, (415) 937-8000.
Mark Weinberger, lawyer for Walnut Creek, (415) 552-7272.
Larry Orman, People for Open Space, (415) 543-4291.

Sonoma City Voters Affirm Plans to Construct Shopping Center

By a vote of 55-45%, residents in the City of Sonoma have ratified the city council's approval of a 100,000-square-foot retail development on the outskirts of the wine country community.

Local citizens who oppose the project now say they will take their fight to the Sonoma County Local Area Formation Commission, which must approve the property's annexation to the city.

"The developer decided to go to the city for approval of his project rather than the county because the county would probably be more strict in granting a use permit," said Sonoma attorney Anthony Cermak, one of the opponents.

The Maxwell Village project is expected to generate $180,000 a year in sales tax in Sonoma, a city of 7,000 residents with an annual budget of $3.5 million. It would include a Lucky market, a Payless store, several smaller retail shops, a day-care facility, and a miniature golf course. As part of the project, the developer has agreed to make about $500,000 in traffic improvements.

Opponents placed the issue on the ballot as a referendum on the city council's decision to amend the general plan and "preapprove" a zone change prior to annexation. The site had been designated as multifamily residential.

Contacts: Ed Steinbeck, City of Sonoma Planning Director, (707) 938-3681.
Anthony Cermak, project opponent, (707) 996-6573.

New York Agencies Band Together to Fight Traffic Congestion

Jurisdictions in suburban Boston and Silicon Valley have already teamed to try to solve traffic problems jointly. But now, state and local governments in the New York area have carried the idea one step further: They've formed a regional traffic-control system to speed up coordination on measures to deal with highway congestion there.

Sixteen transportation and law enforcement agencies have joined Transcom, a regional organization that will deal with traffic problems in a 500-square-mile area around New York.

Transcom will set up a control room that will send out detailed reports simultaneously to all 16 agencies about road conditions and accidents. One of the aims of the project is to improve the flow of the 1.7 million commuter vehicles that enter and leave Manhattan each day.

In fact, the new organization is such a big deal that the grand opening drew Federal Highway Administrator Ray A. Barnhart, who predicted Transcom would be "emulated by other states across the country."