CP&DR
CALIFORNIA PLANNING & DEVELOPMENT REPORT
Vol. 9, No. 2 — February 1994

INSIDE

CP&DR

is published monthly by

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Subscription Price:
$199 per year

ISSN No. 0891-382X

We can also be accessed electronically on

NEWSNET

For online access information call 800/345-1301

Disaster Seen As Opportunity For Transit

Ridership Up But Will It Last?

By William Fulton

The 6.6 earthquake that struck Los Angeles on January 17 has temporarily altered transportation priorities and traffic patterns in the San Fernando Valley and the Los Angeles basin. But it remains to be seen whether any permanent shift in travel patterns will emerge — or whether, in the long run, Angelenos will return to their cars

The earthquake, centered in the San Fernando Valley community of Northridge, knocked out three critical pieces of the L.A. freeway system: the Interstate 5-Highway 14 interchange in Santa Clarita, the major route north out of the Valley; portions of the 118 Freeway, the major connector between the Valley and Simi Valley; and one section of the Santa Monica Freeway (Interstate 10) on the Westside. With some 300,000 vehicle trips a day, I-10 is the nation's busiest freeway. But it was the Santa Clarita and

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The L.A Quake: A Special Report

Disaster Relief Could Affect Regular Programs

Block Grant, HOME Funds Depend On Appropriation

By Morris Newman

The Clinton Administration has promised $750 million in housing and community development block grant funds to cities shaken by the massive Northridge earthquake on January 17. The money came as part of a swift and high-profile political response — a $7.5 billion aid package which revealed the political importance of Southern California to the president. But the housing and community development funds may come at a cost. Some projects expecting HUD funding may lose their priority to earthquake repairs. And the Clinton package remains in doubt, in part because Gov. Pete Wil-

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School Issues Cause San Jose to Rescind General Plan

By William Fulton

Prompted by the threat of litigation from a developer and a consortium of five school districts, the City of San Jose has rescinded approval of its revised general plan and is now reworking portions of its environmental impact report.

However, the city still faces a thorny set of questions involving school facilities. School officials have lobbied for full inclusion of school impact questions in the general plan. Seeking to minimize the risk of litigation, however, city officials have deliberately kept school facilities issues out of both the general plan and the environmental impact report. "It's not advisable from a legal point of view to have something in the general plan that will create a challenge to the approval of general plan decisions," said San Jose City Attorney Joan Gallo. (In other parts of the state, school districts have prevailed in litigation because cities and counties have adopted general plans that contain references to adequate school facilities.) Instead, the city has established a School Impact Task Force outside the general plan process to examine the issue.

Few areas of California planning law have been more

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STATEWIDE

Wilson Would Restore Some Tax

Gov. Pete Wilson, who last year spearheaded the effort to shift $2.6 billion in property tax funds away from local governments to school districts, is now proposing a partial shift in the other direction.

Wilson's budget proposal, released in January would shift $1.1 billion back from schools to counties. It's part of a proposed $5.4 billion "realignment" designed to help counties, which bear the brunt of the state's health and social service costs. The counties would also receive $2.8 billion in proceeds of a full cent of sales tax, rather than the half-cent approved in 1991, and some $1.5 billion in other funds.

The state has allocated property tax funds since the passage of Proposition 13 in 1978. In 1979, Gov. Jerry Brown led an effort to shift some $700 million in property taxes from school districts to cities and counties, with the state making up the difference. But when the state fell on hard times in 1992, Wilson began shifting funds the other way.

Ahwahnee Awards Presented

The Local Government Commission, which had advocated neo-traditional town planning in recent years, has made its first "Ahwahnee Community Design Awards" to honor outstanding land-use planning on the West Coast. Winners were:

- Chula Vista and San Diego County for Otay Ranch.
- Pasadena for its General Plan revision.
- Temecula for the Village Center Concept and General Plan.
- San Jose for the Communications Hill Specific Plan.
- Livermore for the North Livermore General Plan Amendment.
- Sacramento for the North Natomas Planning Principles.

CENTRAL VALLEY

Sacramento Approves Southern Pacific Deal

Sacramento city officials have approved the $1 billion redevelopment of the Southern Pacific rail yards, one of the largest redevelopment projects ever undertaken in the state capital.

The project will seek to revitalize 240 acres of land northwest of downtown. The project would contain commercial development, 2,800 housing units, parks, and museums. Southern Pacific has agreed to donate 8.4 acres for affordable housing and remove toxics from the site.

The Southern Pacific property is part of Sacramento's Richards Boulevard redevelopment project. Infrastructure development for the entire Richards Boulevard project area is expected to cost approximately $400 million. The private development is expected to cost another $600 million.

Bakersfield Accepts Hotel Deal

The Bakersfield City Council has approved a complex financial plan to complete the half-built Convention Center Hotel.

Under the terms of the agreement, Bakersfield will provide some $13 million in funding for the project by refinancing much of its existing Marks-Roos debt. Bakersfield will also own the meeting rooms in the new hotel.

The hotel will be operated by John Q. Hammons, a prominent hotel owner who will personally guarantee the debt.

The Building Trades Council is threatening to sue, arguing that the deal fails to meet federal requirements that prevailing wages be paid on the hotel project.

SOUTHERN CALIFORNIA

L.A. Approves Downtown Strategic Plan

After a four-year process, a citizen committee has approved a new strategic plan for downtown Los Angeles.

The plan describes downtown as three big areas: the "City," which includes the office district, Civic Center, the Los Angeles Music Center, USC, Exposition Park and the Coliseum. A second broad area, the "Markets," includes produce, garment, toy and flower districts as well as rail-oriented uses. Between these two large areas is the "Center City," centered on the Historic District and the Center City East area which is plagued by homelessness and crime.

The goals of the plan, put simply, would be to strengthen existing Downtown activities, while providing connections between its very different areas. "What is so unique about the downtown strategic plan is that it acknowledges what tremendous opportunities we already have downtown; we just need to link them," said Nelson Rising, a senior partner in Maguire Thomas Partners.

But critics said the plan seeks to impose European-style squares and plazas on 21st Century Los Angeles, as well as create a traditional concentric urban form on a city widely known for its decentralization.

INLAND EMPIRE

Ontario Will Build Convention Center

The City of Ontario will build a convention center on a 17-acre parcel of land near the Ontario International Airport.

The Ontario Redevelopment Agency paid $8.5 million for the property. Construction will begin next year. Ontario officials claim that no convention center anywhere in the West will be closer to an airport.

Eagle Mountain Land Swap Is Stalled

A land exchange required for the Eagle Mountain landfill in Riverside County is stalled because of a decision by the Interior Department's Board of Land Appeals.

Under a deal agreed upon last fall, the Bureau of Land Management agreed to swap 3,481 acres of land adjacent to the Eagle Mountain site to Kaiser Resources Inc., Eagle Mountain's owner, in exchange for 2,846 acres of land owned by Kaiser and $139,255 in cash. Kaiser needs the BLM land for access to the Eagle Mountain landfill site.

But in early January, the Board of Land Appeals issued a stay on the land exchange until it issues a final decision. The board stated, in part, that "there are serious, substantial, difficult, and doubtful questions about the land exchange. Such questions are fair ground for litigation." The board may make a final decision in February. ❑

L.A. Redevelopment Spending Cap Rises to $5 Billion

By Morris Newman

The Los Angeles Community Redevelopment Agency (CRA) won the first round in late December of a long-standing fight to raise the court-ordered cap on the total amount of tax increment the agency can collect from its Central Business District project area.

Under the new agreement, the CRA spending cap will rise from $750 million to $5 billion. Despite this milestone, the state's largest redevelopment agency, however, is facing an uncertain future under Mayor Richard Riordan, particularly in light of the new mayor's efforts to revamp the city's economic development bureaucracy.

On December 21, after years of public debate, the CRA reached an agreement with Los Angeles County on a plan to raise the CBD cap and share tax-increment revenues. Starting in FY 1994-95, the CRA will receive 100% of the first $75 million in tax-increment generated in the CBD project area. The county will receive 26.1% of all tax-increment over $75 million, while the CRA must donate an additional 5% (above $75 million) into a special "county-designated project fund." Half the money will be used to finance projects approved by the county supervisors, while the other half will be used for CRA social-service projects. After the project area has reached the $750 million cap, which is expected in 1997-98, the agency is required to deposit at least $5 million annually into the county project fund. Currently the CBD project area generates $56 million in tax increment per year.

Deputy CRA Administrator Pierre Lorenger said this stipulation was "not typical" of tax-increment-sharing agreements, and reflected "the board of supervisors' strong desire that social service funding is continued." The county government is responsible for most social services.

> *"The county will receive 26.1% of all tax increment over $75 million."*

The agreement came only days before January 1, when AB 1290, the redevelopment reform bill, would take effect and impose its own formulas of distributing tax-increment revenues among redevelopment agencies and other local government agencies. The County-CRA tax-increment sharing agreement awaits approval from Los Angeles Superior Court.

The existing $750 million on CBD-derived tax increment is the result of a 1975 settlement of a lawsuit brought against the CRA by then-City Councilman Ernani Bernardi, Los Angeles County, the county's flood control district, and other plaintiffs. The suit challenged the then-unlimited amount of tax increment the CRA could pull out of the booming CBD project area, which includes many high-rise office buildings and hotels.

Without the cap increase, the CRA would have been able to maintain debt service on its existing projects, but would have had little to no income to embark on new projects. With the increase, the CRA expects to get about $10 million annually for new projects. No dollar figure is stipulated in the current agreement, although the agency expects to collect about $5 billion in tax increment from the CBD in the next 27 years.

In response to the new agreement, Bernardi has brought a new suit against the city, claiming that the agreement was made in secret and hence violates the Brown Act. A CRA official said the decision to adopt the agreement was made publicly, and the only part of the hearing closed to the public dealt with pending litigation.

Notwithstanding the CRA's success in striking the long sought deal with L.A. County, the agency's continuing role and influence in the Riordan administration is unclear, and the possibility exists that some, or all, of its powers may be given to another agency.

The Riordan administration is seeking to consolidate the city's economic-development activities into a single agency, CRA Administrator Ed Avila, a Bradley holdover, has sought to reposition the agency to focus on economic development. But the CRA still may fall victim to anti-redevelopment politics in City Hall.

A January 13 report from the city's chief administrative officer, Keith Comrie, and the chief legislative analyst Ronald Deaton, observed that "in Los Angeles, economic development activities take place in the absence of any defined public or private strategy. Policies and programs are fragmented throughout various departments...." They recommended creation of a new Economic Development Department, to be "formed and governed" by a new Community Development Commission. This board, according to Comrie's report, would be "responsible for a myriad of federal and state sponsored economic development, business loan and geographically based incentive programs include enterprise, empowerment, recovery and revitalization zones, as well as regional programs such as infrastructure improvements." The commission would also be in charge of streamlining the permit process, business attraction and retention and administering federal Community Reinvestment Act initiatives.

The new Economic Development Department would be established by the new commission to "centralize, consolidate and carry out the city's economic development programs, activities, services and plans," according to the report. Currently, those responsibilities are performed by the redevelopment agency and other city agencies such as the Community Development Department.

Importantly, the report recommended that the new Community Development Commission "be vested with all the powers, duties and responsibilities of the members of the redevelopment agency." The report proposes that the "nucleus" of the new department would be the existing redevelopment agency.

CRA Commission Chairman Stanley Hirsh, a Riordan appointee, said he would like to the see existing CRA board assume the role as the city's Community Development Commission, although some people inside the Riordan camp reportedly oppose such a move. If the anti-CRA forces in the mayor's office have their way, the CRA may be sidelined in the city's big economic development push, and could be folded into the new agency. ❑

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San Jose Rescinds New General Plan Because of School Issues

Continued from page 1

confusing in recent years than the question of school impact fees. Developers have used state legislation to limit impact fees for schools. But school districts have used litigation to force cities and counties to consider school facilities issues in their general plans, local ordinances, and environmental impact reports. Last November's defeat of Proposition 170 — a measure that would have permitted passage of local school bonds by simple majority vote — further clouded the issue. By unraveling a 1992 legislative deal limiting school fees to $2.65 per square foot, the measure's defeat apparently allows school districts to adopt a more aggressive posture.

The San Jose situation illustrates the difficulty local governments are having in coming to grips with the school facilities issue. Locally, the issue dates back to 1973, when San Jose voters passed Measure B, an initiative which limited residential rezoning in areas where school facilities were affected. One of the first "ballot-box zoning" measures in the state, Measure B was usurped by the state's school fee law, which passed in 1986. Since then, many developers in San Jose have negotiated directly with school districts over school mitigation. In one case, for example, a developer agreed to build a new school and hand it over to the school district as a "turnkey" operation.

The new San Jose general plan presented a number of difficult issues on the school facilities front. First, more than a dozen school districts serve different portions of the city, making coordination difficult. Second, school population is growing in many portions of the city — especially immigrant neighborhoods served by the San Jose Unified School District — where new development is not occurring. And finally, the plan's emphasis on small-scale infill development makes it more difficult for school districts to deal with facilities issues. "It's hard to say to a developer, you're having an impact, when you're talking about six houses, two houses, three houses," said Barry Schimmel, deputy superintendent of San Jose Unified.

What makes the San Jose situation especially unusual is the City Council's decision to actually rescind its own approval of the general plan. The city has been working on the innovative plan — which calls for a major effort at infill housing — for several years. (*CP&DR*, September 1993.) The city planning commission certified the EIR on December 8 and the council approved key general plan revisions on December 14.

At that meeting, however, lawyers representing Davidon Homes and a consortium of six school districts in the San Jose area raised questions about the adequacy of the environmental impact report and the city's process of approving the general plan EIR — for example, the fact that it is certified by the planning commission rather than the city council. (The consortium includes San Jose Unified, East Side Union, Berryessa Union, Alum Rock Union, Oak Grove, and Orchard school districts.) On the advice of Gallo and Planning Director Gary Schoenauer, the council rescinded the approval of the general plan on January 11. City officials are now re-doing some portions of the EIR and its approval process. Schoenauer predicted that the general plan would return to the council by June.

The city does not appear likely, however, to consider including school facilities issues in the general plan. Like some other local government attorneys, Gallo has taken the legal position that the state school facilities law prevents the city from aggressively pursuing school mitigation on new development projects. Furthermore, she and Schoenauer said, San Jose's process is different from other cities because it does not always process general plan amendments and zone changes together. (General plan amendments are processed only once per year, rather than the four times per year permitted by state law.) "It's not possible to document the impact on a long-term basis (in the general plan) because we don't really know what's going to happen demographically and we don't really know what's really going to be built," Gallo said. Thus, Gallo argued, school mitigation appropriately belongs in the city's zoning ordinance and other implementing ordinances — which will be the focus of the School Impact Task Force.

Echoing a debate that has occurred all over the state, school officials claim that school facilities must be considered in the general plan just like roads, sewer systems, and other public improvements. "We're part of the infrastructure of the community," said Schimmel. "We need to be part of the city general plan." Similarly, Marshall Krupp, planning consultant for the consortium of school districts, said that his client districts' goal "is still to seek a planning remedy that ensures that the issue of schools takes a predominant role in the city infrastructure policies." However, Schimmel said the school districts would work cooperatively with the city on the School Impact Task Force.

The San Jose situation stands in contrast to other school-mitigation disputes around the state, where school mitigation has been debated in the context of general plan language supportive of good school facilities. In the most prominent example, school districts in Riverside County prevailed in 1991 litigation because the general plan contained several goals and policies referring to adequate school facilities.

The resulting appellate court ruling (*Murietta Valley Unified School District v. County of Riverside*, 228 Cal.App.3d 1212) led the county to establish a formal planning process for determining school facilities need.

By contrast, court cases have established a higher standard for school districts to meet in requiring that school mitigation be considered outside the general plan process. For example, in another case from Riverside County decided last year, the Fourth District Court of Appeal ruled the City of Corona did not have to consider school mitigation in approving a tentative map under the Subdivision Map Act because such an action was a quasi-judicial action, not a legislative action. (The case is *Corona-Norco Unified School District v. City of Corona*, 17 Cal.App.4th 985, originally reported in the *CP&DR Legal Digest*, April 1993.) ❑

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CP&DR
LEGAL DIGEST

New Laurel Heights EIR Doesn't Need Recirculation

No 'New Significant Information' Is Included, Supreme Court Rules

The University of California did not need to recirculate an environmental impact report on its controversial biomedical complex in San Francisco because the final EIR did not contain significant new information, the California Supreme Court has ruled. In so doing, the Supreme Court reiterated a theme contained in its last major case under the California Environmental Quality Act — *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.2d 553 (1990) — that CEQA should not be used as a tool of delay by project opponents. And the court also laid down a tough new threshold regarding what constitutes "significant new information" triggering recirculation of an EIR.

The lone dissenter in the case, Justice Ronald George, strenuously argued that the final EIR did, in fact, contain important new information — specifically, detailed information about the research center's 24-hour-per-day operation.

CEQA experts say the case — commonly known as *Laurel Heights II* — is the latest example of a growing judicial trend around the state to circumscribe CEQA more narrowly and rule in favor of developer defendants rather than citizen plaintiffs. "Plaintiffs aren't winning that many cases," Tina Thomas, co-author of the Guide to CEQA, told a UCLA Extension conference in late January. "We've had 18 CEQA rulings in the last year and plaintiffs only won two of them."

The *Laurel Heights* case is one of the longest-running CEQA disputes in California. In 1985, the University of California, San Francisco, purchased the former Fireman's Fund Insurance building in the Laurel Heights neighborhood of San Francisco and proposed relocating the School of Pharmacy's biomedical research units to the site. The 1986 EIR was challenged by the Laurel Heights Improvement Association. Among other things, the Laurel Heights group argued that the alternatives analysis was inadequate and the EIR inadequately discussed UCSF's future expansion plans for the research lab.

Two years later, in a landmark decision the state Supreme Court ruled the EIR inadequate and laid down two rules that have become benchmarks in CEQA practice. First, the court ruled that a public agency's alternatives analysis may not be limited to property owned by the agency because the agency has the power to obtain property by eminent domain. And second, the Supreme Court said that an EIR must contain a cumulative impact analysis of "reasonably anticipated future projects." (*Laurel Heights Improvement Association v. Regents of UC*, 47 Cal.3d 376. See *CP&DR*, December 1988.)

After the Supreme Court ruled in the Laurel Heights case, UCSF produced a new EIR. The draft was published in 1989, and the final EIR — containing some six volumes of information — appeared in 1990 and contained considerable additional information. The Laurel Heights Improvement Association claimed the additions constituted significant new information, thus requiring that the EIR be recirculated for additional comments as required under Public Resources Code §21092.1. However, UCSF chose not to do so. Laurel Heights sued once again, losing in the trial court and winning in the Court of Appeal on the question of whether the final EIR required significant new information that demanded recirculation.

In arguing that recirculation was required, Laurel Heights pointed to several pieces of new information, including three new noise studies, two new studies relating to potential toxic discharges, a clarification that the project would require three loading docks instead of one, an expanded alternatives analysis, and the recognition that "night lighting glare" could result from the use of the facility during off hours.

Writing for a six-justice majority, Justice Edward Panelli made clear that he had little sympathy for the Laurel Heights case. In discussing when recirculation is necessary, the court concluded that §21166 of CEQA creates a presumption in favor of the EIR's validity, stating: "After certification, the interests of finality are favored over the policy of encouraging public comment." The court also laid down a high threshold for recirculation under §21092.1, stating that recirculation is triggered only when the final EIR contains "new information that demonstrates that an EIR commended upon by the public was so fundamentally and basically inadequate or conclusory in nature that public comment was in effect meaningless."

The standard Panelli's opinion lays down states that new information is not significant — thus triggering a recirculation — unless "the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a *substantial* adverse environmental effect." In his dissent, George took issue with this new rule.

Picking up a theme from the *Goleta II* ruling in 1990, Panelli wrote that the state legislature sought to "reaffirm the goal of meaningful public participation" yet avoid "endless rounds of revision and recirculation of EIRs.

"Recirculation," Panelli wrote, "was intended to be the exception, rather than the general rule."

The Supreme Court also rejected Laurel Heights's argument that to use the "fair argument" standard of review rather than the "substantial evidence" test in reviewing UC's actions. Laurel Heights sought to argue that if a procedural violation of CEQA had occurred, the substantial evidence test should not be used. Laurel Heights further argued that UC had, indeed, committed a procedural violation by failing to provide an express finding denying Laurel Heights' request for recirculation. The Supreme Court majority concluded that CEQA does not require such a finding, but went on to note that the final EIR contained a response to the recirculation request.

The majority also rejected Laurel Heights' argument that failure to recirculate constituted a procedural error in and of itself. But the court concluded that this constituted a procedural error only if UC concluded that the final EIR contained significant new information — a position the Regents did not take. The majority also rejected Laurel Heights' argument that the fair argument standard contained in §21151, dealing with review of the decision to prepare a negative declaration, should be used.

Panelli's majority opinion also made a methodical review of all the new information contained in the final EIR, concluding that "substantial evidence supports the Regents' decision not to recirculate the final EIR for public comment."

First, Panelli rejected the argument that the three mechanical noise studies constituted "significant" new information. These

studies covered such areas as the existing background noise levels in the neighborhood and the validity of the draft EIR's conclusion that noise problems can be mitigated to a level of insignificance. "These studies merely serve to amplify, at the public's request, the information found in the draft EIR," Panelli wrote.

Second, Panelli dealt with the final EIR's inclusion of a much more detailed discussion of the health risks from background toxic air contaminant levels, which concluded that "maximum estimated cumulative cancer risk increase would be below the project significance standard." The studies conducted in this area were experimental and UC did not rely on their conclusions in approving the project. "No new adverse environmental impact was shown by the study," Panelli wrote. "To the extent the study can be credited, it reveals comforting news."

Third, Panelli addressed the question of the loading docks. The final EIR contained much more specific information about what the project's loading docks would be used for. Wrote Panelli: "Contrary to the [Laurel Heights] Association's arguments, we are not confronted with a case where the physical description or scope of the project has changed....Rather, in this case, the discussion of the use of loading docks merely clarifies the existing description of the environmental impacts of the estimated increase in truck traffic by specifically stating that almost all of the trucks will use the expanded Laurel Street loading area."

Fourth, Panelli rejected the Laurel Heights argument regarding night lighting glare. The final EIR added information about potential night lighting glare from the research complex's use during off-hours. The final EIR concluded that the project would "add only incrementally to existing night lighting" but adopted a mitigation measure to change the position of light fixtures to minimize glare. "An insignificant modification to an EIR does not require recirculation for additional public comment," Panelli wrote, adding: "None of the purposes of CEQA will be served by solicitation of further public comment on this subject; only needless delay will result."

Finally, Panelli rejected the Laurel Heights argument that expanded discussion of one alternative (expanding the existing Parnassus Heights research facility) constituted significant new information. "The expanded discussion in the final EIR does not change the determination that the expansion of the Parnassus Heights campus is feasible," Panelli wrote. "Rather, it merely amplifies the reasons why the alternative is infeasible and ultimately less desirable."

In his separate opinion, Justice George agreed with the majority that the substantial evidence test applies in the case. But he disagreed with the standard that new information is not "significant" unless it deals with "a substantial adverse environmental impact." "The majority's unduly narrow interpretation is fundamentally at odds with the legislative intent and public policies underlying the California Environmental Quality Act."

George also concluded that the final EIR did, indeed, contain significant new information deserving of recirculation. He reached this conclusion by focusing on the noise studies. "Although I agree with the majority's conclusion that the new information set forth in the final EIR relating to toxic air emissions, loading docks, night-lighting glare, and project alternatives does not rise to the level of 'significant new information' .... the final EIR in other respects *does* contain 'significant new information' — insofar as it discloses the Regents' intention to conduct *round-the-clock* operations at the proposed Laurel Heights facility, resulting, among other effects, in an increase in noise."

Regarding the noise issue, George wrote, Panelli's opinion "mischaracterizes the fundamental difference between [the final] EIR and the draft EIR: the draft (nearly 900 pages in length, including appendices) includes only a few vague, inadequate references to the heightened activity anticipated at the proposed Laurel Heights project, yet the final EIR describes a facility, the major components of which would operate on a *round-the-clock basis*. In my view, this difference in the contents of the two documents is statutorily significant ... and thus in itself warrants recirculation of the final EIR for public comment." ❑

■ The Case:
Laurel Heights Improvement Association of San Francisco Inc. v. Regents of the University of California. (Laurel Heights II), No. S027252, 94 Daily Journal D.A.R. 70 (December 30, 1993)

■ The Lawyers:
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TAKINGS

Fresno City Settles Case On Takings for $7.9 Million

Settling a long-standing dispute, the City of Fresno has agreed to purchase an 18-acre parcel of land adjacent to a private airport for $7.9 million plus interest. The settlement means that a large trial court award to Donald Blosser and his sister, Jill Robinson, who filed takings case against the city, will not be subject to an appellate ruling. The case had been a cause for concern among city attorneys because it involved a city's regulation of land to protect safety at a private airport.

Blosser and Robinson own a parcel of land adjacent to Sierra Sky Park in Fresno, a private airport and subdivision for private airplane owners. When they asked Fresno for a rezone of their agriculture property to office/commercial, the city required the dedication of approximately half the property — a 150-foot strip — as a clear zone and emergency touchdown zone as recommended by the Federal Aviation Administration. Rather than accept the provision, Blosser and Robinson sued, alleging a regulatory taking under the Fifth Amendment of the U.S. Constitution.

After losing in the trial court, Blosser and Robinson won a spectacular victory in the Fifth District Court of Appeal in 1991. In an unpublished opinion, the Fifth District ruled that "the primary benefit inures to the operators of Sierra Sky Park and those few members of the public who may use the airport" and concluded that "the public at large rather than the individual property owner must bear the cost of restrictions at issue." (*CP&DR*, August 1991.)

Subsequently, Fresno County Superior Court Judge Stephen Kane awarded Blosser and Robinson $6.3 million —$3.4 million for the total value of the property, $1.35 million for a loss of financial return, another $1.35 million for interest and other financial losses incurred while the property was tied up in litigation, and $180,000 in mental anguish. (*CP&DR Legal Digest*, November 1992.) Among other things, the Blossers declared bankruptcy because of their inability to sell the land and pay off loans that were taken out with the property as security. Fresno city attorneys called Kane's ruling "outrageous," saying he should not have awarded the Blossers full value when only half their property was restricted. (The touchdown zone does create two separate usable pieces of land, however.)

The Fresno City Council appealed Kane's ruling to the Fifth District Court of Appeal in Fresno. However, a new city council was seated last year and ordered the city's attorneys to seek a settlement. With interest, Kane's 1991 damage award now exceeded $8 million.

Under the terms of the agreement:

• The city must pay the Blossers $5 million by May.

• The remaining $2.9 million will be paid off in two yearly installments.

• The city will pay interest on both amounts until they are completely paid off.

In addition, however, the city will own the property, thus opening up the possibility of selling or developing the portions of the parcel not located in the touchdown zone. ❑

■ The Case:
Blosser v. City of Fresno, Fresno County Superior Court No. 375627-7

■ The Lawyers:
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PROPOSITION 13

Supreme Court Will Hear Challenge To Santa Clara Transportation Tax

The California Supreme Court has agreed to hear two important cases involving the application of Proposition 13, including a challenge to Santa Clara County's transportation sales-tax that was overturned by the Court of Appeal.

The Supreme Court's ruling in *Santa Clara County Local Transportation Authority v. Guardino*, No. S036269, appears likely to clarify the circumstances under which local sales taxes may be approved by a simple majority vote, rather than a two-thirds vote — an area of law that has been in a state of confusion since the Supreme Court's ruling in *Rider v. County of San Diego*, 1 Cal.4th 1 (1991).

The high court has also agreed to hear *City and County of San Francisco v. County of San Mateo*, No. S036423. In that case, the First District Court of Appeal ruled that Proposition 13 assessment and taxation rules do not apply to land owned by San Francisco that is located in San Mateo and Alameda counties.

The Santa Clara County case will be the latest battle between counties, which have been trying to establish their ability to pass local sales taxes by a simple majority vote, and taxpayer activists, who are trying to establish that such taxes should be brought under the Proposition 13 umbrella. The issue has profound implications for local transportation commissions, which have used local sales taxes to finance rail construction projects.

In the *Rider* case, the Supreme Court ruled that a sales tax for jail construction required a two-thirds vote because the financing authority levying the tax had no independent authority outside the San Diego County Board of Supervisors and because the tax appeared to be intended to raise money to replace property tax revenue lost under Proposition 13. Justice Stanley Mosk dissented, claiming the decision contradicted earlier rulings by the Supreme Court. (*CP&DR Legal Digest*, January 1992.)

Subsequently, the Santa Clara County Management Group, a private business organization, crafted a half-cent sales tax in Santa Clara County designed to survive a legal test under *Rider*. The measure was developed by a private organization and will be administered by the Santa Clara County Traffic Authority, an independent agency established under state law. The sales tax passed with 54% of the vote in November 1992,

In November, a three-judge panel from the Sixth District Court of Appeal issued a split decision ruling that the measure required a two-thirds vote under Proposition 13. The majority of two judges ruled that transportation funding was traditionally a task funded by local property taxes and that the entire scheme devised by the Management Group was deliberately intended to circumvent Proposition 13. In dissent, Justice William Wunderlich defended the independence of the Traffic Authority and the independent use of sales taxes to fund local transportation improvements. (*CP&DR Legal Digest*, December 1993.)

The dispute between San Francisco and its neighboring counties also involves a split opinion at the appellate court. Proposition 13, of course, severely restricts property tax rates. But Section 11 of Article XIII of the state constitution, which dates back to 1911, lays out a separate formula for calculating property taxes owned by other local governments. Alameda and San Mateo counties argue that the San Francisco land should be taxed under Section 11, whose formulas yield a much higher valuation of San Francisco's land than Proposition 13's formulas would.

In a 2-1 ruling last October, the First District Court of Appeal concluded that Section 11 should prevail over Proposition 13 (*CP&DR*, November 1993). ❑

CEQA

Additional Evidence Is Admissible In Traditional Mandate Action

A plaintiff may introduce evidence not contained in the administrative record when pursuing a traditional mandate proceeding under the California Environmental Quality Act, the Second District Court of Appeal has ruled.

As a result of the ruling, the Western States Petroleum Association will be permitted to admit additional evidence in a pending lawsuit challenging a recent regulation issued by the California Air Resources Board.

Western States sued the ARB after passage of regulations permitting vehicles powered by alternative fuels to have higher emissions levels than vehicles powered by conventional gasoline. Western States then filed a petition for a writ of mandate in Los Angeles County Superior Court. Among other things, Western States argued that the regulatory process was subject to the California Environmental Quality Act. After being denied permission at the trial level to introduce evidence outside the administrative record, Western States appealed.

On appeal, Division One of the Second District took pains to explain the distinction between traditional and administrative mandate, especially in the context of CEQA. Traditional mandate, the court stated, involves a judicial command requiring "any inferior agency" to act. Administrative mandamus, on the other hand, is used to obtain judicial review of adjudicatory decisions. CEQA specifically requires the use of administrative mandate to review agency decisions mandate with the use of such tools as hearings and the admission of evidence. Traditional mandate may be used under CEQA to deal with situations in which an agency has abused its discretion.

Under a string of cases beginning with *No Oil, Inc., v. City of Los Angeles*, 13 Cal.3d 68 (1974), material outside the administrative record is not permitted in administrative mandate proceedings but it is in traditional mandate proceedings.

According to the appellate court, this clear distinction was clouded in a schoolfees case, *Shapell Industries Inc. v. Governing Board*, 1 Cal.App.4th 218 (1991). In that case, Shapell filed a traditional mandate action and presented a report that was not in the administrative record, but the Court of Appeal overturned its admission, saying: "Consideration of reports prepared long after the agency has acted would ... be improper."

However, in the Western States case, the appellate court noted that *Shapell* "by its own terms excludes CEQA cases" and therefore "it is immaterial whether we agree with its holding."

Thus, said the appellate court, "it is clear that the trial court was wrong when it refused to admit WSPA's additional evidence on the ground that WSPA's CEQA cause of action does not give rise to a disputed question of fact because all it does is challenge the 'materiality and the integrity' of the ARB's decision. The question at this stage is not whether the additional evidence proves WSPA's claims, but only

whether the ARB concedes the truth of the allegations set out in WSPA's petition."

The court concluded: "At this stage of the case before us, it is not for us to say which items of additional evidence are admissible in support of WSPA's CEQA claims. At trial, WSPA may offer evidence, in addition to the administrative record, and may at that time explain to the trial court how each proffered item tends reasonably to prove that the ARB 'has not proceeded in a manner required by law' or has reached a decision which is 'not supported by substantial evidence.' The ARB, in turn, will then have the opportunity to offer its own relevant evidence. And the trial court, as in any other case, will decide what is admissible and what is not." ❑

■ The Case:
Western States Petroleum Association v. Superior Court, No. B078335, 94 Daily Journal D.A.R. 431 (January 13, 1994)

■ The Lawyers:
For Western States Petroleum Association: Donna R. Black, Baker & Hostetler, (213) 976-1362.
For Air Resources Board: Walter Wunderlich, Deputy Attorney General, (916) 324-5361.

GENERAL PLANS

Calabasas Bound by Area Plan From L.A. County, Court Rules

The City of Calabasas implicitly adopted Los Angeles County's general plan when it adopted the county's other land-use ordinances after incorporation, the Second District Court of Appeal has ruled in an unpublished opinion.

The case appeared to be a victory for local environmentalists seeking to block construction of 250-unit subdivision proposed by Micor Ventures in the Santa Monica Mountains. After a trial judge ruled against the city, Calabasas changed its local ordinances declaring that its land-use regulations did not require consistency with the county general plan. However, the appellate court declined to take the subsequent ordinances into account in making its ruling.

Located just west of L.A.'s San Fernando Valley, Calabasas incorporated in 1991, partly because of local citizen complaints that the county often approved development beyond density level contained in the county's 1981 Santa Monica Mountains Area Plan, the general plan document for the area. After incorporation, the city approved the Micor project, which was inconsistent with the county's area plan.

The county plan allowed construction of 81 units on the hilly 938-acre Micor site. Under the terms of the agreement between Micor and Calabasas, Micor was permitted to construct 250 units, while donating most of the rest of the property to the Santa Monica Mountains Conservancy. Save Open Space-Santa Monica Mountains, an environmental group, sued, saying that because Calabasas has not adopted its own general plan, its actions are bound by the county's general plan.

In early 1993, L.A. County Superior Court Judge Robert O'Brien ruled in favor of SOS. On appeal, the Second Appellate District, Division Two, agreed.

In making its ruling, the appellate court looked at two Government Code sections dealing with the land-use planning powers of newly incorporated cities, §57376 and §65360, which sometimes appear to be in conflict. §57376 requires a new city to adopt all county codes upon incorporation and keep them in place for 120 days. §65630 permits a new city to approve development projects if they are deemed likely to be consistent with the general plan that the city will eventually adopt.

"It is a quantum leap," the appellate court said, "to jump from a statutory scheme that avoids forcing a new city to continue to be bound by a county general plan ... to the conclusion urged by Micor and the City that there is a statutory presumption that new cities will not be bound by the county general plan absent an affirmative act."

The appellate court went on: "It is thus apparent that a newly incorporated city must adopt as its own all county ordinances unless it specifically states an intention to exempt itself and thus supersede any particularly specified county ordinances. The city thus could have adopted virtually all county ordinances, as it did, but exempted itself from being bound by the county general plan and the area plan by passing a city ordinance which specifically refers to the county ordinance regarding the county general plan and the area plan and stating the city's intention too supersede those county provisions."

Regarding the specifics of the Calabasas case, the appellate court concluded: "Despite the convoluted and protected of Micor and the city to view the matter otherwise, City Ordinance Nos. 91-1 and 91-17 simply adopted virtually all the county ordinances, including the county general plan, and put the city's name on the general plan. As the trial court aptly observed, it would be unreasonable to conclude that the city had adopted all other county land use procedures but not the general plan." ❑

■ The Case:
Save Open Space Santa Monica Mountains v. City of Calabasas, No. B074178, filed January 4, 1994.

■ The Lawyers:
For Save Open Space: Frank P. Angel, (310) 470-9897.
For City of Calabasas, Charles S. Vose, Oliver Barr & Vose, (213) 621-2000

FYI

A decision by the Contra Costa County Planning Commission to deny a permit for a second unit was supported by substantial evidence, the First District Court of Appeal has ruled. The plaintiffs in *Desmond v. County of Contra Costa*, No. A061677, began constructing the second unit prior to obtaining a county permit. Neighbors appealed the zoning administrator's favorable decision to the planning commission, which overturned. The property owners had argued that one finding — that the second unit was incompatible with the neighborhood — was irrelevant as a matter of law. The appellate court disagreed, saying that the second unit would clearly be "an intrusion into the neighborhood." 93 Daily Journal D.A.R. 16402 (December 28, 1993).

The California Supreme Court has dismissed *Christward Ministry v. County of San Diego*, No. S034607, allowing the Court of Appeal ruling in the case to stand. The case involves a ministry's challenge to the environmental impact report on a proposed expansion of a landfill near San Marcos. In August, the Fourth District Court of Appeal ruled that the impact of the mitigation measures had been properly analyzed and that the supplemental EIR had been properly circulated (*CP&DR Legal Digest*, September 1993)....

Last month *CP&DR* inadvertently failed to include the names of the lawyers involved in the case of National Audubon Society v. Marin County. In that unpublished opinion, the First District Court of Appeal ruled that Marin County did not act improperly in preparing a mitigated negative declaration, rather than an environmental impact report, for nine individual boat docks. Lawyers in the case were F. Bruce Dodge of Morrison & Foerster in Palo Alto for the Audubon Society; Robert San-Chez of the Marin County Council's office for the county; and Judy Davidoff and Kerry Shapiro of Baker & McKenzie in San Francisco for the dock owners, who appealed the case. ❑

Block Grant, HOME Projects May Be Affected By Disaster

Continued from page 1

son' is attempting to drive a hard bargain with the feds not to force California to buy into an aid package that doesn't pay all the bills.

Though not as powerful as the Loma Prieta earthquake that hit the Bay Area in 1989, the Northridge quake was apparently far more destructive. Thousands of homes and offices were declared unsafe after the quake. And while most of the damage was concentrated in the San Fernando Valley, other areas were hard-hit as well. Portions of L.A.'s affluent Westside and the poor neighborhoods in South-Central lost many structures. More than 10,000 people were estimated to be living in parks because they had lost their homes or were afraid to return.

The Ventura County city of Simi Valley, just "over the hill" from the San Fernando Valley, was another center of destruction. And in the small Ventura County farming community of Fillmore, northwest of Simi Valley, an historic downtown has been badly damaged. Like downtown Santa Cruz after Loma Prieta and Coalinga after the 1983 quake in Fresno County, Fillmore's downtown seems unlikely to survive. In addition to killing more than 60 people, the quake and its many aftershocks may have done as much as $30 billion in property damage. It could rank as the most expensive natural disaster in American history, though in part this distinction might be attributable to L.A.'s high property values.

Accompanying Clinton to Los Angeles two days after the quake, Housing and Urban Development Secretary Henry Cisneros immediately devised a plan to accelerate distribution of community development block grant funds and HOME program money, so that virtually all the money committed to the L.A. area over the next year would be available almost immediately. Cisneros also restructured the Section 8 housing assistance program — reducing the time value of vouchers from five years to 18 months — in order to make 10,000 vouchers available immediately.

Yet it is currently unknown whether projects previously scheduled to receive CDBG and HOME funds will be bumped in priority or dropped because of the emergency. Clinton has asked Congress for a supplemental appropriation of $7.5 billion to cover earthquake programs. Even if Congress approves the president's package, the existing $131.77 million CDBG allocation will be increased to $250 million. Because that sum also includes funding for HUD's HOME program, it is unclear how much additional community block-grant money, if any, the federal government is actually going to supply to cities. It also opens the possibility that affordable housing and other social-service programs will take the back seat to earthquake repairs.

Notwithstanding the Clinton administration's willingness to spend more on the Northridge earthquake than any other single disaster in U.S. history, the Wilson administration has been lukewarm in its support for the president's proposal. The president is waiving the standard Federal Emergency Management Agency formula, under which the federal government pays 75% of the cost, in favor of a 90/10 ratio — the same deal the government offered Midwest states in last spring's floods. However, the Wilson administration is hanging tough for 100% payment, which the feds provided to states in fall 1992 for Hurricane Andrew.

Wilson is concerned that the federal disaster money may fall short of the region's actual needs, and is trying to convince the feds not to close the door to federal aid before the repair job is finished and paid for. In the Loma Prieta quake, the state experienced a $400 million shortfall in disaster funds, and was never reimbursed by FEMA. "Pete Wilson was a U.S. Senator. He knows how they do things in Washington. When the next disaster comes along, California may be forgotten," said Paul Kranhold, a spokesman in the governor's office.

Federal officials appear hopeful that the private insurers will absorb much of the cost of repairing the havoc caused by the quake. Yet the feds do not appear to be taking into account that comparatively few individuals or businesses carried earthquake insurance. And the continued drop in real estate values suggests that the state may have less money than before to pay off the bonds that it may float for the purpose of raising money for earthquake repairs. The likeliest result is another hike in California's sales tax rate.

The Clinton package allocates $3.5 billion in FEMA funds for disaster assistance, but the exact method of distributing those monies among public agencies is "very preliminary," according to David Martin, a FEMA spokesman in Washington, D.C. Representatives of local government met with FEMA representatives at emergency field offices in Pasadena and elsewhere in Southern California to receive applications and to learn how to identify infrastructure which qualified for FEMA guidelines. (Infrastructure that was damaged or badly deteriorated prior to the earthquake does not qualify, for example.)

Similarly, other federal agencies — including Education, HUD, Transportation, the Veterans Administration, and Small Business Administration — are waiting for applications from local government requesting funding levels based on local damage reports.

Housing in the Los Angeles basin is in severe need of emergency funding. At least 18,000 housing units — representing the housing for about 30,000 people — were reported destroyed in the City of Los Angeles alone, and the number is expected to continue rising, while in the City of Santa Monica at least 3,000 housing units were destroyed. In response, the Clinton administration is proposing to make a total of $500 million available from HUD, including $150 million in vouchers, $100 million in "flexible subsidy," and $250 million in the CDBG and HOME programs combined. SBA loans are a further federal resource for housing, although the exact amount of the $163 million of SBA funds proposed by Clinton will be made available for housing purposes.

Local programs are much more lightly funded than federal agencies, but may provide more good to many people in the short term, while the state waits for the slow machinery of federal decision making to start moving.

The Los Angeles Community Redevelopment Agency has made low-interest home improvement loans available to residents in the Pico-Union district immediately west of Downtown Los Angeles. The loans are funded under an existing community grant loan program, which doubles as an emergency home-improvement loan in times of disaster. Special legislation permitting expedited creation of redevelopment project areas has been passed after previous earthquakes, but it is unclear whether such a plan would be politically possible in Los Angeles. A similar proposal after the 1992 riots ran into political problems and died. ❑

■ Contacts:
Maya Dunne, City of Los Angeles Housing Dept., (213) 847-7434.
David Martin, FEMA spokesman, Washington, D.C., (202) 646-4600.
Paul Kranhold, spokesman for office of Gov. Pete Wilson, (916) 445-4571.
John Phillips, HUD spokesman, Pasadena emergency field office (818) 405-7540.

Disaster Provides Opportunity for L.A. Transit System

Continued from page 1

Antelope valleys — which were among L.A.'s fastest-growing areas in the 1980s — that were hardest hit. With both freeways in the area knocked out, many parts of northern Los Angeles County found themselves almost completely isolated from the job centers to the south.

In general, transportation officials viewed the earthquake as a golden opportunity to prove the viability of alternative transportation strategies in one of America's most car-bound metropolises. Indeed, advocates of virtually every major transportation strategy bandied about in Los Angeles in recent years — rail transit, carpooling, telecommuting, increased use of surface streets — are scrambling to use the earthquake as a way of proving their case. Short-term strategies covered a wide range of actions, including the following:

Local officials responded with at least four different types of strategies in dealing with the short-term transportation crisis:

- Service on MetroLink, the commuter rail system, was beefed up, especially the Santa Clarita line. Service was extended to the Antelope Valley, and ridership on the Santa Clarita line grew from 1,000 to 15,000 per day.
- Caltrans worked to put provisional routes back into operation as quickly as possibly, especially non-freeway alternatives to I-5 and Highway 14 in Santa Clarita.
- Mayor Richard Riordan unveiled a traffic management plan that focused on improving traffic flow in hard-hit areas, especially on the Westside. Westsiders are fortunate in that many surface streets parallel the Santa Monica Freeway, and Riordan moved quickly to reopen such streets as Washington and Venice Boulevard. Transportation officials also instituted a short carpool lane on the freeway and considered turning Washington and Pico into one-way streets to improve flow.
- Finally, federal and local officials unveiled a telecommuting strategy called the Southern California Emergency Telecommuting Partnership, which will work with local governments, telephone companies, and others to set up local telecommuting work centers and provide support for those who can work at home.

> *"Many Los Angeles transportation experts remain skeptical, however, about whether transit ridership will remain high."*

The Highway System

Despite the loss of three important connections, the highway system actually fared well in the earthquake. Bridges collapsed, but the region lost no long sections of highway, as the Bay Area did when a two-mile portion of the Nimitz Freeway in Oakland collapsed during the 1989 Loma Prieta earthquake.

In large part, this success is due to a freeway reinforcement program undertaken by Caltrans following the Loma Prieta quake. In 1990 and 1991, structural engineers at UC San Diego undertook a series of tests to determine the best way to reinforce freeways. The tests led to the design of a new "edge beam", framed into the circular columns of a freeway structure. Caltrans has not reinforced all freeway structures in Southern California, but no reinforced structures collapsed in the Northridge quake.

When President Bill Clinton and his Transportation Secretary, Federico Pena, came to Los Angeles two days after the earthquake, they promised to have the freeway system reconstructed within one year. (Subsequently, the Clinton Administration announced plans to seek $1.4 billion in additional funding from Congress just for transportation projects.) The promise seemed hard to live up to, since many of the freeway segments damaged in Loma Prieta more than four years ago have not been reopened yet.

But Caltrans officials say speedy reconstruction is possible in Los Angeles because the freeways will merely be reconstructed, rather than re-thought or redesigned. After the Loma Prieta quake, reconstruction of two important freeway segments — the Nimitz, through a poor neighborhood in Oakland, and the Embarcadero Freeway in downtown San Francisco — was held up because community groups demanded a redesign. In Los Angeles, the damage is limited to bridges, and virtually all political leaders agree that quick reconstruction should be the highest priority. Comparing the Bay Area reconstruction to L.A. is "apples and oranges," said Caltrans spokesman Russell Snyder.

Indeed, some transportation experts called for a reallocation of funds away from transit to freeway reinforcement. James Moore, a professor of urban planning and civil engineering at USC, criticized the L.A. Metropolitan Transportation Authority's $160 billion rail construction plan, saying the money should be spent on freeway retrofits.

Transportation Alternatives

Meanwhile, advocates of transit and other transportation alternatives were using the opportunity of the earthquake to promote their ideas. In particular, the earthquake seemed tailor-made to prove the viability of MetroLink, the commuter rail system established in 1992 through mutual arrangement of five Los Angeles-area counties.

Revolving around Union Station in downtown Los Angeles, MetroLink provides service on four lines: San Bernardino, Riverside, Santa Clarita, and Ventura County, which runs through some of the hardest-hit areas, including Northridge, Chatsworth, and Simi Valley. MetroLink's success has been modest so far, though the Santa Clarita and Ventura County lines have succeeded in drawing commuters not only to downtown L.A. but also to the job centers around Burbank, which are connected to MetroLink via special shuttle buses.

With vital freeway links from Santa Clarita closed, ridership on the Santa Clarita line skyrocketed 1400%. With travel in the northwest San Fernando Valley also impeded, Ventura County ridership doubled, though trains were still far from full. MetroLink officials hastily extended the Santa Clarita lines along freight lines through Angeles National Forest to the Antelope Valley, and announced plans to extend the Ventura County line to Camarillo.

There is no question that MetroLink has proven its value as an emergency alternative, much as the Bay Area Rapid Transit system did when the Bay Bridge was knocked out by the Loma Prieta earthquake. Many Los Angeles transportation experts remain skeptical, however, about whether transit ridership will remain high. "People are rational," said Martin Wachs, a transportation planning professor at UCLA. "For most people, under most circumstances, the automobile is the rational choice. In these circumstances, for many people transit is the rational choice." He questioned whether MetroLink ridership would remain high once Interstate 5 and Highway 14 reopened. "If you want the Santa Clarita line to continue to carry 15,000 people a day," he said, "don't rebuild the freeway." ❑

■ Contacts:

Russell Snyder, Caltrans, (213) 897-0849.
Warren Froelich, University of California, San Diego, (619) 534-8564.
Annette Castro, Mayor Riordan's office, (213) 847-3556.
Martin Wachs, UCLA Graduate School of Architecture and Urban Planning, (310) 825-2455.

NUMBERS

Stephen Svete

Can MetroLink Hang On To Its New Ridership?

The Northridge earthquake has just handed the Los Angeles Metropolitan Transportation Authority a great opportunity. Responding to emergency "broken freeway" conditions, MTA has already captured multitudes of new commuters, especially on the MetroLink commuter rail lines. Prior to the earthquake, the entire 220-mile system carried 10,000 passengers a day. With Interstate 5 and Highway 14 closed, the Santa Clarita line — extended 35 miles to Lancaster — carries 15,000 riders a day all by itself. This 1,400% increase is nothing if not impressive.

Now the MTA has about one year — until the freeways reopen — to convince the new MetroLink patrons to park their cars for good. But in the end, when all the freeway reconstruction dust settles, the MTA will be lucky to retain perhaps 15% of its newfound patronage — that is, if recent history is any indication.

In October of 1989, when the Loma Prieta earthquake snapped the Bay Bridge and the Cypress Viaduct on the Nimitz Freeway in Oakland, transit officials in the Bay Area responded with vigor. The Bart Area Rapid Transit District quickly expanded service, resulting in a 43% increase in average weekday ridership from the levels immediately prior to the quake (from about 219,000 riders a day in September to 314,000 in November). Though BART planners knew they would lose a large percentage of these new riders after the bridge was repaired, they hoped to convert many commuters permanently. And the numbers indicate they were somewhat successful. After the bridge was repaired, average November weekday ridership still stood at 250,000, a 16% increase. (The Cypress Viaduct, of course, has not reopened.)

But there is another side to this story. According to San Francisco economist David Reinke, a former BART researcher, the earthquake may have simply accelerated the ongoing capture of latent demand for the system. "Something funny seemed to happen," says Reinke, who researched the issue for UC Berkeley's University Research Center. "In the years right before the quake, BART had been achieving a 5%-per-year growth in ridership for a steady period." After the quake and the 16% permanent gain, "the per-annum gains seem to have stalled down."

Indeed, average weekday ridership has held steady at around 250,000 each November since the bridge was repaired. (If ridership had simply continued to increase 5% per year — with no Loma Prieta blip — the current total would be 280,000.) Reinke reasons that because of the earthquake, BART simply sopped up latent transit demand more quickly — in other words, the new permanent riders BART captured would have switched to transit eventually anyway, and Loma Prieta simply captured them early.

If BART's experience is any indicator, MetroLink had better enjoy its glory days while they last. If the Santa Clarita line retains 16% of new riders, as BART did, that translates into only 2,400 new rail commuters. Though, to be fair, the transit glory days will last much longer than they did in the Bay Area. The Bay Bridge was reopened after only three months of repair work. In Santa Clarita, a complete reconstruction is required for the damaged sections of I-5 and Highway 14, meaning they will be closed for at least a year.

But in the end, can MetroLink hope for more than 2,400 or so new permanent riders per day on the Santa Clarita line? Let's hope so. The system's periwinkle-blue-and-white trains are the most heavily subsidized commuter transit service in California. And as a "prove-it-to-me" public intensifies its scrutiny of tax-supported services, MTA may be in jeopardy of being ... well, ridden out of town on a rail. ❑

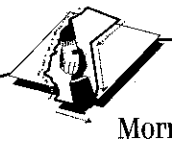
BART Ridership

Before and After the Loma Prieta Earthquake

Date	Number of Passengers	Percentage of Increase
November 1988	209,370	
September 1989 *	219,603	4.66%
December 1989	314,103	30.09%
November 1990	251,084	-25.10%
November 1991	255,682	1.80%
November 1992	258,509	1.09%
November 1993	256,030	- 0.97%

* excluding A's game days

Source: BART



DEALS

Morris Newman

Lancaster Gets Caught Winking on Affordable Housing

Remember those gimmick photographs that depicted an image that seemed to move? By moving the picture back and forth, or by changing one's vantage point, a little dog, or Elvis, or the Deity, could be made to wink. The amazement caused by such images always provoked the same question: How could something be there, and not be there, in the same image?

Winking photographs seem to have fallen by the wayside, but those who are nostalgic for such things will be comforted to learn that we still have public policy that winks. It's the kind of policy that when you look at it from one angle, policy and the public benefit are in the same picture. But tilt the picture slightly, and the public interest vanishes, as if it were never there. (Wink!)

The City of Lancaster in northern Los Angeles County is one place where, until a pesky appellate court got in the way, you could find an excellent example of winking public policy. It is known locally as the Low and Moderate Income House Incentive Program (LMIHIP). Under this policy, part of city's redevelopment money is used to build an overpass to an otherwise inaccessible part of town. If you look at the law one way, you can see two new overpasses and 45,000 housing units in the newly accessible part of the city. But if you move the policy just slightly, all you see are the overpasses, and all the affordable housing vanishes. (Wink!)

> *"Justice Vogel called the policy 'no more than an illusory promise by the city.'"*

How could something be there, and not be there, in the same policy? It works like this. The underlying theory is that the city needs to build two railroad overpasses to connect the developed part of the city to an undeveloped part of the city which is currently open desert. In November 1991, the city authorized the following arrangement: The redevelopment agency floats about $30 million in housing bonds. Then the agency takes a portion of the money raised by the bonds and "buys" $24 million worth of Traffic Impact Fee offsets (TIFs) from the City of Lancaster. The city takes the $24 million and builds the two overpasses. Any developer who chooses to participate in the housing program — which is voluntary (!) — can do so by setting aside a portion of their projects for affordable housing. In exchange, developer is forgiven 90% of the trip impact fees the developer would otherwise pay. So, in a somewhat indirect way, the developer is being offered an incentive to create affordable housing.

The beauty of the deal, for the city, is that the city wins no matter what, because the city gets its overpass money up front. City Attorney David R. McEwen described the arrangement as a "win-win" situation: "You either got the housing built, or the money was reimbursed back to housing fund to do something else." But because the program is voluntary, there is no assurance that any affordable housing at all would be built. (Wink!)

After reading about the housing program in the Los Angeles Times, Lancaster resident Dolores Dibley contacted the prominent Los Angeles-based redevelopment law firm of Kane, Ballmer & Berkman, who agreed to represent her in a lawsuit challenging the legality of the overpass program. (The law firm had been quoted in the news story as critical of the deal.) In her suit, Dibley claimed that the housing program was illegal because it would use housing funds to build overpasses, not houses. "Why should affordable housing subsidize commercial and industrial development and market-rate housing?" asked plaintiff lawyer Kathryn Reimann of the Kane, Ballmer & Berkman firm.

(The plaintiffs' lawyers also took the unusual step of attacking the city attorney McEwen directly, saying he had a conflict of interest because he was, simultaneously, the city attorney, the redevelopment agency lawyer and the city's bond counsel. Dibley's lawyers said that McEwen stood to profit as bond counsel in doing the legal work on projects that he himself helped to structure. McEwen points out a 1992 letter from the Political Fair Practices Commission which says there is nothing illegal or improper in his multiple role.)

In the trial court, city attorneys argued that the use of the funds was indeed legal, because of the nexus between the overpass and developing the eastern part of the city. They also cited a provision in the Community Redevelopment Law that indeed allows cities to use housing funds for non-housing purposes, if those purposes are "made as part of a program which results in the new construction or rehabilitation of affordable housing units." (Lancaster's attorneys also attempted to have the case ruled moot, because the city had used existing redevelopment funds to build one of the disputed overpasses.) The trial judge was convinced of the necessary connection between the overpasses and developing housing in the desert, and ruled in favor of the city.

Dibley appealed to the Second District Appellate Court, which saw the matter differently. Writing for a three-judge panel, Justice Miriam Vogel found the connection between the overpasses and affordable housing unconvincing, first because developers were not required to build the housing. She also failed to find any "plans, proposals or any hint at all of new housing, affordable or market priced." (Wink! Wink!) City Attorney McEwen disputes this conclusion, saying that the city's housing element, approved after the lawsuit was first filed, calls for affordable housing throughout the city. But plaintiffs lawyer Reimann said the EIR of the city's 1992 general plan update indicates that the area in question was, in fact, inappropriate for housing because of its adjacency to existing heavy industry just outside the city border.

Vogel concluded that Lancaster's housing program is "no more than an illusory promise by the City that, if you give us the money to build our overpasses now, then *maybe*, at some point in the future, there *might* be a developer chooses to participate and agrees to construct affordable housing.' Politely stated, that is not enough...."

That Justice Vogel was unimpressed by Lancaster's winking housing policy should be a caution to all the money—except to build affordable housing. Beware: if your housing scheme winks at the wrong judge, the judge may not wink back. ❑