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Court Finds No Taking In *First English* Case

Los Angeles County's famous ordinance prohibiting reconstruction of the First English Evangelical Lutheran Church's camp in Tujunga Canyon does not constitute a "taking — of property, the Second District Court of Appeal has ruled.

The appellate court's decision is a continuation of the same *First English* case that provided the basis for the U.S. Supreme Court's landmark "takings" ruling two years ago. In *First English Evangelical Lutheran Church v. County of Los Angeles*, 107 S.Ct. 2378, the Supreme Court ruled that landowners whose property is taken via regulation are entitled to financial compensation. (*CP&DR*, July 1987.)

The court did not rule, however, on the merits of the *First English* case itself. Rather, the justices sent the case back down to the state Court of Appeal, and in late May the appellate court ruled that the county had acted properly. "The ... ordinance in question substantially advanced the pre-eminent state interest in public safety and did not deny all use of its property," wrote Justice Earl Johnson in *First English Evangelical Lutheran Church v. County of Los Angeles*, B003702. He added that the ordinance "only imposed a reasonable moratorium for a reasonable period of time while the (county) conducted a study and determined what uses, if any, *Continued on page 5*

Many Growth Bills Move Forward in Sacramento

The first round of this year's legislative tournament in Sacramento is over, and a surprisingly large number of growth-related bills are still moving forward.

Whether all these bills will add up to meaningful laws by the end of the legislative season in September, however, is another question. One Sacramento observer referred to the barrage of more than 50 growth-management bills as "galloping ad-hoc-ism." Indeed, while legislative activity on the growth front is considerable compared with last year, the dozens of bills moving ahead constitute a hodge-podge. Each deals with a piece of the growth problem, but so far they don't fit together well. (A comprehensive list of growth bills introduced this year was included in the April 1989 issue of *CP&DR*.)

Some lobbyists say that later in the session, if many bills continue to move forward, legislative leaders may try to merge them into a meaningful package of laws. "A lot of people are starting to focus in on growth management and what bills are out there," said Cheryl Patterson of the League of California cities.

For example, some bills require local governments to meet state goals in order to qualify for state funding, while others encourage the locals to get together to find sub-regional solutions to problems. Such approaches, Patterson suggested, might mesh neatly into a comprehensive approach at some point. *Continued on page 8*

Lawndale Sells Interest In Mall for $10 Million

The City of Lawndale, which acquired 20% of a shopping center outside its boundaries as part of an innovative public-private deal five years ago, has sold its interest in the center for $10 million.

Though some city officials were at first "gloomy" at the prospect of selling Lawndale's interest in the Galleria at South Bay, City Attorney David Aleshire, who negotiated the sale, called it a good deal. Forest City Development Co. paid $10 million to relieve itself from two obligations: the balance of an $8-million Urban Develompent Action Grant loan from Lawndale and the city's claim on a 20% share of both net revenue and sale or refinancing proceeds.

Low mall profits and a high developer's fee meant that Lawndale had never received any revenue participation. Furthermore, Aleshire added, the deal permitted Lawndale to trade a high-risk, potentially high-return investment for the cash, which has been placed in more traditional, low-risk investments.

"Public agencies are not supposed to be gambling their portfolio on high-risk investments," Aleshire said. "A developer takes a risk and makes 14% or 16% on his investment. A city makes a conservative investment and makes 8%." *Continued on page 9*

Caltrans Eyes Air-Rights Development on Harbor Freeway

Caltrans is apparently interested in developing property it owns along the Harbor Freeway in downtown Los Angeles — including the air rights to the freeway itself. And agency consultants have hinted at the possibility that other new ramps and interchanges in the City of Los Angeles could be used as bargaining chips unless the L.A. City Planning Department goes along with the Harbor Freeway development plans.

The state transportation agency has decided to try to hook up with the Central City West planning effort and retained a real estate consulting and a planning/expediting firm to help. Caltrans is interested in two options: leasing freeway air rights to developers and developing the 90 acres of unused right-of-way that Caltrans owns immediately west of the freeway.

Like many other public agencies in California, including the Los Angeles County government, Caltrans has aggressively sought to develop its real estate holdings in recent years. (The state legislature has loosened laws permitting both Caltrans and local agencies to act as private developers.) Because state law bans the sale of Caltrans rights-of-way, the agency either leases property to developers (for a percentage of the cash-flow) or actually joint-ventures on development projects. Among other deals, Caltrans has lease agreements with the Hilton Hotel at the Vermont Avenue exit of the Hollywood Freeway in Los Angeles and with the Rusty Pelican Restaurant on the Ventura Freeway in Glendale.

But Caltrans' plans in Center City West may come into conflict with the city of Los Angeles's planning agenda — and, in the view of city Planning Director Ken Topping, with the state's own long-term transportation planning. "They have a tremendous shortage of funds. They need to use their land for revenue purposes," Topping said. But, he added, "Agendas for long-term transportation planning and short-term revenue production can sometimes conflict." In the area of land use, he concluded, "Caltrans is a house divided."

Caltrans officials say the department's official policy strictly separates the transportation planning and land development functions. But agency consultants suggest that a connection could be made between the Harbor Freeway project and the need to construct ramps and interchanges elsewhere in the city. "Caltrans has two roles in the area, the first as developer, the second as provider of freeway services," said Craig Lawson of C.W. Cook & Co., Caltrans' planning firm. And, he added, Caltrans "sees those two roles as linked" — meaning development of valuable land may be a quid pro quo for future freeway construction. In fact, Lawson said, Caltrans said as much in responding to an environmental impact report for a city project in Watts that may require new freeway ramps. (Lawson is a former aide to Mayor Tom Bradley. Caltrans has also agreed to hire the high-powered Roulac Real Estate Consulting Group of Deloitte Haskins + Sells to work on the Harbor Freeway project.)

Development of Center City West is already a sensitive topic at City Hall. Several large investors and developers want to build large-scale projects there, while City Councilwoman Gloria Molina and others are pushing hard for more housing in the area.

The debate between city planning and Caltrans may boil down to zoning. Currently, the Caltrans right-of-way is zoned for "public use" — but that term is sufficiently ambiguous that nobody really knows what the permitting process would be. Specifically, the city must decide whether to require a complete change of zoning or merely ask for a conditional use permit; Caltrans clearly favors the latter.

In response to Lawson's comments, Topping suggests that the agency should look at many sites, not just the Harbor Freeway property. "We see Caltrans as a good neighbor and would like Caltrans to see (its real estate issues) in the context of a broader program. After all, Caltrans has land all over the city." He also said it is difficult for city planning to assess Caltrans's development plans at such an early stage: "We haven't seen a proposal yet."

Contacts: Craig Lawson, Caltrans consultant, (213) 322-8222.
Ken Topping, L.A. City Planning Director, (213) 237-1986.

Morris Newman

Court Ruling, Senate Report Both Favor Coastal Commission

The California Coastal Commission has won two skirmishes in its longstanding battle against Gov. George Deukmejian, who has repeatedly cut its budget and sought to reduce its effectiveness.

First, the state senate's Advisory Commission on Cost Control in State Government called upon the state to provide more funding for the Coastal Commission because approval of local coastal plans around the state is proceeding so slowly. And second, a state appellate court has ruled that the commission's guidelines are exempt from the state Administrative Procedure Act and therefore not subject to review by the Office of Administrative Law.

The senate report called for dramatic changes in the coastal commission's organization, most notably changing its membership from 12 part-time members, appointed at the pleasure of various state officials, to nine full-time members with fixed terms. The suggestion was made in response to what the commission called "the perception among much of the public that the commission has increasingly often been influenced by political considerations."

But the senate report noted several other problems with the coastal commission. Many are related to the commission's budget, which has shrunk by almost half in after-inflation dollars since 1977. "The budget cuts imposed on the commission have not been cost-efficient," the senate report stated.

Problems — and the proposed solutions — include the following:

- *The long-delayed completion of local coastal plans.* The senate report proposed a carrot-and-stick approach, encouraging local governments to prepare the local plans until 1991 (with, for example, increased permitting fees) and penalizing them for dragging their feet — most particularly, by withholding commission staff and financial assistance from local agencies that have not completed the plans by that time.
- *Insufficient manpower for an effective enforcement and monitoring program.* The senate report called on the legislature to provide additional funds for enforcement programs and grant the commission with broader enfocement powers.
- *Inability to implement several programs required by law, in particular the Coastal Resource Information Center.* Again, the senate report suggested additional legislative funding.
- *Lack of long-term planning.* Here the state report called for the staff's workload to be "restructured to allow it to engage in long-term research and planning" in areas ranging from the greenhouse effect to shoreline erosion.
- *The vast reduction in the commission's budget over the last 12 years.* The senate report recommended that the commission's budget be maintained at its current level, adjusted for inflation, and that budget increases be earmarked for specific purposes required by law, such as those identified above.

The lawsuit over the commission's guidelines began with the Pacific Legal Foundation, a property-rights-oriented public-interest law firm that, among other things, won the *Nollan v. California Coastal Commission* case before the U.S. Supreme Court in 1987. PLF requested the Office of Administrative Law to determine whether the coastal commission's guidelines are regulations within the meaning of the Administrative Procedures Act and, therefore, are subject to OAL review. OAL found the guidelines did fall under the procedures act and declared them "invalid and unenforceable"

Continued on page 4

Suburban Counties Losing Williamson Act Land Quickly

Fast-growing counties in Southern California and the Bay Area are losing farmland at a rapid rate, according to the state Department of Conservation's annual Williamson Act status report.

The report found that between 18% and 25% of all Williamson Act farmland in Ventura, San Diego, Contra Costa, and Riverside counties are in "non-renewal," meaning they will be available for development at the end of a 10-year waiting period. In Riverside County, about 6% of all Williamson Act farmland was placed in non-renewal in 1988 alone.

Perhaps most startling, however, was the state's discovery that 164,000 acres of Williamson Act farmland in Kern County is in non-renewal — five times that of any other county. Kern leads the state with 1.8 million acres of land in Williamson Act contracts, or about 11% of the state's total.

The Williamson Act is a state law that provides tax breaks to farmers who agree to keep their land in agricultural production. If a Williamson Act "contract" is not renewed by the landowner, taxes rise gradually over a 10-year period, after which land may be developed. In rare instances, a county may cancel a contract, meaning the land may be developed immediately. In 1988, according to the state report, cancellations accounted for only about 1,500 acres of land statewide.

The state reimburses counties for lands included in Williamson Act contracts, but the reimbursements are far less than the lost tax revenue. The reimbursements range from 40 cents to $8 per acre per year, depending on whether the property is categorized "urban prime" land (for which counties get the highest reimbursement), "other prime" land, and "open space" (for which counties get the lowest reimbursement.

Earlier this year, Glenn County announced plans to withdraw from the Williamson Act program entirely in an attempt to pressure the state legislature into increasing the reimbursement (*CP&DR*, February 1989). About 80% of Glenn County's Williamson Act land is categorized as open space. The likelihood of increased reimbursements has grown recently because of the state budget surplus.

Overall, the Department of Conservation reported, more than 16 million acres of California farmland were held in Williamson Act contracts. Of that figure, some 500,000 acres — about 3.4% — were in the non-renewal process. In 1988 alone, about 100,000 acres entered the non-renewal process, although about a third of those acres involve Plumas County lands being transferred to a Timber Protection Zone.

As might be expected, considerable activity is occurring on the urban fringes in Southern California. Aside from Plumas County, the greatest non-renewal activity is occurred in Riverside, Ventura, and San Diego counties, each with between 24,000 and 30,000 acres in non-renewal. In addition, Contra Costa County has about 18,000 acres in non-renewal — about 22% of the county's total.

But the expanding urban fringe is also taking its toll on traditionally rural areas throughout the state. Other counties with more than 20,000 acres in non-renewal include San Luis Obispo, on the Central Coast; Placer, which is feeling growth pressure from Sacramento; and San Benito, which is feeling growth pressure from San Jose.

Here are some other highlights from the Department of Conservation report:

- Three Central Valley farming giants — Kern, Fresno, and Tulare counties — together account for almost 30% of all Williamson Act lands in the state.
- Tulare and San Joaquin counties have the most Williamson Act land classified as "urban prime," with more than 100,000 acres each.
- Fresno County has the most "other prime" land — more than 1 million acres.
- Kern County has the most Williamson Act land classified as "open space" land, about 760,000 acres.
- Conservation-minded Santa Cruz County has one of the lowest Williamson Act totals in the state, only 12,148 acres. And some of the state's most rural counties have the least land in Williamson Act contracts. Some examples: Nevada County, 5,216 acres; Trinity County, 21,288 acres; Sierra County, 33,036 acres.

Most Acreage in Non-Renewal

	Acres	% of County Total
1. Kern	164,384	9.1
2. Plumas	32,846	39.5
3. San Diego	32,399	19.4
4. Ventura	31,201	18.3
5. Riverside	24,659	25.5

Note: Plumas acreage being transferred to Timber Protection Zone.

Most Acreage Added to Non-Renewal, 1988

	Acres	% of County Total
1. Riverside	6,086	6.3
2. Ventura	5,596	3.3
3. Mendocino	4,778	1.0
4. Santa Barbara	4,568	0.8
5. Madera	4,505	0.8

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COURT CASES

No Taking in *First English* Case, Appellate Court Rules

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were compatible with public safety."

Michael Berger, the church's lawyer, argued unsuccessfully that the case should be sent back to superior court for a trial on its merits. After reading the decision, he vowed to appeal the case to the California Supreme Court. "They have decided four factual issues on which they have no evidence," Berger said. "There was no trial. I don't understand how you can decide any of those issues without evidence."

L.A. County lawyer Charles J. Moore, a land-use specialist, said the opinion "is perfectly consistent with the opinions filed in other federal and state appellate courts since *First English*. Generally they are in favor of cities and counties who are attempting to regulate land use in the public interest." The appellate court's unanimous ruling was a vindication of the county's argument that the church failed to state a valid cause of action.

It took a decade of litigation for the First English church to get any kind of decision out of a California court. The case began in 1978, when a Tujunga Canyon flood — which occurred partly because fires denuded the area the previous year — washed away the church's retreat. The county Board of Supervisors imposed a building moratorium — first temporary, later permanent — which prevented the church from reconstructing the buildings.

The church sued for damages, but a trial court judge in Los Angeles refused to allow a trial because of California's so-called *Agins* rule. In *Agins v. City of Tiburon*, 24 Cal.3d 266 (1979), the California Supreme Court ruled that a landowner could not claim financial compensation for a taking via regulation because, if the regulation was overly restrictive, it should be invalidated by the courts.

In the next eight years, the U.S. Supreme Court grappled with the question in five different cases, all but one of them from California. Four times, the courts found that administrative remedies had not been exhausted. In the *First English* case, however, the Supreme Court overturned the *Agins* rule.

BRIEFS

Indian Wells Subdivision Must Wait, Court Rules

The City of Indian Wells is properly prohibited from issuing any land-use approvals until its general plan is brought into compliance with state law, an appellate court has ruled.

In *Committee for Responsible Planning v. City of Indian Wells*, the Fourth District Court of Appeal ruled that a trial judge was correct in refusing to permit a 29-home subdivision to move forward while the city was under court order to correct its general plan.

This particular case evolved from a lawsuit filed by the Committee for Responsible Planning challenging the validity of the Indian Wells general plan. Riverside County Superior Curt Judge Noah Ned Jamin found, among other things, "a complete absence of discussion of provision of moderate- or low-income housing," as well as inconsistencies among the different elements and no discussion of "new housing needs or employment pattern ... which is required by statute."

Jamin ordered that the plan be corrected and prohibited any land-use approvals in the interim, though he left open the possibility of exemptions for projects that would not impair the city's ability to adopt an adequate general plan and, in particular, an adequate housing element.

Subsequently, Monte Sereno Estates received subdivision map act approval from the city for a 29-home subdivision, contingent on Jamin's approval. When Jamin would not permit the subdivision to go forward, Monte Sereno appealed the case.

Writing for a three-judge panel of the Fourth District, Justice Howard Dabney concluded that the Committee for Responsible Planning's expert witnesses had a stronger case than the developer's expert witnesses. The city's expert witnesses had stated that the Monte Sereno project, in combination with the massive Sunterra resort project also approved by the city, "may foreclose important land use options in the future."

The full text of Committee for Responsible Planning v. City of Indian Wells, E006027, appeared in the Los Angeles Daily Journal Daily Appellate Report on April 25 beginning on page 5267.

High School Stadium Lighting Exempt From City Zoning

Stadium lights at Santa Cruz High School serve an educational purpose and therefore are exempt from city zoning regulations, the Sixth District Court of Appeal has ruled.

Santa Cruz city officials insisted that a permit for new lights was necessary just one day before the school district was scheduled to install them. A permit was approved but later revoked by the city zoning board after neighbors complained; the city council later affirmed the zoning board's ruling and ordered that the four new 90-foot lighting poles be replaced with six 60-foot poles. Later, a request for 74-foot poles was rejected. Subsequently, the city school board voted to exempt the lighting project from the city zoning ordinance. Government Code section 53094 permits such exemptions so long as they are not applied to "non-classroom facilities."

In court, the debate centered around whether the stadium was a classroom facility or not. Santa Cruz County Superior Court Judge William Kelsay ruled in favor of the school district and, in a 3-0 ruling, the Court of Appeal affirmed his decision.

In the opinion, Justice Walter Capaccioli wrote: "In our view ... Memorial Field serves an important educational purpose at Santa Cruz High and is directly used for student instruction.

"Although the particular sort of instruction, especially evening interscholastic athletic competition, may appear to be an extracurricular activity," he added, the state Supreme Court in a different case had ruled that such activities "are an integral and vital part of our educational program and that they are 'educational' within the free education guaranteed by the California Constitution".

The full text of City of Santa Cruz v. Santa Cruz Schools Board of Education, No. H003515, appeared in the Los Angeles Daily Journal Daily Appellate Report on May 5, beginning on page 5835.

COURT CASES

School Closing May Be Subject to CEQA, Appellate Court Rules

A Palos Verdes school district was wrong to assume that the closing of a high school is exempt from the California Environmental Quality Act, a state appellate court has ruled.

The Second District Court of Appeal in Los Angeles affirmed a trial judge's ruling that the Palos Verdes Peninsula Unified School District should have conducted a preliminary study under CEQA when it decided to close Miraleste High School in 1987. "(I)t is clear that the School Board and superintendent were aware of numerous impacts on the environment attendant on the closing of Miraleste and transfer of students, yet did not undertake further study and analysis of those impacts to determine if they would result in *significant* effects on the environment," wrote Justice Mildred Lillie in *East Peninsula Education Council Inc. v. Palos Verdes Peninsula Unified School District.*

The decision to close Miraleste came after a dozen years of declining enrollment that left the school district with half the student population it had enjoyed in the early 1970s. In making the decision, the school board made a finding that the closing of the high school would "require only minor physical changes to the receptor schools," meaning the action was exempt from CEQA under Section 15314 of the CEQA guidelines.

Los Angeles Superior Court Judge Miriam Vogel declared the school board's action declared null and void and ordered the school district to suspend the closing of Miraleste until the environmental effects of the closure was examined. On appeal, the Court of Appeal agreed.

The appellate ruling turned in part on a law (section 21080.18 of the Public Resources Code), passed in 1984 and amended in 1986, that exempts school closings from CEQA. The 1986 amendment extended the exemption to include transfers of students to different schools, but only in cases where "the physical changes involved are already categorically exempt." The appellate court ruled that before school officials can declare the closing of Miraleste exempt from CEQA, they must determine whether the proposal has environmental effects.

School officials argued that such a requirement, in essence, forces them to put the "cart before the horse." CEQA requires a three-step process: first, local government determines whether an action is subject to CEQA; then an initial study is conducted to determine whether significant environmental effects are likely to arise; and, finally, if so, an environmental impact report must be prepared. In essence, the school district argued, the courts were requiring an initial study before a determination of exemption had been made.

But the appellate court called this argument merely "superficially appealing" and rejected it, saying evidence of significant environmental effects were already on the record. "The public hearings are replete with references to the already overcrowded streets, the high accident rate on some of the major streets on the Peninsula, and to a parking problem at all three of the high schools, to which a large number of students drive or are driven."

Further, in her opinion for the court, Justice Lillie addressed the cart-before-the-horse issue directly: "We recognize that our interpretation of section 21080.18 leads to a situation where the amount of analysis and study involved at the preliminary review stage of determination of whether a project is exempt from CEQA may be similar to that involved at the *second* stage, where the agency conducts an initial study.... However, such result is mandated by the statutory language and does not appear to be repugnant to legislative policy."

The full text of East Peninsula Education Council Inc v. Palos Verdes Peninsula School District, No. B035414, appeared in the Los Angeles Daily Journal Daily Appellate Report on May 9, beginning on page 5931.

Court Says S.F. May Deny Permit for Single-Family Homes

A state appellate court has ruled that the City of San Francisco has the power to reject a proposed single-family house, even though it meets city zoning ordinances and building laws.

In *Guinnane v. City and County of San Francisco*, the First District Court of Appeal concluded that San Francisco's municipal code properly empowers both the Planning Commission and the Board of Permit Appeals to conduct "discretionary review."

The case involved a request by Roy Guinnane to build a four-story, 6,000-square-foot house in the Edgehill Woods area. In 1986, the Planning Commission rejected the application, relying on its own discretionary review powers, which it had specifically extended to the Edgehill Woods four years before.

In ruling for the city, the appellate court dug into San Francisco's municipal code. "Plaintiff's compliance with the zoning laws and building codes did not entitle him to a building permit as a matter of course," wrote Justice John T. Racanelli for a unanimous three-judge panel. "The city, acting through the Planning Commission and the Board of Permit Appeals, was empowered to exercise discretionary review and to determine that the proposed residential development was unsuitable for the indicated location."

The full text of Guinnane v. San Francisco City Planning Commission, No A040760, appeared in the Los Angeles Daily Journal Daily Appellate Report on April 25, beginning on page 5275.

Court Ruling, Senate Report Both Favor Coastal Commission

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until OAL had reviewed them.

However, San Francisco Superior Court Judge Lucy Kelly McCabe granted summary judgment in favor of the coastal commission and the First District Court of Appeal affirmed her judgement.

The Office of Administrative Law argued that the Coastal Act originally exempted the Coastal Commission's guidelines from OAL review temporarily, but only until 1977. Acknowledging that the law is ambiguous, the appellate court relied on a 1982 state Supreme Court case, *Pacific Legal Foundation v. California Coastal Commission*, 33 Cal.3d 158 (1982), and ruled that the OAL does not have jurisdiction over the commission's guidelines.

"Report on the California Coastal Commission," issued by the California State Senate Advisory Commission on Cost Control in State Government, is available from Jason C. Warburg, Senate Office of Research, (916) 445-1727.

The full text of California Coastal Commission v. Office of Administrative Law, A039702, appeared in the Los Angeles Daily Journal Daily Appellate Report on May 19, beginning on page 6451.

Riverside, San Bernardino Again Lead State in Growth

Riverside and San Bernardino counties remained the fastest-growing counties in the state in 1988 — and, in fact, grew at a faster rate than they did in 1987, according to the state Department of Finance's latest figures.

The state's annual estimates show that the two Inland Empire counties added almost 150,000 residents during 1988, for a combined growth rate of 6.7%. As in 1987, Riverside (7.2%) grew faster than San Bernardino (6.4%).

Overall, the state figures showed a nearly identical growth pattern from 1987 to 1988. The state grew by 665,000 residents to about 28.6 million, a growth rate of 2.5%. The five most populous Southern California counties (Riverside, San Bernardino, San Diego, Orange, and Los Angeles) absorbed almost 400,000 new residents, or about 58% of the statewide total. By contrast, the nine Bay Area counties absorbed only about 100,000 residents, or about 15% of the statewide total. All these figures were virtually the same as the 1987 estimates.

Overall, the five Southern California counties contain about 55% of the statewide population, while the Bay Area contains about 21%.

One remarkable trend was the continued rapid growth of San Diego County. Although it is the second-largest county in the state, with a population of more than 2.4 million, San Diego added about 80,000 new residents in 1988, meaning the county's growth rate (3.4%) was higher than the state average. Though some North County cities in San Diego contain growth caps, several cities in that area were among the fastest-growing in the state, including San Marcos, Oceanside, Escondido, and Vista. Similarly, the city of San Diego grew faster than the statewide average (2.7%), even though its population of almost 1.1 million ranks second in the state. In fact, San Diego attracted more new residents in 1988 (about 30,000) than the Nos. 3-10 cities combined.

Losing population for the second year in a row, San Francisco also lost its ranking as the third-largest city in the state to San Jose. A statistical oddity about California cities is that none have populations in the 450,000-700,000 range. It's a long way from No. 4 San Francisco, at 731,000, to No. 5 Long Beach, at 419,000.

No large counties changed rankings, though San Bernardino, which passed Alameda last year to become No. 5, appears about two years away from surpassing Santa Clara for the No. 4 spot. Riverside became the seventh county in the state to surpass the 1 million mark last year, while Sacramento appears poised to cross that line in 1989.

"Population Estimates of California Cities and Counties: January 1, 1988, to January 1, 1989," Report No. 89 E-1, is available from the Department of Finance Demographic Research Unit, (916) 322-4651.

Biggest Cities

City	Population
1. Los Angeles	3,400,500
2. San Diego	1,086,600
3. San Jose	734,400
4. San Francisco	731,700
5. Long Beach	419,800
6. Oakland	356,300
7. Sacramento	339,900
8. Fresno	317,800
9. Anaheim	244,300
10. Santa Ana	237,300

Biggest Counties

County	Population
1. Los Angeles	8,650,300
2. San Diego	2,418,200
3. Orange	2,280,400
4. Santa Clara	1,440,900
5. San Bernardino	1,324,600
6. Alameda	1,252,400
7. Riverside	1,014,800
8. Sacramento	988,300
9. Contra Costa	775,500
10. San Francisco	731,700

Growth Rates Among Populous Counties

(All counties of over 200,000 population)

Growing Faster Than Statewide Average

South	1988	1987
Riverside	7.2%	6.6%
San Bernardino	6.4	6.2
San Diego	3.4	3.5
Ventura	2.4	2.8
Central		
Stanislaus	4.0	4.1
San Luis Obispo	3.6	3.1
Kern	3.0	2.5
Fresno	2.8	3.7
North		
Solano	4.7	3.8
Sonoma	3.2	3.3
Sacramento	2.8	3.4
Santa Cruz	2.5	2.3
Contra Costa	2.7	2.4
Statewide Average	**2.4**	**2.5**

Growing Slower Than Statewide Average

South	1988	1987
Orange	1.8	2.0
Santa Barbara	1.8	1.5
Los Angeles	1.4	1.6
Central		
San Joaquin	2.5	3.2
Tulare	1.9	2.3
Monterey	1.1	1.7
North		
Marin	1.4	0.6
Alameda	1.4	1.9
San Mateo	1.2	1.2
Santa Clara	1.2	1.2
San Francisco	−0.7	−0.1

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Redevelopment Agencies Spend More Money on Housing

Redevelopment agencies stepped up their housing activities considerably in 1988, according to a new report from the Department of Housing and Community Development.

Redevelopment agencies around the state spent more than $164 million on low- and moderate-income housing last year, more than double the figure for 1987, according to HCD's annual report on redevelopment agencies' housing activities. The result was a net increase of more than 5,000 low- and moderate-income units throughout the state.

However, at least $170 million in housing funds is still sitting in redevelopment agency bank accounts waiting to be spent — and HCD warns that these figures may be misleading. For example, the $164 million in expenditures includes a transfer of $44 million from the San Jose Redevelopment Agency to the city housing department, which is now administering redevelopment housing funds. Other inconsistencies in the HCD's reporting forms may have led to other, more minor mis-counting. Thus, the actual amount of redevelopment money available for housing may exceed $200 million.

Redevelopment housing money has been a controversial topic in California for several years because the unspent money has been growing steadily. Most redevelopment agencies around the state are required to set aside 20% of their tax-increment funds for low- and moderate-income housing. However, until recently these cities have not been required to spend the money, leading to growing surpluses.

Last year, the state legislature passed the so-called "use it or lose it" law (AB 4567), requiring redevelopment agencies to spend their low/mod housing funds within five years or turn the money over to the county housing authority. The result, apparently, has been more responsiveness on the part of some redevelopment agencies. (*CP&DR*, March 1989. See also *CP&DR Special Report: Housing and Redevelopment*, February 1988.)

Overall last year, redevelopment agencies registered a net gain of 5,461 low/mod housing units, of which about 80% were low- or very-low-income units. A net gain of about 2,000 market-rate units was also registered.

Though state laws are making it more and more difficult to do, several dozen redevelopment agencies avoided the 20% set-aside last year. Most involved old project areas that are not yet subject to the setaside rule. However, eight redevelopment agencies made findings that there is no need for the agency to assist low/mod housing: Pittsburg, Azusa, Downey, Hawaiian Gardens, Palmdale, Walnut, Tustin, and Redding. Seven other agencies made findings that less than 20% in setaside was sufficient to meet housing need: Downey, Industry, Santa Fe Springs, Walnut, Tustin, Banning, and Thousand Oaks. Some 33 agencies made findings that their communities are making substantial low/mod housing efforts equal in value to the 20% setaside. These cities ranged from Oakland and Long Beach to Pico Rivera and San Dimas. Fourteen of these 33 cities were located in either the San Gabriel Valley or southern L.A. County.

Redevelopment Funds for Housing

Most Funds Available

Agency	Funds
1. Los Angeles City	$26,150,807
2. Brea	14,335,105
3. Pomona	5,820,794
4. Ontario	5,647,482
5. Milpitas	5,008,476
6. Rancho Mirage	4,451,943
7. Huntington Beach	4,024,995
8. Santa Cruz County	3,737,754
9. Orange County	3,421,413
10. Palm Desert	3,415,154
11. Indian Wells	2,952,967
12. Rancho Cucamonga	2,937,019
Statewide Total	$170,222,742

Most Funds Available: Per Capita

Agency	Per Capita
1. Indian Wells	$1,140.1
2. Irwindale	720.42
3. Rancho Mirage	562.75
4. Brea	427.91
5. Palm Desert	175.91
6. Commerce	147.68
7. Lincoln	145.61
8. Coalinga	139.52
9. Milpitas	107.82
10. Montclair	98.56
11. Norco	78.35
12. Colton	61.75
Statewide Average	$ 5.93

Biggest Net Gain in Low-Mod Units (1988)

City	Units
1. Los Angeles City	1,292
2. Paramount	762
3. San Francisco	571
4. San Jose	540
5. Thousand Oaks	335
6. Santa Ana	319
7. Pico Rivera	186
8. National City	170
9. Pittsburg	161
10. Torrance	160
11. Fairfield	139
12. S. San Fran.	125

Statewide Net Gain: 5,461

Biggest Net Loss in Low-Mod Units (1988)

City	Units
1. Inglewood	223
2. Brea	96
3. Bell Gardens	90
4. Lemon Grove	70
5. Long Beach	64
6. Alhambra	36
7. Garden Grove	25
8. Monrovia	25
9. South Gate	23
10. Culver City	21
11. Brentwood	17
12. Fullerton	17

Lawndale Sells 20% Interest in Mall for $10 Million

Continued from page 1

About two years ago, Lawndale was one of several small Southern California cities to lose funds — $1.6 million in Lawndale's case — because of speculative investments. City officials said the loss of those funds was unrelated to Lawndale's decision to sell its interest in the Galleria.

The Galleria project began in 1984, when Lawndale, a tiny city in Los Angeles's South Bay, joined with Forest City Development Co. of Cleveland and approached the federal Department of Housing and Urban development with a novel idea: using a UDAG to finance redevelopment of a shopping center across the city line in Redondo Beach.

Because UDAGs were reserved for depressed cities, Lawndale was one of the few small cities in Southern California eligible for such a grant. But Lawndale had no location for a mall, and the Redondo Beach shopping center site was adjacent to the city limit. Furthermore, Forest City had been involved in many UDAG deals around the country.

So HUD approved the following deal: Lawndale would loan the $8 million to Forest City at 6% over 30 years, while Redondo Beach would float a $5.7 million tax-allocation bond to finance a parking garage. (Redondo Beach also received an Urban Mass Transit Administration grant to build a transit terminal near the mall.) Redondo Beach, of course, would receive substantial sales tax — now totalling between $2.5 million and $3 million per year, according to city officials — and another $1-2 million over 40 years by leasing the parking garage to Forest City. In return for its UDAG, Lawndale would receive loan repayments, which could be recycled for community development work, as well as 20% of all net revenues and 20% of eventual sale or refinancing proceeds.

Lawndale received the loan repayments, but the city never shared the revenue for the mall. Under the deal, Forest City was permitted to service its debt, pay off its operating expenses — and receive a 14% return — before the city got a dime. Vacancy rates have been high at the Galleria, which competes with nearby Del Amo Fashion Center, one of the most profitable malls in the nation.

Expansion and the addition of new department stores could boost revenue. But it also could incur new debt, pushing Lawndale even farther away from profit participation. So Lawndale agreed to take Forest City's offer of $10 million for both its interest in the project and the remaining loan liability.

Aleshire said the city made the best possible deal under the circumstances. The price, he added, was determined by a consultant who combined the market value of Lawndale's $8 million note (it would be considerably below face value, perhaps $5 million to $6 million), projected Galleria rent with 5 percent annual increases, and the city's anticipated participation.

According to Aleshire, the developer largely agreed with the estimates, although Forest City argued that the face value of the $8 million note may have been less than the city claimed. The city asked for $11 million and the developer countered with $9 million before the deal was struck at $10 million.

Aleshire wouldn't comment on the wisdom of the original deal terms, but added, "A deal with goofy language in it, a deal that did not include as much participation as we would have liked, is better than no deal at all."

Initially, he said, there was some disappointment in Lawndale City Hall over the outcome of the UDAG grant and the Galleria. "When we got ready to take this deal back to the council, we were all quite gloomy, as if we hadn't gotten enough money out of it," he said. But today, he added, the city is happy to have $10 million in the bank instead of 20% ownership of a shopping mall and an outstanding low-interest note. The annual interest of between $800,000 and $900,000 will be used for infrastructure and public works. A citizen committee decides which projects are to be built or upgraded.

And, he added, the mall continues to provide benefits to Lawndale residents. Of the 1,200 jobs created by the mall, 44% are filled by city residents. A goal of 50% was set as part of the original deal.

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Morris Newman

BRIEFS

Prop. 13 Under Attack

After 11 years as a sacred cow, Proposition 13 is under attack from both ends of the political spectrum.

On the left, Voter Revolt, which sponsored the Proposition 103 insurance initiative, has launched an initiative campaign to institute a split assessment roll in the state, meaning homeowners would pay lower property taxes while businesses would pay higher taxes.

The "Fair Share Property Tax Act of 1990" would retain the 1% cap on residential assessment but boost the cap for commercial property to 2.2%. In return for the $9-billion-a-year windfall, local governments would be prohibited from imposing development fees.

Meanwhile, a lawsuit that could become the test case in a constitutional challenge to Proposition 13 has been filed in San Diego by Northwest Financial Inc. The U.S. Supreme Court recently opened the door to a possible constitutional challenge in striking down a similar assessment system in West Virginia. (*CP&DR*, March 1989.)

SP to Sell Right-of-Way

Southern Pacific Transportation Co. is offering to sell almost 80 miles of potentially important transit right-of-way in the Los Angeles area — but has set a strict deadline for public agencies to respond.

SP's right-of-way sale includes several important components of the old Red Car lines that could connect to the L.A. area's emerging new transit system. They include 14 miles of former track from the USC area to the beach in Santa Monica which could connect to the Long Beach light-rail line; more than 12 miles from Stanton to Paramount, which could connect with the Century Freeway transit line; and 50 miles from downtown L.A. to San Bernardino.

Officials at the Los Angeles County Transportation Commission, including county Supervisor Pete Schabarum, were said to be enthusiastic about the prospect of acquiring the property, but called its value is hard to assess.

S.F. Hotel Stirs Controversy

The Marriott Hotel rising in downtown San Francisco has stirred controversy and ridicule — and may violate downtown planning guidelines, according to Gerald Adams of the *San Francisco Examiner*.

The 1,500-room hotel, part of the Yerba Buena redevelopment project, is still under construction. But, Adams reported, it has already been called "a high-rise parking meter, a Wurlitzer jukebox, a monstrous glass goiter, Las Vegas glitz, and a giant rectal thermometer."

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Many Growth-Related Bills Advance in Legislature

Continued from page 1

The growth packages introduced by the two local government committee chairs are still pretty much intact — though the Senate chair, Republican Marian Bergeson of Newport Beach, has decided not to pursue one of her key bills. Bergeson chose not to have her committee consider SB 965, which would lay the foundation for a statewide growth policy by laying out policy goals that local plans would have to follow. In Sacramento parlance, SB 965 is now a "two-year bill," meaning it's dead for this year but could be revived next year if the political climate looks better.

The other bills in Bergeson's package cleared their first hurdle, including SB 966 (tying state infrastructure funding to housing elements) and SB 969, which would reorganize the Southern California Association of Governments. This last bill won committee approval after certain amendments limited its scope somewhat; SCAG now supports the bill. Meanwhile, SB 967, which would give funding preference to localities that have adopted traffic mitigation measures and acceptable housing elements, has been held temporarily until the state budget is completed.

Several elements of the broader growth package introduced by Assembly Local Government Chair Dominic Cortese, D-San Jose, also cleared their first committee hurdles, including AB 2200 (sets statewide growth policies), 2201 (requires LAFCOs to consider jobs-housing balance); 2202 (requires input of surrounding jurisdictions in a city's general plan); and 2203 (requires an air quality element in general plans). Cortese decided to hold AB 2206 until next year; the bill would permit local governments to require developers to set aside land for open space before a development project may be approved.

Three bills and two proposed constitutional amendments by Cortese and Bergeson, designed to make it easier for cities and counties to split property and sales tax revenues, are still alive, but they are beginning to diverge. All five bills permit tax-sharing arrangements without a vote. However, Cortese's bills (AB 2204, AB 2205, and ACA 38) have been amended to require a vote if the tax-sharing is associated with an annexation. The League of California Cities dropped opposition to those bills as a result. The Bergeson bills (SB 968 and SCA 19) have not been amended similarly and the League still opposes them.

Here's the status of some other bills of interest:

- Still alive and stirring up considerable interest are SB 1332, by Sen. Robert Presley, D-Riverside, and AB 1512, by Assemblyman Sam Farr, D-Monterey. Though the funding mechanisms differ, both bills would encourage local governments to get together for sub-regional planning efforts.
- Several bills by Senate Housing Committee Chair Leroy Greene, D-Sacramento, are moving forward. These include SB 727, which would require that regional jobs-housing balance be considered in local land-use plans; SB 712, which would require air quality plans to include jobs-housing balance considerations; and SB 713, which would restrict the imposition of conditions on development projects under general plan amendments or zone changes.
- By contrast, legislative proposals by Senator John Seymour, R-Anaheim, haven't fared so well. Still alive is SB 1282, which would require local general plans to include specific reporting requirements relating to affordable housing. Dead, killed, held, or otherwise going nowhere for now are SB 1278, which would make state housing assistance conditional on a valid housing element; SB 1279, requiring local agencies to spend development fees in accordance with their housing elements; and SB 1280, requiring that a city or county planning to reduce its low-income or affordable housing to file an economic impact analysis.
- Meanwhile, Sen. Ed Davis's bill to reform Local Agency Formation Commissions is still alive, but it's been trimmed back in scope. The Republican from the San Fernando Valley represents several new or aspiring cities that have been stymied by the L.A. County LAFCO. The revised bill would require LAFCOs to conduct a financial feasibility study with a longer time horizon, reviewable by the state controller.

Riverside, San Bernardino Again Lead State in Growth

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Fast-Growing Cities of More Than 100,000

Rate	Growth	Population	Rate	Growth	Population
Moreno Valley	10.5%	101,300	Santa Clarita	5.8	115,700
Rancho Cucamonga	9.4	104,700	Vallejo	5.4	103,300
Oceanside	9.1	117,600	Modesto	4.9	152,100

Fast-Growing Smaller Cities

Rate	Growth	Population	Rate	Growth	Population
East Bay			**North L.A. County**		
San Ramon	10.8%	33,800	Palmdale	17.3	45,850
Pleasanton	7.8	52,000	Lancaster	10.3	82,200
Antioch	5.9	57,600	**Sacramento Area**		
			Roseville	10.1	37,900
			Folsom	10.1	25,650
Inland Empire			**San Diego County**		
Victorville	17.6	31,700	San Marcos	28.7	33,85[illegible]
Corona	16.8	61,000	Vista	9.4	61,700
Colton	12.7	37,700	Escondido	6.2	99,000
Fontana	11.5	78,000			

Seattle Voters Slap California-Style Limits on Downtown Growth

Seattle voters have placed limits on downtown development similar to those in downtown San Francisco.

Under Initiative 31, which won 62% of the vote at a special election in early May, construction in downtown Seattle will be limited to 500,000 square feet per year for the next five years and 1 million square feet per year after that. In addition, downtown buildings will be restricted to 450 feet in height. The initiative won a resounding victory even though it was opposed by the downtown business community and most elected officials, including lame-duck Mayor Charles Royer.

The impact of the growth restriction is not likely to be felt immediately, because 6.5 million square feet of downtown space is already in the pipeline and won't be affected by it. When it does take effect, however, it may reduce the size of new office projects, since many new downtown projects are much larger than the new annual cap.

Last fall, the Seattle City Council placed a moratorium on downtown development once Initiative 31 had qualified for the ballot. (*CP&DR*, January 1989.) Now that the measure has passed, the city's task is to devise a method of choosing which developers will get to construct buildings downtown.

The initiative calls for downtown construction to be allocated on a first come, first served basis, or by "any other reasonable means" established by the city Department of Land Use and Construction.

At Royer's instruction, the department is working on an allocation system that would rank proposed buildings based on "a building's design and its enhancement of the character of the cityscape downtown." However, initiative supporter Ted Inkley suggested in the *Seattle Post-Intelligencer* that the allocation method take into account a building's broad impact, including its effect on transportation and housing. The city council is expected to take up the question in June.

Initiative 31's victory came after a bitter campaign in which the downtown business community spent some $200,000, or about 10 times as much as the community activists who sponsored it. Because it was a special election, turnout was a low 23%.

Downtown Seattle now contains about 28 million square feet of office space, and has been adding about 1 million square feet per year.

NATIONAL BRIEFS

Carolina Resort Rejects Growth Curb

Voters in Hilton Head Island, S.C., have soundly defeated a proposal to tie new construction to traffic congestion.

Like many California ordinances, the Hilton Head Island proposal would have prohibited new construction if traffic congestion exceeded certain limits. The proposal was defeated by better than two-to-one; 65% of the voters came to the polls, even though it was a special election.

Hilton Head Island is a 42-square-mile island with 22,000 permanent residents and more than 1 million visitors each year. About 40% of the island's registered voters are retirees.

BRIEFS

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Further, according to Adams' report, the hotel is bulkier than the Downtown Plan would permit; its mirrored windows violate Planning Commission regulations; and its showy design violates the Urban Design Plan's requirement that signature buildings be reserved for civic and religious buildings. However, citizen groups never complained about the project's appearance because they favored the public benefits, particularly the Yerba Buena Gardens recreation/culture facility.

Woo to Reorganize Hollywood Panel

Los Angeles City Councilman Michael Woo will reorganize the often recalcitrant Project Area Committee for the Hollywood redevelopment project.

The L.A. City Council approved a plan on May 23 to permit Woo to eliminate the elected PAC and replace it with a group he would appoint. Dissident members of the current PAC caused Woo a lot of trouble last year by seeking to overturn the Hollywood redevelopment plan, saying the PAC had been improperly formed. After a three-month trial, CRA won the case. (*CP&DR*, August 1988 and February 1989.)

The plan to select a new PAC would seem to leave the CRA open to legal challenge, since the independence of PACs has been a cornerstone of an anti-redevelopment movement in Hollywood and elsewhere in Southern California.

San Diego Says: Stay Away, L.A.

A recent *Los Angeles Times* poll about quality of life in the L.A. area didn't sit too well with the people in San Diego. The *Times* found that half of L.A.'s residents were considering moving out of the area, and San Diego was one of the places they like best.

In response, the *San Diego Union* devoted considerable space to a plan to "keep Angelenos in their place." The *Union*'s ideas included a border checkpoint at Irvine Meadows Amphitheatre, where immigrants would be checked for 12-packs of Evian water, cellular phones with answering machines, glove-compartment Gelato makers, and concealed *Les Miz* ticket stubs.

Suspicious-looking immigrants would be grilled by the border police, who would ask such questions as: "What is the difference between a screenplay, a treatment, and a novelization?" And even if people from L.A. slipped through the checkpoint, they could be discouraged from staying in San Diego by "stress simulations" designed to prove that San Diego is just as stressful as L.A. These simulations would include "well-dressed decoy groups trained to mill around outside restaurants and bars," bad-driver squads, and "fake cameramen and reporters paid to lurk outside our finer hotels and nightclubs."

Roundup

Activists may seek a ballot measure to **control resale prices of all homes in Berkeley**....The Sacramento Housing and Redevelopment Agency has proposed **taking over Mather Air Force Base's housing** once the base closes....Chula Vista and San Diego County jockey for position over control of a proposed **22,000-acre project in Otay Mesa** by Baldwin Co., an Orange County developer....Median home price in "affordable" Sacramento **cracked the $100,000 barrier in March**, a 13.4% increase in one year.