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INSIDE

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Torf Fulton Associates
1275 Sunnycrest Avenue
Ventura, CA 93003-1212
805/642-7838

William Fulton,
Editor & Publisher

Morris Newman,
Senior Editor

Stephen Svete,
Elizabeth Schilling,
Contributing Editors

Allison Singer,
Circulation Manager

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Farmers Use CEQA To Challenge Regs In Monterey County

Judge Stays Implementation Of Far-Reaching Groundwater Rules

By Elizabeth Schilling

A group of Monterey County farmers has seized on the California Environmental Quality Act (CEQA) in an unusual lawsuit which challenges local regulations designed to protect groundwater quality.

The case is noteworthy for the light it sheds on both the continuing struggle over water rights in local communities and the need for state leadership in water policy. The lawsuit alleges that a change in irrigation habits brought about by the groundwater regulations would threaten crop production and result in a taking of property. In addition, the case presents the theory that regulations in themselves can represent a "project" requiring CEQA review.

In a May ruling on the case in San Jose Superior Court, *Continued on page 9*

Most Pro-Growth Measures Win In June Election

Bond Failures Lead to Crises In Transportation, Parks

The impact of the recession has finally hit California's ballots. Weary from a long economic downturn, California voters unequivocally stated in June that they don't want more bonds — but they do want more growth.

More than $6 billion in proposed state bonds went down to defeat in June, creating a crisis for parkland supporters, the transportation system, and school facilities. And in a dramatic reversal of traditional patterns, pro-growth forces won 67% (6 of 9) of the land-use related issues that appeared on local ballots around the state.

The defeat of Propositions 1A (earthquake bonds), 1B (school bonds), 1C (higher education bonds), and 180 (parkland acquisition bonds) sent legislators, bureaucrats, and lobbyists scrambling. The failure of the earthquake bonds *Continued on page 10*

Property Rights Ruling To Get Quick Test in California

The U.S. Supreme Court has once again delved deeply into land-use planning, imposing new requirements on exactions that could affect planning practice in California.

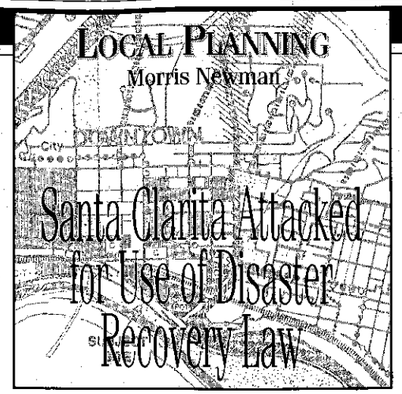
Expanding on its 1987 *Nollan v. California Coastal Commission* opinion, the court ruled 5-4 that exactions must have a "rough proportionality" to problems created by new development. The court also appeared to shift the burden of proof in such cases to the government, at least in quasi-judicial situations such as conditional use permits. The *Dolan v. City of Tigard* ruling came in an Oregon case involving the proposed expansion of a hardware store.

The impact on California is unclear so far — but the court wasted no time in jumping into the fray in this state. Just three days after ruling in *Dolan*, the court accepted a controversial exactions case from Culver City and remanded it to the appellate court in Los Angeles for reconsideration in light of the Dolan case. In *Ehrlich v. City of Culver City*, the appellate court had affirmed the city's decision to impose a recreational mitigation fee on a property owner who closed a private athletic club and replaced it with condominiums.

Turn to page 5 for our special coverage, which includes reports by *CP&DR*'s special Supreme Court correspondent Kenneth Jost, former editor of the *Los Angeles Daily Journal*, as well as excerpts from the majority opinion and both dissents. ❑

Local Planning

Morris Newman



Santa Clarita Attacked for Use of Disaster Recovery Law

The City of Santa Clarita has been slapped with two lawsuits by the local water agency alleging that the city has abused both the California Environmental Quality Act and community redevelopment law by adopting a $1.1 billion disaster recovery plan.

The lawsuits claim that the plan is a redevelopment project area in all but name, and that city officials have used the disaster as an excuse to use tax-increment financing to build a "wish list" of public works projects. In response, city officials say that Santa Clarita has been unfairly stigmatized, since other cities have created similar recovery plans without protest.

At issue is the proper interpretation of the Health & Safety Code §§34000-34014, known as the Disaster Project Law. Enacted in 1964, the statute enables cities to create disaster projects quickly, and with many of the powers of redevelopment agencies, notably tax increment financing. Unlike redevelopment project areas, however, disaster plans do not require environmental review, the formation of a public advisory committee, or public hearings.

Cities can form disaster projects either through the Disaster Project Law or through special state legislation. Both methods have been used multiple times in recent years, although the legislative route appears to be more popular. The cities of Whittier and Santa Monica have created a disaster plan under the statute, while the City of Los Angeles plans to create five such project areas.

In February, Santa Clarita rushed to create the 13.5-square-mile disaster area in the wake of the Northridge earthquake on January 17. The city was close to the Northridge epicenter and suffered severe damage.

Among those projects are road construction and urban design for San Fernando Road, an east-west corridor that traverses the city; adaptive reuse and change of occupancies on Lyons Avenue, a major commercial corridor; and removal of visual blight and protection of neighboring properties along the Southern Pacific line that runs through the city. "Those projects are probably appropriate for redevelopment, but were pre-existing at the time of the earthquake," said H. Bruce Tepper Jr., a partner in the Los Angeles firm of Kane, Ballmer & Berkman, which represents the plaintiffs.

The Castaic Lake Water Agency filed a CEQA lawsuit in March. Attorneys for the water district argued that the city's recovery plan does not qualify for an emergency exemption to redevelopment law under CEQA, that the area does not qualify as a disaster area under the statute, and further, that the disaster project law does not remove the need for environmental review.

In an apparent attempt to argue for the need for a nexus between disaster damage and a disaster plan, the complaint cited language in §34004 defining a disaster recovery area as one which the local lawmakers determine to be "in need of redevelopment, rehabilitation, or renewal as the result of a disaster." While Santa Clarita suffered extensive damage on January 17, lawyers for the water district argued that a majority of the projects outlined in the project were not disaster-related. A trial in the CEQA suit is scheduled for July.

In the second suit, filed in April, the water district argued that the city had not created a true disaster recovery project but a "hybrid" between a disaster project and a redevelopment project area. The suit cited alleged violations of redevelopment law among the causes of action, including a lack of evidence to support the creation of the disaster plan, since only a portion of the project area needed disaster relief; a failure to find blight; establishment of a project in a non-urbanized area; and "illegal" inclusion of non-blighted areas within the project.

"While the plan does have elements of a disaster recovery project, it has been grafted onto a $900 million public works project," Tepper said. "Out of the $1.1 billion budget, $200 million is directed at earthquake damage. The rest is for an infrastructure wish list that the city has developed."

Carl Newton, the contract city attorney, said the city had done nothing illegal, because the statute does not require a nexus or relationship between disaster damage and projects. "The disaster plan method of project creation does not impose a limitation on the extent of redevelopment that can be pursued. It says you may create a redevelopment agency when a disaster situation occurs," he said.

Santa Clarita redevelopment director Don Duckworth, an architect of the disaster plan, said that the statute does not oblige cities to limit disaster-plan projects to disaster damage. But he also argued that the disaster plan was in the spirit of FEMA guidelines, which urge disaster prevention as well as repair. He defended one of the most criticized proposals, a 26-mile roadway, as falling within the disaster-prevention category. "Without this east-west road, the city can't deliver disaster services to many of its residents," he said.

Sacramento lawmakers have considered updating the 1964 statute several times in recent years, largely because the law does not reflect changes in redevelopment law since that time, according to Toni Symonds, consultant to the Assembly Housing Committee. An early version of a reform bill, AB 978, introduced by Assemblyman Dan Hauser, D-Eureka, would have essentially repealed the Disaster Project Law.

The California Redevelopment Association, however, requested changes to the Hauser bill which preserves the law, introduces some interim reforms, including limitations on agency activities to disaster repairs and a 10-year limit to incur indebtedness. Under the current version of Hauser, the old law would "sunset" in three years in anticipation of new legislation. "There is a need for a generic law for disaster recovery and redevelopment," said redevelopment association director Bill Carlson. The existing law, he added, is "just out of date, and unless it is updated, it can lead to abuse or the appearance of abuse." ❑

■ Contacts:

Toni Symonds, consultant, Assembly Housing Committee, (916) 445-2320.

Bruce Tepper, Kane, Ballmer, & Berkman, (213) 617-0480.

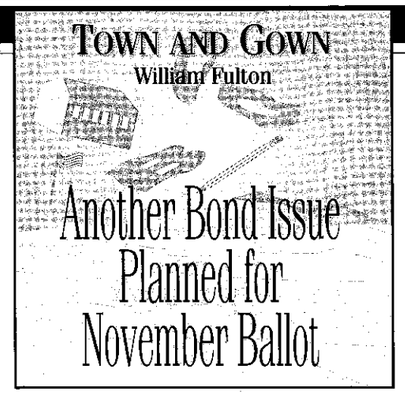
Carl Newton, contract city attorney, City of Santa Clarita, (213) 236-0600.

Don Duckworth, redevelopment director, City of Santa Clarita, (805) 259-2489.

Bill Carlson, California Redevelopment Association, (916) 448-8760.

Town and Gown

William Fulton



Another Bond Issue Planned for November Ballot

The defeat of Proposition 1B has left the state with virtually no state funds for K-12 school facilities, bringing the school construction issue to a head yet again in California.

School bond advocates are already planning a November bond measure that could reach or exceed $1 billion. But the state program is already running so far behind that this money won't solve the problem.

Lyle Smoot, assistant executive officer of the State Allocation Board, which doles out the state bond funds, said the board still has approximately $125 million but will retain it for contingencies on previously approved projects.

The State Allocation Board has already approved some $900 million in local school construction projects for which state bond funds are not currently available, while applications for another $100 million are being processed.

Thus, if a $1 billion bond measure passes in November, the money will already be committed, leaving no funds for future growth. And local options are limited too. Last November, voters rejected Proposition 172, a constitutional amendment to permit local bond issues with a simple-majority vote. All this means school districts around the state can be expected to lean harder than ever on developers and cities to extract more money in fees for new school facilities.

1B did far better than all other bond issues on the June ballot, losing by only 35,000 votes statewide. School facilities advocates are planning another bond proposal for November and hope to raise $500,000 for a statewide campaign. "Maybe this doesn't mean we shouldn't do school bonds," commented infrastructure finance guru Dean Misczynski, acting director of the California Research Bureau. "Maybe it means we should only do school bonds."

But the school bond is likely to have lots of competition. Although a rail bond and a housing bond now scheduled for the ballot may be removed, Gov. Pete Wilson is pushing a prison bond. And the Planning & Conservation League, which has been associated with bond initiatives in the past, has qualified the so-called CALTEA program for the ballot. Though not a bond, CALTEA calls for a gas-tax increase for transportation improvements.

Furthermore, school bonds have historically done worse in November elections as opposed to June elections. In 1990 — also a gubernatorial election year — the "yes" vote on school bonds dropped 5.8% from June to November. And the legislature appears unlikely to place a school bond measure on the ballot before August at the earliest.

Real estate developers are likely to take a larger role in the November school bond election — especially in fundraising terms. "I think there was some complacency," said Dwight Hansen of the California Building Industry Association. Hansen said developers will pay their "fair share" of the November campaign but said related groups such as the California Teachers Association and the Associated General Contractors should do the same. CBIA and CTA were the two biggest contributors to the 1B campaign, each chipping in $25,000. Several large real estate developers, including the Santa Margarita Co. and the Mission Viejo Co., also made contributions.

State bonds have been an integral part of California's school facilities financing program since 1982, when a $400 million bond issue received 50.5% of the vote on the November ballot. Since then, voters have approved $7.6 billion in state school construction bonds. Under the School Facilities Act, first passed in 1986, the state bond money is supposed to provide the state's share of funding for school facilities. Local school districts are supposed to make up the difference through a combination of local bonds, fees on new development, and other strategies.

However, the state bond program has never produced enough money to provide the state's required share under the School Facilities Act. Two years ago, Gov. Pete Wilson proposed ending the state bond program and instead focusing on local general-obligation bonds. That idea came to a screeching halt with the resounding defeat of Proposition 172 last year. Legislative leaders, including Assembly Education Chair Delaine Eastin and Senate Housing Chair Leroy Greene, have continued to push state bond measures onto the ballot.

Performing far better than the three other bond issues on the June ballot, Proposition 1B received 49.6% of the vote statewide. The measure actually passed in several large urban counties, including Los Angeles, San Francisco, Santa Clara, Alameda, Contra Costa, Monterey, and San Mateo, all of which have a history of strong support for state school bonds. Contra Costa, Monterey, and San Mateo were the only counties that saw an increase in support from 1992. But school bonds saw a significant erosion of support in many parts of the state, especially the Central Valley. To wit:

- In Merced County, the school bond received barely 40% of the vote, a drop of 6 points from November 1992 and 16 points from June 1992.
- Kern County gave 1B only 37% of the vote, down from 42% in November 1992 and 47% in June 1992.
- Support for school bonds in Fresno County dropped from 54% in June 1992 to only 47% in June 1994.
- San Joaquin County support for state school bonds dropped to 37%, down from 45% in June of 1992. Sutter County showed a similar decline.
- Already-slim support for state school bonds in the far northern counties eroded even more. The yes on 1B vote totaled only 24% in Tehama County, 27% in Glenn County, 29% in Siskiyou County, and 33% in Yuba, Colusa, and Butte counties.

1B also suffered an important dropoff in more conservative urbanized counties, such as San Bernardino, Ventura, Solano, and San Diego, which had previously shown strong support for school bonds. Proposition 152 on the June 1992 ballot passed in both Ventura and San Diego Counties and received 49% in San Bernardino. However, Solano gave 1B only 48% of the vote. Ventura and San Diego counties each gave 1B only 46% of the vote, while San Bernardino's yes vote dropped to only 43%.

In Placer County — a fast-growing suburban/foothill county near Sacramento — 1B received only 35.8% of the vote — down more than 11 points from the November 1992 school bond vote. Several school districts have recently staged successful local bond elections in Placer County. But Kelvin Lee, superintendent of the Dry Creek Elementary School District in Roseville and chair of the statewide Coalition for Adequate School Housing, termed the Placer results "perplexing." He noted that three anti-growth measures on the June ballot in Placer were handily defeated. (See local election results, page 10.) "If it had just been a growth issue," Lee said, "Measures C, D, and E would have won." ❑

■ Contacts:

Lyle Smoot, State Allocation Board, (916) 445-3159.

Kelvin Lee, Dry Creek Elementary School District, (916) 771-0646

Dean Misczynski, California Research Bureau, (916) 653-8303.

Dwight Hansen, California Building Industry Association, (916) 443-7933.

Base Reuse

Morris Newman

K-Rat May Hinder Development Plans at March

Having wreaked havoc on the Riverside County political landscape over the last six years, the endangered Stephens' kangaroo rat is now causing trouble at March Air Force Base near Moreno Valley.

Claiming that county officials have welched on earlier promises, the U.S. Fish & Wildlife Service is demanding that more land be set aside for the endangered rodent. But one local politician claims that an expanded K-rat habitat could render the base useless for private development.

Currently approximately 1,000 of March's 7,000 acres is set aside for rat habitat — the result of an agreement by Caltrans to fund mitigation for construction of the 215 Freeway. Fish & Wildlife wants another 1,200 acres originally promised by March officials several years ago as mitigation for a planned construction program on the base.

The military projects are no longer planned. March is currently in the midst of a realignment from military to reserve use, with approximately 4,000 acres to remain under military control. County Supervisor Norton Younglove, who is also a member of the March reuse committee, says that under the circumstances Fish & Wildlife should withdraw its demand for an expanded rat preserve. "If you look at a map of March and draw lines around the area that they (military officials) want to keep for reserve activities, and you add to that all the federal and state agencies that are in the pecking order for space, and add the k-rat habitat, there's no more room," he said.

Local environmental officials have a more entrepreneurial idea for the k-rat. Brian Loew, executive director of the Riverside County Habitat Recovery Agency, said he would like to sell the land on March to private developers, and use the proceeds to acquire K-rat habitat in western Riverside County. With good rail and freeway access, the March site is prime commercial land that could sell between $50,000 and $100,000 an acre, according to Loew. Comparable or "better" habitat in the western county could be bought for about $10,000 an acre, he said.

Another possibility, according to Loew, would be trades, in which property owners in environmentally sensitive areas would be encouraged to give their hard-to-develop properties to the habitat agency in exchange for commercial land on March.

But Fish & Wildlife do not seem enthusiastic about the plan. "We have a lot of concerns about such a proposal," said John Bradley, a biologist in F&W's Carlsbad office. "They said, 'We are going to establish 1,000 or 2,200 acres for the preservation of SKR (Stephens kangaroo rat),' and two years later, for political-economic reasons, that agreement is abrogated in favor of some other alternative. If you set up a mitigation reserve, and two years later dissolve it, that's not good-faith planning."

He points out that the existing k-rat habitat at March, together with the nearby Sycamore Canyon Park in the City of Riverside, is considered a "core" reserve for the threatened species. Adding another layer of uncertainty, the Riverside County conservation agency has not identified which specific lands would replace the k-rat habitat at March.

But Fish & Wildlife's Bradley did not dismiss the idea entirely. "We will consider it, if what they are proposing is going to be a significant improvement over what that particular configuration is right now. But the Service does not want to leave the impression that you can put up a wildlife reserve someplace for the protection of certain species and then you can just come around and change it for political-economic reasons."

Younglove chafes at such arguments. "They had an opportunity to do a land swap in which they made out like bandits. That's why we find their reluctance a little hard to comprehend," he said.

According to Loew, the county has spent $20 million on habitat and plans to spend $50 million more.

In an unrelated development, military reserve units are showing interest in assuming control of parts of March. One proposal calls for setting aside 2,200 acres for the use of 5,200 Air Force reservists and another 200 civilian personnel who are expected to be stationed at March within the next two years. In addition the 63rd Army Reserve Unit wants to acquire 10 existing buildings at March to house its reservists.

Also, the U.S. Forest Service envisions an emergency service center on the base for the FIRESCOPE program, which is a general-emergency cooperative venture of local, state and federal agencies. The disaster program would employ 300 people.

Base Briefs

New noise limits proposed for McClellan Air Force Base may affect future development on or near the base.

The Sacramento County Airport Land Use Commission has recommended expanding the noise buffer surrounding the base that could not be developed. The expanded boundaries suggest that local officials are taking steps to keep McClellan open, by making it possible for the air force base to accommodate large, recent-vintage aircraft, such as the four-engine KC-135 aerial tankers now flown to McClellan for maintenance. Expansion of the noise buffer, however, would result in a ban on homebuilding in an area currently eyed for residential development....

Norton Air Force Base was one of four sites in the state selected in May as the future home of the Defense Finance and Accounting Service. The Pentagon's accounting division is expected to employ 750 people at the Riverside County facility. The Pentagon plans similar offices in Mare Island Naval Shipyard in Vallejo, Fort Ord in Monterey County, and a still-unidentified site in San Diego. Together, the agency will employ 3,000 people....

San Francisco Mayor Frank Jordan is promoting a plan to lease parts of the Presidio to offset the $25 million annual cost of maintaining the army post. Federal officials also estimate that rehabbing the historic buildings on the post could run $500 million during the next 15 years. The high cost estimates puts increased pressure on local officials to consider selling or leasing off parts of the Presidio.

Rep. John Duncan, R-Tennessee, has proposed selling off parts of the 1,450-acre facility, including the Letterman Army Hospital and a golf course, to offset maintenance costs.

Separately, the University of California at San Francisco has submitted a plan to lease the Letterman hospital complex and create a medical research center at the 1.2 million-square-foot complex.

The Pentagon plans to transfer ownership of the Presidio to the National Park Service in October. ❑

CP&DR
LEGAL DIGEST

Supreme Court Ruling Will Narrow Exactions Field

Dolan Creates 'Rough Proportionality' Rule, Shifts Burden of Proof

By Kenneth Jost

The U.S. Supreme Court's newest land-use ruling gives developers more leverage to resist exactions from government agencies. And California land-use law experts say cities and counties will have to work harder to justify development fees and other conditions. But the impact of *Dolan v. City of Tigard* in California will depend on how strictly lower courts interpret the new test the high court created.

In a 5-4 ruling, the court ruled that government agencies must show a "rough proportionality" between any permit conditions and the specific harms from the development that the requirements are designed to prevent. The court also shifted the burden of proof for this showing from the developer to the government, at least in quasi-judicial actions such as conditional use permits.

"The city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development," Chief Justice William Rehnquist wrote in the June 24 ruling.

The *Dolan* ruling will get an early test in California. Three days after handing *Dolan* down, the Supreme Court remanded a California appellate case, *Ehrlich v. Culver City*, to the Second District Court of Appeal in Los Angeles for reconsideration in light of the *Dolan* decision. (See following story.) Gideon Kanner, a prominent Los Angeles property rights lawyer, predicted that California appellate courts would not interpret the *Dolan* ruling broadly, saying they have shown "no intellectual leadership" in the area.

The *Dolan* decision extends the Supreme Court's ruling in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), the first case that required local governments to show a "nexus" between permit conditions and the impacts of proposed developments. Michael Berger, a Los Angeles lawyer who represents developers, called the new ruling "a good follow-up to *Nollan*."

"It tells cities that there's a limit beyond which they cannot go and that their conditions and exactions must be tailored to the specific project that's in front of them," Berger said. "I think a lot of them didn't believe that before this."

But Katherine Stone, a Ventura lawyer who represents local governments, said the decision is comparable to the "reasonable relationship" standard that has long been used in California courts. "It is very similar to some of the cases interpreting *Nollan* in the [Ninth] Circuit and California," Stone said.

In its ruling, the Supreme Court sided with the owner of a family-operated plumbing supply company in a dispute with the city of Tigard, Ore., a suburb of Portland. Florence Dolan challenged the city's demand that she grant an easement to about 10% of her 1.67-acre downtown parcel for a bike path and public greenway before being allowed to build a larger store and expand the parking lot.

The court said the city had not presented enough evidence to show the bike path was needed to offset new traffic from the expansion. And it said the city did not show why public access to the greenway was necessary to control drainage into a creek adjoining Dolan's property.

Legal experts who followed the case had said the evidence for Tigard's demands was shaky. But in California, Stone noted, many local governments already conduct detailed studies to justify dedications or impact fees.

"I'm going to be telling them the same thing," Stone said on the day of the court's ruling. "I told Malibu just last night that they were going to have to have better findings to justify" conditions being proposed for a development.

But Fred Gaines, a Sherman Oaks lawyer who works for developers, said the ruling may prevent cities from forcing property owners to bear the cost of public improvements because of "marginal" impacts from their projects. In Los Angeles, for example, he said the city often requires developers to pay for street or traffic improvements to get clearance for projects that will generate only a small number of additional trips.

"The question is now beyond just showing a nexus," Gaines said. "Now the mitigation has to be in proportion to the impact being caused."

In practical terms, lawyers on both sides of the issue said cities and counties will find it more time-consuming, more expensive, and more difficult to impose conditions on property owners.

"Oftentimes, an applicant for a permit will give in, and that makes the permitting authority that much more greedy," said Bill Moshofsky, president of Oregonians in Action Legal Center, which represented Dolan in the case. "This gives the applicant the weapon he can use and takes away some of the temptation that has existed heretofore."

"It's going to make local governments more hesitant to require dedications," Stone said, "and it's going to be expensive for them to do these justifications."

Property rights advocates said they were especially pleased by one passage in Rehnquist's opinion signaling a stricter approach to legal claims under the constitutional provision prohibiting taking of property without compensation. "We see no reason why the Takings Clause of the Fifth Amendment," Rehnquist wrote, "should be relegated to the status of a poor relation."

"It's nice to hear the Supreme Court say that," Michael Berger said. "It would be even nicer if the lower courts would apply it."

Justices Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy, and Clarence Thomas joined Rehnquist's opinion. The dissenting justices argued that the burden of proof should remain with the property owner.

"When there is doubt concerning the magnitude of these impacts," Justice John Paul Stevens wrote, "the public interest in averting them must outweigh the private interest of the commercial entrepreneur." Stevens' dissent was joined by Justices Harry Blackmun and Ruth Bader Ginsburg, ruling in her first property rights case. Justice David Souter wrote a separate dissent in which he said Rehnquist had merely applied the *Nollan* test to the Dolan situation.

In Oregon, lawyers representing the Dolan family predicted the city would have to drop the conditions for her building permit. "We don't think there's any way they can establish a proportional relationship between the impact and the condition of

the Dolans' development," Bill Moshofsky said.

For its part, the city tried to put a favorable spin on the ruling by noting that the court had endorsed the city's planning objectives. And City Attorney Timothy V. Ramis indicated he hopes the dispute can be resolved without more litigation.

"The result leaves the city without its desired dedications and Dolan without approval of the development," Ramis said in a written statement. "The city is hopeful that the issues will be worked out now that the law has been clarified."

In California, Berger similarly predicted that the impact of the ruling would be felt more at the bargaining table than in court. "The more likely result will be that government and developers will sit down at a more level bargaining table without having to fight it out in court," he said. ❑

■ The case:
Dolan v. City of Tigard, 93-518.

■ The attorneys:
For Dolan: David B. Smith, Oregonians in Action Legal Center, (503) 620-0258.
For Tigard: Timothy V. Ramis, (503) 222-4402.

Kenneth Jost is the author of The Supreme Court Yearbook (Congressional Quarterly).

Dolan Forces Reconsideration Of Culver City Exactions Case

By Kenneth Jost

Immediately following the *Dolan* ruling, the U.S. Supreme Court used a California case to signal that local governments may face new hurdles in imposing fees on developers.

The justices voted 5-4 to set aside a state appeal court's ruling that upheld a $280,000 "recreational mitigation fee" imposed on the owner of a Culver City athletic club to get permission to build a 30-unit condominium on the site. Richard K. Ehrlich, a Los Angeles area developer, claimed that the levy — and an additional $33,200 "public arts fee" — amounted to an unconstitutional taking of property. (The appellate ruling in the *Ehrlich* case was reported in *CP&DR Legal Digest* in July 1993.)

The high court's order sent the case back to the Second District Court of Appeal in Los Angeles for a new hearing in light of the court's pro-property rights ruling three days earlier in an Oregon case. In that decision — *Dolan v. City of Tigard* — the high court said cities must justify demands that property owners set aside part of their land for public use before getting permission for new developments.

Lisa Ehrlich, who serves as general counsel for her father's development business, said she was "ecstatic, to say the very least," about the court's action.

"I thought the Court Appeal opinion was very, very bad precedent," Lisa Ehrlich said. "With all the development in California, it's very bad precedent, very bad for developers, and very bad for the economy."

Norman Herring, city attorney for Culver City, said the $280,000 fee represented the cost of building four new tennis courts to replace the courts at the athletic club. In upholding the fee, the state appeal court noted that the city had done a market study indicating the need for recreational facilities in the area. Ehrlich paid the fee and the condominium was completed in 1991.

Despite the Supreme Court's action reopening the case, Herring said he believes the *Dolan* decision has no bearing on Ehrlich's claim. "The facts are not synonymous," Herring said. "We didn't ask them for any property. There was no physical taking. It was a totally different situation."

But a lawyer for the conservative Pacific Legal Foundation, which had urged the Supreme Court to take up Ehrlich's case, disagreed.

"The California courts have for several years been saying that the Supreme Court's regulatory takings cases apply only when there's a transfer of property," said R.S. Bradford. "This is a pure monetary exaction. Obviously, the *Dolan* rule is to be applied to pure monetary situations."

The high court remanded Ehrlich's case in an unsigned order issued without elaboration. The four justices who dissented in the *Dolan* case — Harry Blackmun, John Paul Stevens, David Souter, and Ruth Bader Ginsburg — also dissented from the action in Ehrlich's case. ❑

■ The Case:
Ehrlich v. City of Culver City, No. B05523

■ The Lawyers:
For Richard K. Ehrlich: Lisa Ehrlich, general counsel, (310) 374-2887.
For Culver City: Norman Y. Herring, City Attorney, (310) 202-5835.

Excerpts from *Dolan* Opinions

Excerpts from majority opinion by Justice William Rehnquist:

...We think the "reasonable relationship" test adopted by a majority of the state courts is closer to the federal constitutional norm than either of those previously discussed. But we do not adopt it as such, partly because the term "reasonable relationship" seems confusingly similar to the term "rational basis" which describes the minimal level of scrutiny under the Equal Protection Clause of the Fourteenth Amendment. We think a term such as "rough proportionality" best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development....

Justice Stevens' dissent relies upon a law review article for the proposition that the city's conditional demands for part of petitioner's property are a "species of business regulation heretofore warranted a strong presumption of constitutional validity." But simply denominating a governmental measure as a "business regulation" does not immunize it from constitutional challenge on the grounds that it violates the Bill of Rights....We see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or the Fourth Amendment, should be relegated to the status of poor relation in these comparable circumstances....

(K)eeping the floodplain open and free from development would likely confine the pressures on Fanno Creek created by petitioner's development....But the city demanded more — it not only wanted petitioner not to build in the floodplain, but it also wanted petitioner's property along Fanno Creek for its Greenway system. The city has never said why a public greenway, as opposed to a private one, was required in the interest of flood control....

It is difficult to see why recreational visitors trampling along petitioner's floodplain easement are sufficiently related to the city's legitimate interest in reducing flooding problems along Fanno Creek....We conclude that the findings upon which the city relies do not show the required reasonable relationship between the floodplain easement and the petitioners' proposed new building....

With respect to the pedestrian/bicycle pathway....[d]edications for streets, sidewalks, and other public ways are generally reasonable exactions to avoid excessive congestion from a proposed property use. But on the record before us, the city has not met its burden of demonstrating that the additional number of vehicle and bicycle trips generated by the petitioner's development reasonably relate to the city's requirement for a dedication of pedestrian/bicycle pathway easement....

The city's goals of reducing flooding hazards and traffic congestion, and providing for public greenways, are laudable, but there are outer limits to how this may be done.

Excerpts from dissenting opinion by Justice John Paul Stevens:

...The Court [erects] a new constitutional hurdle in the path of these conditions....Not one of the state cases cited by the Court announces anything akin to a "rough proportionality" requirement.... [A]lthough these state cases do lend support to the Court's reaffirmance of *Nollan*'s reasonable nexus argument, the role of the Court accords them in the announcement of its newly minted second phase of the constitutional inquiry is remarkably inventive....

The correct inquiry should instead concentrate on whether the required nexus is present and venture beyond considerations of a condition's nature or germaneness only if the developer establishes that a concededly germane condition is so grossly disproportionate to the proposed development's adverse effects that it manifests motives other than land use regulation on the part of the city....

If the Court purposes to have the federal judiciary micromanage state decisions of this kind, it is indeed extending its welcome mat to a significant new class of litigants....

The city's conditions are by no means immune from constitutional scrutiny. The level of scrutiny, however, does not approximate the kind of review that would apply if the city had insisted on a surrender of *Dolan*'s First Amendment Rights in exchange for a building permit....

If the government can demonstrate that the conditions it has imposed in a land-use permit are rational, impartial, and conducive to fulfilling the aims of a valid land-use plan, a strong presumption of validity should attach to those conditions....

Excerpts from dissent by Justice David Souter

...[O]n my reading, the Court's conclusions about the city's vulnerability carry the Court no further than *Nollan* has gone already, and I do not view this case as a suitable vehicle for taking the law beyond that point. The right case for the enunciation of takings doctrine seems hard to spot. ❑

ELECTIONS

Court Upholds Irvine's Decision To Throw Measure Off Ballot

In a rare move, an appellate court has upheld a city council's decision to remove a land-use referendum from the ballot prior to the election.

The Fourth District Court of Appeal, Division 3, concluded that an Irvine referendum on a rezoning issue would have rendered the zoning ordinance inconsistent with the city's general plan. In so doing, the court echoed several previous decisions stating that the zoning "tail" cannot wag the general plan "dog."

Only once before has a California appellate court upheld the removal of a land-use measure from the ballot in advance. In the Irvine case, the Fourth District relied heavily on *deBottari v. City Council*, 171 Cal.App.3d 1204 (1985), a situation where the appellate court also knocked a measure off the ballot because it would have created an inconsistency between zoning and the general plan.

James Toledano, lawyer for Irvine Citizens Against Overdevelopment, which brought the referendum, said he thought the decision was wrong and will appeal to the California Supreme Court. "I think I'm going to challenge *deBottari* too," he said.

The case involved a 760-acre parcel of land, located outside the Irvine city limits but in the city's sphere of influence and owned by The Irvine Co. The city approved a general plan amendment and zone change in 1991, linking development of this parcel to dedication of a 961-acre parcel owned by the company as open space.

Irvine Citizens Against Overdevelopment, or ICAO, then gathered signatures to place a referendum on the ballot, hoping to overturn the development approval. However, the city then sued to remove the measure from the ballot, arguing that the proposed referendum was invalid because it would have created an inconsistency between the general plan and the zoning ordinance. Orange County Superior Court Judge Mason Fenton ruled in favor of the city, thus knocking the measure off the ballot, and ICAO appealed.

ICAO made five arguments before the appellate court. First, the citizens argued that Irvine lacked standing to sue. Second, the citizens said Fenton should not have relied on *deBottari* because Irvine is a charter city, not a general-law city. Third, ICAO said the case was distinguishable from *deBottari* because the property was in the sphere of influence, not inside the city limits. Fourth, ICAO said Irvine, as a charter city, has not adopted the state general-law requirement of consistency. And fifth, ICAO argued that there was no inconsistency between the general plan and the proposed zoning ordinance.

The appellate court rejected all arguments. First, the appellate court rejected ICAO's argument that only a resident or property owner had standing to sue.

On the charter city arguments, the court concluded that Irvine has explicitly adopted an ordinance calling for consistency and, therefore, bringing the city "within the ambit of the statewide scheme" calling for consistency. The court went out of its way to declare its analysis consistent with *Garat v. City of Riverside*, 2 Cal.App. 4th 259 (1991), which found that Riverside's zoning ordinance did not have to be consistent with its general plan because Riverside was a general law city. The Fourth District court noted that Riverside had never adopted an ordinance calling for consistency.

ICAO also made several arguments claiming that the referendum would not create an inconsistency because it would simply return the zoning to its previous designation — "development reserve," which permits no development. The court noted that such a designation would, indeed, be inconsistent because the general plan for the area calls for at least 1,621 houses on the property. The court also rejected ICAO's argument that no consistency would be created because Irvine's code permits inconsistent zoning if it is remedied "within a reasonable time."

But the Fourth District rejected the argument, noting that the code says that the inconsistency can be reconciled only by amending the general plan. Quoting *Lesher Communications Inc. v. City of Walnut Creek*, 52. Cal.3d 531 (1990), the court stated: "The tail does not wag the dog. The general plan is the charter to which the ordinance must conform." ❑

■ The Case:
City of Irvine v. Irvine Citizens Against Overdevelopment, No. G013014, 94 Daily Journal D.A.R. 7872 (June 10, 1994).

■ The Lawyers:
For City of Irvine: Leonard Hampel, Rutan & Tucker, (714) 641-5100.
For Irvine Citizens Against Overdevelopment, James Toledano, (714) 752-5538.
For The Irvine Co. (Real Party in Interest): Robert K. Break, Latham & Watkins, (714) 540-1235.

LOCAL ZONING

Rejection of Large Second Unit Is Upheld by Court of Appeal

The Costa Mesa City Council acted legally in rejecting a conditional use permit for a two-story second unit that would have been 50% larger than the main structure, the Fourth District Court of Appeal has ruled.

Reversing a Superior Court judge's ruling, the Fourth District said that Costa Mesa's decision was supported by substantial evidence. The council concluded that the project was incompatible with the surrounding neighborhood, thus meeting one of the tests contained in the city's second-

unit ordinance for denying a CUP on a second unit.

The Costa Mesa case is the latest in a series of lawsuits involving local ordinances dealing with second units or accessory apartments in single-family residential neighborhoods. In 1983, the state passed a law permitting second units in residential neighborhoods (Government Code §65852.2) and imposing standards to be used in such cases. Local governments, however, could meet the terms of the law by passing their own ordinances.

Costa Mesa passed a local second unit ordinance, allowing second units by CUP but requiring that the city make findings that the second unit is "substantially compatible" with the neighborhood, would not be "materially detrimental" to health, safety, and welfare, and would not allow a "use, density, or intensity" inconsistent with the general plan.

Subsequently, property owner Jeffrey Harris applied for a CUP to construct a second-unit in the quaint Flower Street neighborhood of Costa Mesa. Harris proposed tearing down his detached garage, which faces an alley, and replacing it with a three-car garage with a 1,200-square-foot second unit above it. Harris's main house was only 900 square feet in size.

The city's staff recommended approval of the CUP but the Costa Mesa Planning Commission denied it. Harris appealed the CUP to the city council, where the staff again recommended approval. But the council upheld the planning commission's action, finding that it would have an adverse impact on health, safety, and welfare, and would be inconsistent with the general plan. Harris sued and won a favorable ruling from Orange County Superior Court Temporary Judge Eleanor M. Palk, who ruled that the council's decision was not supported by substantial evidence.

But the appellate court overturned Judge Palk, saying that the council had ample evidence to make such a decision.

The appellate court quoted the transcript of the city council meeting at length, noting that several council members discussed the incompatibility of the proposed second unit. Quoting from *Lindborg-Dahl Investors Inc. v. City of Garden Grove*, 179 Cal.App.3d 956 (1986), the court noted that "it is proper to look for findings in oral remarks," as well as the official finding.

Regarding the substantial evidence issue, the court rejected Harris's argument that the CUP must be granted because the only basis for opposition was neighborhood resistance to multi-family dwellings in a single-family zone. ❑

■ The Case:
Harris v. City of Costa Mesa, No. G012846, 94 Daily Journal D.A.R. 8021 (June 14, 1994).

■ The Lawyers:
For Jeffrey Harris: David A. Delman, (714) 975-6942.
For City of Costa Mesa: Thomas Kathe, (714) 574-5399.

SUBDIVISION MAP ACT

City Can't Increase Facilities Fee After Approving Subdivision Map

The City of Modesto must refund impact fees of $3,400 per unit to Kaufman & Broad because those fees were imposed after the fact, an appellate court has ruled.

In essence, the Fifth District Court of Appeal ruled, Modesto had not given Kaufman & Broad adequate notice that fees would be increased from $1,434 to $4,890 per residential unit before K&B's vesting tentative map was deemed complete. Modesto had argued that an "escalator" condition in the vesting tentative map approval permitted the higher fees.

The ruling represented the second time the legal dispute between Modesto and K&B over fees on the so-called River Terrace project has reached the appellate court. In 1992, the Fifth District ruled that the Subdivision Map Act prohibits the imposition of post hoc conditions if those conditions could have been imposed at the time of approval. (*CP&DR Legal Digest*, March 1992.) That case was subsequently de-published by the state Supreme Court.

This appeal raised related issues. In 1987, Modesto passed an ordinance imposing infrastructure fees of $1,434 on all new residential units in the city. The city later passed a policy indicating that the fees should be increased each year in accordance with the construction cost index.

In October of 1988 — before the fees were increased — the Modesto Planning Commission approved the vesting tentative map for a 134-lot subdivision in the River Terrace project. (River Terrace was owned at the time by Nineveh Inc., but was sold to Kaufman & Broad in 1991.) The city imposed a condition on the River Terrace approval stating that the developer should pay the infrastructure fee "based on the rates in effect at time of issuance of the building permit."

Subsequently, the city revised its financial analysis and increased the fees twice — to $2,653 in February 1989 and $4,890 in November 1989. Kaufman & Broad went to court, arguing that the Subdivision Map Act required that the city charge the fees in effect at the time the developer's application for a vesting tentative map was deemed complete in 1988. The city argued that the escalator clause permitted it to impose the higher fees.

Relying heavily on *Bright Development v. City of Tracy*, 20 Cal.App.4th (1994) — the only previous appellate case dealing with vesting tentative maps — the Fifth District ruled in favor of Kaufman & Broad.

First, the appellate court concluded that the escalator fee conditions conflicts with Subdivision Map Act §66498.1 et seq. — the sections dealing with vesting tentative maps. The vesting tentative map provisions "were intended to create a vesting right affording greater protection and arising earlier in the development process than the right available under the common law doctrine," the court wrote. Thus, the court added, the vesting tentative map law "effectively freezes in place the ordinances, policies, and standards in effect at the time the vesting tentative map application is determined to be complete."

The court also concluded that Kaufman & Broad did not have adequate notice that the fees would be increased several-fold, thus violating its due process rights." ❑

■ The Case:
Kaufman & Broad Central Valley Inc. v. City of Modesto, No. F019464, 94 Daily Journal D.A.R. 8351 (June 20, 1994).

■ The Lawyers:
For Kaufman & Broad: David P. Lanferman, Lanferman Fisher & Hashimoto, (714) 623-4150.
For City of Modesto: Roland R. Stevens, Assistant City Attorney, (209) 577-5284.

FYI

A federal judge ordered construction of the San Joaquin Hills toll road through Laguna Canyon to proceed, but the Ninth U.S. Circuit Court of Appeals stayed the order pending appeal. U.S. District Court Judge Linda McLaughlin, who had previously stayed construction pending her ruling, said that the project's environmental impact statement was adequate even though it contained different project descriptions for different environmental impacts. *Laguna Greenbelt v. U.S. Department of Transportation*, No. SA CV 94-499 LHM....

The Bay Conservation and Development Commission has jurisdiction over liveaboard vessels at Oyster Point in San Mateo County, the First District Court of Appeal has ruled. *San Mateo County Harbor District v. People of the State of California*, No. A061758, 94 Daily Journal D.A.R. 8638 (June 23, 1994). ❑

Monterey County Farmers Use CEQA to Attack Groundwater Regs

Continued from page 1

retired Appellate Justice Harry Brauer, the magistrate in the case, issued a stay and found that the separately adopted ordinances should have been considered together as a single project and thus are subject to environmental review. The litigants are in negotiations, and a settlement may be reached before the case comes to trial this fall.

The ordinances at issue were adopted after more than five years of controversy-filled hearings. The problem was how to prevent depletion and degradation of the freshwater aquifer that lies under Monterey County and provides its water supply. (The county has no imported water.) The resulting lower levels of fresh water allowed ocean water to seep into the aquifer, killing crops irrigated with water from affected wells. Saltwater contamination also threatens thousands of private residential wells as well as service to urban users in the cities of Castroville and Salinas.

In hearings, every proposed action by the water agency was criticized by farmers as too hasty. Eventually, the State Water Resources Control Board threatened to assume control of groundwater in the county if the Monterey County Water Resources Agency failed to impose its own controls.

Against this external timeline, the Monterey County Board of Supervisors, acting as the water agencies governing board, enacted three ordinances last year. One required installation of meters on wells. A second determined an upper limit on pumping. A third established a pumping fee schedule.

Policymakers in Monterey County defend the new regulations as a conservative start to combat saltwater intrusion. They contend the state would have dealt with agricultural interests more harshly than do the local regs.

> *"Policymakers in Monterey County defend the new regulations as a conservative start to combat saltwater intrusion."*

But farmers, accustomed to free and unregulated irrigation water, have opposed the laws. This group, which includes corporate agriculture landowners, represents ownership of 150,000 acres of crop land south of Salinas. The coalition includes four small cities, including Greenfield and King City. It contends the problem is confined to farmland north of Salinas, and has hired a geologist to argue that the theory of basin-wide conservation is "flawed science."

Despite the lawsuit, Deputy County Counsel William Rentz contended this type of policy is exempt from CEQA because the ordinances are designed to collect data and comprise an attempt to improve environmental conditions. Rentz added he believed factions were cooperating, and blamed the state-ordered hurry-up for triggering the lawsuit.

Ironically, the county had adopted identical ordinances months earlier without a threat of legal action, but had decided to phase in the groundwater program over two years. Under threat from the Water Resources Control Board, the county was forced to revisit the issue and put the ordinances into place in a six-month time period.

"We had achieved a fragile balance of consensus that was tipped the wrong way when the state forced us to move our deadline," Rentz said. The State Water Resources Control Board, which is also named in the suit, declined comment on the case.

Rentz said that only economic, not environmental concerns, were brought up by the farmers at the dozens of hearings prior to adoption of the ordinances. "They are using CEQA as a stalling tactic," Rentz said. "In it, their lawyer found them a convenient hook for other concerns, which are not environmental."

Economic and environmental concerns cannot be separated, according to Tom Ho'Okano, a co-counsel with the San Francisco firm of Carroll, Burdick and McDonough, which represents the four-year-old Salinas Valley Water Coalition.

"We don't know what the environmental impact of the ordinances will be, because the water agency has never stopped to analyze it," said Ho'Okano, adding, "It's outrageous to have granted these actions exempt from CEQA."

While CEQA does not deal directly with water quality, Ho'Okano argued that the Monterey County water regs should be considered by CEQA for their land-use impacts.

Two issues that he wants addressed in an EIR are based on the assumption that ag land would go fallow under the proposed system. Any change in commuting patterns due to lost farm jobs must be examined, according to Ho'Okano. And if crop land goes out of production, it will lose value and ultimately be converted to residential or commercial use, creating new demands for open space, the attorney added.

Ho'Okano insisted his clients support water planning, but considered the Monterey County Water Resources Agency ineffective. Alternative water management policies offered by the coalition include building a reservoir and moving north county wells farther south, beyond the reach of saltwater contamination.

Beyond the CEQA questions, the case exemplifies a lack of direction and priorities in both local and state water planning. More water-related lawsuits can be expected, according to Sandra Dunn, an attorney with De Cuir and Somach, a Sacramento firm which handles about a dozen such cases a year.

"Water is so political because it is tied to property rights and values," Dunn said. "Until recently, agriculture has had most water rights. Now, as urban areas grow, conflicts will increase."

Better direction from the state could help municipalities achieve greater success in water planning, Dunn said. In particular, guidelines on water marketing would help.

Another possible solution to water planning would be AB 2673 (Cortese) still under debate, which would require cities and counties to include water availability in their general plan amendments. Enactment of the Cortese bill could create problems as well as solving them. By requiring local governments to include water planning in general plans, water regs could be exposed to CEQA lawsuits, when general plan EIRs are reviewed. ❑

■ Contacts:
Tom Ho'Okano, Carroll, Burdick and McDonough, (415) 989-5900.
William Rentz, Monterey County deputy counsel, (408) 755-5045.

Pro-Growth Forces Win Most Elections in June

Continued from page 1

rendered the state's transportation funding program virtually broke and set off competition among legislators over how to allocate what little money they had left. The school bond defeat had a similar impact on the education community. (See Town & Gown, page 4.) Meanwhile, higher ed, park, and school lobbyists were working on new bond issues for November.

The 67% success rate was the best showing ever for pro-growth forces on a June ballot in a major election year. Slow-growth forces have traditionally done well on June ballots, when fewer residents vote and fewer land-use measures tend to make it onto the ballot. Though the number of land-use measures was about average (it has ranged from 10 to 14 in June elections since 1988), the outcome was a significant change. Slow-growth forces won more than 70% of June measures in both 1992 and 1990.

Overall, 4 of 6 pro-growth measures passed — a significant drop from June 1992 and June 1990, when only 1 of 7 pro-growth measures passed. And one 1 of 3 anti-growth measures passed.

Support for growth was widespread. Voters in traditionally slow-growth Santa Monica approved a plan to redevelop the Civic Center and the RAND Corp. headquarters site near the beach. Voters in Carlsbad approved Legoland, while Oceanside voters defeated a measure intended to block construction of a Wal-Mart.

The most significant victory for slow-growth forces came in the City of San Diego, where voters soundly rejected a proposal to open up the 12,000-acre North City Urban Reserve for development. The only other victories for slow-growthers came in the Bay Area. Pacifica voters rejected a general plan amendment for a small residential lot, while Santa Clara County approved an advisory measure calling for a $12 per parcel assessment on much of the county to create an open-space authority. ❑

County-By-County Results of June Ballot Measures

County-by-county results of land-use related measures on local ballots around the state in June:

Los Angeles County

Santa Monica

Santa Monica voters overwhelmingly upheld a plan to rebuild the city's civic center. In November 1993, the city council approved a 42-acre master plan, which includes a 500,000-square-foot headquarters for the Rand Corp., as well as 200,000 square feet of office space, 20,000 square feet of retail space, 350 housing units, a new police station and a park.

Measure D (Civic Center Specific Plan)
Yes: 61.3% No: 38.7%
Measure E (General Plan Amendment)
Yes: 60.4% No: 39.6%

Placer County

Placer County voters soundly rejected three ballot measures designed to slow growth in this fast-growing suburban/foothill county near Sacramento.

Measure D, which would have required developers to pay for community infrastructure, did best, receiving 43.9% of the vote. But voters overwhelmingly rejected two other measures. Measure C, which would require a public vote on general plan amendments, received only 37.4% of the vote, while Measure E, which would have restricted the sale of agricultural land, received only 32.2% of the vote.

Measure C (vote on general plan amendments):
Yes: 37.3% No: 62.7%
Measure D (infrastructure)
Yes: 43.9% No: 54.1%
Measure E (restrictions on ag land)
Yes: 32.2% No: 67.8%

San Diego County

San Diego County voters approved an advisory measure to convert Miramar Naval Air Station to a civilian airport if the air station is ever closed. But the results may mean little, because San Diego city residents voted against Proposition A and local politicians say a consensus among local governments is required.

Measure A:
Yes: 52.3% No: 47.7%

City of Carlsbad

In an advisory measure, Carlsbad residents stood solidly behind the high-profile decision by Lego, the Danish toymaker, to construct a Legoland theme park.

Measure D:
Yes: 56.7% No: 43.3%

City of Oceanside

Oceanside voters rejected a measure designed to prevent development of a commercial center that would include a Wal-Mart. The measure called for rezoning a 50-acre parcel so commercial use was not permitted. The landowners said they would consider reducing the total development .

Measure G:
Yes: 31.0% No: 69.0%

City of San Diego

San Diego residents soundly rejected a proposal to open up the 12,000-acre North City Urban Reserve for development. Plans call for construction of some 17,500 houses in the area. A 1985 initiative requires voter approval for any development denser than estate housing. Development interests spent $2 million in support of the proposition.

Measure C:
Yes: 45.7% No: 54.3%

City and County of San Francisco

San Francisco voters came out strongly in support of a proposal to build a $1 billion BART station at the San Francisco International Airport. The same voters rejected a proposal to choose the less expensive of two alternatives.

Measure H (less expensive alternative:
Yes: 41.4% No: 58.6%
Measure I (BART station in terminal)
Yes: 63.2% No: 36.8%

San Mateo County

City of Pacifica Pacifica

Pacifica voters refused to amend the general plan to permit a higher-density zoning for a residential parcel.

Measure B
Yes: 34.9% No: 65.1%

Santa Clara County

Santa Clara County voters approved an advisory measure to create a county open space authority and fund it with a $12-per-year assessment on homeowners.

The authority would include the eastern two-thirds of the county, though the assessment area would include only the population centers in the central part of the county

Measure A:
Yes: 57.4% No: 42.6%

❑

NUMBERS

Stephen Svete

Can Train and Road Both Survive in South Pasadena?

It would be hard to find a better example of the dichotomies between the planning for freeways and rail transit than in South Pasadena.

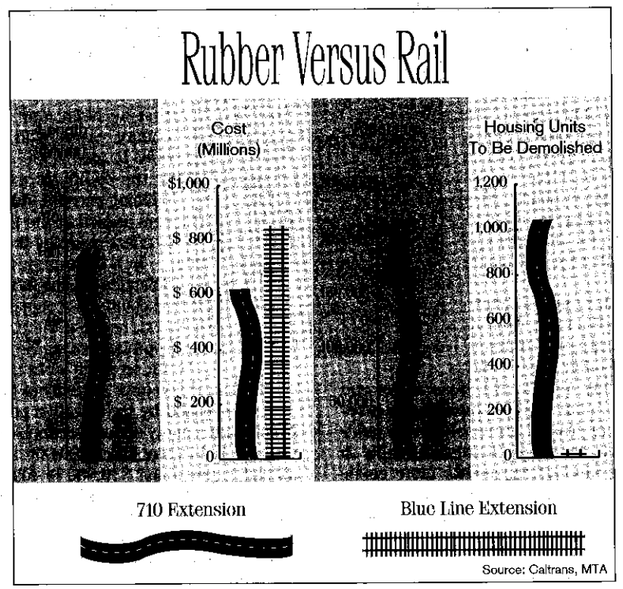
In this small bedroom community tucked between downtown Los Angeles and Pasadena, Caltrans, once the largest freeway-building bureaucracy in the world, plans a 6.2-mile gap-closure link of the long-unfinished Interstate 710.

Through the same corridor, though on a different alignment, L.A. County's mammoth Metropolitan Transportation Authority — the state's largest transit planning/operating agency — is proposing a 13.6-mile light-rail line linking downtown L.A. with Pasadena.

In South Pasadena, Caltrans may meet its Waterloo. And MTA may have stumbled into perhaps its strongest enclave of support for Southern California's emerging commuter rail system.

Caltrans first laid plans for the 710 in 1962. But the project was mothballed before completion during the freeway-busting era of Governor Jerry Brown. South Pasadena has always opposed the route, but its intensifying fight has mostly been waged solo. Neighboring Alhambra (where the freeway now ends) has campaigned for completion, while Pasadena and Los Angeles have largely steered clear of the skirmish. Meanwhile, planning for the 710 completion has continued for more than 30 years, long enough for the city to build a multi-pronged opposition strategy on the one hand, and to witness fundamental changes in transportation policy on the other. Some of those changes have led to the Pasadena Blue Line.

Caltrans claims the capital costs for the 710 would amount to $622 million, which opponents say is vastly understated. The costs in physical and social disruption have never been comprehensively analyzed. The project would entail the condemnation of 1047 dwelling units in three cities. South Pasadena claims that 8% of its land area would be affected and 14% of its population would be displaced. Caltrans estimates that 710 will carry a 200,000 vehicle trips per day. 710 opponents say that the still-unfunded project will be stymied by lawsuits for years to come.



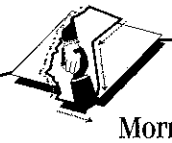
In comparison, the Pasadena Blue Line would cost $855 million, entail the condemnation of 34 dwelling units, and largely operate on existing rail right-of-way. The line is estimated to carry 55,000 boardings per day, providing roughly the equivalent of four peak-hour freeway lanes per day. The project enjoys broad support for the length of its route.

Caltrans and MTA have refused to enter the debate about the contradiction of developing both projects. Instead, the two agencies are officially in favor of both, and will not admit to any inherent conflict in building rail lines versus freeways. Despite the planning dictum that freeways undercut the success of commuter rail systems, both agencies claim that the projects serve "different needs" and therefore won't compete for travelers.

Clearly, 710 would convey more commuters than the Pasadena Blue Line, though at great social and environmental expense. But meaningful cost/benefit comparisons are not available — apparently because both agencies claim the two projects would serve different user groups.

Ultimately, the South Pasadena case reveals that transportation decisions are policy decisions. The construction of new freeway systems may occur at the expense of capturing ridership on the rail system. But we don't know for sure because of the tunnel-vision of the transportation agencies. As long as Caltrans pursues completion of a 30-year-old plan without considering the impact of related transportation projects — and as long as MTA's transit planners refuse to challenge the dynasty of freeway builders — highway and rail projects may well be planned and built at cross-purposes.

In a final ironic twist, South Pasadena may be the place where nothing at all gets built. Both agencies are staring at major budget crises, and both projects may be put on hold indefinitely. But the budget crisis only underscores the need to compare the numbers. With a diminishing volume of money available for transportation, decision-makers must choose what is more important: continuing to build upon the freeway snarl in L.A. County, or completing a new piece of the region's emerging rail transportation system. ❑



DEALS

Morris Newman

Sonoma County's Land Conservation Flea Market

I'm a fan of swap meets and flea markets. I like secondhand goods, and I like good prices. I also know that not every single item offered in such places was acquired in the most conventional or savory way. Even so, I observe the protocol of the flea market: I keep my eye on the price, and I don't ask the merchant how he or she came to acquire the goods in the first place.

That's one reason why I don't envy the Sonoma County Board of Supervisors. In late 1992, the board was offered a very attractive piece of second-hand goods: the conservation easement on the McCord Ranch in Alexander Valley, which ensures that nearly all of the ranch's 3,053 acres of agricultural land will remain undeveloped.

Although the deal was a major coup for a county strongly committed to open space, the deal caused discomfort to Sonoma County officials. For starters, the private land trust which had offered the easement to the county agency had marked up the price nearly 30% above what it had paid two months previously. And secondly, there was a hint that strong-arm tactics were used to acquire the easement.

> *"Outraged county supervisors argued that the land trust was in effect usurping their land-use powers."*

The background for the story is a quarter-cent sales tax, approved by Sonoma County voters in 1990 that brings in $8 million annually for the preservation of open space. The tax established Sonoma County Agricultural Preservation and Open Space District, which can buy land or conservation easements directly from owners or from a group of private land-trusts. In many cases, the private, nonprofit trusts are able to negotiate deals and acquire land or easements more easily than can public agencies. In selling to public agencies, the private land trusts can recoup their purchase costs, as well as pay their staffs from added fees and other mark-ups.

That's the structure under which the Sonoma Land Trust, a private group, pursued McCord Ranch, an unspoiled piece of property located between the scenic Alexander and Knight valleys, which has remained intact since the time the property was a Mexican Land Grant. After the death of Virginia McCord, the previous ranch owner, in 1992, the property was sold out of probate to Maacama Valley Ventures, a Healdsburg-based developer, for $3.2 million. The developer planned to build 10 exclusive estates on the vast ranch, which was zoned for 39 estate houses. Acting aggressively, the land trust asked two family members of the former ranch owner to challenge the court sale, then used that "leverage," as land trust director Dan Schurman would later call it, to negotiate a deal with the developers. Maacama agreed to build only four houses and sell the land's conservation easement to the Sonoma Land Trust for $700,000, or less than half its appraised value.

In November 1992, the Sonoma Land Trust proudly displayed its trophy to the Sonoma County Supervisors, and asked $900,000 for the property; the mark up included a $75,000 "finder's fee" as well as $42,000 in expenses. At first, observers were dismayed by the 30% markup.

Soon after, ethical questions arose. A series of articles in the Santa Rosa Press Democrat disclosed that a McCord relative was a board member of the Sonoma Land Trust, a relationship which Schurman dismissed as "coincidental," but which gave rise to accusations of conflict of interest. Several county supervisors expressed unease with a deal in which the land trust essentially forced the landowners to make concessions and sell the conservation easement under the threat of losing the sale altogether. The land trust was further embarrassed when developer Chris Stone said that he was unaware that the county was interested in buying the easement immediately after he sold it to Sonoma Land Trust.

Disturbingly, Stone also claimed that the settlement with the Sonoma Land Trust had obliged him not to speak directly to the county. Had he been able to deal directly with the county, Stone said, he would have made an offer to give 2,500 acres of the McCord Ranch to the county in exchange for 10 residential building permits. And outraged county supervisors argued at the time that the land trust was in effect usurping their land-use powers.

In a hearing in December 1992, Schurman defended his business practices. Even with the markup, the county still saved money on the deal, because the easement was still far below appraised value. His mistake, as he saw it, was not to have obtained a "contract" with the county that would have spelled out his responsibilities.

Embarrassed by the negative publicity over what had now become the county's most scrutinized land deal, county supervisors voted to pay only $700,000 for the easement, and later agreed to pay about $30,000 in costs incurred by the Sonoma Land Trust. In January 1993, the county sponsored a public workshop for non-profit land trusts on how to do business with the county and avoid conflicts of interest.

Schurman has since left the land trust, and has been replaced by Richard Charter, who was not employed by the land trust during the McCord Ranch affair. While Charter said that newspapers may have sensationalized the story, he also added, "You've got to have full disclosure to decision makers and to the public, in front and in advance."

It's not my purpose here to argue for or against the role of private land trusts. It is true that they arguably provide a service and a public benefit. I am not convinced, however, that paying a 30% markup makes good business sense when commercial real estate brokers charge no more than 6%.

But that's secondary to ethical problems, real or perceived. The lesson of McCord is that private groups who do business in the name of the public interest must conduct themselves with the same level of disclosure and propriety as public agencies. With a prize like the McCord Ranch in the balance, I guess it would be hard to say no. But I would add one thing to the deal: I would insist on a zoning change on the ranch, to make room for a swap meet — just so county residents would have a place to sell second-hand goods, without having to explain how they acquired them. ❑