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INSIDE

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Wilson Growth Plan Almost Ready

Revisions in Local Planning, CEQA Review Seem Likely

Having been accorded just one sentence in the January State of the State speech, the Wilson Administration's growth management proposal will apparently be unveiled sometime in late February or early March. And while the outlines of the Wilson plan have are becoming clear, the proposal may come too late for serious legislative consideration this year.

This situation is a big change from last year, when incoming Governor Pete Wilson promised to give growth management the highest priority. But Wilson and his aides say that the situation has changed since last year and the sluggish economy has overtaken growth management as an issue.

Indeed, the Administration seems to have struggled with the question how to "pitch" growth management during a recession. And there still seem to be some battles going on within the Administration — as evidenced by the recent "leak" to the Los Angeles Times of a proposal within the California Environmental Protection Agency to establish regional Cal-EPA offices. The proposal seemed counter to the thrust of the Wilson growth management effort.

By all indications, Wilson's people are now putting the finishing *Continued on page 3*

Macris Will Quit As S.F. Planner

Was Targeted for Ouster By New Mayor

By Morris Newman

San Francisco Planning Director Dean Macris will take early retirement later this spring, ending the stewardship of a controversial planner during a period notable in that city for both growth and the increasingly political nature of planning.

The 60-year-old Macris decided to quit after many reports that San Francisco's new mayor, Frank Jordan, wanted to oust him. He has served as the city's planning director for more than 11 years under three different mayors.

Even Macris's critics, and he has many, acknowledge that he has been a man of ability and political savvy, able to push through large-scale plans and projects in a city where community participation can slow the planning process to a crawl. He is best known for passage of San Francisco's nationally acclaimed downtown plan in 1985 and the creation of the specific plan for Mission Bay, a "second downtown" to be built on railroad land south of downtown.

Macris himself credits the department for taking the city "through the biggest development period in its history" during the 1980s, and suggested that the experience would not soon be repeated. His tenure *Continued on page 3*

Bradley Picks New Yorker for L.A. Job

Con Howe to Succeed Topping in Top Planning Post

New Yorker Con Howe is Mayor Tom Bradley's choice as Los Angeles's new planning director.

In an announcement on February 3, Bradley said that Howe's qualifications "demonstrated that he is the type of bold, innovative leader that can guide our planning department today." Howe still must be confirmed by the L.A. City Council.

Until last March, Howe served as executive director of the New York City Planning Commission. Among other things, he oversaw the Times Square revitalization and a reform of the environmental review process. Since March he has served as director of the Lower Manhattan Projects.

In announcing Howe's selection, Bradley noted that a recent management audit identified many problems with the L.A. City Planning Department, including low morale among the staff.

Before picking Howe, Bradley interviewed four other candidates: Phoenix Planning Director Ron Short; Bruce McClendon, planning director in Ft. Worth, Texas; Norman Krumholz, former planning director of Cleveland; and Acting L.A. Planning Director Melanie Fallon.

CALIFORNIA DIRT

William Fulton

It's Time to Think Beyond the Next Fee

A couple of weeks ago, at UCLA Extension's annual land-use law and planning conference, development lawyer Bill Ross began saying things that must have sounded crazy to most people in the room.

The subject was school construction finance — school fees — and Ross's point was simple, if unconventional: If developers are going to pay ever-higher school fees, then they ought to be able to question what the money's being spent for. Insist that the school district in question has applied for all available state aid. Take a look at how the school district is spending its money. Question whether the schools really need to contain all the facilities the school districts want.

To a lot of people, probably the only thing more frightening than having school districts plan schools is to have developers do it. Indeed, school district attorney Jeff Oderman quickly rebutted Ross's comments, arguing that schools nowadays don't contain "gold-plated faucets" and that developers ought to stay out of the business of determining which school programs are legitimate and which aren't.

Yet there's something in what Ross says. In presentation after presentation these days, you hear planning and development experts outline follow a familiar line of reasoning. They outline some problem — transportation, air quality, schools — and when it comes time to find a solution, they always come up with the same thing: new or higher fees on new construction. At the UCLA conference, we saw this on literally every issue. The school construction panel debated the wisdom of higher school fees. The transportation panel discussed the likelihood that Los Angeles County will impose a new traffic fee as part of its congestion management plan. Speakers on wetlands and stormwater drainage permits seemed to allude to the possibility of fees in those areas.

> *"There's no reason the concept of 'least-cost planning' can't be borrowed and applied to planning issues"*

Is this the extent of our public policy debate these days — how to calculate new fees? Have planners become nothing more than accountants? Surely there's another way to look at these issues.

Over the past couple of months, I've been working on a magazine story that has led me into the unfamiliar world of electric utility regulation. This field is full of arcane jargon that it makes land-use planning seem accessible by comparison. But in researching the story — which dealt with the question of reducing pollution from coal-fired power plants — I kept running into the same concept over and over again: "least-cost planning." It's something that people in the planning and development business ought to start thinking about more seriously.

All least-cost planning means is anything that will drive down the cost of providing electricity and still meet the needs of utility consumers. For decades, utility companies, like the phone company and defense contractors, operated in a highly cushioned "cost-plus" world. They would figure out the cost of building a new power plant, tack their profit margin onto it, and then get permission from utility regulators to pass that amount on to their ratepayers.

This was a swell system for a long time. Eventually, however, the cost of building new power plants became so expensive that the system broke down. Partly this breakdown occurred because power plants got bigger and bigger, and so the incremental cost of building one was sky-high. But partly the breakdown occurred because of environmental considerations. Utilities had to spend huge sums of money complying with state and federal environmental mandates. Some utilities were also forced by political considerations to mothball nuclear power plants which cost billions of dollars.

However worthy the environmental goals involved, the utility ratepayers balked at footing the bill for all this stuff. Consumer advocates began demanding that utility shareholders eat the cost of mothballed nuclear plants, and environmentalists questioned the need to build so many new power plants. In short, society would no longer shoulder the burden of a cost-plus philosophy in the field of electricity generation. Hence, the least-cost planning philosophy was born.

The idea behind least-cost planning in the electricity business is to get the cost of capital infrastructure and environmental compliance down to a level where ratepayers are willing to pay for it. The pioneering work in this area was done by the Environmental Defense Fund, which argued that (I'm oversimplifying here) it would be cheaper for Pacific Gas & Electric to buy everybody in California a more energy-efficient refrigerator than build new, environmentally destructive power plants.

It seems to me that we now find ourselves in the same situation with regard to infrastructure finance and environmental protection in California. The need for both, in the face of massive growth, is unquestioned. But the cost has become so high that society is unwilling to bear the cost.

The taxpayers long ago dumped the burden on the developers and the consumers of new development. The result has been a rising spiral of fees on new development.

Remarkably enough, we have not seen least-cost planning emerge as an overarching and cohesive concept in dealing with the demands imposed by new growth. We do see least-cost ideas in some areas of planning. The whole concept of demand management in transportation planning is a least-cost idea, for example. The same is true of year-round schools, which represent an attempt to make maximum use of existing infrastructure. Yet in four or five years of legislative debate on growth issues, nobody has ever articulated the idea that least-cost planning ought to be part of the overall solution.

It's a concept that's long overdue for serious discussion. Nobody's going to suggest seriously that developers ought to take over the accounting departments of local school districts. But at the same time, we can't afford to take the cost of everything at face value any more. We must find innovative ways to bring down the cost of infrastructure construction and environmental protection.

If the planners in this state had any vision at all, they'd see that the real problem in California today is not how to calculate development fees, but how to get the overall cost of growth down to a level that society — developers, new homeowners, and, yes, even taxpayers — is willing to pay for. This kind of attitude requires a willingness to look beyond the next fee and examine the big picture. Despite what you might think listening to the debate on transportation, school construction, wildlife, air quality, or any other growth-related issue in California today, there's more to planning than accounting. ❑

Wilson's Growth Management Plan Will Be Unveiled Soon

Continued from page 1

touches on the growth management proposal. And while nothing formal has been announced, the outlines of the proposal have been revealed in speeches by Wilson aides and in documents released recently by the Governor's Office of Planning and Research. The key points of the Wilson proposal apparently will include the following:

1. A comprehensive state plan, which will include both conservation and development, that such diverse state agencies as Caltrans, the Department of Water Resources, and the Department of Fish & Game will have to follow. The plan is likely to be based on a few clearly articulated state goals for growth management.

2. A revised general plan process that would include streamlined comprehensive plans, broader plan consistency requirements, and more environmental review at the plan level.

3. A streamlined project review process, including a proposal for automatic approval or streamlined environmental review for projects that are consistent with the general plan.

4. A "boundary" concept that will designate sensitive lands as well as short-term growth areas, though this concept is not likely to be called an "urban limit line" or an "urban growth boundaries."

5. A strengthened role for regional councils of governments in reviewing plans and assuming some functions currently carried out by local agency formation commissions.

6. Financial incentives for local governments to comply with state goals — perhaps including "strings" attached to the public works bond issue that both Wilson and Democratic legislative leaders are advocating.

> *"Wilson seems likely to craft a state comprehensive plan even without legislation"*

Conspicuously absent from the package is any attempt to deal with the "fiscalization" of land use by changing the way taxes are divided among local governments. Such changes are advocated by counties but adamantly resisted by cities.

The late timing of the Wilson proposal puts Sacramento in a fix on the growth management issue this year. Four other growth management proposals are already in the hopper — most notably AB 3 by Assembly Speaker Willie Brown, a proposal for strong regional governments that Wilson opposes.

In late January, both Martin Dyer, deputy director of the Governor's Office of Planning & Research, and Carol Whiteside, assistant resources secretary, made public speeches describing possible components of the Wilson growth proposal. Also, OPR released a report called "Planning and Growth Management," which contained a proposed growth management program that administration officials say includes many of the proposals under consideration. Based on these sources, here is a brief rundown of all the different aspects of the Wilson program

State Plan

One of the few aspects of growth management that all parties in Sacramento seem to agree on is the necessity for a coordinated state growth plan. Over the past year, many government reports and press articles have pointed out the many conflicting state goals on growth issues, especially those on development issues (transportation, housing, commerce) and those on conservation issues (land, wildlife, air, water).

At a major speech before the UCLA Extension Land-Use and Planning Conference in late January, Whiteside acknowledged that the Wilson Administration "must assume leadership" in establishing growth goals, but acknowledged "the debate will be healthy when we try to decide what those goals are."

The state comprehensive plan is one of the few pieces of the Wilson growth package that does not need legislative approval. It seems likely that the Administration will proceed with preparing a state plan even if other elements of the growth package are still pending in the legislature. Of course, cynics in Sacramento point out that the Wilson could have moved forward on this front a year ago.

Revised Local Planning

A key element of the Wilson proposal will be major revisions to the local planning process. The purpose of these revisions will be to invest even more power in the general plan itself, thus allowing expedited review of projects that are consistent with the plan.

Individual development projects are often killed through environmental review whether or not they are permitted under local general plans. During the recent Growth Management Consensus Project — organized by Cal State, Sacramento, at the request of the legislature — all sides expressed a desire to operate more at the plan level, rather than the project level.

The Wilson proposal will likely call for a streamlined general plan format, but with more detailed environmental review. The OPR "Planning and Growth Management" report calls for the reorganization of general plans into four "super-elements" — land use, hazards, capital improvements, and implementation — as well as a mandatory environmental impact report for all local general plans. This up-front work would permit "tiering" of EIRs on individual projects, so that environmental review would be minimal and project permitting would proceed more quickly. In addition, the Wilson proposal may also call for permitting no more than one general plan amendment per year.

In her Los Angeles speech, Whiteside said the purpose of these proposals is to deal with financial and environmental issues "up-front" so they do not hold up a project late in the permitting process. "We're all troubled by the application of CEQA (the California Environmental Quality Act) to stop development projects rather than provide environmental protection," she said.

Environmentalists such as Larry Orman, executive director of the Bay Area's Greenbelt Alliance, acknowledge that such a proposal might meet with the approval of environmental groups, but only as part of an overall package that provides them with other environmental gains. Furthermore, he said, environmentalists are angry that Wilson has not included them in shaping the growth management proposal and are not likely to view any Wilson proposal favorably.

Boundaries

Environmentalists have long argued that metropolitan sprawl must be halted by the creation of growth boundaries — essentially, "lines in the sand" beyond which development may not occur. The building industry has always opposed growth boundaries, but during the Growth Management Consensus Project the builders at least acknowledged that some areas should be designated for development and some areas should be designated for conservation.

Based on the speeches of both Dyer and Whiteside, it seems likely that the Wilson proposal will include a provision permitting the state Resources Agency to designate some areas as land of significant environmental concern — prime agricultural land, wetlands, and so forth — thus providing the state with a role in drawing at least some boundaries. Whiteside also said that there is an emerging consensus within the Administration that the state should use all financial and policy levers at its disposal to encourage development in some areas and discourage development elsewhere.

"There are 17 New Town proposals for three adjacent counties in the Central Valley," she said. "Undoubtedly not all 17 New Towns represent good urban planning. Shouldn't we use the highway grants and other levers we have to support the good ones

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After 11 Years, Macris Will Take Early Retirement in San Francisco

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witnessed the construction of about 18 million square feet of new office space, 15,000 housing units, and more than 7,000 hotel rooms.

Macris's departure adds to the growing turnover among planning directors in major California cities. L.A. planning director Kenneth Topping resigned last year, and at press time Mayor Tom Bradley was expected to name a replacement any day. San Diego Planning Director Robert Spaulding resigned after an allegation of sexual harassment. And Diane Guzman of Santa Cruz recently took over as planning director for Sacramento. Among this elite group, only longtimers Gary Schoennauer of San Jose and Robert Paternoster of Long Beach remain in place.

It will take a while to find a replacement for Macris, because Jordan plans to appoint new members of the Planning Commission first. But the job will likely go to an insider. The San Francisco Chronicle reported that candidates include Supervisor Tom Hsieh, who is an architect; Douglas Wright, former deputy mayor of transportation for Mayor Art Agnos; William Blackwell, an architect at Bechtel; and Macris's predecessor, Allan Jacobs, who recently took himself out of the running for L.A. job.

After beginning his career in Chicago, Macris first came to San Francisco in 1975, when Mayor Joseph Alioto appointed him as planning director. He left shortly thereafter for the Association of Bay Area Governments, but returned in 1981 at the request of Mayor Dianne Feinstein. Macris served as planning director for the rest of the Feinstein administration and through the four-year term of Agnos, whom Jordan defeated for re-election last fall.

Macris's downtown plan made the city one of the few in the nation to have comprehensive growth controls in place before the office boom of the 1980s hit with full force. The plan set an annual limit on downtown development of 950,000 square feet, imposed a tough "transit first" policy in the downtown area (currently about half of downtown office workers use mass transit), created a transferrable development rights program, imposed a housing-linkage fee on commercial development, and set very strict design guidelines meant to encourage traditional architecture.

"We showed that you can do planning lot by lot, building by building," Macris said. He added that the downtown plan has become a model of controlled growth for other American cities, noting that L.A. now has adopted both a housing-linkage plan and downtown parking restrictions. (Many of the concepts in the downtown plan were actually the brainchild of Macris's longtime assistant, George Williams, who — ironically enough — was forced to resign recently after remodeling his house without a permit.)

Macris also pointed with particular pride to the Mission Bay plan, which he negotiated for both Feinstein and Agnos with Catellus Development Corp., formerly the real estate arm of the Santa Fe railroad. Designed as a low-rise back-office district, Mission Bay will contain 6 million square feet of commercial space, 8,500 housing units (including 3,000 affordable), waterfront parks, and a hotel.

Not surprisingly, Macris had critics on many fronts. Slow-growthers remained dissatisfied with the downtown plan in the face of tremendous growth, while construction industry officials thought the plan too restrictive. In 1986, San Francisco voters approved the Proposition M initiative, which slashed office construction downtown to only 475,000 square feet.

On the other hand, the construction industry opposed Macris's downzoning of residential neighborhoods. Joe O'Donoghue, president of the Residential Builders Association of San Francisco, a trade group made up primarily of remodeling contractors, called the downzonings "racist" because they represented the desire for exclusivity among white homeowners.

Following the enactment of Proposition M, Macris became a target for brickbats over the so-called "beauty contest" used to select high-rise office projects. Although he has maintained that he does not prefer one architectural style over another, critics of the beauty contest have claimed that the planning department favored postmodern buildings with a historicist flavor and "party hat" roof lines. One Los Angeles architect went so far as to claim "there is one good reason why you can't do a good building in San Francisco, and that reason is Dean Macris." (A few months ago Macris defended himself by saying: "There have been no hats on the latest buildings.")

But Macris also has his defenders among architects, including Jeffrey Heller of Heller & Leake in San Francisco, who has designed several buildings that have passed muster in the beauty contest. Heller said Macris "creatively took control" of rampant growth in San Francisco and praised the downtown plan, especially its height and massing requirements for buildings. "I would say that document has had a similar impact (on San Francisco) as the New York zoning ordinance of 1916" had on that city. The New York law required setbacks and led to many of the great skyscrapers designs of the '20s and '30s, including the Empire State Building. Heller said the exacting standards of the beauty contest have made architects more responsible to their context and for better buildings overall.

Macris would divulge no plans for his future, except for a long vacation, and would not say whether he would seek either private- or public-sector employment, although he mentioned an interest in teaching. And he laughed amiably when reminded of the vacant director's job in Los Angeles. ❑

Wilson's Growth Management Plan Will Be Unveiled Soon

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and drop the others to the bottom of the list?"

In addition, the recent OPR report calls for local general plans to identify a designated 10-year growth area. At the same time, however, Whiteside made it clear that the Administration would not support "rigid urban growth boundaries." It will be interesting to see how the semantics of the boundary issue play out in the legislature.

Regional Governance

Since his 1990 gubernatorial campaign, Wilson has made it clear that he does not want to create "another layer of government" in the form of strong regional growth agencies, as called for in the Wilson bill. Instead, he is likely to propose a strengthened role for the Association of Bay Area Governments, the Southern California Association of Governments, and the other regional councils of governments around the state. But how much power the COGs can accumulate, and whether they can address issues on a regional basis rather than a local basis, remains to be seen.

Under the likely Wilson scenario, COG membership would be made mandatory. (In the past it has been voluntary, which has given some local governments — for example, those from Orange County — the leeway to undermine regional planning efforts.) Each COG would prepare an integrated regional plan, including such areas as air quality and transportation. COGs would review local general plans for consistency with regional plans, and the state, in turn, would review regional plans for consistency with the state plan. Finally, the COGs may take on some duties of the local agency formation commissions, which set jurisdictional boundaries.

A big question, however, is whether the COGs would take the place of the powerful single-issue regional agencies now in existence, such as the air-quality and transportation agencies. Indeed, this question still appears to be up in the air in Sacramento. In January, a document from the California Environmental Protection Agency was leaked to the press which described the possible reorganization of air and water quality permitting agencies into seven Cal-EPA regional offices. Such centralized permitting authority may not be consistent with the Wilson growth proposal. ❑

CP&DR
LEGAL DIGEST

Court of Appeal Strikes Down Rezoning Of L.A. Warner Ridge Property

In a case that could have far-reaching implications, the Court of Appeal has thrown out the City of Los Angeles's decision to downzone a controversial parcel of land in the Woodland Hills section of the San Fernando Valley.

More importantly, the court ruled that a zoning designation is inconsistent with the general plan even if it calls for a lower intensity of use than the plan. If broadly applied, the ruling could be important in Los Angeles and throughout the state. At L.A. City Hall, both lawyers and planners are scrambling to figure out what the ruling in *Warner Ridge Associates v. City of Los Angeles* means and how they must deal with it.

Many local jurisdictions, including L.A., have always interpreted the consistency provision to mean that merely that zoning on a parcel may not be "higher" — that is, more intense — than the general plan designation. In the City of Los Angeles alone, there are believed to be tens of thousands parcels of land where the zoning is lower than the general plan designation — the result of a deliberate policy decision made during a massive citywide zoning-planning consistency effort several years ago. Theoretically, the zoning on all these parcels is now subject to legal attack, and many more cases may be filed as a result.

Acting Planning Director Melanie Fallon said that while she admitted Warner Ridge might be viewed by the courts as a "bad case," "we never thought we would lose the bigger theory of how to do planning and zoning in the city." She said the city and its lawyers — including Carlyle Hall of Hall & Phillips, who has been retained to advise the city — are trying to determine how the ruling should be interpreted. She said the city may appeal the case to the California Supreme Court or ask that the Supreme Court "de-publish" the case, thereby robbing it of its precedential value. Recent press reports have also indicated that some L.A. City Council members are trying to settle the Warner Ridge case, in which the developers are seeking $100 million in damages.

These deliberations are important, because the impact of *Warner Ridge Associates v. City of Los Angeles* depends largely on whether the decision is broadly interpreted. The Warner Ridge case involves a parcel of land designated for commercial development in the general plan — but was downzoned to permit only residential construction after a political controversy. Yet L.A. city officials say many of the now "inconsistent" parcels do not involve such a stark difference between the zoning and general-plan designation; many are designated in the general plan for high-density residential use but are zoned for lower-density residential projects. Indeed, another pending case against the city involves a parcel of land planned for high-density residential use but zoned for low-density residential use.

The Warner Ridge case is perhaps the most contentious land-use dispute to arise in Los Angeles since the city's balance of power began to shift toward slow-growthers in the mid-1980s. The parcel of land at stake is a prime one: 21.5 acres located in Woodland Hills, near both the high-rise Warner Center development and working agricultural land owned by Pierce College. The 1984 district plan for the area designated the parcel for "Neighborhood and Office" use, even though the zoning on the land remained RA-1 (rural residential) and A1-1 (agricultural). In 1985, Warner Ridge Associates — consisting of developer Jack Spound and his development partner, Johnson Wax — purchased the property and proposed a 950,000-square-foot commercial project.

At the suggestion of Councilwoman Joy Picus, who represents the area, the city appointed a citizen advisory committee for the area and charged the group with preparing a specific plan. The citizen group and the developer worked out a new proposal, which called for an 810,000-square-foot project and a 50% increase in open space, and in 1986 the developer sought to change the zoning to C-4 (Commercial) so that it would conform with the specific plan.

In 1988, however, the Woodland Hills Homeowner's Organization announced its opposition to the project. Later that year, Picus announced her opposition as well, and in early 1990 the city council rejected the Warner Ridge project and approved a zoning proposal, initiated by Picus, to rezone the property to (T)RS-1 (residential suburban), which permits residential development on 7,500-square-foot lots. Council President John Ferraro signed the ordinance as acting mayor when Mayor Tom Bradley was out of town, the first time a controversial zoning ordinance had been signed in Bradley's absence in 15 years. In changing the zoning, the city council made a finding that the residential zoning was consistent with the commercial designation in general plan because of the city's "hierarchical" zoning scheme, which permits lesser uses in any zone.

L.A. Superior Court Judge John Zebrowski, who hears many land-use cases, ordered the city to rezone the property to bring it into compliance with the general plan. The city had announced plans to change the general plan to conform with the zoning, but Zebrowski specifically ordered city not to follow this course of action, which he called "an illegal backwards approach to the important environmental issue of land use."

Subsequently, however, the Supreme Court de-published the case Zebrowski relied on for his authority, *La Quinta Dunes v. City of La Quinta*, which held that a city had the discretion to resolve an inconsistency between the general plan and the zoning ordinance by amending the general plan. (*CP&DR*, October 1990.) Warner Ridge Associates asked Zebrowski to reconsider the case, but he merely amended his order to delete his reliance on the La Quinta case without substantially changing his decision. In a third order, Zebrowski gave the city 30 days (from September 11, 1990) to rezone the property. The city appealed the order.

In affirming Zebrowski's order, the Court of Appeal flatly rejected the city's argument that its zoning and planning schemes are "hierarchical" — that is, permitting less intense uses in each zoning category. A hierarchical scheme thus would permit residential zoning in a district designated under the general plan for commercial use — exactly the situation with Warner Ridge . The city was joined in putting forth this argument by the Federation of Hillside and Canyon Associations, an amicus curiae in the case.

In part, the city and the hillside federation had boxed themselves into this argument by the way they had proceeded with the so-called "AB 283" rezoning program in the mid-1980s. As part of a legal settlement between the city and the hillside federation, Los Angeles undertook a massive program to resolve inconsistencies between the general plan and the zoning ordinance. (This program was originally called for under a state law known as AB 283.)

In instances where the zoning called for more intense use than the general plan, parcels were downzoned. However, the city made a policy decision not to reconcile inconsistencies when the zoning ordinance called for a less intense use than the general plan. In part, this decision was made so that the whole AB 283 process would be more manageable. (It involved rezon-

ing hundreds of thousands of parcels.) In part, according to sources close to the situation, the city did not see any advantage in giving away "free" upzonings to developers without exacting any concessions in return.

And in part, city planning officials argued that hierarchical zoning was a valid planning policy of longstanding — a position Fallon says she still holds. (Land-use law experts such as Daniel J. Curtin, author of *California Land-Use and Planning Law*, argue that a hierarchical system is outdated and has been replaced in many jurisdictions.) In any event, the city used the "hierarchical" zoning theory to back up this policy decision, and as a result thousands of parcels have lower zoning than general plan designation.

Relying heavily on the California Supreme Court's ruling in *Lesher Communications v. City of Walnut Creek*, 52 Cal.3d 531 (1990), the Court of Appeal said that the hierarchy theory improperly "would allow the city to amend its general plan through the enactment of inconsistent zoning ordinances." Quoting Lesher, the court concluded that such a system wrongly permits the zoning tail to wag the dog of planning.

Writing for the court, Presiding Justice Joan Dempsey Klein said: "A general plan which designates property for intense development with the contemplation that designation may thereafter be prohibited by zoning is, in effect, no general plan....The hierarchy theory, in essence, repeals the consistency requirement."

While the zoning issue was pending before the Court of Appeal, other aspects of the Warner Ridge case generated considerable publicity in Los Angeles, just at the time when the city's planning processes were coming under increased scrutiny. In October, a 1,750-page deposition of Picus was leaked to *The Los Angeles Times*, which published a sensational excerpt. Among other things, Picus said in the deposition that she threatened to make "chopped liver" out of developer Spound if he released a pre-1989 election poll that made her look bad.

A few days later, Superior Court Judge Kathryn Doi Todd denied a request by L.A. city attorneys to block release of more depositions. Subsequently the Times revealed that Spound, in a deposition, felt betrayed by Councilman Zev Yaroslavsky, who voted against the Warner Ridge rezoning. At Yaroslavsky's request, Spound had raised $17,000 for the councilman's aborted 1989 mayoral campaign. Subsequently, Judge Todd found that Picus could not be held personally liable for damages in the case. ❑

- The Case: Warner Ridge Associates v. City of Los Angeles, No. B052835, 92 Daily Journal D.A.R. 97 (January 3, 1992).
- The Lawyers:
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LAND USE

California Supreme Court Affirms County's Power Over Toxic Dump

State toxic waste laws don't totally pre-empt local land-use power, the California Supreme Court has ruled.

The decision does not appear to give cities and counties much direct power over toxic cleanup, which is still mostly governed by state law. However, the Supreme Court did conclude that the state's Hazardous Waste Control Act (Healthy & Safety Code §25100 et. seq.) is somewhat respectful of local land-use powers. The ruling overturns a Court of Appeal decision and resolves a conflict in the lower courts over whether local land-use powers are pre-empted by the state hazardous waste law.

In practical terms, the ruling appears to give local governments a way to force state officials to consider a particular cleanup option even if the site's operator does not want the option considered. Municipal lawyers say this represents a triumph for local governments, some of whom may be victimized by the importation of hazardous waste. Property-rights lawyers say it will lead to further NIMBY action on the hazardous waste front.

The case involves a dispute over the so-called Panoche hazardous waste disposal facility adjacent to Benicia. The landfill has been in operation since 1968, prior to the passage of the state hazardous waste law. But the facility has repeatedly violated a requirement, contained in its conditional use permit, that all treatment and storage of hazardous wastes must be set back at least 200 feet from the property line.

The question of setbacks has been a longrunning battle between IT Corp. (as well as its predecessors at the site) and Solano County. On at least one occasion, the site's owner, accused of storing waste less than 200 feet from the property line, resolved the problem by buying additional property. As a result of a lengthy investigation in 1986 and 1987, the county found that the 200-foot setback requirement was violated in at least eight different locations on the site. In response, the county ordered IT to close the areas which violated the setback requirement. The county also ordered IT to ask state and federal agencies for permission to pursue a "clean closure" option — that is, not just to close the areas but also to remove the toxic waste located there. IT estimated that this action would involve the removal of 174,000 cubic yards of toxic material and could cost as much as $40 million. The county promised to reopen the issue if clean closure permits were not granted.

IT sued, claiming that the state toxic waste law had pre-empted local land-use powers and also arguing that the county could not order IT to pursue a particular course of action on cleanup of the site. While battling the county, IT had also asked the state Department of Health Services for permission to "close in place" the entire Panoche facility — that is, shutting down the operation and sealing the land off, but not removing any of the waste.

A trial judge in Solano County ruled that the state had pre-empted the land-use field on hazardous waste issues, but said that the county could order IT to submit cleanup plans to state and federal regulators for review. The Court of Appeal affirmed, ruling that the setback requirement was a valid local land-use regulation but adding that the county could not dictate the cleanup method.

In a unanimous decision, the Supreme Court overturned the Court of Appeal on the pre-emption issue. "Nothing in state hazardous waste disposal law implies that a city or county is precluded from abating a clear and potentially dangerous violation of its valid land use regulations," wrote Justice Marvin Baxter in the court's opinion.

In reaching this conclusion, Baxter addressed both the question of "implied" pre-emption and "express" pre-emption. The Court of Appeal had found an implied pre-emption in the state law. But the court disagreed. The opinion noted that the state law states that, with one exception, "it is not the intent of this article to preempt local land use regulation of existing hazardous waste facilities."

In discussing the question of implied pre-emption, the court examined the whole purpose of the state hazardous waste law. For example, the justices rejected IT's argument that under the state law, only the facility operator may take the initiative for the closure plan. Furthermore, the court concluded, the state hazardous waste law "expressly provides for joint state and local authority over the siting and operation of hazardous waste facilities."

In one sharply worded passage, the court wrote: "In essence, IT contends that the long-continuing deposit of hazardous waste in and upon land never permitted for that use is exempt from effective local remedy simply because a state scheme exists for regulation and 'closure' of hazardous waste disposal facilities. However, the HWCA (the state law) suggests no such wholesale intent to intrude upon the enforcement of local zoning and land use regulations."

In discussing the question of express pre-emption, the court focused its attention on one section of the state law (§25149) that prohibits cities and counties from taking any action to "prohibit or unreasonably regulate" hazardous waste disposal. In a lengthy discussion, the court concluded that the county's action was not an "unreasonable" or "prohibitory" regulation.

IT had argued that the county's action was unreasonable because the Board of Supervisors had rejected IT's proposed alternative of dedicating a new setback line consistent with the current boundaries of IT's property. The Supreme Court said this alternative would have "rewarded and ratified" IT's violations and

therefore the supervisors' rejection of it was not unreasonable. ❑

- The Case: IT Corp. v. Solano County Board of Supervisors, No. S017701, 91 Daily Journal D.A.R. 15885 (December 26, 1991).
- The Lawyers:
  For the county: Daniel Selmi, (213) 736-1098.
  For IT Corp.: Scott W. Gordon, Bruen & Gordon, (510) 295-3131.

TAKINGS

Justices Grill Property Rights Lawyer In Mobile Home Case

By Kenneth Jost

Mobile home rent control ordinances may survive their first constitutional challenge in the U.S. Supreme Court — judging by the skeptical questions that several property rights-minded justices had for the lawyer representing Escondido mobile home park owners trying to overturn the city's law.

At oral argument January 22, attorney Robert Jagiello confronted a buzz-saw of questions from three members of the high court who have previously joined decisions upholding landowners' claims under the Constitution's "takings clause" to overturn regulatory restrictions on use of their property.

Jagiello had previously won two rulings from the Ninth U.S. Circuit Court of Appeals in cases attacking Santa Barbara and Los Angeles mobile home rent control ordinances. (*Hall v. City of Santa Barbara*, 833 F.2d 1270, and *Azul Pacifico Inc. v. City of Los Angeles*, 91 Daily Journal D.A.R. 13599) The Supreme Court's decision to hear his challenge to the Escondido ordinance seemed to set the stage for a broad ruling for mobile home park owners. The lawsuit by the owners of mobile home parks in Escondido challenges the vacancy control provision of the rent control law, claiming it constitutes a taking of property under the Fifth Amendment. (*CP&DR*, December 1991.)

Jagiello's argument did not go smoothly, however. He told the justices that because of vacancy control, Escondido's ordinance effectively allows a departing tenant who sells his mobile home to sell the right to a rent-controlled space along with it. The tenant's ability to collect that premium instead of the landowner, Jagiello said, is "outright expropriation."

But Chief Justice William Rehnquist and Associate Justices Byron White and Antonin Scalia were visibly unconvinced. They pressed Jagiello repeatedly to try to square his argument with rulings upholding local rent control or with anti-discrimination laws that also limit a landowner's right to decide who occupies his property.

"Is every anti-discrimination ordinance a taking?" Scalia asked. Jagiello said those laws serve "an overarching purpose," but the answer did not satisfy Rehnquist. "We've never used governmental purpose to determine whether there's a taking," the chief justice said. And when Jagiello agreed, Rehnquist concluded abruptly: "Then how does your answer to Justice Scalia make any sense?"

Jagiello tried hard to distinguish mobile home rent control ordinances from local laws regulating apartment rentals. (The Supreme Court upheld the constitutionality of such laws in Penneli v. San Jose, 107 SCt 847 (1988).) But Scalia said he couldn't see the difference. "Every price control involves a transfer of wealth," he said. "Every price control does what you talk about."

The views of Scalia and Rehnquist could be critical to the outcome of the case. The two have written key majority opinions favoring property owners in regulatory takings case in the past.

Washington, D.C., lawyer Carter Phillips, hired to represent the city in the Supreme Court arguments, faced fewer and less persistent questions. Justice Anthony Kennedy pressed Phillips to acknowledge that the ordinance did bestow a property right on the mobile home owner. And Scalia showed his doubts about the wisdom of the ordinance by saying it was was "strange" to regulate rents but to set no limits on the tenant's selling price for the mobile home. That allowed Phillips to conclude, though, by saying Escondido's decision to regulate one kind of transaction but not the other was "the kind of legislative judgment that this court has traditionally been very deferential to." ❑

Kenneth Jost, a freelance journalist in Washington, D.C., is a former editor-in-chief of the Los Angeles Daily Journal.

- The Case:
  Yee v. City of Escondido, 90-2947.
- The Lawyers:
  For the mobile home park owners: Robert Jagiello,(714) 336-5345.
  For the City of Escondido: Carter G. Phillips, (202) 429-4270 (argued case before Supreme Court), and Jeffrey Epp, assistant city attorney, (619) 741-4608.

DEVELOPMENT FEES

A Carlsbad water district's connection charge has been upheld as a fee and not a special tax under Proposition 13 by the Fourth District Court of Appeal in San Diego.

Writing for a unanimous First Division panel, Justice William L. Todd Jr. concluded that the fee "is not intended to replace revenues lost as a result of Proposition 13; it is triggered by a voluntary decision of the developer to develop the 300-unit condominium complex and it is directly tied to the increase in the use of water facilities and services likely to be generated by the development." For this reason, Todd wrote, the fee did not require a two-thirds vote for approval.

Community Resources Corp. (now QLC Corp.) paid a fee of $95,400 to the Carlsbad Municipal Water District as part of the approval process for the 300-unit complex. The water district had established a "major facilities charge" of $300 per dwelling unit. The case has been in the court system for some three years, and in fact went before the Court of Appeal once before, when the court rejected the water district's request to dismiss the case via summary judgment.

CRC did not question the "nexus" between the connection charge and the condominium project; in fact, the company stipulated that the charge had a "fair and reasonable relationship" to the condos. But CRC argued that the fee was a special tax because the water district's resolution permits the money to be spent for unrelated purposes. San Diego Superior Court Judge Kevin Midlam ruled in favor of the water district, and the Court of Appeal affirmed the judgment.

In making this case, CRC relied heavily on another Court of Appeal case, Bixel Associates v. City of Los Angeles. In that case, the developer was asked to pay a $135,000 fire hydrant fee, even though the project in question required only two fire hydrants that cost a total of $16,000, because the city needed to raise money for general improvements to the water main in the area. In that case, the Court of Appeal chided Los Angeles for passing an ordinance that did not contain language restricting the use of the funds generated by the fire hydrant fee.

In the Carlsbad case, however, the Court of Appeal found little similarity with Bixel. The court concluded that the water district's resolution contained many references to such topics as "new and altered structures," "new water service or altered water service requirements" and "proposals to alter a structure in any way which results in a greater potential water demand therefore." ❑

- The Case:
  Carlsbad Municipal Water District v. QLC Corp., D012621, 92 Daily Journal D.A.R. 248 (January 9, 1992).
- The Lawyers:
  For the water district:: Richard G. Opper, Jennings, Engstrand & Hendrickson, (619) 557-7760.
  For the developer: Bernard J. Karwick, (619) 282-1007.

SUPREME COURT

Appellate Court Issues Final Ruling Upholding Riverside General Plan

Issuing a final ruling in the important Garat v. Riverside case, the Fourth District Court of Appeal panel in San Bernardino has upheld the City of Riverside's general plan as valid.

Regarding the substantive questions surrounding the general plan, the final ruling is essentially the same as the court's tentative rul-

ing in the case, which was issued last fall. (*CP&DR*, November 1991.) In a lengthy new section, the court upheld the appealability of the issues in the case. These had been called into question by a confusing series of rulings by Riverside County Superior Court Judge Victor Miceli.

The ruling is important because it affirms the independence of charter cities, such as Riverside, from the state law's requirement of consistency between a jurisdiction's general plan and its zoning ordinance. In reversing Miceli on this issue, the Court of Appeal also affirmed the validity of two Riverside slow-growth measures, Proposition R, passed in 1979, and Measure C, passed in 1987.

In 1989, Miceli ruled that the Riverside general plan was out of date, incomplete, and internally inconsistent. He also declared the two slow-growth initiatives invalid because they were, in effect, zoning ordinances inconsistent with the general plan, and also because they were adopted at a time when the general plan was invalid.

Before the Court of Appeal, lawyers for the property owner plaintiffs had argued that even though the state's consistency requirement does not apply to charter cities, Riverside had pursued consistency between general plan and zoning ordinance as a matter of policy and therefore had to be held to consistency as a legal standard. But the Court of Appeal simply ruled that Riverside is not required to pursue consistency as a matter of state law and never adopted a resolution stating such a policy. The court did rule, however, that a charter city's general plan must be internally consistent.

In a section they admitted was dicta — that is, merely advisory — the justices criticized Miceli for invalidating the initiatives as a result of invalidating the general plan. They said that, in such situations, a judge should order and oversee the process of bringing a general plan into compliance within a short period of time.

In the new section, which was added after oral argument in October, the justices concluded — despite earlier questions — that Miceli's orders of September 5, 1989, constituted a "final judgment," as required by state law in order for a case to be appealed. The court noted that at least eight causes of action regarding the general plan's invalidity have not been tried before Judge Miceli and that Miceli had never formally severed those eight from the ones that he did rule on. The court was also concerned that Miceli's original order addressed the invalidity of both the general plan and the initiatives, while his revised order addressed only the initiatives.

However, the Court of Appeal concluded that either (1) a de facto severance of issues had occurred, or (2) if such a severance did not occur, the land owners are barred from trying the remaining causes of action under the principal of res judicata — the fact that the case has already been decided. Therefore, the court concluded, the issues were in fact appealable. ❑

■ The Case:
Garat v. City of Riverside, No. E007409, and Arlington Heights Citizens Association v. City of Riverside, No. E007969, 92 Daily Journal D.A.R. 201 (January 8, 1992).
■ The Lawyers:
For the property owners:
Daniel J. Curtin, McCutchen Doyle Brown & Enersen, (510) 937-8000, and many others.
For the City of Riverside:
Katherine E. Stone, (310) 444-7805.
For other cities as amicus curiae:
Daniel Selmi, (213) 736-1098.

AVIATION

9th Circuit Affirms Injunction Limiting City's Airport Power

The City of Long Beach has the right to limit flights at Long Beach Municipal Airport, but must provide notice and hold hearings when reducing the number of flights by a particular airline, the Ninth U.S. Circuit Court of Appeals has ruled.

The Ninth Circuit upheld a lower court's injunction against the city's ordinance restricting Long Beach municipal airport to 26 commercial flights per day. But the court overturned District Court Judge Laughlin Waters's conclusion that the ordinance was pre-empted by federal law and violated the constitutional protection of equal protection and interstate commerce.

Long Beach first passed an ordinance restricting commercial flights in 1981 in response to noise complaints from local citizens. Two years later Judge Waters ruled that the ordinance, which limited flights to only 15 per day, was too restrictive, and enjoined the city from setting a limit below 18 per day. In 1987, the city sought the court's approval of a new noise ordinance, while the air carriers asked the judge to increase the number of flights allowed. Waters increased the minimum number of flights to 26 before trial and, after ruling in the air carriers' favor, increased the minimum again, this time to 40 flights per day.

On appeal, a three-judge panel of the Ninth Circuit overruled Waters on most issues, but found a significant enough defect in the ordinance to permit the injunction to remain in effect.

The court ruled that the city's process of determining which commercial air flights to cut violated the procedural due process protections in the U.S. Constitution. Under the ordinance, a reduction in the number of flights may be ordered by the airport manager without a hearing if a given carrier exceeds certain noise standards. "Leave to land one's planes at the airport is ... a property interest closely associated with the purpose of a livelihood," wrote Judge Robert Beezer for a unanimous three-judge panel. "Therefore, due process also requires notice and a hearing before flight allocations can be revoked. Because the ordinance does not provide such procedural protections, it cannot be upheld."

The court, however, upheld all other aspects of the ordinance, overturning Judge Waters in the process.

Without much difficulty, the court found that the city's power to restrict flights was not pre-empted by federal law. But the Ninth Circuit reversed Waters' ruling that the Long Beach ordinances violates the Commerce Clause of the U.S. Constitution by restricting interstate commerce. The court noted that the ordinance does not distinguish between in-state and out-of-state flights, and said that it was not "unreasonable or irrational" — the legal criteria for a facially neutral ordinance to be struck down on these grounds. The Ninth Circuit criticized Judge Waters for making "a quasi-legislative judgment about whether the ordinance's effects on interstate commerce were greater than its beneficial effects on the environment." The court also upheld the ordinance's prohibition of commuter flights, saying that this ban did not distinguish between in-state flights and out-of-state flights.

The circuit judges also reversed Judge Waters' ruling that the ordinance violated the constitution's equal protection clause by regulating commercial air carriers and not private airplanes. "(T)he singling out of air carriers for numerical restrictions is rational given the fact that because air carriers alone have published schedules, it is only upon them that such limitations could have could have a predictable effect," Beezer wrote. ❑

■ The Case: Alaska Airlines v. City of Long Beach, No. 88-6745 and No. 89-55728, 92 Daily Journal D.A.R. 368 (January 10, 1992).
■ The Lawyers:
For the city:
Lee Blackman, McDermott, Will & Emery, (310) 277-4110, and Roger P. Freeman, Deputy City Attorney, (310) 59-2230.
For the airlines:
John J. Lyons, Latham & Watkins, (213) 486-1234.

FYI

Preservation lawyers around the country are anxiously awaiting the outcome of a re-hearing in a key case before the Pennsylvania Supreme Court. In the initial ruling in *United Artists Theater Circuit Inc. v. City of Philadelphia*, the court declared the Philadelphia's historic preservation ordinance unconstitutional. But the court decided the case on state constitutional grounds so as not to run afoul of the U.S. Supreme Court's ruling that a historic preservation ordinance did not constitute a taking....

Two Court of Appeal panels order new briefs in lawsuits challenging local transportation sales taxes; the action comes as a result of the California Supreme Court's ruling in *Rider v. County of San Diego* (*CP&DR Legal Digest*, January 1991). ❑

S.D. Changes Forest Zoning

San Diego County has downzoned more than 30,000 acres of "forest" land near Cleveland National Forest to require 20-acre lots, but environmentalists still argue that the new zoning will permit too much development.

The forest zoning actually covers a 200,000-acre area in eastern San Diego County. But 75% of the land is zoned for open space, and most of it is state park and national forest land. Of the remaining 40,000 or so acres, most were zoned for four- and eight-acre residential lots.

Development in the forest area became an issue last fall when several projects came before the Board of Supervisors for review. In October, the board denied the Roberts Ranch proposal, which would have permitted 124 homes on 714 acres near the intersection of Interstate 8 and State Route 79. Then, in December, the board approved a 17-home subdivision adjacent to the Roberts Ranch property.

Environmentalists and foresters then began clamoring for a downzoning to restrict future development. The U.S. Forest Service asked for 80-acre zoning — a low-density classification often used in forest areas such as New York's Adirondacks. The San Diego County Planning Commission then recommended a change to 40-acre zoning.

By a 3-2 vote, the Board of Supervisors agreed to designate about 35,000 acres for 20-acre lots and retain the existing four- and eight-acre zoning on about 5,000 additional acres. The proposal passed when Supervisor Brian Billbray reversed his vote and decided to support the rezoning.

Despite the fact that the 20-acre zoning represents a substantial decrease in development potential, environmentalists were not happy with it. Environmental groups advocated 40- or 80-acre zoning, saying it would protect the area better, because 20-acre "ranchettes" are attractive ti suburbanites and could encourage development. Sierra Club representative Linda Michaels urged the supervisors to have "the long-term vision of Theodore Roosevelt rather than the short-term vision of aspiring politicians." But Billbray ridiculed the idea that 20-acre zoning would open the development floodgates, calling the action "the most Draconian downzone in the history of the region." ❑

Agencies to Work Together On Las Virgenes Planning

Los Angeles County will join together with four cities, water and school districts, and the National Park Service in revising the county's Las Virgenes area plan.

The unusual step was initiated by County Supervisor Ed Edelman, who began representing the area last year after a court-ordered reshuffling of supervisorial districts.

The Las Virgenes area, straddling Highway 101 from the San Fernando Valley and the Ventura County line, has seen some of the most intense city-county planning fights anywhere in the state in recent years. Los Angeles County resisted the incorporation of Calabasas for many years, and a fight over the sphere-of-influence boundaries for Agoura Hills reached the Court of Appeal.

The area plan has not been updated since the late 1970s, prior to the incorporation of three of the four cities in the area. L.A. County will provide $60,000 — half the cost of the plan revision — while the rest of the money will come from the cities of Calabasas, Agoura Hills, Westlake Village, and Hidden Hills, as well as the Las Virgenes School District, the National Park Service, and local water districts. The park service manages large portions of land in the area as part of the Santa Monica Mountains National Recreation Area. ❑

Sutter County Plan Approved

New Town Would Double County Population; Opponents Hoping to Force Vote on Issue

Sutter County has approved a development plan for 25,000 acres of land in the southern part of the county near the Sacramento Metropolitan Airport — a project which, if successful, could dramatically change the character of that rural county . But a citizen group has gathered thousands of signatures in hopes of placing the issue on the ballot as a referendum.

Developers of the Sutter Bay project have proposed constructing four new towns in the 36-square-mile area — a plan that is expected to add 140,000 people and 96,000 jobs to the area over the next 30 years. One county supervisor called the project "like creating something on the scale of Irvine" in Sutter County. The county currently has a population of about 70,000.

The county board voted 3-1 for the project. Many supporters believe that the project is necessary to attract jobs and prevent Sutter County from becoming a bedroom suburb of Sacramento. Supervisor Peter Licari opposed the project, saying he did not believe the jobs created would benefit local residents.

Supervisor Joe Benatar abstained after being advised by the state Fair Political Practices Commission that he might have a conflict of interest because he is the manager of a title company. Project opponents say they plan to ask the FPPC to investigate whether Supervisor Ron Southard, who provided one of the three votes in favor of the project, might also have a conflict of interest because he is a mortgage lender.

The enormous project is being proposed by Jonathan Cohen and William Falik, two East Bay land-use lawyers who have recently turned to development. For the Sutter Bay project, they teamed up with Ahmanson Development Inc. on the project and hired Marty Van Duyn, former Sacramento city planning director, as project manager. County planners say they want to encourage jobs-housing balance during the phasing of construction, so the ratio of jobs to housing does not get out of whack, and they will encourage dense development, mass transit, and pedestrian alternatives. But Licari, among others, said he fears strip development. ❑

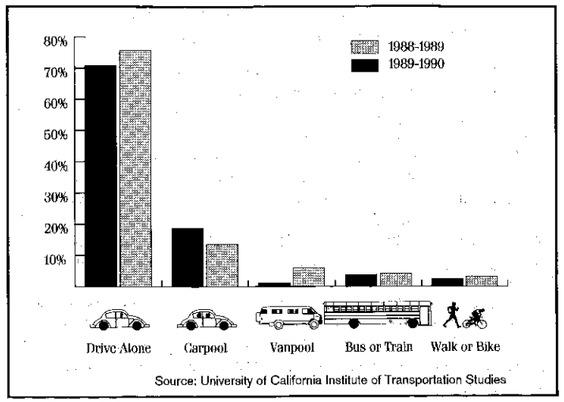
In Brief

The San Jose City Council has rezoned a 92-acre industrial area for housing, a step hailed by the plan's supporters as a major commitment to jobs/housing balance. Gibson Speno Co. and Shea Homes are expected to proceed with construction of close to 1,000 homes in the area, and are negotiating with local school districts on a payment to offset the impact of the new houses....

The Oakland International Airport has decided to postpone construction of a 10,000-foot runway for at least a decade. The runway had been under attack by environmentalists as a threat to San Francisco Bay and wetlands. The runway was to be part of a $300-million expansion including a new terminal, but the Port of Oakland, the airport's operator, ran an $18 million deficit last year, and a spokesman said the volatility of the airline industry made long-term planning difficult....

Sam Sebastiani's Sonoma County neighbors don't like the winemaker's idea to build a 100-acre pond for migrating ducks at his winery near Sonoma. The project has been approved by the Army Corps of Engineers and the state Fish & Game Department, but still requires county approval. One neighbor told the Santa Rosa Press Democrat that Sebastiani "shouldn't be allowed to bring these filthy, rotten ducks here without filing an environmental impact report.". ❑

Changing Commuting Habits



A new survey by the UCLA's Martin Wachs and USC's Genevieve Giuliano shows that employer ridesharing programs are encouraging some people to carpool but not to use public transit. This chart shows the percentage of commuters using each mode of transportation before and after the South Coast Air Quality Management District began requiring employers to draw up ridesharing plans. The statistics are based on a survey of commuters at 812 work sites in the four-county AQMD region. ❑

Riverside, Orange Counties Agree On Highway 91 Toll Lanes

After months of wrangling, Orange and Riverside counties have finally agreed on plans for toll lanes along the Highway 91 freeway, the main commuter artery from housing-rich Riverside into job-rich Orange County.

Both counties had agreed in principal on the toll lanes, but Riverside transportation officials had balked at the idea of Riverside commuters paying most of the freight for the lanes. As reached, the agreement calls for the following:

- Carpools of three or more people would be permitted to ride the toll lanes for free.
- The Orange County Transportation Commission will be reimbursed $5 million by California Private Toll Corp. for planning work done on the toll lanes.
- Both counties will lobby the state to try to get excess profits on the toll project spent on Riverside Freeway improvements.

The proposal passed the Riverside County Transportation Commission by a 4-3 vote. All three county supervisors who serve on the panel voted no on the plan. County officials complained that, because Riverside's new half-cent transportation sales tax will be used to partially fund the toll lanes, Riverside commuters who also pay the tolls would be paying twice for the same thing.

The $88 million project will add toll lanes to a 10-mile stretch of freeway, running from the Riverside/Orange county line all the way to the 57 Freeway. A $2 toll would be charged during rush hour. ❑

CALENDAR

February

- **19: Redevelopment Update.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **19: CEQA: An Update.** Redding. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **21: Planning in California: The Basics.** San Francisco. Sponsor: UC Berkeley Extension. Call: (510) 642-4111.
- **21: Regional Governance and Growth Management.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **21: Subdivision Map Act.** Redding. Sponsor: UC Davis Extension. Call (916) 757-8887.
- **24-25: Airport Noise and Land Use Compatability Symposium.** San Diego. Sponsor: University of California, Institute of Transportation Studies. Call: (510) 231-9590.
- **28: CEQA Update: Issues and Trends for 1992.** Palm Springs. Sponsor: UC Riverside Extension. Call: (714) 787-4105.

March

- **4: Design Review: A "How To" Course for Planners.** Santa Barbara. Sponsor: UC Santa Barbara Extension. Call: (805) 893-4200.
- **4: Development Review: Effective Management Practices.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **6: The Subdivision Map Act Law: A 1992 Update.** San Francisco. Sponsor: UC Berkeley Extension. Call: (510) 642-4111.
- **10-11: Linking Land Use, Valuation, and Tax/Finance Methods.** Los Angeles. Sponsor: Lincoln Institute of Land Policy. Call: (800) LAND-USE.
- **12-14: Litigating and Defending Development Impact Fees.** San Francisco. Sponsor: Georgia Institute of Technology, Continuing Education. Call: (404) 894-2547.
- **13: Wetlands, Endangered Species, and Planning Decisions.** San Francisco. Sponsor: UC Berkeley Extension. Call: (510) 642-4111.
- **13: Traffic Congestion: Causes and Solutions for Land Use Planners.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **13: Subdivision Map Act.** Fresno. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **16: "Babel or Breakthrough": The West Hollywood Urban Design Conference.** Sponsor: City of West Hollywood. Call: (310) 854-7475.
- **17-21: 12th International Making Cities Livable Conference.** San Francisco. Sponsor: Center for Urban Well-Being. Call: (408) 626-9080.
- **20: Cultural Resources: Impact Assessment and Mitigation.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **26: The California Environmental Quality Act: 1992 Review and Update.** Sponsor: UC Berkeley Extension. Call: (510) 642-4111.
- **26-27: Achieving a Jobs-Housing Balance: Effective Land Use Strategy or Unworkable Market Intervention?** San Francisco. Sponsor: Lincoln Institute of Land Policy. Call: (800) LAND-USE.

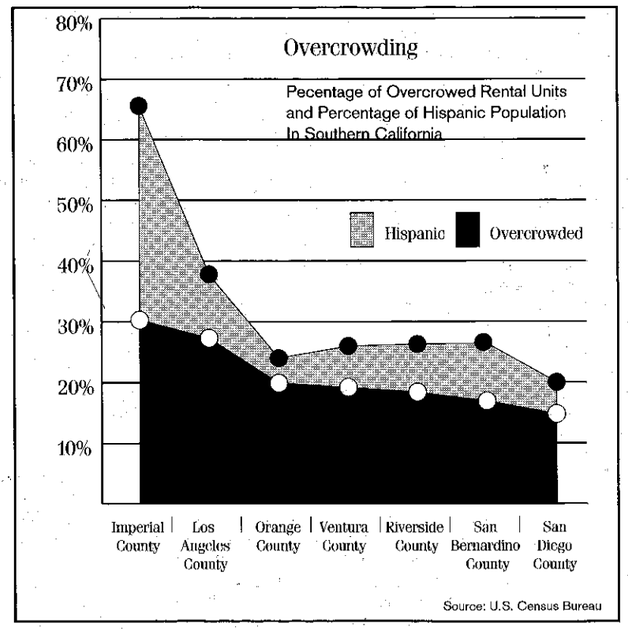
NUMBERS

Stephen Svete

In Multi-Racial California, What Does Overcrowding Really Mean?

The question of housing affordability, a sticky planning issue in most communities in California, is often addressed in the marketplace in such a way that presents a different type of planning problem to city officials — overcrowding.

Emerging statistics from the 1990 Census reveal that overcrowding is on the rise in California. Across the state, in agricultural areas, coastal communities, and college towns, friends and family are teaming up into dwelling units in numbers that the U.S. Census Bureau define as overcrowded and local officials view as far too many for the designed capacity of the units.



In an effort to curb overcrowding practices, which invariably result in stresses on communities' service delivery systems, some cities are responding aggressively through using their biggest stick — police powers provided through zoning authority. In addition to aggressively filing cases against existing building code violations, cities are testing new ordinances limiting the numbers of residents in apartments by type, limiting numbers of residents in single family homes near college campuses, and outlawing the conversion of garages to living quarters. But these measures have been controversial, and both advocates of affordable housing and immigrants rights groups have charged that a stepped-up crackdown on overcrowding now — at a time when affordability problems are near all-time highs — will force people into the streets and may even be racist.

Cities in Orange County have been the most aggressive in combating the overcrowding issues through ordinances. An attempt by the City of Santa Ana to pass an overcrowding ordinance was overturned by an appellate court in 1990 because its interpretation of the state housing code was found to be overly restrictive. (49.4% of Santa Ana's rental units are considered to be overcrowded.) The city has responded with a complex revision of the ordinance which staff members claim will still allow up to five people in a one-bedroom apartment. The Court of Appeal has delayed enforcement of the new ordinance, awaiting an appeal from the previous plaintiff, Asencion Briseno. Briseno has maintained that if the ordinance were strictly enforced, he, his wife, and their three children would be forced to leave.

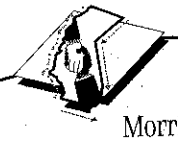
Nearby Orange County communities of Orange, Dana Point, and San Clemente are considering similar ordinances, pending the outcome of the Santa Ana case. But other housing specialists are less convinced the strategy is enforceable or fair. Oxnard Housing Officer Carl Lawson says such a rule would be impossible to enforce, and that " it has a disproportionate affect on the minority population."

New Census statistics suggest that Lawson is probably right. Housing overcrowding in the 1990s has as much to do with affordability as ever, but other factors may be tied to the emerging legal battles — immigration, race, and even cultural values. In a review of newly released Census data published by the Los Angeles Times, the evidence suggests a correlation between overcrowding and Latino populations, especially in areas that are home to large immigrant populations, as both urban and rural southern California clearly are.

Data from the U.S. Census Bureau and the Southern California Association of Governments indicates that in the seven-county southern California region (Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego, and Imperial), 22.2 % of rental units are overcrowded, defined as greater than one person per room within a dwelling unit. Imperial County has the highest overcrowding rate, at 30.3%, while San Diego County has the lowest overcrowding rate, with 14.8%. The data defies any obvious pattern at the county level, given that the least populous and the most populous counties in the region are the first and second most overcrowded areas, respectively.

Focusing on a more local geography, the data points to a different pattern. Of the 10 most overcrowded cities within the seven-county region, nine are in Los Angeles County, largely clustered in the aging industrial corridor near the Los Angeles River between downtown Los Angeles and Long Beach. The anomaly is the town of Coachella, a small agricultural center in eastern Riverside County. But the most important single fact is this: The five most overcrowded cities have Hispanic populations ranging from 85% to 93%.

The Santa Ana case raises reaches to the core of the question of established standards for housing overcrowding. As Briseno might argue, is it fair to force he and his family out of their apartment because they do not meet local zoning codes? A review of adopted standards with respect to the community in question may be warranted. Old standards may no longer apply, especially as the demography and immigration patterns, age distribution, and racial composition of California's population continues to change. ❑



DEALS

Morris Newman

Disney Goes for Control, Not Money

Now that The Walt Disney Co. has chosen Anaheim as the location of its $3 billion "second gate" in California, the competition between the Orange County city and Long Beach has been resolved. A lot of semi-convincing public explanations have been floating around as to why. But the truth may be a lot more subtle than the headlines. And the most important lesson of the whole affair may be what this decision says about Disney as a company — and as a major shaper of our built environment.

In an earlier column, (*CP&DR Deals*, September 1990), we suggested that Disney had created a bidding war for subsidies by dangling itself in front of the two cities. According to published estimates, Disney needed about $1 billion in Anaheim for freeway widening and offramps, while Long Beach city officials said about 880 million was needed in Long Beach for street widening and other traffic improvements. (Both figures are rough estimates.) Yet we suspect money was secondary in Disney's decision. Uncertainty was a greater issue. And possibly the greatest factor of all was the company's ability to call the tune.

> *"The Long Beach proposal was a particularly ambitious and intriguing piece of planning."*

But the decision to walk away from Port Disney in Long Beach could be a cause for regret. The Long Beach proposal was a particularly ambitious and intriguing piece of planning. The seaside location would have been a first for Disney. To be located in the city's downtown area, the Port Disney project called for about 200 acres of landfill to extend into the Long Beach harbor. And the project offered ample public space: roughly half the area of had been set aside for pedestrian shopping streets and resort hotels.

In contrast, the description of the 470-acre Westcot Center — the Big Bang in Anaheim — seems like a *deja vu* of Disney's existing Epcot attraction in Orlando, Fla. The focus of Westcot is to be "our humanity, our history, our planet, our universe," according to Disney literature, but its greatest emphasis seems to be on our money. As a piece of urban design, Westcot appears to promise less in public space than did Port Disney. Public uses are relegated to a single small district, Disney Center; the rest of the park will remain a gated area requiring a $26 ticket.

What makes the choice for Anaheim doubly confusing is that Disney appeared to favor Long Beach above Anaheim. If so, the theme-park developer had some good reasons: Long Beach has arguably a more attractive location, with a newer and more attractive downtown area. The park would have a unique waterfront setting. The area is well served by freeways and rail. Above all, the Long Beach site — where Disney holds a land lease that came with the purchase of Wrather Corp. — would have enabled CEO Michael Eisner and the current generation of Disney executives to make their mark on the world far from the shadow of the Magic Kingdom. Port Disney would have been a bold and in many ways unexpected move that reinforced, rather than undermined, good place-making and a strong environmental consciousness — something as dramatic as lasting in its own way as the original Disneyland itself.

Anaheim, on the other hand, is a more prosaic city. Disney officials have complained privately about the tacky hotels surrounding the original Disneyland and a somewhat inconvenient location off the antiquated Santa Ana freeway.

So what made Long Beach unacceptable? The most obvious possibility is the tough time that Disney had with state officials about winning some favorite-son waiver of the environmental rules. One of those rules is the Coastal Act's general prohibition on landfill along the coastline.

Disney lobbied hard last last year to crack open the Coastal Act to give Port Disney a similar exception. According to the Sacramento Bee, the company hired two environmental lobbyists, in addition to Disney's standing account with the entertainment-oriented Sacramento lobbying firm of Neff Thomas. Although the hired guns reportedly pushed hard on Disney's behalf, the bill died in committee last spring. When environmentalists complained that an exemption could "set a bad precedent" and weaken the integrity of the coastal act, Disney offered a different version, this time allowing such exemptions only in the Long Beach area. Disney may have smelled defeat, or at least great difficulty, when the bill unceremoniously died in committee.

In the early fall, however, Disney seemed a show a change of heart and a new spirit of accommodation by proposing only 50 acres of coastal fill, and that all the uses on the new atoll would be marine-related, solving the problem of the Coastal Act's limitations. Long Beach City Councilman Ray Grabinsky says that an opportunity was missed in having the prestige of Disney associated with such crucial environmental issues as the coastline and wetlands.

But in December, Disney officials kept their promise to make a decision by the end of the year and chose Anaheim. But why Anaheim, particularly when a compromise version of Long Beach could have cleared the regulatory hurdles? A Disney official said it was a essentially a matter of certainty. "We thought it was essential to have clarity about what we were going to do," said vice president David Malmouth, adding that Disney "picked the project which had the higher likelihood of being built, and being successful, by the end of the decade."

But we think it was not quite so simple. In our view, Disney simply did not want to negotiate a deal in which it did not hold the upper hand. In Anaheim, where the company is a major employer, Disney has clout. In Long Beach, Disney would be at the mercy of state and federal officials, and have to cringe and beg for approvals. In other words, in Long Beach Disney would have been just another developer — an unfamiliar and uncomfortable role.

Disney officials were probably correct in assuming that Long Beach would be much harder to negotiate and would take years of negotiation. But by choosing the safe bet over the longshot, Disney lost a creative opportunity. A marine-oriented attraction on the coast would have provided a public benefit, and the idea could have won many supporters in both government and the private sector. The plan might even have helped ameliorate the "greedy developer" image Disney has been painted with over the past couple of years.

But by choosing the route of least resistance, it looks like Disney valued control above everything else. Yes, Long Beach would have been a pain to pull off, but it may have been the more interesting project. Sometimes you have to go through some mickeymouse to do something worthwhile. ❑