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## INSIDE



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# Species Talks Drag

## No Interim Controls In Place Yet

The Wilson Administration's attempt to preserve the coastal sage scrub habitat in Southern California — an innovative negotiation that grew out of the California gnatcatcher endangered-species controversy — has proceeded at a snail's pace, angering environmental groups. But state officials say some progress is being made.

After six months of negotiation, the Administration still has not imposed a set of "interim controls" on development in coastal sage scrub areas, as promised last fall. Though Administration officials say that such controls are not essential because of the real estate bust, environmentalists disagree. The Natural Resources Defense Council walked out of the coastal sage scrub negotiation in December because of the interim controls issue. "I felt that was a violation of the understanding that we went into the process with," said Mary Nichols, director of the NRDC's L.A. office.

Meanwhile, the U.S. Fish & Wildlife Service is moving closer to listing the gnatcatcher as an endangered species, a move that could render the Wilson Administration's negotiations moot. Fish & Wildlife held hearings on the gnatcatcher in Orange County in late February and is expected to make a decision by September. Under federal law, Interior Secretary Manuel Lujan could postpone the decision until March 1993. Both the Wilson Administration and *Continued on page 9*

# Challenges Await Howe in L.A.

## New Planning Director Arrives In April

By William Fulton and Morris Newman

When Con Howe takes over as director of the Los Angeles City Planning Department in early April, he will confront a city eager for stronger direction on planning issues but divided on how to achieve that goal.

The 42-year-old Howe was confirmed by the L.A. City Council in late February, about three weeks after he was selected by Mayor Tom Bradley to succeed Kenneth Topping, who resigned in late 1990. Howe comes to Los Angeles from New York City, where he served until recently as executive director of the city planning department. "The main reason the mayor picked him was that he presented the absolute best fit of skills for the job," said Jane Blumenfeld, Bradley's planning deputy. Blumenfeld said Howe had run a large bureaucracy, and he has experience in working with diverse groups in a politically charged environment because of his experience in New York and Manhattan in particular.

*Continued on page 4*

# Supreme Court Hears Land-Use Cases

## Landmark Ruling Expected From Lucas Case

Nineteen ninety-two is shaping up as the biggest year for land-use cases at the U.S. Supreme Court since 1987, when the landmark Nollan and First English cases were handed down. In February and early March, the court heard oral arguments on two important cases — *Lucas v. Coastal Council* and *PFZ v. Rodriguez* — as well as the constitutional challenge to Proposition 13.

The Lucas case is considered most important because it involves an alleged taking from South California. Active questioning by eight of the nine justices left lawyers on both sides of the case puzzled as to the likely outcome of what had been billed as a key test of the attitude of the Supreme Court's solidified conservative majority toward the growing property-rights movement.

Some questions in the Lucas oral argument indicated that a few justices may be concerned about ripeness issues in the case. But Justices William Rehnquist and Antonin Scalia, the court's leading property-rights advocates, seemed determined to craft a landmark opinion. An on-the-scene report by Kenneth Jost, CP&DR's special Supreme Court correspondent, appears in the *CP&DR Legal Digest*, beginning on page 5.

## CALIFORNIA DIRT

William Fulton

# Linking Growth Management to the Economy

You've got to begin wondering whether Pete Wilson is ever going to announce his long-awaited growth management proposal.

When he first took office, Wilson appointed an internal task force to look at the problem and promised he would produce a sweeping proposal early in 1992. (In fact, at his request, virtually all land-use planning bills were held up in the Legislature last year in order to await his proposal.) But then things began to slow down. He mentioned growth management briefly during the State of the State speech in January but offered no specifics. Some details emerged in speeches by Wilson aides during January (*CP&DR*, February 1992), and for a while it looked like the announcement might come in late February. Now it's March, however, and an announcement seems further away than it did back in January.

In a lot of ways, this isn't surprising. Wilson has had a much fuller plate of problems than anyone could have predicted, and in particular the state's revenue situation has left him with little leeway to propose new initiatives. And it's understandable that, in the middle of the worst recession in 20 years, managing growth might not seem like the highest priority in the world — not compared with, say, stimulating some of it. But Wilson is missing an opportunity to use the growth management issue to his political advantage, even — or maybe especially — in hard economic times.

> *"Pete Wilson is missing the opportunity to use the growth management issue to his political advantage, even — or maybe especially — in hard economic times."*

Curiously enough, right in the middle of slowing down his growth-management proposal, Wilson appointed the so-called "Ueberroth Commission" — the Commission on California Competitiveness — and charged it with figuring out why California's business climate is so lousy. It seems pretty obvious to me why California's business climate is so lousy — other than the current national recession, I mean.

Despite a drop in prices, housing still costs twice as much as the national average. It's really hard to get approval to build new development projects, even when they're undeniably necessary. Traffic and smog problems get worse, largely because local governments don't or won't or can't coordinate their local land-use policies. State agencies charged with building infrastructure and conserving resources move in conflicting directions. In other words, business is fleeing California because we're not doing a good job of managing our growth. I'd even lay odds that the Ueberroth Commission will come to that conclusion, even if five of its 17 members are from Orange County. After all, they all probably drive on the San Diego Freeway just like everybody else.

Yet Pete Wilson — ex-mayor and self-described growth management pioneer — does not seem very interested in connecting the "competitiveness" question to the growth management issue. His political advisors seem to think that growth management has this big-government overtone that nobody wants to hear these days — more regulation and all that stuff.

But it doesn't have to be that way. Look what Wilson has been talking about. Channeling state infrastructure into areas targeted for high growth. Streamlining environmental review at the project level. Coordinating local efforts so they don't work at cross-purposes anymore. Setting aside large areas of environmentally sensitive land to help preserve the unique quality of life that drew our remarkable work force here in the first place. This isn't growth management; this is industrial policy. What we're talking about is making our planning system better, more efficient, more productive, so the economic activities that need to take place can take place while using a minimum of resources, economic and environmental. If the prime minister of Japan floated this kind of proposal, George Bush would be scared to death.

A couple of years ago I went down to Florida to write a magazine story about whether that state could ever become a diverse economic powerhouse like California. As I talked to a lot of the business and banking leaders there, they agreed that Florida's big liability was its low-tax political philosophy, which prevented the state from investing in basic infrastructure the way California did during the Earl Warren and Pat Brown years.

The business leaders knew, of course, that the political climate in 1990s Florida was different from the political climate in 1950s California. They knew that a Pat Brown-type public-works program was an unfashionable political concept and probably an outdated public-policy idea as well. But they also knew that growth policy — state-level growth policy — inevitably plays a role in economic prosperity. And many of them pointed with pride to Florida's tough growth management law, which was pushed through the state legislature in the mid'-80s by Democratic Gov. Bob Graham. The Florida law lays out a few simple state growth policies, among them compact urban development and "concurrency," which means you can't build new development projects unless you build the roads and other infrastructure at the same time.

The tax thing was still a problem, the business leaders said; there was not enough money in the system to build all the roads and the schools. But, they insisted, the growth management law was important. By forcing the state and local governments to focus on where and how growth was going to occur throughout the state, the law might help Florida avoid the growth-flailing-out-of-control problem that was — and is — afflicting California. Some of them even suggested that the growth management law came in handy when they were trying to cherry-pick California businesses by proving the state was serious about maintaining its quality of life.

It's unlikely that the Ueberroth Commission will suggest a policy initiative in the area of growth management. After all, the California business community — in contrast to Florida's — has been singularly uninterested in growth issues over the years, and Ueberroth and his colleagues are much more likely to simply rail at over-regulation in general. But the governor himself would be ill-advised to follow suit. No regulation can be just as destructive to the economy as too much regulation. And a well-managed economic future might be a good political message in 1994 — especially for a governor who considers himself both a manager and an expert on growth. ❑





# Hemet Drops Controversial Redevelopment Scheme

### State Finance Department, Taxpayer Groups Attacked Plan to Build Schools With Increment

Faced with strong opposition from the state Finance Department and local citizens, the City of Hemet has back off from a redevelopment scheme intended to provide the local school district with construction funds. But a similar plan is moving forward in Santa Ana, and taxpayer advocates say they have targeted such schemes for attack.

The Hemet plan would have taken advantage of loopholes in state law, allowing redevelopment funds to be used for school construction while forcing the state to reimburse the school district out of general-fund revenues. Ordinarily school districts must wait in line for reimbursement from the state's school construction fund, which is currently nearly broke.

In an unprecedented step, Finance Director Thomas Hayes went to court to contest the validity of the Hemet redevelopment scheme. At the same time, local citizens teamed up with the Paul Gann's Citizen Committee, a taxpayer group, to organize local opposition to the project. When confronted with petitions to place a referendum regarding the redevelopment plan on the ballot, the Hemet City Council voted in mid-February to drop the idea altogether.

The stakes involved in this so-called "double-dipping" scheme are large, which is why Hayes decided to step in. The Hemet plan would have provided schools with $198 million over 40 years, while the proposed Santa Ana redevelopment scheme would provide local schools with $1.5 billion in construction funds over 30 years. Because these funds come from property-tax revenue "lost" to the school district because of redevelopment, the state would have to reimburse the school district for most of it.

Critics of the scheme — most of whom work in the Legislature or in state agencies — compare the plan to a money-laundering scheme. Local officials, however, defend it as an appropriate response to the state's inability to provide needed school construction funds. Under the 1986 School Facilities Act, the state is supposed to provide most of the money for school construction, but neither state bond issues nor general-fund appropriations have been able to keep up with the rapid increase in student enrollment.

The Hemet situation could signal the beginning of a broader attack on redevelopment practices. For many years, counties have complained that cities use redevelopment as a way to obtain property-tax revenues they would otherwise have to share with counties, school districts, and special districts. Until the Hemet scheme was revealed, however, almost nobody else cared. The entry of Hayes and taxpayer activists into the redevelopment fray, however, led to widespread publicity over redevelopment practices.

"We believe redevelopment agencies generally have a considerable public benefit," said Glee Johnson, assistant program budget manager for the Department of Finance. "This one struck us as not falling in line with the purpose of redevelopment."

As for taxpayers, Richard Gann of the Paul Gann's Citizen Committee said his organization — which boasts 250,000 paying "sponsors" — has targeted redevelopment abuses as a high-priority item. The organization has hired longtime redevelopment opponent Sherry Passmore-Curtis as a consultant on redevelopment issues; it was Passmore-Curtis who brought the Hemet situation to the attention of both Gann and the state. "We are totally prepared to deal with this issue both referendum-wise and with lawsuits," Gann said.

The redevelopment scheme proposed in Hemet is sometimes called the "Coronado plan" because it was first used several years ago in the City of Coronado. The scheme works like this:

A city declares virtually its entire corporate boundary as blighted because of a lack of needed school facilities. This designation means that all future increases in overall property-tax revenue within this large redevelopment area go into redevelopment agency coffers, rather than being shared by county, school district, special districts, and other taxing entities. The city then negotiates "pass-through" arrangements with all other taxing entities except the school district, so that they will receive a portion of this "tax increment." With the remaining tax increment, the city redevelopment agency builds schools. And because state law requires school districts to be reimbursed for property-tax revenue "lost" to redevelopment, the schools then get the money back from the state.

Thus, in essence, the school district has used the redevelopment agency to obtain money from the state general fund for school construction. Ordinarily, school districts must apply to a state allocation board to receive reimbursement for construction funds — a process that can sometimes take years. In Coronado, this finance method yielded a $3-million-per-year tax-increment flow — enough to float an $11.5-million bond issue and build a 750-student elementary school. ❑

■ Contacts: Joseph Guzzetta, Hemet city manager, (714) 658-9411.
Glee Johnson, Department of Finance, (916) 324-0043.
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# New Bill Would Tighten Mello-Roos Requirements

### Recent Defaults Stir Fears Among Legislators, Other State Officials

In the wake of defaults and near-defaults on Mello-Roos bonds throughout Southern California, both State Treasurer Kathleen Brown and legislative leaders are considering ways to change the Mello-Roos law.

In perhaps the most significant development, Sen. Henry Mello, D-Watsonville, has introduced the most sweeping Mello-Roos reform bill since the law was first passed 10 years ago. Among other things, SB 1464 would prohibit any city, county, or school district from forming a Mello-Roos district unless the agency receives most of the proceeds of the resulting bond issue.

This provision is aimed at preventing a rerun of the recently defaulted Temecula Valley School District bond issue, in which the school district organized a $27 million bond issue even though it received only $1 million of the proceeds. "The idea is to avoid the situation of developers shopping for the dumbest district," said Senate staffer Dean Miszcynski, who drafted Mello's bill.

Mello-Roos bonds have become increasingly popular as a way of financing infrastructure for new developments; since 1983, more than $3 billion in Mello bonds have been floated. The bonds are paid off with additional property taxes imposed on the land included in the district; thus, they are sometimes called "dirt" bonds. With the downturn in the real estate market, however, several Mello bonds have teetered on the edge of default. (*CP&DR*, January 1992.) In response, Brown convened a special hearing of her California Debt Advisory Commission in Orange County in January to discuss issues surrounding Mello-Roos bonds.

Last year, CDAC issued a report on Mello-Roos bonds that urged local governments to adopt fiscal guidelines when floating such bonds. (*CP&DR*, November 1991.) Some of the CDAC proposals are included in Mello's bills.

Under SB 1464, local agencies forming Mello-Roos districts would have to adopt policies similar to those proposed in the CDAC report, and the lead agency in forming the district must receive most of the money from the resulting bond issue. In addition, the Mello-Roos district must provide a better description of what the money will be used ❑

# Howe Faces Major Challenges as New L.A. Planning Director

*Continued from page 1*

Howe steps into a situation rich with opportunity and loaded with risk. In terms of policy and vision, the planning environment is wide open; the city lacks a "vision" on how to grow. At the same time, however, Howe may find himself straightjacketed by special interests and the "fortress mentality" at almost every turn. "One of the things he's going to have to do is build a constituency for planning," said Jane Blumenfeld, planning deputy to L.A. Mayor Tom Bradley.

In Los Angeles, the planning constituency is fragmented among politicians, neighborhood groups and developers. Each tends to pursue separate objectives, often as single-issue agendas (such as traffic congestion) or as highly localized land-use controversies (such as downsizing a project in the neighborhood). Because of L.A.'s "weak-mayor" system, most of the planning power resides with the 15 members of the city council, who exert virtually unchecked influence over development in their districts. "The planning director's power is limited," said Westwood neighborhood leader Laura Lake. "He is an advisor. He serves the council; it's not the council serving him. I've rarely seen a planning director contradict statements of council members or defend a sound planning decision."

In 4 1/2 years on the job, Topping found himself caught in this political vice. In a telephone interview from New York, Howe said he believes it is possible for the planning department to carve out a more forceful niche in city policymaking. He pointed out that during his confirmation hearings, both Council President John Ferraro and Councilman Hal Bernson advised him not to be afraid to butt heads with individual council members when their interests do not coincide with the interests of the city as a whole. "There seems to be a consensus that there needs to be a strong planning program for the city, and that the place to have it is in the Department of City Planning," Howe said.

Howe expressed optimism that his department could forge a bridge between the concerns of individual council members and citywide planning policy. "It's up to the planning department to see the linkages between a multitude of specific problems, so that when the planning department says, here's an issue we have a position or an approach on, it is one that addresses not just the specific problem in this council district, but is at least a partial answer to the problem citywide," he said. "You have to keep identifying those kinds of issues. I just don't believe there's not a pattern or a commonality about it."

In addition to dealing with the council members, Howe will also have to contend with the narrowly focused agendas of both developers and homeowner groups, who fight constantly for political leverage over the council members. Lake, a neighborhood leader, said the underlying problem in Los Angeles is with the "institutionalized corruption" that emerges from a system in which developers provide large campaign contributions to council members. By contrast, San Bernardino homebuilder Cary Lowe — who holds a Ph.D. in urban planning and was among the 12 finalists for Howe's job — said Howe will have a tough time with neighborhood groups. "It is the six blocks around your house which becomes people's point of reference," Lowe said. "You have to overcome that kind of balkanized approach to planning."

Just as difficult as the political problems, however, are the bureaucratic problems Howe faces within the planning department. A management audit last year characterized the department as ineffective and demoralized, and called for sweeping changes in the way the agency operates. Howe served on the professional review panel for the management audit and endorses its findings.

It is hard to say, however, whether Howe will be able to inspire the planning staff to do a better job. Many insiders say the staff is a talented group looking for good leadership. "For the most part, everybody in that department wants it to get better," says Blumenfeld, who worked there for 11 years before moving over to the mayor's office. "It's no secret that it's in bad shape. I think we're at such a low point it can only get better."

For his part, Howe said he hopes to open up the department's operations to encourage creativity and productivity. "While I believe strongly in management and supervision within an agency," he said, "I am also not hierarchical, and I believe good work and good ideas come from all levels."

In defining Howe's challenge, many people in Los Angeles suggest that he should develop a compelling "vision" of the city's future growth — a vision that would inspire politicians, developers, neighborhood leaders, and professional planners to begin moving in the same direction. Howe admits that he is not very familiar with Los Angeles, and this lack of familiarity may be both an asset and a liability. Some neighborhood leaders have expressed suspicion about Howe because he worked for so long in New York — apparently fearing that he will advocate a relentless high-density growth strategy for L.A. But Howe said: "I'm not coming in here trying to apply any preconceptions of what any city ought to be like."

One potential starting point for the vision-building process might be the so-called "General Plan Framework," a multimillion-dollar consulting contract designed to pull together growth management principles and assessment of resource constraints in order to fashion a comprehensive citywide growth policy. Despite — or perhaps because of — its massive size, the Framework contract has been riddled with delays. The planning department issued a request for proposals almost two years ago, and only now is finishing negotiations with a consulting team. ❑

## Warner Ridge Case Settled

A tentative settlement has been reached in the controversial lawsuit between the City of Los Angeles and the developer of a proposed office and housing project in Woodland Hills. But the city continues to struggle with the consequences of a Court of Appeal ruling on the project.

The L.A. City Council has approved a settlement permitting developer Jack Spound to construct a 690,000-square-foot office project and 125 condominiums on the so-called "Warner Ridge" site. The city and the developer are still negotiating details of the settlement, but the broad principles of the agreement have been presented to the L.A. Superior Court judge overseeing the case.

The tentative settlement comes just a few weeks after a Court of Appeal ruling striking down L.A.'s "hierarchical" zoning scheme, which permits many parcels of land to be zoned for uses less intense than the city's general plan calls for. In the Warner Ridge case, the general plan permits commercial development on the 21.5-acre site, but when neighborhood opposition to the project surfaced the L.A. City Council downzoned the property to accommodate only residential use.

Spound originally sought a 960,000-square-foot commercial development, and later agreement with a citizens committee on a project of 810,000 square feet. After the downzoning he sued, seeking $100 million in damages. According to Carlyle Hall, a private lawyer working for the city, the city's potential liability in the case was somewhere between $15 million and $60 million.

The settlement does not, however, address the broader problems created by the Court of Appeal ruling in Warner Ridge Associates v. City of Los Angeles, 92 Daily Journal D.A.R. 97. Thousands — and perhaps tens of thousands — of parcels in the city have zoning designations that are "lower" than their general plan designations, as the Warner Ridge property did. ❑





CP&DR
LEGAL DIGEST

# Supreme Court Hears Lucas Case, But Outcome Is Hard to Predict

## Ruling Could Mark Turning Point In Property Rights Debate

By Kenneth Jost

The U.S. Supreme Court appeared divided and uncertain March 2 as it heard arguments in a closely watched beachfront development case that could set new limits on government power to restrict use of private property without paying the owners.

Active questioning by eight of the nine justices left lawyers on both sides of the case puzzled as to the likely outcome of what had been billed as a key test of the attitude of the Supreme Court's solidified conservative majority toward the growing property-rights movement.

"The questions were all over the board," said Nancie Marzulla of the Washington-based group Defenders of Property Rights, who filed a friend-of-the-court brief in support of the plaintiff in the case, South Carolina developer David Lucas. Lucas is asking the court to reinstate a $1.2 million damage award he won against the state of South Carolina because of a 1988 law that barred him from building on two oceanfront lots he bought before enactment of the law.

Los Angeles lawyer Katherine Stone said she was also uncertain of the justices' leanings after the argument. "It's hard to work out a clear direction," said Stone, who filed a brief on behalf of 75 California cities and counties urging the justices to reject Lucas's damage claim.

The South Carolina Supreme Court overturned Lucas's damage award, agreeing with the state's Coastal Council that the development restrictions were necessary "to prevent serious injury to the public." After the U.S. Supreme Court agreed to review the case last fall, environmental groups and state environment officials warned that a broadly written constitutional ruling in Lucas's favor could inhibit efforts to limit development in coastal areas, wetlands and elsewhere.

Oddly, Lucas has conceded the state's Beach Management Act advances a "substantial state interest," but argues that he is still entitled to be paid for his land because the law denies any "economically viable use" of the property. Several Washington-based property-rights groups distanced themselves from that stance. They argued instead for rigorous scrutiny of the justification for property restrictions but acknowledged the government's power to ban uses of property that amount to a public "nuisance."

Further complicating predictions in the case is a procedural issue created by Lucas's legal strategy. South Carolina amended the beach control law in 1990 to allow beachfront owners like Lucas to apply for an exemption from the building restrictions. Lucas, however, never filed for an exemption, calling the procedure a "smokescreen."

During the argument, several justices — including Sandra Day O'Connor, Byron White, and John Paul Stevens — asked whether Lucas's failure to exhaust his administrative remedies meant the case was not "ripe" for the Supreme Court to decide. When Lucas's lawyer, A. Camden Lewis of Columbia, S.C., answered by saying the South Carolina high court had been willing to decide the case, White shot back: "That doesn't settle ripeness for us."

But two of the court's most property-rights-minded members — Chief Justice William H. Rehnquist and Justice Antonin Scalia — countered the idea of returning the case to South Carolina courts without a decision on the main issues. Scalia argued the justices had discretion whether to invoke the ripeness doctrine, while Rehnquist said that in any event Lucas's inability to use his land for two years could entitle him to compensation for that period despite the 1990 legislation. Rehnquist wrote the Supreme Court's 1987 ruling in *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, which ratified the concept of a "temporary taking."

Both Marzulla and Stone predicted the court would eventually set the procedural issue aside and reach the question of how to weigh land use restrictions against property rights. "It's pretty clear they're going to say something," Stone said. "They're looking for some limits, but they didn't find the answers they were looking for."

The court's decisions on the issue over the years have been muddled. In *Pennsylvania Coal Co. v. Mahon*, 260 US 393 (1922) by Justice Oliver Wendell Holmes, the court first declared that in some cases regulation could "go too far" and amount to a taking of private property requiring compensation under the Constitution. In 1978, *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), the court listed three factors to determine whether land use regulation amounted to a taking: the economic impact of the regulation, the regulation's interference with reasonable investment expectations, and the character of the government action. Two years later, in *Agins v. City of Tiburon*, 447 U.S. 255 (1980), the court phrased the issue differently, saying a taking could result if a regulation "does not substantially advance legitimate state interest . . . or denies an owner economically viable use of his land."

Lucas's lawyer, Lewis, opened by saying that was exactly what had happened to the beachfront lots that Lucas had paid $975,000 for. But he was promptly challenged by Justice Harry Blackmun, the court's most vocal defender of environmental regulations.

"You feel it was completely worthless?" Blackmun asked. After Lewis said yes, Blackmun continued: "Would you be willing it to give to me?"

After brief laughter in the courtroom, Lewis at least partly recovered. "If there are taxes owed, yes, I'd be willing to give it to you," he said.

Lewis also found himself challenged by Justice Anthony Kennedy, who appeared to defend the beachfront restrictions by asking whether the government could ban building in a residential subdivision after the discovery of an earthquake fault in the area. "Why can't the state say . . . that this is now a very dangerous place to build — dangerous to its owners, dangerous to the public?" Kennedy asked.

In his turn, the coastal council's lawyer, C. C. Harness III, was pressed by Scalia to detail the harms that the beach controls were aimed at preventing. Harness listed the threat of beach erosion and storm-broken water and sewer lines, but Scalia was unsatisfied. "That's enough to prevent all building entirely?" Scalia asked — and then noted that those risks had not prevented other property owners from building houses all along the beachfront.

The court's newest justice, Clarence Thomas, was the only member not to ask questions during the argument. Property-rights advocates expect him to line up on their side along with Rehnquist, Scalia and perhaps O'Connor. Kennedy's questions appeared to align him with three justices — Stevens, Blackmun and White — who joined in 1987 in upholding a Pennsylvania law limiting subsurface coal mining in order to protect buildings from subsidence. *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470.

That could leave the swing vote with Justice David Souter, who has not participated in any of

the previous property-rights cases. During his questioning of Lucas's lawyer, Souter appeared receptive to the state's arguments for controlling beach development.

Stone said she and other municipal attorneys felt encouraged after the courtroom session, but she was still prepared for a ruling narrowing the permissible scope of regulation — for example, by a tighter definition of public nuisance. Marzulla said she and other property-rights advocates also believed that the key issue for the court could be the standards for defining nuisances. She suggested the court might adopt something like a "clear and present danger" test for nuisance law, looking to see whether the danger is definite rather than speculative and how severe the harm is.

For property rights groups, the Lucas case gained added significance after the justices had a strong negative reaction to a second case seeking to expand legal protections for property owners against development restrictions.

In that case — *PFZ Properties Inc. v. Rodriguez*, 91-122 — a development company filed a claim under federal civil rights law after Puerto Ricans' authorities denied a building permit for construction of a resort hotel. Two lower federal courts dismissed the suit.

When the case was argued before the Supreme Court Feb. 26, several justices challenged the development company's lawyer's argument that the denial of the permit violated a property right protected by federal law. "It is totally unclear to me," O'Connor said at one point, "what property it is you say has been taken."

The court dismissed the case without an opinion on March 9, saying that review had been "improvidentially granted." ❑

■ The Case:
Lucas v. South Carolina Coastal Council, 91-453
■ The Lawyers:
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For South Carolina Coastal Council: C. C. Harness III, (803) 744-5838
For Defenders of Property Rights (amicus):
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## SUPREME COURT

### Supreme Court Appears Cool To Proposition 13 Challenge

The U.S. Supreme Court gave a chilly reception February 25 to a Los Angeles homeowner's claim that California's Proposition 13 unconstitutionally discriminates against new property owners by taxing their property at full market value while limiting assessments of old property owners.

At least four justices clearly signaled their reluctance to overrule local property tax schemes despite the wide gap in California between taxes on newly purchased property and taxes on property owned before Prop. 13's enactment in 1978.

"We don't throw out taxing schemes because a large number of people are going to be hurt," Chief Justice William H. Rehnquist said in a comment echoed by three other justices: Sandra Day O'Connor, Antonin Scalia and David H. Souter.

Only Justice John Paul Stevens voiced qualms about the measure. "You've got neighbors who get the same benefits from the state but pay lower taxes," Stevens said. "There's something counter-intuitive about that."

Los Angeles lawyer Carlyle W. Hall Jr. — representing homeowner Stephanie Nordlinger — said Prop. 13 allows the owner of a Beverly Hills mansion assessed at pre-Prop. 13 levels to pay lower taxes than the owner of a modest Venice bungalow assessed at current value. The high tax burden, he said, falls on new homebuyers who are already "stretched" by high mortgages.

But Rex Lee, a former U.S. solicitor general who defended Prop. 13 on behalf of L.A. County Assessor Kenneth Hahn, said the measure ensures homeowners won't lose their homes because of rising taxes. And he warned the justices that striking down Prop. 13 would invite more constitutional litigation over property tax systems. "It's going to make Sherman's march through Georgia look like a Sunday picnic," he said.

The court's decision is due by the end of June. ❑

■ The Case: Nordlinger v. Hahn, 90-1912.
■ The Lawyers:
For Nordlinger: Carlyle W. Hall Jr., (310) 470-2001.
For L.A. County: Rex Lee, (202) 736-8000.

## DEVELOPMENT FEES

### Nollan Analysis Doesn't Apply To S.F. Transit Impact Fee

San Francisco's transit impact fee should not be subjected to the heightened judicial scrutiny used in the U.S. Supreme Court's ruling in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), the First District Court of Appeal has ruled.

In a unanimous ruling, a three-judge panel of the First District concluded that the Nollan analysis should apply only in instances when a potential "taking" involves actual physical possession of the property, rather than merely the imposition of a regulation.

Courts have long stated that land-use regulations must "substantially advance" a "legitimate governmental interest" in order to be valid. In the landmark Nollan case, the U.S. Supreme Court declared unconstitutional a Coastal Commission demand that a property owner grant a beach access easement in exchange for a development permit. The Nollan ruling seemed to place a greater burden on governments — requiring not merely that a regulation advance a governmental interest, but that the regulation be directly related to the specific governmental interest which gave rise to it.

In a case involving the Levi's Plaza office building in San Francisco, however, the Court of Appeal concluded that this heightened scrutiny should not be applied to regulatory takings cases. The court relied heavily on the Ninth U.S. Circuit Court of Appeals ruling in *Commercial Builders v. Sacramento*, 941 F.2d 872 (1991), which concluded that this heightened level of scrutiny should be applied only in cases of "possessory taking" — that is, when a taking of property has occurred in the form of physical occupation. (*CPEDR*, September 1991.)

The transit impact fee was challenged by the builders of Levi's Plaza, a five-story office building constructed along the waterfront near downtown San Francisco. The fee, which calls for payment of $5 per square foot on downtown office space, was imposed after Levi's Plaza was approved by the planning commission but before the building received its certificate of completion. When the city demanded payment, the building owners paid the $3.1 million fee into an escrow account under protest.

The California Supreme Court has already ruled that the transit fee could be applied to projects that were under construction at the time the fee was passed, because the approval of projects was conditioned on the developers participating in such a financing scheme. (*Russ Building Partnership v. City and County of San Francisco*, 44 Cal.3d 839 (1988).)

In arguing that the heightened scrutiny test from Nollan should apply to the Levi's Square situation, the developers relied on the Court of Appeal ruling in *Bixel Associates v. City of Los Angeles*, 216 Cal.App.3d 1208 (1989), which held that a fire hydrant fee ordinance was a special tax in violation of Proposition 13 because it did not contain necessary constitutional safeguards to create a strong "nexus," or connection, between the new development and the fee in question. Bixel is often cited by developers in nexus cases because it is one of the few instances where a California appellate court has struck down a fee based on a nexus issue. But in this case, the Court of Appeal disregarded the Bixel case because it dealt with Proposition 13, not with takings law.

The Court of Appeal also rejected several other arguments by the Levi's Square developers. The developers argued that the condition of the project's building permit that required participation in a financing scheme did not cover the transit fee, which the court concluded was untrue. Finally, the developers argued that Levi's Square should not have been subject to the fee because the project was not located downtown. However, the Court noted that the developers had stipulated that the project is within the geographic downtown area as defined by the ordinance. ❑

■ The Case: Blue Jeans Equities West v. City and County of San Francisco, No. A051759, 91 Daily Journal D.A.R. 1557 (February 4, 1992).
■ The Lawyers:
For the developer: Howard Ellman, Ellman, Burke, Hoffman & Johnson, (415) 777-2727.
For the City: Tobert M. Reitzes, Deputy City Attorney, (415) 554-4283.

### Hayward School Fees Upheld by Appellate Court

The Hayward Unified School District's development fee structure has been upheld by a Court of Appeal panel in San Francisco.

Garrick Development Co. had challenged the fees on both statutory and constitutional grounds. Garrick's principal argument was that the fees were an illegal special tax under Proposition 13 because they exceeded the reasonable cost of providing the necessary school facilities. Garrick also claimed that the fees violated the provisions of the state law on exactions and fees, commonly known as AB 1600, and that they amounted to an unconstitutional taking of property. The First District Court of Appeal rejected all arguments.

Hayward imposed the fees under the 1986 School Facilities Act, which permits school district to impose fees on new development (originally $1.50 per square foot for residential units, 25 cents per square foot for non-residential units, and adjusted for inflation each year since) if a need for new facilities is documented. Garrick paid the fees under protest.

Alameda County Superior Court Judge Joanne C. Parrilli rejected Garrick's arguments that the fee constituted a special tax. But a unanimous three-judge panel affirmed Parrilli's decision.

Hayward based its fee on a study by Urbanplan, which concluded that new school facilities would cost about $3 per square foot for all new residential projects over the next 20 years. Garrick argued that the fee structure was faulty because it was not derived from specific plans for construction of new school facilities that would be required as a result of the new development. Without these specific plans, Garrick argued, the school district could not determine whether the fees exceeded the "reasonable cost" of the facilities — a requirement for the fees to pass muster under Proposition 13.

The Court of Appeal rejected Garrick's argument. The court said that neither the law nor case law require a specific building proposal. The court noted that Garrick's concerned seemed to be that the school district would collect the fees but not use them for school construction; however, the court also pointed out that this is not permitted under AB 1600, which requires unused funds to be refunded. "With that ongoing mechanism in place to guard against unjustified fee retention, there is no reason to think that the Legislature meant to require school boards to make a concrete showing of all projected construction when initially adopting a resolution," the court wrote.

Garrick also attacked the fee structure on the grounds that it did not conform to the requirements of AB 1600. Because AB 1600 (Government Code §66000 et seq.) says that the school district must identify the "purpose" of the fee, the "use" to which it will be put, and the "reasonable relationship" between the project and the use, Garrick argued that the school district had to include site-specific information on what building projects it would undertake. Again, the court rejected this argument. "The Legislature was apparently satisfied that a need for new school facilities based generally on projected new residential development was nexus enough as a matter of law, without a need for case-by-case adjudication, so long as fees did not exceed the prescribed maximum rate," the court wrote. ❑

■ The Case: Garrick Development Co. v. Hayward Unified School District, No. A051182, 92 Daily Journal D.A.R. 1676 (February 5, 1992).
■ The Lawyers:
For Garrick Development: David Lanferman, Varni, Fraser, Hartwell, Lanferman & Rodgers, (510) 886-5000.
For Hayward Unified School District: Priscilla Brown, Breon, O'Donnell, Miller, Brown & Dannis, (415) 788-4999.

### Modesto Can't Impose Condition After Approval of Vesting Map

The City of Modesto can't charge escalated development fees from the Kaufman & Broad homebuilding company because K&B had obtained a vesting tentative map on the project in question, the Fifth District Court of Appeal has ruled.

The case revolves around conditions attached to approval of a 228-unit subdivision being built by Kaufman & Broad in Modesto. Seeking to nail down development rights, K&B asked the city for a "vesting tentative map" under the subdivision map act, which provides developers with vested rights.

In its report to the planning commission in 1988, the city staff recommended that a condition be attached to the vesting tentative map requiring that K&B pay the "capital facilities fee" in place at the time the building permit is issued, rather then locking the fee in at the time of the project's approval. This condition would have permitted the city to increase the capital facilities fee in between the time of development approval and the time building permits were issued. While K&B's application for a vesting tentative map was pending, the city adopted a policy of demanding such an escalator clause on all vesting tentative map applications.

When the Modesto Planning Commission approved the vesting tentative map on the K&B project in October of 1988, however, it deleted this particular condition. According to the court ruling, a K&B representative apparently persuaded a city staff member that the the city policy should not apply to the K&B project, since K&B's application for a vesting tentative map was filed in July of 1988, prior to the change in city policy.

Fifteen months after the vesting tentative map was approved, K&B applied for the first 19 building permits in the subdivision. In the meantime, however, the city had increased the capital facilities fee from $1,434 per unit to $4,890 per unit. This change increased the overall fee for the 228-unit subdivision from $327,000 to $1.1 million. The city refused to issue the building permits until K&B agreed to pay the higher fee, and K&B sued.

On appeal, the court considered the question of whether additional conditions may be imposed after issuing a vesting tentative map under Government Code §66498.1, which restricts the circumstances under which such post-hoc conditions may be imposed. The city argued that the section is ambiguous and should be interpreted to give the city maximum flexibility to avoid financial hardship. The court ruled that another t provision, §65961, prevents the city from imposing *post-hoc* conditions that it could have imposed at the time of approval.

"The city could have approved Kaufman & Broad's vesting tentative map subject to a condition that Kaufman & Broad pay the capital facilities fees in effect when its building permits issued," the court wrote. "Its failure to do so barred it under section 65961 from subsequently imposing that condition." ❑

■ The Case:
Kaufman & Broad of Northern California Inc. v. City of Modesto, No. F015916, 92 Daily Journal D.A.R. 1365 (January 30, 1992).
■ The Lawyers:
For Kaufman & Broad: David Lanferman, Varni, Fraser, Hartwell, Lanferman & Rodgers, (510) 886-5000.
For the City of Modesto: Laury L. Dowd, Deputy City Attorney, (209) 577-5284.

## ASSESSMENT DISTRICTS

### Metro Rail Voting Scheme Upheld by Supreme Court

The California Supreme Court has upheld the constitutionality of a Los Angeles Metro Rail assessment district that permits only commercial property owners to vote on the assessments.

On a 5-2 vote, the court overturned a ruling by the Second District Court of Appeal, which declared the assessment scheme unconstitutional because it does not permit residential property owners and non-property owners who are affected by Metro Rail to vote on the assessment.

In a long and complicated ruling, Justice Armand Arabian said that the Metro Rail voting scheme fell within a narrow exception to constitutional equal protection guarantees and based his decision mostly on two precedents dealing with water districts. Justice Joyce Kennard issued a strongly worded dissent, which was joined by Justice Stanley Mosk.

The Southern California Rapid Transit District hoped to raise $130 million from the two assessment districts in question, which would finance about 11% of the $1.25-billion cost of Metro Rail's first phase, a 4.4-mile leg from Union Station to Wilshire and Alvarado. Under the assessment plan, commercial property owners within walking distance of five Metro Rail stops were to pay 30 cents per square foot annually. The justification for the assessment was RTD's contention that property values would rise in the vicinity of Metro Rail stops.

The first assessment bills went out to property owners in late 1986, with a $200 million bond issue planned for 1987. Since then, however, commercial property owners have waged a long war against the assessments. Under pressure from the property owners, RTD decided in 1987 to defer collection of the assessments for five years. (*CP&DR*, April 1987.) RTD still planned to go ahead with the bond issue, but when RTD Secretary Helen Bolen balked, the agency sued her, touching off a legal battle that has so far lasted three years.

In upholding the constitutionality of the voting scheme, the Supreme Court concluded that the scheme falls within a narrow legal exception to the "one-person, one-vote" rule laid down by the U.S. Supreme Court in the landmark case of *Reynolds v. Sims*, 377 U.S. 533 (1964). Quoting another U.S. Supreme Court case (*Avery v. Midland*, 390 U.S. 4747 (1968)), the court said that the one-person, one-vote rule need not apply in the case of "a special-purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other(s)."

The Supreme Court majority then relied on two water district cases which it determined is analogous to the Metro Rail situation. In *Salyer Land Co. v. Tulare Water District*, 410 U.S. 719 (1973), the U.S. Supreme Court affirmed the constitutionality of a water district voting scheme in which the right to vote was based on property ownership. In *Ball v. James*, 451 U.S. 355 (1981), a case from Arizona, the court again affirmed the constitutionality of a property-based voting scheme for a water district, even though the water district was a producer of hydro-electricity consumed throughout the state.

Noting that the entities administering the voting scheme were the assessment district, not the RTD, Arabian wrote: "(W)e are satisfied that the governmental units at issue lack the indicia of 'general governmental powers.'..." And Arabian also found that the voting privileges should not be expanded to all residential property owners and residents of the area because "nonvoting residents of the assessment districts have no specific beneficial interest in the proceeds of the assessments distinguishable from that of every other resident of the multi-county area comprising the transit districts."

In her dissent, Kennard said that Arabian's conclusion that RTD was not the constitutionally relevant agency "is fundamentally erroneous and, indeed, senseless," because RTD imposes and collects the assessments and also conducts the election. Regarding the question of who benefits from the assessment, she wrote: "The transportation service that the SCRTD provides is not distributed according to land ownership but is available to all who choose to ride its trains. Although the building of a rail mass transit system provides special benefits to some landowners, these benefits are incidental to the rapid transit district's primary purpose." ❑

■ The Case:
Southern California Rapid Transit District v. Bolen, No. S015986, 92 Daily Journal D.A.R. 1497 (February 3, 1992).

■ The Lawyers:
For Helen Bolen (defendant-appellant): Marilyn L. Garcia, Brobeck, Phleger & Harrison, (213) 975-1415.
For RTD (plaintiff-respondent): Vincent J. Marella, Bird, Marella, Boxer, Wolpert & Matz, (310) 312-0300.
For Atchison, Topeka & Santa Fe Railway Co. (intervenor): John R. Shiner, MacDonald Halsted & Laybourne, (213) 892-7300.

## ENVIRONMENTAL LAW

### Approval of Single-Family Home Doesn't Require CEQA Review

A single-family home in Ukiah is exempt from review under the California Environmental Quality Act, according to a new ruling from the First District Court of Appeal in San Francisco.

A citizen group, the Association for the Protection of Environmental Values in Ukiah, had challenged the city's determination that the single-family home was exempt from review under CEQA. Under the CEQA Guidelines, a single-family home can be subject to environmental review if certain "unusual circumstances" exist. However, the appellate court found that no such circumstances existed in this case and upheld the city's decision to categorize the house as exempt.

The home of Bill and Tami Rainer — apparently being constructed on the last vacant lot in an otherwise built-out neighborhood — has apparently been controversial in Ukiah since it was first proposed. Unlike most single-family homes, their house required a "site development permit" because the lot width at the building setback line is 51 feet, rather than the 60 feet required by local ordinance. The permit was denied by the planning commission, but that action was overturned by the city council. Later the permit was revoked because during construction it became apparent that the house was 32 inches higher than approved. During construction, the Rainers redesigned the roof structure to reduce the height of the building.

Nevertheless, opposition from the Rainers' neighbors continued. After organization into the Association, the neighbors sued, charging that the city had erroneous declared the project exempt from CEQA. But Mendocino County Superior Court Judge Eric Labowitz ruled in favor of the city, and the Court of Appeal affirmed his ruling.

On appeal, the neighbors tried to argue that the Rainers' house fell within the exceptions contained in the CEQA Guidelines for "Class 3" exemptions such as single-family homes. (CEQA Guidelines, Section 15300.2.) The three exceptions are unusual location, cumulative impact, and significant effect.

The court rejected this argument. With regard to the "significant effect" exception, which both sides focused on before the Court of Appeal, the court wrote: "There is no evidence presented that construction of a single-family dwelling on this lot .... would adversely affect the environment of persons in general. Moreover, the height, view, and privacy objections raised by the Association impacted only a few of the neighbors and were properly considered by City in connection with its site development permit approval, along with other aesthetic considerations."

The Association also argued that the city did not make proper findings in declaring the home exempt from CEQA review. However, the court rejected that argument as well, saying that the city's action fell under a section of CEQA (Public Resources Code §21168.5) that does not require a hearing or findings. (The city argued that its decision to exempt the project from CEQA review was a decision separate from the decision on the development permit and that no hearing was required.) The city did combine the CEQA determination and the development permit decision and did hold a public hearing. But the Court of Appeal said that just because the hearing was held did not mean it was required by law. ❑

■ The Case:
Association for the Protection of Environmental Values in Ukiah v. City of Ukiah, No. A051104, 92 Daily Journal D.A.R. 744 (January 17, 1992).

■ The Lawyers:
For the Association: Jared Carter, (707) 462-6694.
For the City of Ukiah: David J. Rapport, (707) 462-3825





# Orange County Judge OK's EIR for Tollway

### Environmentalists Likely to Sue Again When Federal EIR Is Approved

Environmentalists have lost the latest round in the court battle over the San Joaquin Hills tollway in Orange County.

On February 26, Orange County Superior Court Judge James Gray gave his blessing to additional environmental impact analysis prepared by the Orange County Transportation Corridor Agencies. Gray's action means that construction on the tollway can proceed, although environmental groups are expected to appeal Gray's order.

At a court hearing in October, Laguna Greenbelt and three other environmental groups asked Judge Gray to overturn the certification of the San Joaquin Hills environmental impact report. Gray declined to do so, but he did order the TCAs — the legal entity actually constructing the toll road — to revisit several issues addressed in the EIR, including air quality, wetlands, and the possible impact of the toll road on growth in northern San Diego County.

The transportation agency subsequently commissioned additional study by LSA Associates on all issues. But the environmental groups returned to Judge Gray with more complaints. In particular, the environmentalists said that the new LSA study revealed new air-quality problems. But at the February 26 court hearing, Judge Gray declined to grant the environmentalists' request for a supplemental EIR.

The San Joaquin Hills tollway is one of three proposed new highways being planned for southern Orange County by the TCAs, a joint powers authority. The 17-mile San Joaquin, which will connect Newport Beach with San Juan Capistrano, has been particularly controversial because it would cut across Laguna Canyon, a pristine canyon near Laguna Beach that has become the focus of environmentalist concern. Cost of the San Joaquin is expected to be about $800 million.

Part of the environmentalists' complaint about the San Joaquin Hills project has to do with the fact that the TCA certified the EIR under the California Environmental Quality Act last spring, while the environmental impact statement required under federal law still has not been completed. The federal Environmental Protection Agency has been unusually aggressive in raising environmental concerns about the San Joaquin Hills project.

At the court hearing, environmentalists emphasized that LSA's new environmental study showed that carbon monoxide problems at three intersections would be worse if the tollway were built than if it were not. TCAs lawyer John Flynn countered by arguing that under both the state and federal Clean Air Acts, the air-quality impacts of highway projects must be viewed in total, rather than intersection by intersection.

Although Gray stated that "as a citizen, this project saddens me," he ruled in favor of the TCAs. He called the EIR "not perfect," but said the agency had done sufficient environmental review to allow the project to move forward.

In addition to appealing Gray's ruling, the environmental groups are expected to file a lawsuit in U.S. District Court in Los Angeles when the TCAs approve the federal environmental impact statement. ❑

■ Contacts:
Mark Weinberger, lawyer for Laguna Greenbelt, (415) 552-7272.
John Flynn and Rob Thornton, lawyers for the Transportation Corridor Agencies, (714) 835-9000.

# Little Progress in Endangered Species Talks

*Continued from page 1*

large landowners are expected to urge Lujan to do so

The Wilson Administration embarked on its "Natural Communities Conservation Planning" process for coastal sage scrub last fall, after urging the state Fish & Game Commission to deny a petition to consider listing the gnatcatcher as endangered under state law. The NCCP process is supposed to allow state and federal officials to "get ahead of the curve" on endangered species in the coastal sage scrub habitat — a type of vegetation found in Orange, Riverside, and San Diego counties that is home not only to the gnatcatcher but also to dozens of other species that may be listed as endangered over the next few years. Speaking before the Fish & Game Commission last fall, Resources Undersecretary Michael Mantell promised, in exchange for not listing the gnatcatcher, the state would hit certain "milestones" in the NCCP process — the first one being the creation of interim controls for the destruction of coastal sage scrub.

*"Environmentalists continue to believe that the Administration should have supported a listing"*

That promise was enough to bring three environmental groups to the negotiating table — NRDC, the Nature Conservancy, and the Endangered Habitats Coalition. But the negotiations quickly bogged down over scientific details — and over the interim controls Mantell had promised. In particular, three problems arose:

- A scientific advisory panel said it needed more survey information about coastal sage scrub — an expensive and time-consuming proposition.
- Prominent land-use lawyer Fred Bosselman, who was hired by the Resources Agency to work on the issue, expressed concern that without a scientific rationale, any interim controls could be construed as an unconstitutional "taking" of property.
- Both landowners and local governments have quibbled over the conditions for "enrollment" — a process by which they would, in essence, commit themselves to protecting all coastal sage scrub habitat for the duration of the negotiations.

Environmentalists continue to believe that the Wilson Administration should have supported a listing for the gnatcatcher last fall as the best way of motivating large landowners to negotiate in good faith. But some environmentalists fear that the building industry may be using its clout with Wilson to slow the Resources Agency down. "I keep saying, list the bird and then this thing will have a driving force behind it, but nobody believes me," said Dan Silver of the Endangered Habitats Coalition. "I think Mike Mantell is well-intentioned, but some people say he's being used."

Resources Secretary Douglas Wheeler continues to insist that the state had to oppose listing the gnatcatcher or else the building industry would not have participated in the negotiation. "We didn't think we could get the builders to the table any other way," Wheeler says. "They had very little to gain by negotiating after the fact. They would sooner have gone to the courts than to have sat down."

And meanwhile, Wheeler and his staff say that the negotiations are beginning to make progress. Carol Whiteside, an assistant resources secretary, said that a meeting in San Diego in late February drew more than 50 people, including representatives of all major landowners and all local governments in the three-county area. Whiteside said local governments are now considering a proposal to elevate the elimination of coastal sage scrub to the status of a "significant" environmental impact ❑

# Sacramento Project Rejected

## Opponents Called Centrage Development 'The Wrong Project in the Wrong Place'

A controversial high-rise project close to downtown Sacramento has been rejected by the city council by a 9-0 vote.

Developers of the Centrage project promised a "European-style pedestrian-friendly enclave," and business and labor leaders supported it as a generator of both jobs and tax revenue. But city planners and East Sacramento neighborhood groups attacked the project as too big and located in the wrong place.

Centrage was proposed for a 48-acre fruit orchard along Business 80, a freeway just east of downtown Sacramento. Developer James Lennane, who bought the property at a tax sale in 1983, proposed a 1-million-square-foot office development, divided among five towers, a retail center of 340,000 square feet, and 1,200 housing units. (Lennane recently made a fanciful run for the Republican presidential nomination in New Hampshire, but he was overshadowed by Pat Buchanan, to say nothing of George Bush.)

In negotiations with the city, Lennane chopped his project down by about 25% across the board and also reduced the height of the office towers. For example, a 26-story office tower was reduced to 19 stories. The Sacramento Planning Commission approved the revised project last fall by a vote of 6-3.

During the winter months, however, the Centrage project ran into intense opposition from East Sacramento's neighborhood leaders, the city planning staff, which claimed among other things, that the office and retail portions might suck business away from downtown. ❑

# In Brief

Voters in Solvang have passed Measure E-92, clearing the way for construction of the so-called "Duff Mesa" project on one of the city's last pieces of open land. The project calls for 66 homes on the 68-acre parcel of land, with 16 acres of land deeded to the city for open space....

The San Francisco Chamber of Commerce is demanding a relaxation of Proposition M, which restricts downtown office construction to 475,000 square feet per year. Under the Chamber's proposal, Prop M calculations would not include all government, port, and redevelopment buildings; buildings previously approved; and the entire Mission Bay project. Citizen activists said the relaxation was not necessary, given the fact that the city currently has a 13% office vacancy rate....

The City of Sacramento has scrapped its proposed settlement with Mutual Life Insurance Co. of New York over the Hyatt Regency Hotel. The city was planning to pay $13 million to MONY to rid itself of all future financial obligations on the project, but MONY then initiated foreclosure proceedings on the project.

Burbank is pursuing the possibility of constructing a sports arena. The city council has agreed to an exclusive negotiating agreement with Lewis Wolff, owner of the Burbank Airport Hilton, and investor Wayne Rogers, best known for his acting role on the TV series "M*A*S*H."....

The Huntington Beach City Council has ordered homeowner Emad Ali Hassan to tear off the top story of his home. The city approved a three-story home but now says Hassan's building exceeds the area's 30-foot height limit by six feet. What does the homeowner say? "They just can't come and destroy something beautiful like this," he told a reporter for the *Orange County Register*. ❑

# Calendar

### March

- **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. San Francisco.** 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.
- 26-27: Environmental Protection: Planning, Law, and Design Guidelines, Phoenix. Sponsor: AICP. Call: (312) 955-9100.

### April

- **1: Assessing Land Use and Growth-Inducing Impacts.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **2: CEQA Update.** Los Angeles. Sponsor: UCLA Extension Public Policy Program. Call: (310) 825-7885.
- **3: Zoning and Planning: A How-To Course.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **8: CEQA: An Advanced Seminar.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **9: Habitat Conservation Planning for Endangered Species.** Oakland. Sponsor: ABAG. Call: (510) 464-7964.
- **10: Understanding Grading and Drainage Plans.** San Francisco. Sponsor: UC Berkeley Extension. Call: (510) 642-4111.
- **10: A Return to Tradition: Designing the Changing Suburb, with Peter Calthorp.** Ontario. Sponsor: APA Inland Empire Section. Call: (714) 386-0200.
- **14: Assessing and Mitigating Farmland Impacts.** Oakland. Sponsor: ABAG. Call: (510) 464-7964.
- **23-26: California Preservation Conference.** Eureka. Sponsor: California Preservation Foundation. Call: (510) 763-0972.
- **23-26: Association of Environmental Professionals State Conference.** San Diego. Sponsor: AEP. Call: (619) 528-9090.
- **24: Subdivision Map Act.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **24: Challenging the Dogmas: Symposium on Density.** Burbank. Sponsor: L.A. Section/APA. Call: (213) 622-4443.
- **27: Endangered Species: Practical Approaches to Resolving** Conflicts. Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **29: Farmlands: Impact Assessment and Mitigation.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **29: Advanced Subdivision Map Act Law.** Ventura. Sponsor: UC Santa Barbara Extension. Call: (805) 893-4200.





# Numbers

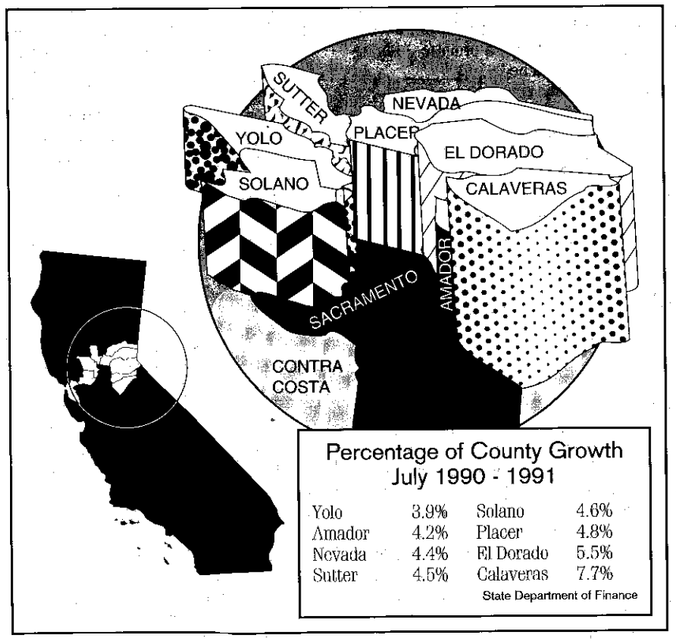
Stephen Svete

# Sacramento Grows Out, Not Up

Local sentiment against Los Angeles-style suburban development notwithstanding, the metropolitan Sacramento area is sprawling outward in a pattern reminiscent of its south state nemesis, according to recent data released by the Department of Finance.

Sacramento is growing, and growing fast. In raw numbers, the Capital county ranked sixth in the state in population increase between July 1990 and July 1991 when it gained 36,600 people. Interestingly, its rank among all the state's counties in terms of percentage change was a middling 22nd. But the real story lies in the growth rates for the surrounding area.

Of California's 10 fastest-growing large counties (more than 100,000 people) in 1991, four of them can be linked to Sacramento's growth (El Dorado, 5.5%; Placer, 4.8%; Solano, 4.6%; and Yolo, 3.9%). What's more, of the ten fastest-growing small counties (fewer than 100,000 people), four of them can be linked to the Capital's growth (Calaveras, 7.7%; Sutter, 4.5%; Nevada, 4.4%; and Amador, 4.2%). These demographic figures indicate predictable consequences, and despite a good understanding by a cross-section of society about the ramifications of current development practices that lead to sprawling urban complexes, the best intentions have failed to modify the pattern.




Percentage of County Growth
July 1990 - 1991

| | | | |
|---|---|---|---|
| Yolo | 3.9% | Solano | 4.6% |
| Amador | 4.2% | Placer | 4.8% |
| Nevada | 4.4% | El Dorado | 5.5% |
| Sutter | 4.5% | Calaveras | 7.7% |

State Department of Finance

The fact that Sacramento is sprawling is somewhat ironic, for it is a community that has demonstrated an admirable initiative to respond to and direct its rapid growth. Planners, designers, and developers have teamed up to sponsor and embrace new models for urban and exurban development with a vigor unmatched by their sister metropolitan and rural regions. Perhaps ignited by Andres Duany's now-infamous bashing of the City of Folsom General Plan in 1989, development professionals around Sacramento seemed to endorse both Duany's neo-traditionalism and Peter Calthorpe's TODs (transit-oriented development) and PODs (pedestrian-oriented developments). The Sacramento County's 1991 General Plan Update codified some of these concepts, while the city countered by revising parking standards for downtown to encourage use of the fledgling light rail and other trip-reduction options. Calthorpe's Laguna West development project was the smash hit at last fall's state APA conference, while a specific plan for the Calvine/Highway 99 site was being drafted to require orientation to a planned extension of the RT light rail. The dream of a new kind of metro area was being stoked.

But the numbers point to a different future. With the counties surrounding Sacramento joining the ranks of the fastest-growing in the State, the dreams of a future urban ecotopia-on-the-delta are being replaced with the more familiar images of jammed freeways and paved-over agricultural land. Underscoring the notion that Sacramento is actually growing outward rather than upward is the Sacramento City Council's February decision to reject the ambitious Centrage project. The project, which would have been the largest mixed-use development in the city, had been billed as a pedestrian-friendly in-town new town included high-rise office towers, housing, hotels, retail, and day care centers in an unabashedly urban-scaled siting scheme. The public discussion evolved into a classic battle between business and labor interests pitted against environmentalists allied with East Sacramento neighborhood groups.

Clearly, any project of Centrage's magnitude would generate environmental impacts. The question becomes, with the public rejection of urban-scaled projects in town, is growth being inadvertently squeezed out of town? Bill Meehan, executive director of the Sacramento Building Trades Council, framed the decision in exactly this light in a *Sacramento Bee* op-ed piece. "The decision before the City Council (was) not a decision on a particular project, but on how project Sacramento will address growth and land-use principles in the '90s and beyond," Meehan wrote. On February 4, the three-year negotiation process came to an end when the Council denied the Centrage project on a 9-0 vote.

With Sacramento's erstwhile rural hinterland showing signs of becoming the San Fernando or Santa Clara Valley of the 1990s, planners, designers, and developers — both those working in the Capital city and in the surrounding counties — may need to redouble their efforts if they want to preclude a rerun of post-war planning from playing itself out atop the row crops and orchards of the greater Delta region. ❑

## DEALS

Morris Newman

# Does San Jose Need the Giants This Much?

One of the great California pastimes is the act of bringing a major sports franchise to town. Another great pastime is tax revolt. This spring, these two great pastimes will have a playoff in the ballot boxes of San Jose. Odds are that local voters will approve the 2% utility tax increase that will make it possible for the city to pay for a $185 million baseball park for the soon-to-be-former San Francisco Giants. But the economic costs of that victory may go further than a few tax dollars.

The mania for professional sports teams is a recurring theme in California political life. (CP&DR Deals, January 1991.) The 1990 campaign of San Jose Mayor Susan Hammer included a promise to bring the ball team to town. Importantly, she pitched the Giants as an economic development ploy; consultants claim that communities can profit from the economic spillover to stores, restaurants and hotels. But there may be a bigger downside to this project than Hammer is willing to admit. Two big computer companies have come out against the utility tax, and other firms could move elsewhere in the Silicon Valley to avoid it — especially considering the current glut of R&D space in the area.

> *"There may be a bigger downside to this project than San Jose is willing to admit"*

Bob Lurie and the Giants have been turned down in three different elections on various schemes to build new ball parks, twice in San Francisco and a third time, in 1990, by a consortium of five Santa Clara County cities. That election was sunk by opposition to a similar utility tax, but a majority of San Jose voters approved the idea. Lurie has wanted out of windswept Candlestick Park for years, but he began thinking about San Francisco again after the election. Then, however, new Mayor Frank Jordan recommended installing "wind baffles" at Candlestick — a solution Lurie rejected years ago. After that, he started talking in earnest to San Jose city officials.

The current project is a $185 million ballpark that would seat 48,000 people and open in 1996. The city is to contribute $155 million in bond financing to the park, while the Giants organization is to contribute $30 million. The city's redevelopment agency would contribute another $40 million in off-site improvements. The Giants are to be responsible for all cost overruns and over-budget design changes. (Those numbers costs do not include the cost to buy or lease 103 acres from the State of California and another 50 acres from Santa Clara County, which together could add another $55 million to the deal.)

The Giants would lease the land from the city for 30 years, paying $3 million in rent for the first three years, plus 5% of ticket revenues and 15% of net parking receipts. The city will collect the first $387,000 of revenues not related to baseball, the Giants collect the next $618,000, and everything above that is split equally between the city and the ball club, including any sale of the ballpark's name to a corporate sponsor.

San Jose's economic assumptions justify this expense. Although the city has not hired a consultant to estimate the spillover, San Jose continues to rely on a 1990 report by Deloitte & Touche, which concluded that the Giants are expected to generate $90 million in direct and indirect economic benefits, mostly in tourist-related service jobs. The report was prepared for the ill-fated 1990 election sponsored by San Jose and four other Santa Clara County cities to bring a similar stadium to a location two miles away.

The city plans to finance its contribution to the stadium by floating $155 million in certificates of participation with a 30-year maturity. The city will service the $15 million annual payments through a 2% utility tax; 60% of that tax, as it turns out, will be paid by business. The San Jose Giants Committee, a booster group, has reportedly raised $100,000 to campaign for the stadium tax; boosters may spend a total $700,000 before the election, according to the San Francisco Examiner. The pro-stadium campaign will be run by the same consultant who ran Hammer's mayoral campaign.

The city attorney is confident that the proposed tax will is legal under Proposition 13, which outlaws any "special tax" not approved by two-thirds of the voters. Although the Supreme Court recently ruled illegal a special tax in San Diego, San Jose argues Prop. 13 will not apply in its case because, because the utility-tax revenues will not be channeled into the general fund. But local businesses, which would foot the bill for 60% of the utility-tax increase, are not crazy about the whole scheme. The Chamber of Commerce has supported it, but the Santa Clara Manufacturers Association, an organization with more than a little political clout, is opposed. And in February, two of the town's largest companies — IBM and Cypress Semiconductors — publicly came out in opposition to the tax; although IBM said it would not dirty its hands by campaigning against the ballot measure, it was an extraordinary gesture for the normally aloof Big Blue.

In an interview, Cypress Semiconductor president T.J. Rodgers, said that the city's priorities are "out of whack." In Silicon Valley, he said, "you just have to pick up the newspapers to see news of companies laying people off." Above all, Rodgers said he is is offended by the notion of subsidizing a wealthy sports organization and its millionaire ball players. "I am the CEO of a $300 million company that is listed on the New York Stock Exchange, and I don't make as much money as anybody who plays for the Giants." He acknowledged that his company's $100,000 yearly tax burden "would be less than we give to charity," yet for other companies, "it could be the straw that breaks the camel's back."

Assistant City Manager Darrell Dearborn says the taxes are not going to frighten business away. He noted that all businesses currently pay a 5% tax, and that the expense is deductible from state and national income taxes.

But one does not need to be an economic consultant to realize that 1% of gross receipts may be viewed by some businesses as an onerous burden — particularly in a recession year in the troubled high-tech and computer-related industries. If San Jose is too expensive to do business in, big tenants can easily relocate to other buildings in Mountain View, Palo Alto, Cupertino and other suburban locales, where office space is plentiful and cheap; further, since competing locations are close, companies can move away from San Jose, or choose to expand elsewhere without losing their prized labor pool.

What all this adds up to is the fact that San Jose is prepared to gamble the loss of existing jobs in the high-tech sector for new jobs in low-paying service industries. In economic development terms, that seems like a lousy return for $195 million in public funds. ❑