CALIFORNIA PLANNING & DEVELOPMENT REPORT

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## Local Plans Forced To Deal With Schools

School districts around the state are claiming that the 1986 school construction finance package isn't doing the job, and so they have undertaken a two-pronged attack to deal with the question of school overcrowding and construction funds.

First, the schools are attempting — with some success — to use litigation in order to force local governments to address the question of school capacity as part of the planning process. Local governments frequently claim that the '86 school finance law pre-empts their ability to deal with school capacity questions in planning and environmental review — and they may fear that school finance questions will impede their own ability to use special bonding techniques to pay for other infrastructure.

And second, the schools are advancing a proposed amendment to Proposition 13 that would allow local school bonds to be passed with a simple majority vote, rather than a two-thirds vote. The idea has the support of several important players in Sacramento, including Governor Pete Wilson.

The 1986 school construction law, originally known as AB 2926, was designed to provide a state-local solution to the growing problem of school construction finance. The package is best-known in the planning community for authorizing impact fees to be levied by school districts (originally $1.50 per square foot for residential projects and 25 cents *Continued on Page 3*

## Rulings Don't Help Clarify 'Taking' Issues

Four years have passed since the U.S. Supreme Court's landmark opinion in the First English case, which appeared likely to give property owners greater leverage over government agencies. But according to many land-use lawyers, the ruling has not settled the issue of "taking by regulation," but, rather, has merely opened an array of new questions about the topic.

The "taking" issue was one of the most hotly debated land-use law questions of the 1980s. *In First English Evangelical Lutheran Church of Glendale v. County of Los Angeles,* 485 U.S. 304 (1987), the Supreme Court overturned existing California case law and ruled that if a land-use regulation so restrictive that it constitutes a "taking" of property under the Fifth Amendment, then the landowner is entitled to monetary compensation. Previously, California courts had said the remedy for such a taking was invalidation of the ordinance. The case was seen as a boon to property owners who have had a hard time getting projects approved, especially in California. *(CP&DR Special Report: The Supreme Court Rulings,* July 1987.)

On the way to the First English ruling, however, the Supreme Court established a high threshold for ripeness in takings cases. This high threshold has caused many takings cases to be rejected on ripeness issues by both state and federal appellate courts, causing consternation among lawyers who represent property owners.

Beyond the ripeness issue, however, lies the question of exactly when a regulatory taking occurs — and, in particular, whether a regulatory taking can occur *Continued on Page 4*

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# Schools Districts Force Local Plans to Deal With Their Concerns

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per square foot for all others) to raise local funds for school construction. (*CP&DR*, January 1987.) However, the school population has grown so fast that the state has been unable to provide its share of the construction funds, even though voters have approved several bond issues for school construction since 1986.

With a $12 billion budget deficit, it seems unlikely that the state government will provide more funds for school construction. However, the growing need for more schools has prompted serious discussion of the Proposition 13 amendment that would permit school bonds to be approved by only a simple majority, rather than a two-thirds vote. Assemblyman Jack O'Connell, D-Carpinteria, has introduced such a bill for several legislative sessions without result. However, in a recent study called "1991 Capital Outlay and Infrastructure Report," the Wilson Administration expressed support for such a concept, noting that if a simple majority were already permitted, an additional $790 million in local school bonds would have been approved between 1986 and 1990. The Wilson Administration report estimated K-12 construction requirements for the next 10 years at $30 billion and assumed that no new state school bonds will be issued after 1992, leaving the local districts with the responsibility for $6.4 billion in bond issues. "We keep constructing school finance systems that are designed to break down," says Dean Misczynski, consultant with the Senate Office of Research.

But at the local level, the shortage of school finance money has caused considerable friction between schools and local governments, which must compete for bonding capacity to fulfill all infrastructure needs. Besides state funds and impact fees, virtually the only other source of funds for school finance are Mello-Roos bonds, which can raise far more money than the impact fees.

The only problem is that fast-growing counties such as Riverside also count on Mello-Roos bonds to finance other pieces of capital infrastructure, such as roads and sewers. But newly developing land has only a limited bonding capacity. Wall Street's rule of thumb is a 3:1 ratio of debt to land value, and developers say that homebuyers will balk if the annual tax bill exceeds 2% of assessed value (1% normal property tax plus 1% Mello-Roos tax). So the counties and the school districts compete for a limited amount of bonding capacity — and because they control the land-use planning process, counties often win the race. "Schools want to play too," says Ron Pregmon, a facilities planner with the Riverside County schools office. "We have no way of paying for it (school construction) ourselves. Counties have more control over their destinies."

In addition to this competition for bonding capacity, of course, school districts and local governments have a long history of animosity. And as they have gotten into disputes with school districts, local governments have claimed that the school finance law prevents them from dealing with school capacity questions in their planning process. But three appellate courts have ruled against them, mostly recently in the case from Murrieta Valley.

The Murrieta Valley Unified School District sued Riverside County over the way the county handled the school capacity issue in its South West Area Plan (SWAP), a component of the county general plan dealing with 200,000 acres in the fast-growing southwestern portion of the county. The school district alleged that the county had wrongly failed to address the school overcrowding issue in both the SWAP and in the accompanying environmental impact report. Apparently the school district was interested in establishing a Mello-Roos district and/or altering the timing and phasing of projects in the southwest area in order to better accommodate new schools. The county responded by arguing that the state's school finance law pre-empted the county's power to require mitigation measures.

The Fourth District Court of Appeal ruled in favor of the school district. Relying on two previous cases, *Mira Development Co. v. City of San Diego*, 205 Cal.App.3d 1201 (1988), and *William S. Hart Union High School District v. Regional Planning Commission*, 226 Cal.App.3d 1612 (1991), the court ruled that the state school finance law (Government Code section 65995) does not prevent local governments from dealing with school capacity issues — and proposed mitigation measures — either in the area plan or in the EIR. Furthermore, the court faulted the county for not dealing with school capacity issues in the area plan because the plan's own goals call for school development, as well as cooperation between the county and school districts.

In interviews, county officials relied on their legal arguments, saying merely that they believed the state pre-empted their interest in the area. Deputy County Counsel Jay Vickers did not say directly that the county was opposed to a Mello-Roos district to finance schools, but he acknowledged that the county has its own infrastructure plans for that area and "you can't bond for everything." The South West Area Plan lays out needed infrastructure but doesn't specify that Mello-Roos districts will be used.

Because the Hart ruling is already on appeal to the state Supreme Court, laywers involved in the state said the Murrieta Valley ruling probably will increase the pressure on the high court to settle the pre-emption issue.

*The full text of Murrieta Valley Unified School District v. County of Riverside appeared in the Los Angeles Daily Journal Daily Appellate Report on April 2, beginning on page 3648.*

*For more information on the William S. Hart case, see CP&DR, March 1991.*

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## Infrastructure Bill: $54 Billion

California will have to double its current debt load in order to cover necessary capital and infrastructure costs over the next decade, according to a new report from the Department of Finance.

To cover the estimated $54 billion required in new bonds, the voters will have to approve $27 billion in new general-obligation bonds — forcing the state's debt load, as a percentage of the general fund, up from 2% in 1990 to 4.5% by 1997. (From 1984 through 1990, state voters approved $15.7 billion in general-obligation bonds, an unprecedented amount.) About $16.7 billion will come from special fund revenues — the vast majority from Proposition 111 gasoline-tax revenues — and $10.9 billion are expected to come from federal funds, mostly for highway construction.

The Finance Department report identified the following capital needs that would be funded with the $54 billion:

Transportation: $28.4 billion.
Public Safety: $11.3 billion.
Education: $8.8 billion.
Resources: $5.2 billion.
New office buildings: $800 million.



# BRIEFS

## UC Narrows Field to 3 Valley Sites

The University of California has selected three Central Valley sites as finalists for the system's long-anticipated 10th campus.

UC has selected the Lake Yosemite site near Merced and two sites in the Fresno area — Table Mountain in Madera County and the so-called Academy site near Clovis. The three sites were chosen from a list of eight semi-finalists selected last summer.

Just because UC is continuing the selection process does not mean that construction will begin soon. Although the university hopes to open a new campus sometime between 1998 and 2000, the state's severe financial problems may cause delays.

Water availability may be the deciding factor in site selection. UC will now hire hydrologists to examine the water situation at all three sites.

The new campus would be the first UC campus in the San Joaquin Valley. Currently, the only inland UC campuses are located in Davis and Riverside.

## Santa Cruz Loses Historic Designation

The state Office of Historic Preservation has decided to remove downtown Santa Cruz from the National Register of Historic Places.

The decision came more than a year after most of downtown's historic buildings were lost to the Loma Prieta earthquake. Prior to the earthquake, 36 of the downtown district's 54 buildings met the criteria for historic status. Today only 16 of those buildings remain.

In the days after the earthquake, the city, using emergency powers, demolished several historic buildings that were deemed unsafe, including Cooper House, which was considered the most historically significant building in the district. Later, preservationists fought an ultimately unsuccessful battle to save the St. George Hotel, one of downtown's largest structures (*CP&DR*, May 1990).

## No Church in Norwalk Shopping Mall

Saying "a church just doesn't belong in a shopping center," the Norwalk City Council has turned down a request by a Pentecostal Church to hold services in a recently redeveloped mall.

La Senda Antigua Pentecostal Church had already leased space to use for services, but the city planning staff recommended rejection because the church is not "a customary use in a commercial center," and because of potential traffic problems created by the 125-member congregation. The church already uses some leased space for a gift shop and a reading room.

Norwalk's action contrasts sharply with the attitude in emerging suburbs such as Moreno Valley, where a paucity of good church sites has led many congregations into mini-malls, office buildings, and any other available space.

## Pebble Beach Expansion Plan Cut

The new owner of the Pebble Beach Co. proposed construction of 900 homes, but quickly scaled the proposal back to 400 houses in response to public opposition.

Japanese investor Minoru Isutani also backed off of his proposal to turn Pebble Beach's four golf courses into a private club, agreeing to permit some public golf times while giving tee-time priority to members, who are expected to pay at least $500,000 each.

Isutani also reportedly agreed to drop plans for a new hotel and a new club, though he still hopes to build another golf course, which would be Pebble Beach's fifth.

Real estate experts were surprised when Isutani agreed to pay Miller Klutznik Davis & Gray close to $1 billion for the company. But the memberships would raise almost enough to pay off Isutani's $574 million mortgage.

## Pleasanton Wins Boundary Battle

The City of Pleasanton has won a controversial boundary dispute involving 4,000 acres of ridgelands to its west.

The Alameda County Local Agency Formation Commission expanded the city's sphere of influence to include the ridgeland property over the objection of county environmentalists, who believe that Pleasanton will permit development of the property. County agricultural zoning called for one home per 100 acres on the site.

Apparently, Pleasanton wanted the property in its sphere partly because city officials have long been angry about a large mansion that was built ridge that is visible from Pleasanton but is located in the city of Hayward.

## Santa Ana Arena Postponed

Santa Ana's arena project, originally scheduled to open next year, will not be finished until at least 1994, developers have told the city.

The slowdown in schedule might mean that neighboring Anaheim will finish its competing arena first. Anaheim is currently scheduled to finish its arena in 1993.

Developer Tony Guanci told city officials that because of the economic slowdown, sales of luxury suites have not moved as fast as anticipated. Suites are currently selling for $50,000, but would increase substantially if Santa Ana secures a basketball or hockey team.

Meanwhile, Anaheim city officials say they see "no problem" with finishing their arena by next year. The city sold $103 million in bonds in January, and is currently anticipating that work will begin on the arena next June.

## Roundup

**East Palo Alto has lost its third city manager** since December....**Folsom and Roseville consider joining Sacramento's Regional Transit** agency in order to lure light rail....A portion of **San Francisco's last city farm will be turned over to a developer** for affordable housing....Sacramento Community Development Director **Michael Davis leaves to go into private consulting**....Port of Oakland CEO Nolan Gimpel is fired, **stalling negotiations to save the troubled Jack London's Waterfront project.**

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COURT CASES

# Despite '87 Court Cases, 'Taking' Issue Remains Muddled

courts often apply an "and" test. The "and" test means means that if the regulation in question furthers a legitimate governmental purpose is present, a taking won't be found, even if the landowner loses all economically viable use of his land.

Despite Stone's comments, as recently as the ruling in the *Griffin Homes* case last year, the First District Court of Appeal reaffirmed that the test is, in fact, an "or" test. But many lawyers simply don't believe that the California courts — so long deferential to governments on land-use issues — will apply the "or" test. Says Long Beach Equities lawyer Karen Lee, "I do believe there is a reluctance on the part of the California courts to find that there can be a taking when there is a legitimate use of the police power."

Apparently the same is true elsewhere in the country. In two cases this spring, the South Carolina Supreme Court ruled against two beachfront property owners (one of whom had won $1.2 million at trial) who claimed that their property had been taken under the state's strict Beachfront Management Act, designed to protect against erosion on beaches. "Protection against serious public harm justifies strict government regulation of the property, thereby prohibiting the finding that the property has been `taken'," the court wrote in one of the cases, *Beard v. Coastal Council*, ___ SE2d ___. (*CP&DR*, April 1991.)

At the same time, however, the U.S. Claims Court, which hears claims against the federal government, has made it clear that it will grant compensation in takings cases even if a legitimate government interest is being pursued. In fact, the Claims Court has ruled that it is the proper forum for such cases, while cases that challenge governmental legitimacy should be filed in U.S. District Court.

Last summer, Claims Court Judge Loren Smith granted million-dollar damages in two cases brought by property owners who were refused wetlands "fill" permits by the Army Corps of Engineers. In one of the two cases, Smith said "it is not this court's function" to determine whether governmental agencies were acting properly in restricting a Florida quarry operation. Rather, he said, "It is this court's duty to decide which regulatory restrictions require compensation under the Fifth Amendment." *(Loveladies Harbor Inc. v. U.S.*, 21 Cl.Ct. 153, and *Florida Rock Industries v. U.S.*, 21 Cl.Ct. 161. These cases were reported in *CP&DR*, September 1990.)

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## Court of Appeal Reverses Earlier Ruling From Simi Valley

The Ventura panel of the First District Court of Appeal has reversed an earlier ruling in a case from Simi Valley, concluding that Griffin Homes Inc. does not have a cause of action in a lawsuit challenging the city's growth-control ordinance.

Griffin sued Simi Valley after the city removed the homebuilder's projects from the city's building allocation "queue," alleging that that the builder's property had been taken under the Fifth Amendment and that the builder's civil rights had been violated. The builder also claimed its own petition to the court need not fall under the heading of administrative mandamus, since the builder alleged — the hearing at which the city pulled Griffin's projects was not truly an administrative proceeding. Administrative mandamus actions have a much shorter statute of limitations. (The case is *Griffin Homes v. Superior Court*, B047708, filed on April 30. The original ruling was reported in *CP&DR*, December 1990, electronic edition only.)

Griffin originally agreed to provide some $5 million in infrastructure improvements which, the builder acknowledges, were not directly related to the two projects they hoped to build in Simi Valley. However, after the city rejected one project and postponed approval of another, Griffin filed the lawsuit. Griffin's lawyer, Michael Berger, said the company did not believe its property and civil rights had been violated until the projects were bumped.

In October, the appellate court found the takings ruling unripe, but ruled in favor of Griffin in the other two matters. After a rehearing, however, the court issued a new ruling on April 30 that ruled against Griffin on both issues.

In the original ruling, the Ventura panel found, with regard to the civil rights claim, that Griffin "must be afforded the opportunity to present evidence that its property rights were substantially impaired by the city's action." However, in the revised ruling, the court changed its tune. The exactions, the court said, "would be violative of Griffin's rights at the time they were imposed. They would be illegal regardless of whether city subsequently refused to issue allocations. Griffin seemingly went along with these demands and did not cry 'foul' until city refused to promptly issue all of the allocations." Noting the one-year time limit on civil rights claims in property cases, the court found the cause of action to be barred by the statute of limitations.

With regard to the mandamus petition, the court originally ruled that, even though Griffin's projects were subject to an administrative proceeding, Griffin's petition for traditional mandamus was appropriate because "the complaint alleges that the city council acted in an arbitrary and capricious manner when it conducted a public hearing on the allocation grants." However, in the new ruling, the court changed its mind.

"The allocation process is adjudicative in nature as it involves city council's ranking of competing projects based upon consideration of a variety of factors....Although allegedly held in a slipshod manner, the city did conduct an administrative hearing concerning the application to build additional phases. The resolution of Griffin's varied contentions requires that the reviewing court look at the record of this administrative proceeding to determine whether the governmental entity has proceeded in the manner required by law. As such, Griffin's writ petition, in seeking to contest the validity and application of the slow-growth ordinance, must be classified as a sounding in administrative mandate."

Because administrative decisions have a 90-day statute of limitations, and Griffin's lawsuit was not filed for six months, the court ruled that this cause of action cannot proceed.



COURT CASES

# Despite '87 Court Cases, 'Taking' Issue Remains Muddled

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if the regulation in question is used to further a legitimate governmental purpose.

Despite a long series of cases, the Supreme Court has never laid out a clear rule on the question of when a regulatory taking occurs. "You look at all those cases and you see that the Supreme Court has never told us anything more than, `Gosh, we don't know when a taking happens'," says Michael Berger of Los Angeles's Berger & Norton, the victorious lawyer in the First English case.

When the First English case was issued, land-use lawyers concentrated their debate on the percentage of value lost as a result of the regulation — whether a taking occurs if a piece of property has lost 20% of its value, or 50% of its value, and so on. Over the last year, however, a different issue has emerged as the leading question in the field: whether a taking can occur even if the land-use regulation in question serves a legitimate public purpose.

A variety of state and federal courts have dealt with both ripeness and substantive questions in very different ways. However, as the number of California appellate rulings on the takings question grows, so has pressure for the California Supreme Court to take a case that will sort out the issue in the state.

## Ripeness

In two cases that preceded First English — including one from California, *McDonald, Sommer & Frates v. County of Yolo*, 477 U.S. 340 (1986) — the Supreme Court struggled with the vexing question of whether a regulation can ever be truly a "taking" of property, since regulations can be changed at any time. This struggle led to several hurdles landowners must leap before a case is ripe — including making a formal application even if it conflicts with local plans, seeking a variance, and exhausting remedies in state court.

For this reason, most of the takings cases that have made it to the appellate courts since First English have been ruled unripe, especially federal cases before the Ninth U.S. Circuit Court of Appeals in San Francisco. Typical of these cases is *Southern Pacific Transportation Co. v. City of Los Angeles*, 913 F.2d 762 (1990), in which Southern Pacific's taking claim was ruled unripe because, although the railroad opposed a city-initiated zoning of its property, SP officials "filed no meaningful applications for development of the property, for variances, or for any other form of relief before filing this federal complaint."

The Ninth Circuit has allowed taking claims to proceed in two other cases. In *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 911 F.2d 1331 (1990), the Ninth Circuit permitted taking claims to go forward that dealt with an eight-month period in 1983 and '84, during which a virtually complete moratorium on all development was in place in the Lake Tahoe Area. (Other taking claims, dealing with periods during which some development was approved, were ruled unripe.) The Ninth Circuit also permitted a taking claim to go forward in *Del Monte Dunes v. City of Monterey*, a case in which a city council rejected a development plan that had been redrawn to its specifications.

State appellate courts have also found several taking cases unripe, including two legal challenges to Simi Valley's growth control ordinance that might form the basis for an appeal to the California Supreme Court. The ordinance restricts new residential construction to 250 houses per year. In *Griffin Homes v. Superior Court*, the Second District Court of Appeal panel in Ventura found a taking claim unripe because — the court said — it was theoretically possible for Griffin homes to meet its original 1992 deadline for completing two housing tracts totalling 400 homes, even though the city had no allocated any building permits to the company as of 1990. (The court permitted the case to proceed on other grounds, but then reversed that decision after a rehearing. See accompanying story.)

In a new — though unpublished — ruling, the Ventura panel rejected a landowners' taking claim as unripe because the company, which is seeking to develop 250 homes in the Simi Valley area, never applied for annexation to the city, nor did it seek a variance from Ventura County's "Guidelines for Orderly Urban Development."

The company, Long Beach Equities, had difficulty getting either the city or the county to process its request for the project, which would be located in an area that has been designated as an "urban reserve overlay" by the county. Long Beach Equities alleged that both city and county took land-use actions deliberately designed to block the project. But the Ventura panel faulted the company for neither seeking annexation to Simi Valley nor seeking a variance.

In finding the issue unripe, the Ventura panel said that the test for ripeness "is not one of exhaustion of a particular administrative remedy — whether the developer has exhausted all administrative appeals regarding a particular application. The developer must show that it has submitted the appropriate, meaningful applications necessary to proceed with the particular project and that it has received a final rejection of those projects."

Three weeks after the initial ruling, the Court of Appeal granted Long Beach Equities' request to rehear the case. In its petition for rehearing, the company's attorney, Karen Lee, argued, among other things, that the court had wrongly decided some facts in the case and had misinterpreted the land-use designations for the property. Simi Valley, joined by the Attorney General and the League of California Cities, have asked that the case be published. (The unpublished case is *Long Beach Equities v. County of Ventura*, B045047 and B046558, filed on March 15.) Depending on the outcome of the rehearing, the Long Beach Equities case may be a candidate for appeal to the California Supreme Court, which has not ruled in a taking case since the First English ruling.

Landowner lawyers say they are frustrated by the high ripeness threshold. Berger, who has dubbed the situation "the ripeness muddle," puts it this way: "Somehow, a right which is only available to those with the intestinal fortitude and economic staying power to hire counsel and pay them to conduct difficult, protracted litigation loses some of its luster."

## When a Taking Occurs

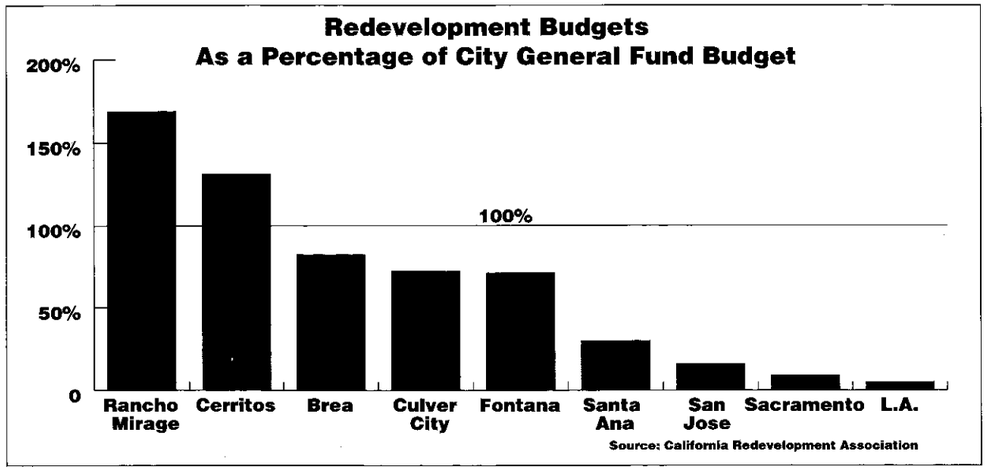
While most taking cases have been kicked out on ripeness grounds, those that have moved forward have run into the vexing question of when a taking occurs. And the most frequent issue in this area deals with the question of governmental legitimacy.

The Supreme Court has not laid down specific rules as to when a taking occurs. However, in *First English* and two other takings cases decided in 1987 (*Nollan v. California Coastal Commission*, 483 U.S. 825, and *Keystone Bituminous Coal Assn. v. De Benedictis*, 480 U.S. 470), the court confirmed that the legal test for a taking has two components: (1) that the regulation does not substantially advance a legitimate governmental interest; and (2) that the landowner is robbed of all economically viable use of his land. The current question is not so much how these two tests are imposed, but, rather, whether both must be present for a taking to occur. In other words, is this two-part test an "and" test or an "or" test?

According to Katherine Stone of Freilich, Stone, Leitner, and Carlyle in Los Angeles, who represents Simi Valley in the two pending cases, the Ninth Circuit usually interprets this test as being an "or" test — either one or the other is enough to create a taking — while state

# BY THE NUMBERS

## Some Redevelopment Budgets Larger Than City Treasuries




The state's most active redevelopment agencies are bigger than — or almost as big as — the cities that operate them, according to a recent survey by the California Redevelopment Association.

For example, Rancho Mirage's redevelopment budget of $20.5 million is 69% higher than the city's general-fund budget of only $12 million. Other outsized ratios can be found in Cerritos (redevelopment, $42 million; general fund, $32 million), Brea (redevelopment, $46 million; general fund, $57 million), and Culver City (redevelopment, $51 million; general fund, $71 million).

By contrast, the largest redevelopment agencies in the state have tiny budgets compared to their city's general funds. Los Angeles's $254 million redevelopment budget represents only 7% of the city's $3.7 billion budget. San Francisco's $98 million redevelopment budget is only 5% of the city's $2 billion overall budget. And San Jose's $162 million redevelopment budget represents just 16% of the city budget, which totals just under $1 billion.

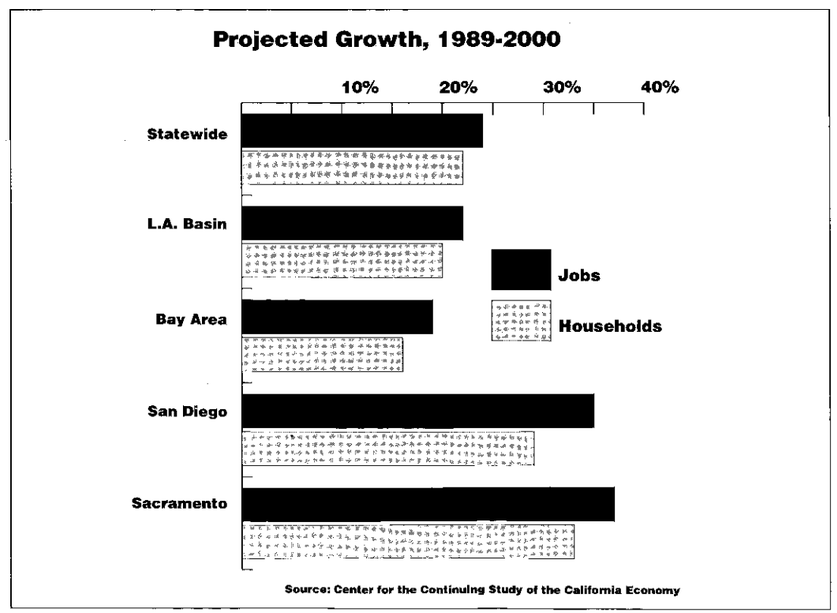
The 26 redevelopment agencies that responded to the survey reported budgets totalling more than $1.1 billion.

## Surging California Growth Likely to Continue in 1990s

The recession may be slowing down California's growth temporarily, but it won't do so permanently. That, at least, is the prediction of the Center for the Continuing Study of the California Economy, based in Palo Alto.

According to a new study from the center, California will add 3 million new jobs and 6 million more residents in the 1990s — bringing the total to 17.5 million jobs and 36 million residents by the year 2000. If these figures are correct, California will growth at double the national average in the next decade.

But this growth may not last forever. Because birth rates are currently below replacement levels in the United States, the center predicts that the next 20 years will be California's "last great growth surge," and the population may eventually stagnate between 40 million and 50 million.






# COURT CASES

## 1873 Gauge Properly Measures Clear Lake Level, Court Rules

A Clear Lake resort improperly dredged and filled the lake below the legal low-water mark, the First District Court of Appeal has ruled.

The court's ruling in *County of Lake v. Smith* clarifies a lengthy legal history establishing that the lake's level should be determined by using the Rumsey Gauge, a measuring device placed in the lake as a result of surveys taken in 1873. The low-water mark determines property lines on Clear Lake because the lake is regarded as navigable and, therefore, the state has a legal interest in its protection. Clear Lake, one of California's few natural lakes, is located inland some 80 miles north of San Francisco.

Though the legal concepts in the case are unlikely to be transferred to situations elsewhere in the state — each lake presents its own measurement problems — the *County of Lake* ruling is consistent with rulings involving other lakes in that it relies on "traditional and longstanding expectation" to determine lake level, according to Assistant Attorney General Richard Frank.

The legal history of Clear Lake's level goes back 70 years, but the question of whether the Rumsey Gauge should be used to determine the lake's low-water mark remained unresolved. The current case began in the 1960s, when U.A. Local 38 Convalescent Trust Fund built the Konocti Harbor Inn along Clear Lake. The trust fund dredged and filled part of the lake at that time. In 1980, Lake County sued the landowner, claiming that the dredging was illegal because it had occurred below zero on the Rumsey Gauge, which the county (and the state) argued was the legal low-water mark.

The landowners argued that the low-water mark should not be "zero Rumsey," but, rather, the lowest point recorded during the 1977 drought — 3.39 feet below zero on the Rumsey Gauge. Lake County Superior Court Judge Robert L. Crone Jr. ruled for the county, and the appellate panel affirmed the decision. "(P)ersuasive authority and common sense support the conclusion that the 'low-water mark,' which forms the boundary here, ... is not some extraordinary lowest level reached during a severe drought, but is a regular or ordinary level which property owners could use for practical purposes in setting a realistic boundary."

The court's reasoning was different from the Third District Court of Appeal's reasoning in determining Lake Tahoe's high-water mark in the 1986 case of *Fogarty v. State of California*, 187 Cal.App.3d 224. In that case, the court said the state should select the five consecutive highest-water years since 1944, and then use the lowest water level of the five years as the high-water mark. But Frank noted that the circumstances there were different — notably because Lake Tahoe's level has been controlled by a dam since 1870, and so property owners had never experienced the lake's natural condition. That's why Frank said he regards the rulings from the two lakes as consistent: They both rely on longstanding tradition, though the tradition of each lake is different. "You've got to look at the history of each lake," he said.

*The full text of County of Lake v. Smith, A046835, appeared in the Los Angeles Daily Journal Daily Appellate Report on March 13, beginning on page 2849.*

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## Appellate Panel Reaffirms Riverside Redevelopment Ruling

An appellate panel in San Bernardino has reaffirmed its earlier decision indicating that plaintiffs in a Riverside County redevelopment case should have spoken up during administrative hearings before filing their lawsuit.

The City of Rancho Mirage and several individual plaintiffs had sued Riverside County over the expansion of two redevelopment areas and the creation of a third, all in the Coachella Valley area. The plaintiffs, who included a former Riverside County employee now working for Rancho Mirage, alleged that the redevelopment projects did not meet the state's requirement that 80% of a redevelopment area be "urbanized."

But the plaintiffs did not appear at any public hearings on the redevelopment plans, and last July the Fourth District Court of Appeal panel in San Bernardino found that they had not exhausted their administrative remedies before filing the lawsuit. (*CP&DR*, September 1990.) The court rejected the plaintiffs' arguments that seeking administrative remedies would been futile, and that the lawsuit was justified because the plaintiffs were acting in the public interest.

Subsequently the court accepted a petition for rehearing from the plaintiffs. The court refined its decision but did not change it. The court again found that the public interest exemption did not apply because "the public at large had ample opportunity to participate in the county's decision-making process." However, the appellate court remanded the case to Superior Court Judge Ronald T. Dreissler because Dreissler had never ruled on the futility issue.

*The full text of Redevelopment Agency v. Superior Court, Nos. E007431, E007432, and E007433, appeared in the Los Angeles Daily Journal Daily Appellate Report on April 5, beginning on page 3857.*

## CEQA's Explanatory Role Lacking, Bay Area Survey Suggests

The California Environmental Quality Act does a good job of providing information about environmental problems, but isn't much help in explaining why local governments approve the projects they do. And the law could be far more effectively administered if the it contained more specific definitions and requirements.

That's the conclusion of a new survey of Bay Area planners, consultants, and lawyers conducted by the Association of Bay Area Governments. The information will be used by ABAG in preparing a possible reform agenda for CEQA.

The survey found that, on the average, local jurisdictions receive 65 project applications per year; they prepare negative declarations on 61 of them and environmental impact reports on the other four.

Highlights of the survey include the following:

• On a scale of 1 to 3 (1 being most effective), ABAG found CEQA to be most effective in informing decision-makers and the public about potential environmental problems (mean answer, 1.5) and least effective in disclosing the reasons for a governmental agency's actions (mean response, 2.2).

• Uncertainty and disagreement are most often found on the following questions: alternatives analysis (72%), cumulative impact requirements (71%), and recirculation requirements (70%).

• 54% of the survey respondents said that legal defensibility, rather than the true informational role, drives the CEQA process.

• 80% agreed that the state should provide greater specificity in definitions and requirements.

• 66% agreed with the concept of expanding the number of categorical exemptions.

The 130 survey respondents included mostly planning directors (50%), lawyers (245), and consultants (17%).

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DEALS

# Watts Redevelopment Effort Should Work From the Bottom Up

Watts is the sort of community for which redevelopment was invented. Twenty-five years after the Watts riots, South-Central Los Angeles remains convulsed by depressed housing, overcrowded schools, gang violence, drug dealing, and a lack of new commercial development.

Not surprisingly, officials at the Los Angeles Community Redevelopment Agency expected a warm response from residents last spring to the notion of a 2,000-acre expansion of the Watts/Century Boulevard Project Area, making it the largest redevelopment area in the city. After all, the first phase of Watts redevelopment brought about the renovation-expansion of the Martin Luther King Shopping Mall, a suburban-style regional mall with high-end stores and a supermarket for residents who formerly had to travel outside Watts to buy food.

Instead of excitement, however, the agency encountered distrust and even rage. It wasn't long before Mayor Tom Bradley and the L.A. City Council were falling over each other to back away from the project.

What happened in Watts? An outsider might conclude that misinformed residents allowed themselves to be swept away by hysteria over fears of eminent domain. An examination into Watts and its relationship with city government, however, reveals local residents had good reason to be worried. In the end, Watts residents asserted their right to political control over an area that had long been a plaything of regional planners.

The redevelopment feasibility study, which was published in March 1990 and approved by Los Angeles City Council in the same month, envisioned "new commercial, industrial and residential development...to create employment, business and residential opportunities for local residents." Also mentioned were the creation of affordable housing, removal of physical blight, and the creation of a "cultural crescent" centering on Watts Towers. Of the $203 million budget, $93 million would stem from tax increment — that is, from increased property tax revenues generated by new commercial projects in Watts residents over 30 years.

Importantly, the study alludes only indirectly to eminent domain: "...Area blight will be removed through selective building rehabilitation, demolition and strategic land use modifications needed to revitalize the area." But even a whisper of condemnation, as it turned out, was enough to inflame Watts residents, who claimed that the city was planning massive displacement of local residents. Critics claimed the city wanted to build housing for white-collar office workers who now would find Watts a convenient whistlestop on the way to downtown or Long Beach. And despite $44 million earmarked for economic development in the study, critics claimed that redevelopment revenues would not flow to local businesses, but would benefit outside developers primarily.

"The community felt it's been under siege," said Denise Fairchild, program director of Local Initiative Support Corp. and a vocal CRA opponent. The possibility of displacement and eminent domain is "clearly seen as massive Negro removal," as local residents derisively renamed urban renewal in the 1950s and '60s.

While the notion of white office workers standing in line to live in Watts would bring hoots in the boardrooms on Bunker Hill, a glimpse at recent history shows that Watts residents indeed have cause for concern regarding their property. Watts has become a place where government has chosen to locate three giant transportation corridors: the Blue and Green light-rail lines and the Century Freeway. To build the Century Freeway, 7,000 housing units were destroyed. And for the first phase of Watts redevelopment, 550 homes and residential properties were taken. Despite a good reception for the new mall, residents remain suspicious of the CRA, and wondered aloud why the agency had become interested in Watts at the same time that an increasing number of outsiders are streaming through the area on mass transit.

In June 1990, public-interest lawyers at the South-Central Los Angeles office of the Legal Aid Foundation decided to attack redevelopment in court. Representing three Watts residents, lawyer Paul Lee filed the suit just one day before the scheduled election of project area committee members. The lawsuit alleged violation of state redevelopment laws.

The suit also contended that the project errs by emphasizing commercial development above housing, adding redevelopment "is not justified and has the effect of undermining...residents' quality of life."

With the lawsuit filling the newspapers, Bradley sought to head off the conflict with a statement — on the day before the scheduled court hearing — reassuring residents there would be no taking of homes in the expansion area. Councilman Robert Farrell and Councilwoman Joan Milke Flores made similar pledges. In court, the formerly combative CRA "agreed to everything we asked them," said Lee, including a willingness to rescind the feasibility study. The agency and plaintiffs settled out of court for an undisclosed amount of money.

Meanwhile, in City Hall, the city council was mounting a retreat. The council rescinded its approval of the feasibility study. In September, Assemblywoman Maxine Waters, D-Los Angeles, and Assemblyman Alan Robbins, D-San Fernando Valley, authored SB 1780, which would forbid the condemnation of residentially zoned property in any future redevelopment area in Watts.

In October, Farrell and Flores set up residents committees in their respective districts to come up with their own set of recommendations regarding redevelopment. Farrell's committee arrived at a set of recommendations in December, asking for an emphasis on rehabilitation of existing housing and commercial buildings, development of vacant and abandoned lots, and, of course, an assurance that eminent domain will not be used. Mark Ridley-Thomas, the apparent frontrunner in the runoff election for Farrell's city council seat, said he supports redevelopment in Watts but added that it "needs to start from scratch." Redevelopment, he says, is only "one tool" in a larger program of community revitalization.

Now, indeed, Watts redevelopment is starting again from scratch. The experience has been a very healthy one for Watts, and for Los Angeles, even if some residents misread the agency's intentions in certain particulars or demonized the agency. What seemed to outrage at least some residents was that the feasibility study, a document with a potentially monumental impact on the area, was the product of an outside consultant, rather than a community effort. Residents were also right to ask serious questions whether "downtown-style" development would benefit the residents of Watts. Rather than office buildings or "cultural crescents," many residents may be more concerned with safe public space, assistance to existing and new businesses, and affordable housing that does not turn into Jordan Downs or Nickerson Gardens after the first coat of paint wears off.

The experience in Watts seems to have one promising upshot: local residents, rather than consultants, are taking responsibility for redevelopment and may become policy- makers, rather than parrots. The notion of policy coming from the bottom up, rather than being dictated from the top down, seems attractive; the near future will show whether it is practicable. To move forward, redevelopment in Watts must first win support from its constituency. The question now in Watts is whether redevelopment can be marketed to the people who arguably need it most.

**Morris Newman**