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INSIDE

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Kern Pursues Transactional Approach To Species Protection

Work Group Gives Tentative Go-Ahead To New Idea

By William Fulton

An unprecedented "transaction" program for habitat protection has received the initial go-ahead from a Kern County working group that includes state and federal wildlife officials and environmentalists.

If the habitat transaction system is put into place for the Kern County Valley Floor Habitat Conservation Plan, it would apparently mark the first time a trading mechanism has been used to protect endangered species.

The transaction notion is the latest in a series of steps seeking to resolve species issues in the development-oriented county. Several recent events have stepped up interest in dealing with species issues in Kern, including the listing of the Mohave ground squirrel and the arrest of a farmer whose operations interfered with the habitat of the Tipton kangaroo rat.

Under the Kern County system, each parcel of land in the 3,000-square-mile Valley Floor area would be assigned a value based on biological value and contiguousness to other habitat. Landowners whose activities could harm endangered species — principally oil companies — could buy and sell habitat "credits" to mitigate the impact on endangered species. A habitat bank would be established to supervise the transactions.

The transaction system has received conceptual approval from a working group including the U.S. Fish & Wildlife Service and the state Department of Fish & Game. "I'm 90-95% sure it will work for both sides," said Ron Rempel, a conservation biologist with the Department of Fish & Game who was skeptical about the idea at first.

County officials now must prepare environmental documents and a formal application for a habitat conservation plan, which still must be approved by state and federal agencies. Further processing will take at least a year.

Continued on page 9

State Transportation Program Faces Fiscal Crisis

Political Dispute Over Priorities: Retrofit or Construction?

By Morris Newman

The state's transportation construction fund is broke, and a political fracas is brewing as lawmakers and transportation programmers decide how to deal with a budget shortfall that could approach 80%.

The California Transportation Commission recently approved $5.5 billion in spending in the seven-year State Transportation Improvement Program (STIP). But as much as $4.5 billion of the STIP could go unfunded, due to falling levels of gas tax revenue, federal money, and voter rejection of transportation and earthquake bonds. The result is a growing politicization of the state's scant transportation money, as local governments try to cut back-room deals to salvage what little money is left in the STIP for local projects. Indeed, the STIP crisis may be a prelude to a rethinking of transportation funding and programming by the Legislature.

"There aren't a lot of options," said John Stevens, consultant to the Assembly Transportation Committee. "You can either lengthen the period of time it takes to do projects, or you can establish priorities and reprogram the STIP so the list of projects equals the amount of money."

Meanwhile, a fight appears in the offing between lawmakers and the Wilson administration over which program should have priority when the transportation barrel is nearly empty: seismic work or freeway and rail construction. Local transportation officials want to bargain for the few remaining crumbs, while Assembly Transportation Chair Richard Katz, D-Sylmar, wants to prioritize seismic and upgrade work. Katz has introduced AB 1958, which bars Caltrans from spending any money on new freeway projects until seismic work is completed.

At issue is the level of funding for the STIP, the state's master plan for transportation construction.

Continued on page 10

Local Planning

Morris Newman

Santa Margarita Water District May Go Private

Anyone reading Southern California newspapers lately knows that the Santa Margarita Water District in south Orange County has been wracked with scandal. But the indictments and convictions are only part of the Santa Margarita story. At the same time, the district is dipping into the local real estate market to foreclose on more than 2,000 acres of residential land in its service area. And it may soon be "taken private" by a Chula Vista-based water company — the first such instance ever in California.

In June, the water district's former general manager and assistant general manager paid big fines and received community service sentences after pleading guilty to criminal charges of conflict of interest, accepting illegal gifts, and improper awarding of contracts. Most of the gifts came from an Irvine-based planning firm — Robert Bein, William Frost & Associates — and a Mission Viejo-based engineering firm, McDonald-Stephens Engineers, which together won $17 million in contracts from the Santa Margarita Water District. Earlier, the board's former chairman and the district engineer paid civil fines for spending district funds on personal luxuries.

But at almost the same time that the district's big cheeses were pleading guilty, Santa Margarita began foreclosure proceedings on the Talega planned community, located just outside the City of San Clemente. On June 30, Arvida/JMB Ltd. II — a partnership of two of the nation's largest development firms — defaulted on a $5.7 million bond payment to the district. The 2,290-acre Talega project was designed as an upscale residential development of almost 5,000 homes, but it fell prey to the weak housing market of the early '90s.

The water district said it has not decided whether to foreclose, a process that would take three years, or draw upon an $11.4 million line of credit established by the developers, which would cover two years of debt service. The Talega situation is the latest in a series of situations in which public agencies have been faced with the question of whether to actually take title to development projects that have gone bust. Earlier this year, the Simi Valley Unified School District assumed control of the Wood Ranch project, making the district, essentially, developer of a project with entitlements for 600 units. (*CP&DR Town & Gown*, May 1994.)

But the Santa Margarita Water District might not be a public agency for long. The California-American Water Co. of Chula Vista has proposed acquiring the district's assets in exchange for assuming the district's existing bond debt of $356 million. If successful, the arrangement would be the first-ever purchase of a public water district by a private firm in California.

California-American spokesperson Nancy Rollins said the proposed purchase is unrelated to the personnel scandals but, rather, reflected the company's wish to "get some access into Orange County, where we have not been able to get a foothold before." She added that the attempted purchase is being closely watched by private water companies nationally. "From an acquisition standpoint, if this would be a feasible project for us, it would open the door to other investor-owned water companies to pursue," she said.

About 250 water districts in California are privately owned, though most serve very small communities such as trailer parks.

Judge Nixes Dougherty Valley EIR

Portions of the Dougherty Valley environmental impact report have been struck down by a Superior Court judge in Contra Costa County, temporarily stalling the 11,000-home project in the eastern part of the county.

Judge David Allen ruled that the county must further examine oak tree protection and sewage treatment before the project can proceed. However, Allen found that the traffic analysis was adequate. The ruling came shortly after the county settled with San Ramon and several neighboring cities who had sued over traffic issues. (*CP&DR*, June 1994.)

Meanwhile, the Board of Supervisors has agreed to allow Shapell Industries to process rezoning of a 600-acre slice of the area known as Coyote Creek. The area is the only part of Dougherty Valley already located within the boundaries of existing water and sewer districts. Supervisor Gayle Bishop, who was elected from the area in 1992 on a platform opposing the Dougherty development, reluctantly voted in favor of allowing the rezoning to proceed.

Land-Use Mediation Bill Signed

Gov. Pete Wilson has signed SB 517, a bill that establishes a mediation process for land-use lawsuits. The bill does not confer any new powers on judges handling land-use cases but it does create a framework for mediation to occur.

SB 517 specifically authorizes judges to request litigants to enter into a mediation process on any land-use-related lawsuit. The litigants then ask for a mediator from a council of governments or from the state Office of Permit Assistance. The lawsuit's time-clock is stopped during mediation, and the lawsuit resumes in 90 days if the case is not resolved.

Introduced by Senate Local Government Chair Marian Bergeson, R-Newport Beach, the final bill is a watered-down version of Bergeson's idea for a separate land-use court. "This is the strongest legislation we could get," Bergeson said.

SB 517 applies to lawsuits involving development permits, CEQA, time limits in the Permit Streamlining Act and the Subdivision Map Act, school fees, other fees and exactions, general plans and specific plans, redevelopment plans, and LAFCO decisions. It was signed into law as Chapter 300, Statutes of 1994.

Chula Vista May Sell Property

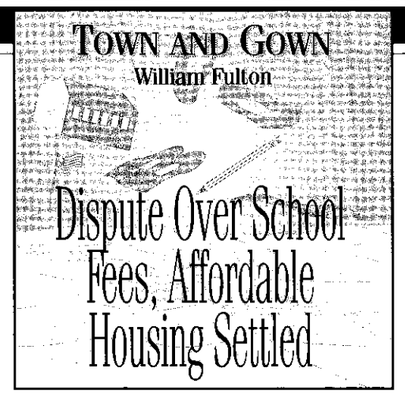
Facing a shortfall in tax increment, the City of Chula Vista is considering a plan to sell off properties owned by the city's redevelopment agency in order to help the city meet its bond payments.

Existing tax increment will leave a $2.4 million gap in the agency's $7.6 million budget for 1994-95. The city pays $3.6 million annually in debt service and would like to retire some high-interest-rate bonds, which would reduce debt payments by about $1.4 million. The 1993-94 budget, which was submitted eight months late, contained a $2.5 million budget deficit on a budget of $8.8 million, causing the agency to dip into its reserves. Reserves now total less than $1 million.

Redevelopment Director Chris Salamone has urged the city council to adopt the sale plan, which involves two auto dealer lots vacated when the city moved the dealers to a new auto mall; two bayfront parcels that the city hopes to sell to the San Diego Unified Port Commission; and an occupied office building. The city hopes to raise $9 million through the sales. ❑

Town and Gown

William Fulton



Dispute Over School Fees, Affordable Housing Settled

Everybody wants cheap housing. And everybody wants good schools. But in a world where you usually get new schools by slapping a tax or fee on new housing, how do you get both?

The answer — at least in Carlsbad — is that you bicker about numbers, file a lawsuit, and split the difference.

Ending a longstanding dispute, the city of Carlsbad and the Carlsbad Unified School District agreed in late July to a legal settlement calling for the developer of an affordable housing project to pay $3.87 per square foot for school facilities — more than twice the current legal limit for school fees, and half again as much as the city and the developer originally offered. The settlement will add $300,000 to the cost of the affordable project.

The settlement is the latest development in a series of disputes around the state arising out of the ill-fated SB 1287 — a state law that raised the allowable school fee from $1.65 to $2.65 per square feet for 10 months last year. SB 1287 lapsed last year after the defeat of Proposition 170, the proposed constitutional amendment that would have permitted the passage of local school bonds by a simple majority vote, rather than a two-thirds vote.

The Carlsbad case, however, had an unusual twist. The school district wasn't simply asking the city to squeeze the developer for more than the state-permitted fee. That's a common enough occurrence. In Carlsbad, the city resisted because the school district was asking for fees on an affordable housing project being subsidized by the city. And at the same time, the school district wouldn't budge because school officials argued that low-income housing generates more students than market-rate housing — thus increasing the need for the fee.

The Carlsbad situation is actually the result of a complex intersection of several different planning issues — a virtual microcosm of California's planning policy situation.

Under pressure from the state Department of Housing & Community Development, Carlsbad revised its housing element to require developers of large master-planned communities to provide affordable housing. The policy change meant that Aviara — a 1,000-acre master-planned community owned by Hillman Properties West — was responsible for more than 300 affordable units. So Hillman made a deal with the city and with San Francisco-based BRIDGE Housing Corp., the state's leading non-profit housing developer. Carlsbad bought a site just outside the Aviara community; Hillman agreed to build a 344-unit affordable project there; and BRIDGE agreed to own and manage it after it was built.

At this point, however, the housing policy issue ran head-on into the school facilities issue. Because at the same time the city was dealing with HCD on the housing element, it was also dealing with Carlsbad Unified School District on the financing of school facilities.

According to both sides, city and school officials both sought to solve their infrastructure finance needs through Mello-Roos assessments in undeveloped parts of the city. At first the two sides tried to create a joint Mello district. "We were going to tag along behind them," said John Blair, the school district's assistant superintendent for business services. But they had a falling out over how to administer it. Among other things, the city's approach called for a tax on vacant land and a prohibition on passing through the Mello liability to homeowners. "Developers have to pay it off at the building permit stage," said Community Development Director Michael Holzmiller.

As a result, they went their own way. The city successfully established a Mello-Roos district on all undeveloped land in the city — including Aviara — to finance roads and other city infrastructure improvements.

The school district, meanwhile, sought to create its own Mello financing tools. A citywide district, similar to the city's, was overwhelmingly defeated by property owners. But the district did work a deal with Hillman for a Mello district in Aviara, which called for Aviara property owners to finance construction of an elementary school in Aviara. Another separate Mello district was formed for a development project owned by the William Lyon Co.

Then, however, Hillman, the city, and BRIDGE reached agreement on the affordable project, Villas, to be located a half-mile outside of the Aviara project. First Hillman asked that the Villas project simply be added to the Aviara Mello-Roos district. According to Hillman project manager Larry Clemens, Hillman had cut down its development plan for Aviara and therefore the school had enough capacity to house the students from Villas. "Our contention," he said, "was that we built the school and our taxpayers were paying for it."

As an alternative, Hillman and the city offered to pay the $2.65 per square foot then allowed under state law — approximately $900,000.

In each case school officials refused, demanding a fee of approximately double the offer. Indeed, they did more than refuse — they hired an economic consultant who concluded that the school fee for Villas should be higher than the school fee on market-rate housing, because low-income units generate more children per household than market-rate units. "They looked all over the North County and the City of San Diego, and in our barrio, which has a comparable economic profile," Blair said. "They found that low-income units generate between 0.6 and 0.9 children per unit. That's 0.3 children or sometimes even half a child higher than in other units."

But the response from the city and Hillman was to hold fast to the $2.65 offer even though Proposition 170 had failed in the meantime, meaning the statewide fee limit had fallen to $1.65. So the school district sued.

"We were being forced by the city to do affordable housing," said Hillman's Clemens. "We tried to get it down right. Then the district sued us because we don't have enough capacity, even though we were the ones who built the school!"

Neither side, however, had the stomach for a long legal battle. The school district wanted its money, the city wanted its affordable housing, and Hillman wanted to put the matter behind them. "This was becoming a real problem in terms of getting the construction loan."

So all sides settled for about $1.2 million in fees, or about $300,000 above the original offer. The figure works out to $3.87 per square foot — a figure very much in line with most of the legal settlements on school fees in the last year or so.

Having settled the suit, Hillman can now return to the task of actually developing the property, which was originally owned by the Hunt brothers. The latest news on that front: Hillman has agreed to dump plans for 86 single-family homes in exchange for building 250 time-share units. The switch is designed to speed construction of the adjacent Four Seasons Aviara Hotel, which has been stalled for three years because of a lack of financing. ❑

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Base Reuse

by William Fulton

It took months of political wrangling earlier this year to set up the planning process for the reuse of the El Toro Marine Corps Air Station in Orange County. But now nobody seems happy with the outcome.

Fearing that the planning process is stacked against a civilian airport at El Toro, a group of Orange County business owners have resorted to ballot-box zoning. Led by developer George Argyros, the "Committee for 21,000 New Jobs" has placed a proposed general plan amendment on the November ballot that would mandate a civilian airport be planned for 2,000 acres of El Toro's 4,700-acre total.

And fearing that the initiative might win, a consortium of cities near El Toro have hired their own planning consultants to create alternative land-use scenarios for the base. The consultants' results are due in September — only 45 days after the consultants were hired — and local politicians expect to use them as ammunition against the initiative.

"There's a basic lack of trust among everybody," said Sen. Marian Bergeson, R-Newport Beach, the supervisor-elect from the area. "I think it's going to wind up in the courts." Bergeson, whose supervisorial district includes areas around both John Wayne Airport and El Toro, is opposed to the initiative, saying that it "circumvents a very solid planning process."

After a lengthy fight earlier this year, the south Orange County cities finally agreed to share power with county supervisors in replanning El Toro, which is scheduled to close in 1999. (*CP&DR*, March 1994.) The El Toro Reuse Planning Authority (ETRPA), a joint-powers authority, was established last spring with instructions to examine three different land-use scenarios, one of which must be a civilian airport. ETRPA's board includes all five county supervisors, three council members from Irvine, and one from Lake Forest. In June, the agency hired Post, Buckley, Schuh & Jernigan as master consultant on the job.

Under ETRPA's timetable, alternatives will be identified and analyzed in 1995 and '96. But Argyros, Buck Johns, and other heavy-hitting Orange County business leaders have forced the issue by sponsoring the initiative. After supporters gathered 114,000 signatures, the Board of Supervisors voted reluctantly in late June to place the measure on the November ballot.

The initiative is a general plan amendment that changes the land-use designation on 2,000 acres of the property to "Civilian Airport Use" and requires "airport-compatible" uses on the rest of the property. The supervisors would retain control of the property, advised by a 13-member panel including city, aviation, community, business, and labor representatives. The initiative even depicts a proposed runway alignment for commercial aviation.

The initiative's backers say El Toro must be used as a civilian airport because of constraints at John Wayne Airport. Under a legal settlement with Newport Beach, John Wayne has restricted operations. International flights and air cargo cannot be accommodated. "According to SCAG, 30% of the air cargo in Southern California comes from Orange County," said initiative spokesman David Ellis. "But it has to go to LAX or Ontario. Our businesses are at a disadvantage because pickup times are one to one-and-a-half hours earlier."

Ellis said he believes the ETRPA board will never accept an airport because the Irvine and Lake Forest representatives and one or two county supervisors will oppose the idea — meaning an automatic five to six votes against it.

In response, a group of south Orange County cities banded together in July and raised more than $200,000 to hire a consulting team led by Kotin Regan & Mouchly. The Kotin team will critique all existing documents on El Toro reuse, reporting back to the cities in September. Then the team will provide a series of alternative land-use scenarios, which will be released on approximately October 1 — right in the middle of the initiative campaign.

"A lot of people are trying to say that we're undercutting ETRPA," said Marcia Rudolph, mayor of Lake Forest. "The problem is the initiative. This initiative has moved everybody's timetable up to November of this year. If we're going to be successful in diverting people from the initiative, we've got to give them an alternative."

Laguna Beach, Laguna Niguel, Lake Forest, and Mission Viejo have already agreed to contribute some of the $235,000 required for the study. The "South County Working Group" — an informal consortium of communities near El Toro — also includes Dana Point, San Juan Capistrano, Laguna Hills, and several unincorporated communities in south Orange County. The consultant work will be overseen by Laguna Niguel City Manager Timothy Casey.

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Base Briefs

The Inland Empire may not be able to support commercial airports at both Norton Air Force Base in San Bernardino and March Air Force Base in Riverside, according to a new study from the Southern California Association of Governments. The SCAG study concludes that the viability of the two airports depends largely on whether expansion occurs at Ontario International Airport, the Inland Empire's only existing airport. A proposed $350 million expansion at Ontario has been stalled for two years while the Los Angeles Department of Airports searches for funding sources....

Three Inland Empire congressmen and Gov. Pete Wilson are seeking to give local governments more control over whether closed military bases are used to assist the homeless. The proposal — supported by Reps. George Brown, D-San Bernardino, Jerry Lewis, R-Redlands, and Ron Packard, R-Oceanside — is aimed at giving local officials more control at March Air Force Base near Riverside, which has seen 20 requests from homeless organizations. Among other things, the proposal would move the final decision from the federal Department of Health and Human Services to the Department of Housing and Urban Development....

The National Park Service's plan to turn the Presidio in San Francisco into a national park is moving forward. The Presidio plan has passed the House Natural Resources Committee despite opposition from some members of Congress who believe it is too expensive. Under legislation approved in the 1970s, the Presidio automatically becomes park service property after closure; transfer is now scheduled for late September. The park service plan has an estimated pricetag of $700 million over 15 years....

Correction: Last month's Base Reuse column erroneously stated that Norton Air Force Base is in Riverside County. As all good base mavens know, Norton is in San Bernardino County. Sorry. ❑

CP&DR LEGAL DIGEST

Federal Circuit Upholds Wetlands Compensation

Loveladies Harbor Ruling Addresses 'Denominator' Issue in Takings Cases

In its second significant ruling on wetlands and takings in recent months, the U.S. District Court of Appeals for the Federal Circuit has ruled that a New Jersey property owner who was denied a wetlands fill permit should receive $2.6 million in compensation.

Though largely decided on the facts, *Loveladies Harbor Inc. v. United States*, No. 91-5050, could prove significant. In particular, the Federal Circuit's reasoning in determining the time frame for a regulatory taking and the size of the underlying parcel used in the takings equation — the so-called "denominator problem" — may provide guidance to other courts in the future.

In *Loveladies*, the Federal Circuit concluded that the taking occurred in 1982, when the Army Corps of Engineers denied the wetlands permit, and therefore the "denominator" in the equation should be the 12.5-acre parcel Loveladies owned at the time. The government had argued that the denominator should be the 250-acre parcel originally purchased by the developers in 1958. By 1982 most of that land had been profitably developed by the landowner.

Environmental lawyers said the ruling could lead to "gamesmanship" by landowners. "It invites the landowners to develop as much as he can, leave an environmentally problematic parcel, then get a permit denial and sue for a taking," said attorney John Echeverria of the National Audubon Society. Property rights lawyers, by contrast, said the ruling would help clarify the "denominator" issue. The federal government has asked for an *en banc* reconsideration of the case by the Federal Circuit.

Loveladies Harbor was the second of two important wetlands taking cases that have been pending before the Federal Circuit for more than three years. The first case, *Florida Rock Industries Inc. v. United States*, 18 F.3d 1560 (1994), was decided by the same Federal Circuit panel in March. In that case, the Federal Circuit ruled that a regulatory taking can occur when a property loses only part of its value and judges must apply a balancing test in determining the extent of the damages. (*CP&DR Legal Digest*, May 1994.)

Loveladies Harbor developed 199 acres of a 250-acre parcel of land on Long Beach Island along the New Jersey Shore prior to 1972, when the Clean Water Act was passed. Seeking to develop the remaining 51 acres (one of which had already been filled), Loveladies sought permission from the New Jersey Department of Environmental Protection and the Army Corps of Engineers. After the state denied a permit in 1977, Loveladies sued in state court. In 1981, the state and Loveladies settled, with Loveladies agreeing to deed 38 acres to the state and receive a permit to fill the remaining 12.5 acres, including the one acre already filled.

Loveladies then sought a permit from the Corps under §404 of the Clean Water Act. But when the Corps asked the state for comment, the state responded that the project — a 35-home subdivision — was not in compliance with state requirements, even though the state had granted its own permit as part of the legal settlement. Based partly on the state's comments, the Corps denied Loveladies the permit in 1982.

Loveladies then sued in U.S. District Court and also filed a claim in the U.S. Court of Federal Claims. The District Court suit, based on §554 of the Administrative Procedures Act, proved unsuccessful. (*Loveladies Harbor Inc. and Loveladies Harbor, Unit D, Inc. v. Baldwin*, Civ. No. 82-1948 (D.N.J. April 3, 1984), *aff'd* 751 F.2d 376 (3d Cir. 1984).) Loveladies then pursued the Claims Court case and won a $2.6 million judgment from Claims Court Judge Loren Smith in 1990.

On appeal, a three-judge panel of the Federal Circuit affirmed Smith's ruling. In so doing, the court articulated a three-part test for a regulatory taking based on *Lucas v. South Carolina Coastal Council*, 505 U.S. ___, 112 S.Ct. 2886 (1992), and other takings cases. The court said that (1) a denial of economically viable use must take place; (2) the property owner had to have distinct investment-backed expectations; and (3) the property interest alleged to be taken is not within the power of the state to regulate under common law nuisance doctrine.

For Judge S. Jay Plager, the stickiest question was determining which "denominator" to use in determining whether denial of economically viable use had taken place. The "numerator" in the takings equation was the value of the 12.5 acres for which a permit was denied. The government argued that the denominator should be either the original 250-acre parcel or at least the 51 acres that remained undeveloped in 1982. But Plager concluded that the taking should be calculated on the 12.5-acre parcel and specifically rejected adding the 38.5 acres Loveladies had agreed to convey to the state in the legal settlement. "It would seem ungrateful in the extreme to require Loveladies to convey to the public the rights in the 38.5 acres in exchange for the right to develop 12.5 acres, and then to include the value of the grant as a charge against the givers."

Plager also rejected the government's argument that filling a wetlands would constitute a public nuisance, noting that Loveladies had purchased the property with the intent to develop in 1958 but no government entity sought to stop wetlands filling until after the development project had been undertaken. "In other words, nothing in the state's conduct reflected a considered determination that certain defined activities would violate the state's understanding of its nuisance powers."

Both *Loveladies Harbor* and *Florida Rock* were held up in 1992 while the Federal Circuit awaited the outcome of the U.S. Supreme Court's landmark ruling in the *Lucas* case. The *Loveladies* case was further stalled when the government moved to dismiss the case for lack of Federal Circuit jurisdiction, arguing that the landowner should not be permitted to pursue both a regulatory takings case in District Court and a compensation case in the Claims Court. In an *en banc* ruling also issued in June, the Federal Circuit ruled against the government on the motion. ❑

■ The Case:
Loveladies Harbor Inc. v. United States, No. 91-5050, U.S. Circuit Court of Appeals for the Federal Circuit (June 15, 1994).

■ The Lawyers:
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For the United States: Robert L. Klarquist, Justice Department Environmental & Natural Resources Division, (202) 514-2731.

HOUSING

Poverty Lawyers Continue Push For Housing Element Enforcement

By Larry Sokoloff

Efforts to get California cities and counties to comply with the housing element law are continuing to bear fruit. In the past year, poverty lawyers have won settlements with the cities of Healdsburg and Winters.

Meanwhile, several new lawsuits have recently been filed challenging the validity of housing elements in other jurisdictions, including Los Altos, where an anti-inclusionary housing measure won voters' approval last November. And poverty lawyers are also negotiating with the City of Fresno under threat of a lawsuit there.

The lawsuits — as well as outreach efforts by the state Department of Housing and Community Development — have boosted the housing element compliance rate among local governments from 27% a year ago to 45% in June, HCD recently reported. A 1992 warning letter from Attorney General Dan Lungren also has helped. Lungren wrote 47 jurisdictions that had not submitted their housing elements to HCD for review. HCD has now approved the housing elements for eight of those communities, and 29 others are now working with HCD on their housing element.

At the same time, housing element reform is pending in two legislative bills. And some housing element mandates have been suspended by the state budget for the second year in a row, leading to some confusion among local governments, especially in Southern California.

The housing element is a state-mandated section of each city and county general plan. Under law, the housing element must show how each community will meet affordable housing targets established by state and regional agencies. HCD reviews the housing elements but enforcement generally occurs only through litigation.

Most of the recent lawsuits have been filed as part of the Housing Element Enforcement Project, led by the Alameda County Legal Aid Society. The project, funded in part by grants from the Rosenberg Foundation of San Francisco, provides backup assistance to local legal aid offices that handle the cases. The project has gone after upscale communities where zoning excludes lower-income residents, as well as communities that already have large amount of low-income housing but now want to attract higher-income residents.

"We don't choose the litigation," said Mike Rawson, director of the Housing Element Enforcement Project. "It depends on the local clients." Rawson said the Enforcement Project does not have the capacity to make all jurisdictions in the state comply with the housing element law. Instead, he said, they are "hoping that there's a deterrent effect ... and we've been told that there is."

Enforcement Project attorneys have helped persuade several localities to revise their housing elements, Rawson said. In particular, he added, Redding, Oakland, and Paso Robles revised their housing elements to include programs for more low-income housing.

Similar negotiations are currently under way between Central California Legal Services and the City of Fresno. The legal aid group has threatened to file litigation to stop all building in the city, including a downtown stadium, unless the city creates more housing for low-income residents.

In Sacramento, two bills to reform the housing element process have been introduced: SB 1839 by Sen. Marian Bergeson, R-Newport Beach, and AB 51 by Assemblyman Jim Costa, D-Fresno.

Both bills would simplify the complicated housing element law by establishing performance standards for communities to meet. Both would replace HCD review with self-certification. Each bill is awaiting action in the other house, which may come during August.

During the recent budget discussions, the legislature discussed suspending the housing element law altogether as a way of providing "mandate relief" to local governments. However, this action was not taken. Instead, the budget continues the suspension of certain portions of the housing element law which provide funds to regional councils of governments to establish affordable housing "target" numbers.

Madera County is using the partial suspension of the law as a basis for appeal in another Enforcement Project lawsuit. Last year, in a case filed by California Rural Legal Assistance, a Superior Court judge suspended building activity in some areas of the county until a new housing element was adopted. *Harris v. Madera County*, Madera County Superior Court No. 49063. A companion case against the city of Madera was resolved last fall when the city's revised housing element was approved by HCD. *Schillings v. City of Madera*, Madera County Superior Court No. 49253.

The Healdsburg settlement was the biggest victory for the Housing Element Enforcement Project so far this year. The city agreed to provide approximately 500 low-income housing units; to implement an affordable housing program; and to include low-income housing on a 223-acre parcel being annexed to the city. The settlement also allows developers to build up to 20 units per acre if the project provides affordable housing. *Sonoma County Housing Now v. City of Healdsburg*, Sonoma County Superior Court No. CV737932.

Legal Services of Northern California forced a settlement with the small Yolo County city of Winters last December. The city agreed to establish a 15% inclusionary housing requirement. (Though brought by Legal Services, the Winters case was not part of the Housing Element Enforcement Project.) *Michel v. City of Winters*, Yolo County Superior Court No. 70141.

Advocates for low-income housing have had at least one setback this year. In an unpublished opinion, an appellate court overturned an order for the City of Industry, in L.A. County, to revise its housing element. The Second District Court of Appeal, Division 1, found that the plaintiffs in the case, an association of local business people, did not have standing to sue. (The Housing Element Enforcement Project had filed an amicus brief in the case.) *Industry Civic Planning Association v. City of Industry*, No. B072028.

Other pending cases include:

• *Jimenez v. Los Altos City Council*, Santa Clara County Superior Court No. CV737932. In the Los Altos case, housing advocates have asked the court to repeal Measure G, which repealed an inclusionary zoning ordinance designed to include moderately priced units in new condominium or apartment developments in the city. In late July, Judge Jeremy Fogel ruled that the measure was "a valid exercise of the voters' constitutional right of referendum."

• *Herrera v. City of Oxnard*, Ventura County Superior Court Nos. 143789 and 143793. These two cases, filed in May, challenge the approval of two housing projects based on the allegedly small number of low-income units built in the city in the past 14 years.

• *Ivory v. Yuba County*, Yuba County Superior Court No. 54694. This case challenges the adequacy of the Yuba County housing element and the adequacy of the 5,000-acre Plumas Lake Specific Plan, where as many as 12,000 homes may be built. A hearing was scheduled for July 22. ❑

■ The Case:
Jimenez v. Los Altos City Council, Santa Clara County Superior Court No. CV737932.
■ The Lawyers:
For Jimenez: Amanda Wilson, Public Interest Law Firm, (408) 293-4790.
For Los Altos: Robert K. Booth Jr., Atkinson & Farasyn, (415) 967-6941.
■ The Case:
Sonoma County Housing Now v. City of Healdsburg, Sonoma County Superior Court No. 190743.
■ The Lawyers:
For Sonoma County Housing Now: David Grabill, California Rural Legal Assistance, (707) 528-9941.
For City of Healdsburg: Kenneth Wilson, Meyers, Nave, Riback, Silver, (707) 545-8009.
■ The Case:
Harris v. Madera County, Madera County Superior Court No. 49063.
■ The Lawyers:
For Harris: Baldwin Moy, California Rural Legal Assistance, (209) 674-5671.
For Madera County: Doug Nelson, Office of County Counsel, (209) 675-7717.
■ The Case:
Schillings v. City of Madera, Madera County Superior Court No. 49253.
■ The Lawyers:
For Schillings: Baldwin Moy, California Rural Legal Assistance, (209) 674-5671.
For City of Madera: Axel Christiansen, (209) 673-8084.
■ The Case:
Industry Civic Planning Association v. City of Industry, 2d DCA No. B072028 (unpublished).
■ The Lawyers:
For Industry Civic Planning Association: Jonathan Lehrer-Graiwer, (213) 936-8111.
For City of Industry: Graham Ritchie, Markman, Arczynski, Hanson & King, (818) 333-1480.
■ The Case:
Michel v. City of Winters, Yolo County Superior Court No. 70141.
■ The Lawyers:
For Michel: David Jones, Legal Services of Northern California, (916) 447-5798.
For City of Winters: Jim Moose, Remy & Thomas, (916) 443-2745.
■ The Case:
Herrera v. City of Oxnard, Ventura County Superior Court Nos. 143789 & 143793.
■ The Lawyers:
For Herrera: Barbara Macri-Ortiz, Channel Counties Legal Services Association, (805) 487-6531.
For Oxnard: Gary Gillig, City Attorney, (805) 385-7483.
■ The Case:
Ivory v. Yuba County, Yuba County Superior Court No. 54694.
■ The Lawyers:
For Ivory: Ilene Jacobs, California Rural Legal Assistance, (916) 742-5191.
For Yuba County: Dan Montgomery, Yuba County Counsel, (916) 741-6401.

Desert Hot Springs Order to Pay $3 Million in Fair Housing Case

By Larry Sokoloff

A federal jury in Los Angeles has ordered the city of Desert Hot Springs to pay over $3 million to a development company for thwarting the company's efforts to build 117 units of low-income rental housing in the community.

The city's attorney said Desert Hot Springs is likely to appeal the verdict.

The award is believed to be the largest jury verdict ever granted for violation of the federal Fair Housing Act, according to William J. Davis, attorney for Silver Sage Partners Ltd. Testimony at the trial indicated that at least two city council members wanted to prevent Mexican and black families with children from moving into the community.

Two other cases involving the Silver Sage case are pending in the state Court of appeal, including a fair housing case and a housing element case.

Plans for the project date back to the 1980s, when the land was located in an unincorporated section of Riverside County. In 1985, an earlier developer received a conditional use permit from Riverside County to build homes on the site. Streets and a clubhouse were built, but the developer went bankrupt. In 1987, the land was annexed by Desert Hot Springs.

The property was unoccupied in 1990, when Silver Sage attempted to develop the site with three- and four-bedroom manufactured (mobile) homes.

But Desert Hot Springs stopped the project by refusing to help obtain financing. First, the city refused to work with the county to issue revenue bonds for the project. Then the city thwarted Silver Sage's attempts to receive state financing and federal tax credits.

Silver Sage arranged a $4.3 million loan from the state's Rental Housing Construction Program, as well as $8.3 million in federal low-income housing tax credits. But the state funding could not be released until the city certified that the voters had authorized low-income housing under Article 34 of the state constitution.

Passed in 1950, Article 34 requires public approval for low-income housing in any community. In general, such ballot measures have addressed the question of low-income housing generally. Some citizen activists have argued in court — unsuccessfully so far — that Article 34 requires the ballot measures to specifically identify projects and sites.

In 1978, Desert Hot Springs voters approved a general ballot measure authorizing that 5% of the city's housing be low-income housing. But the council denied certification for the Silver Sage project in 1990. Michael Andelson, the city's attorney in the case, said the council was concerned about providing police and fire protection to the site, and also about accessibility to public transit. The site lies two miles from the nearest transit line.

Former City Manager Glenn Crowson testified at the trial that he overheard then-Mayor Daniel Been and Councilman Cole Eyraude say in an executive session that they would not approve the development because "it would be filled with black and Mexican children and would halt quality development on the west side of town." During the trial, both men denied making the comments.

Silver Sage filed suit seeking a writ of mandate in Riverside County Superior Court in May 1991. The writ was denied. On appeal, the California Court of Appeal, Fourth District, Division Two, held in 1993 that the city council does not have the power to approve or disapprove low-income housing projects under Article 34 because that power is reserved for the voters. *Silver Sage Partners Ltd. et. al. v. City of Desert Hot Springs*, No. E009903 (unpublished).

Two additional cases are pending in the state Court of Appeal in the matter. One, *Silver Sage Partners Ltd. et. al. v. City of Desert Hot Springs*, No. E 01390 is based on a violation of state fair housing laws and could become moot if the federal action stands.

A second appellate case seeks to overturn a lower court ruling that the city's housing element is in compliance with state law. *Silver Sage Partners et. al. v. City of Desert Hot Springs*, No. E013725. The state Department of Housing and Community Development rejected the Desert Hot Springs housing element in 1993.

Andelson noted that state courts have upheld the city's decision on the project. "At no point did any state court say the city was obligated to approve this project," he said. ❑

■ The Case:
Silver Sage Partners Ltd. v. City of Desert Hot Springs, No. CV91-680 CBM (Sx) (U.S. District Court, Southern District, Los Angeles)
■ The Lawyers:
For Silver Sage: William Davis, Davis & Co., (714) 222-9034.
For Desert Hot Springs, Michael Andelson, Best Best & Krieger, (619) 568-2611.

SUBDIVISION MAP ACT

Appellate Court Rules for Modesto In Second Development Fee Case

The ongoing legal battle between Modesto and two homebuilders over capital facilities fees continues. After ruling in June against the city, the Fifth District Court of Appeal has now issued another — and somewhat confusing — ruling in the city's favor.

In the new ruling — issued only 10 days after the first one — the appellate court concluded that Modesto could legally impose the capital facilities fee on a subdivision after the city approved a tentative map under the Subdivision Map Act.

Under state law, a city may impose a condition after tentative map approval if the city was prohibited from imposing that condition at the time the map was approved. Modesto approved a capital facilities ordinance in June 1987 and then applied it retroactively to two subdivision maps it had approved a few weeks before for the Dry Creek Meadows area.

The appellate court concluded that because the city did not have an ordinance in place at the time the subdivision map was approved, it was "legally prohibited" from imposing such a fee; and therefore Modesto's action to impose the fee later was valid.

In its opinion, the court acknowledged that the ruling made little sense in policy terms. "This construction ... appears to conflict with the evidence intent of the Legislature to limit a local agency's power to impose new exactions after it has approved a tentative map. It would also create the anomalous result that a local agency which is slow to adopt development regulations retains more freedom to impose them than one which adopts the same regulations early in the process.

"However," the court wrote, "we are charged only to interpret what is written, not to question the wisdom of the statute as enacted."

Only 10 days before, the same appellate court ruled that the city had not given adequate notice to Kaufman & Broad in increasing the same capital facilities fee. The K&B project was approved just after the capital facilities fee was passed in 1987.

The city plans to appeal the Kaufman & Broad ruling to the California Supreme Court, while the plaintiff in the newer case — Golden State Homebuilding Associates — plans to appeal that ruling.

K&B and Golden State Homebuilding have been in litigation with the city over the capital facilities fee since its passage seven years ago. K&B has been challenging the city's insistence that the homebuilder pay $4,800 per unit for capital facilities, rather than the $1,400 fee in place at the time the projects were approved. Golden State has been challenging the city's ability to impose the fees at all on its project, since the fee was imposed after the project's tentative map was approved.

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. (That case, *Kaufman & Broad of Northern California v. City of Modesto*, No. F015916 — now known as *K&B I* — was de-published by the Supreme Court. It was reported in the *CP&DR Legal Digest* in March 1992.)

In June, the court ruled again in the *K&B* case. This time, the court ruled that under Government Code §66498.1, the vesting tentative map approval essentially froze the capital facilities fee at the level in place at the time the map was approved. The city had argued that one condition of approval contained an escalator clause allowing the fees to be increased later.

The new case involved two subdivision maps, one by Golden State Homebuilding Associates and one by Alta Pacific Housing Partners II, approved by the city in April of 1987. After passing the capital facilities fees shortly thereafter, the city sought to impose the fees (ranging from $3,400 to $5,200 per unit) at the building permit stage.

The developers sued and argued that this action was barred by Government Code §65961, a provision of the Subdivision Map Act which limits the power of a local government to base its issuance of building permits only on those conditions it could have lawfully imposed on a previously approved tentative map. The question, as the Court of Appeal framed it, was whether Modesto could have lawfully imposed the capital facilities fee in April 1987 when the vesting tentative maps were approved.

Stanislaus County Superior Court Judge Aldo Girolami ruled in favor of Golden State Homebuilding. Girolami relied on the *K&B I* ruling to conclude that the city's action was an improper post-hoc condition.

The case turned on the interpretation of §65961, a provision passed in 1982, in relation to the vesting tentative map law, which was passed in 1984. The builders argued that §65961 prohibits a local government from imposing a condition at the building permit stage that was not imposed at the tentative map approval stage.

But the appellate court found that this interpretation of §65961 would be too broad, because the vesting tentative map law passed two years later (§66498.1) serves the same purpose. Thus, the court concluded that §65961 is intended to confer a vested right narrower in scope than the vesting tentative map provisions.

"Because it had no established fee policy when the map application for Dry Creek Meadows was deemed complete," the court said, "the city could not have conditioned its approval of the map on Developers' payment of the fees in the future. Therefore, it was not barred by §65961 from subsequently requiring Developers to pay the fees as a condition to its issuance of building permits for the development." ❑

■ The Case:
Golden State Homebuilding Associates v. City of Modesto, Nos. F019643 & F019921 (June 30, 1994)

■ The Lawyers:
For Golden State Homebuilding Associates: C. William Brewer, Motschiedler, Michaelides & Wishon, (209) 439-4000.
For City of Modesto: Roland R. Stevens, Deputy City Attorney, (209) 577-5284.

FYI

A Malibu property owner's attempt to challenge a coastal development permit involving transferable development credits (TDCs) has been rejected as untimely by the Second District Court of Appeal.

Ojavan Investors purchased 77 lots which had been deed-restricted through an agreement between the previous property owners and other Malibu-area property owners who used the TDC system to obtain building permits for their own lots from the Coastal Commission. Under the deed restrictions, the building rights were extinguished.

Ojavan subsequently started selling some of the 77 lots anyway. The Coastal Commission issued a cease-and-desist order. Ojavan sued the Coastal Commission, challenging the deed restrictions.

The Court of Appeal ruled that the challenge was time-barred because challenges to permits issued under the TDC program must be filed within 60 days. Ojavan's lawsuit was filed several years after the TDC restrictions were imposed. *Ojavan Investors Inc. v. California Coastal Commission*, No. B074494 (94 Daily Journal D.A.R. 9360)...

A federal judge in Los Angeles has ruled that Malibu's mobile home rent control ordinance doesn't constitute a taking of property. The ordinance was challenged by two mobile-home park owners, which challenged the imposition of rent control in 1991, shortly after Malibu was incorporated. *The Adamson Cos. v. City of Malibu, and The Kissel Co. v. City of Malibu*, No. CV-1027 MRP (94 Daily Journal D.A.R. 9158). ❑

Kern Pursues Transactional Approach to Species Protection

Continued from page 1

County officials hope the transaction system will provide the basis for a multi-species HCP.

Advocates of the transaction system say it has provided a conceptual breakthrough on the species issue after seven years of negotiation. "It really broke an impasse," said Kern County Planning Director Ted James. "The transaction method has an appeal because it wasn't drawing lines on maps."

But critics — including some government agency biologists who won't speak on the record — say that the transaction system has not been thought through and is not tied to any coherent plan to preserve habitat. "It's not planning — it's gambling," said one source.

The transaction system was developed by economist Todd Olson and Robert Thornton, a prominent endangered species lawyer, under contract with the Western States Petroleum Association, whose members have major landholdings in Kern County.

The idea emerged after government biologists surveyed the entire southern San Joaquin Valley and assigned most land to one of three categories — high-value habitat, medium-value habitat, and low-value habitat. According to Rempel, the agencies' goal is to retain 90% of the high-value habitat and 75% of the medium-value habitat, while permitting all of the low-value habitat to be developed if necessary.

Rempel said he is concerned that the transaction program could lead to a scattered habitat preserve, and that some crucial habitat could be lost to oil development projects. "We're going to permit them to punch holes like Swiss cheese in some of the most important areas," he said. "But the probability of them punching a hole in the wrong place is small. It's a risk, but we have to take a risk."

> *"Advocates say it's a breakthrough; critics say it's not tied to any coherent plan."*

Trading systems are gaining popularity in the field of environmental regulation — especially air pollution — as a means of creating economic incentives for business to protect the environment. Under the 1990 Clean Air Act, the Environmental Protection Agency established a trading system for sulfur dioxide emissions as a way of reducing acid rain. An emissions trading system has also been established in Los Angeles by the South Coast Air Quality Management District. Advocates view trading systems as a means of achieving environmental protection more cheaply than traditional regulation, while skeptics say they are simply a way to weaken environmental regulation.

Like most of the San Joaquin Valley, Kern County has been grappling with multiple endangered species issues over the last few years. Listed species in the county include the San Joaquin kit fox, the Tipton kangaroo rat, and the blue-nosed leopard lizard.

The county has been working for seven years on proposals to prepare two habitat conservation plans. The Metropolitan Bakersfield HCP, covering approximately 400 square miles around the city of Bakersfield, is focused on urban development. The Valley Floor HCP covers 3,000 square miles — basically all land in the county below 2,000 feet in altitude that is not included in the Metro HCP. The Valley Floor HCP is focused on the oil industry and farming; indeed, some oil activities in the Metro Bakersfield area will be handled through the Valley Floor HCP.

Local officials say resistance to endangered species protection in Kern County has been mounting lately for at least three reasons. One is the fact that negotiations on both HCPs have dragged on for so long. Another was the listing of the Mohave ground squirrel by the California Fish & Game Commission.

The commission listed the squirrel as endangered under the California Endangered Species Act in 1991. Claiming that the squirrel contributed to the demise of some 200 development projects, Kern County officials took the unprecedented step of asking the commission to reverse its decision — which the commission did in 1993.

However, a coalition of environmental groups sued in San Francisco Superior Court to overturn the de-listing action. In June, Judge Thomas J. Mellon Jr. ordered the squirrel back on the list. Mellon said more study needed to be conducted on the impact of urbanization on the squirrel's habitat.

The third factor was the highly publicized arrest of farmer Taung Ming-Lin, who is facing criminal charges by the U.S. Fish & Wildlife Service accusing him of destroying the habitat of the Tipton kangaroo rat.

Under the federal Endangered Species Act, it is a federal crime to "take" an endangered species, a definition that has traditionally included disrupting species habitat. In February, Lin — an El Monte resident who was planning to grow Chinese vegetables for the L.A. market — was arrested while beginning to till his land for the spring planting. Fish & Wildlife also confiscated his tractor, though the tractor was later returned.

In July, Lin sued Tenneco West Inc., an oil company with extensive landholdings in Kern County that had sold him 723 acres for $1.6 million. Lin accused Tennoco of intentionally defrauding him by not telling him about the species problem on the land.

In addition, the Bureau of Reclamation has asked 1,200 farmers who receive water from the Central Valley Project to permit their property to be searched for endangered species. And the Bureau of Land Management, a major property owner in Kern County, has been working on a draft white paper titled, "A Biological Framework for Natural Lands and Endangered Species in the Southern San Joaquin Valley," which discusses species recovery needs in Kern and neighboring counties. Local farmers have expressed concern that the report will call for the removal of land from agricultural production, but BLM officials say this not likely.

Unlike the Valley Floor HCP, the Metro Bakersfield HCP is a relatively straightforward habitat recovery effort. Under the proposed plan, which has already been published in the Federal Register, developers in the Bakersfield area would pay $1,240 per acre in mitigation.

According to both James and Thornton, who represented property owners in the negotiations, the Metro Bakersfield HCP is expected to function as a "pay as you go" plan — meaning that habitat must be set aside at the same rate as land is converted to urban development. "At any point in time, the compensation has to stay ahead of the take," Thornton said.

The land will be purchased by a joint powers authority tentatively known as the Metro Bakersfield HCP Implementation Trust Group. James said he expects the agency will acquire approximately 700 acres of land per year. ❑

■ Contacts:
Ted James, Kern County planning director, (805) 861-2615.
Todd Olson, economist, (714) 847-6735.
Robert Thornton, Nossaman Guthner Knox & Elliott, (714) 833-7800.
Ron Rempel, California Department of Fish & Game, (916) 654-9880.
Peter Cross, U.S. Fish & Wildlife Service, (916) 978-4866.

State Transportation Program Faces Fiscal Crisis

Continued from page 1

Comprised of both freeway and rail projects, the STIP is a seven-year program adopted on a "rolling" basis every two years. (The '94 STIP, in fact, is a carbon copy of the 1992 STIP, because no new projects were approved.) Funding for the STIP comes from a variety of sources, including gas taxes, voter-approved bond measures and the federal Intermodal Surface Transportation Efficiency Act (ISTEA).

This spring, the California Transportation Commission allocated $5.5 billion for the '94 STIP, including $2 billion for rail projects and $3 billion for highways and freeways. Now it seems questionable whether any funds from the 1994 STIP will be spent, because Caltrans may be able to collect very little of the money earmarked for transportation projects. But the STIP funding shortfall could be between $3 billion and $4.5 billion over the next five years, according to Bob Remen, executive director of the California Transportation Commission.

The revenue shortage stems from:

- The rejection by state voters of Proposition 156 in 1992, the second of three scheduled rail bond measures that were part of a transportation package passed by the Legislature in 1989. The third measure is scheduled for the November ballot, but even its original sponsor, Assemblyman Jim Costa, D-Fresno, has said he won't support it.
- The failure of Prop. 1A on the June ballot, which would have provided $2 billion for earthquake repairs, of which $1 billion was earmarked for highway work.
- A $1 billion drop in revenue from both state and federal sources, including state gas tax and the federal Intermodal Surface Transportation Efficiency Act. California received only 92% of its ISTEA funds in '92. If that continues for the next three years, the state could lose nearly $500 million.
- Uncertainty regarding the source for $650 million to perform retrofit on the state's toll bridges.

> *"The timing of seismic improvements has become a political issue."*

The rising squall about how to pay for seismic repairs on toll bridges is a microcosm of political tensions in the transportation funding crisis. The CTC wants to use toll revenues to pay for the repairs, although local governments want to restrict the revenues for maintenance and traffic improvements only.

"In our opinion, seismic work on toll bridges should be paid for by the state," said Therese McMillan, financial manager of the Metropolitan Transportation Commission, which passed a 20-year, $77-billion regional transportation plan for the Bay Area in late June. She observed that Bay Area voters approved a toll increase in 1988 to fund a specific program of improvements. "Should the seismic work come completely out of toll revenues, it would put our program completely at risk," she added.

On the other hand, if the state picks up the tab, the STIP is left shortchanged, which could give rise to complaints from politicians in Southern California that they are bearing a disproportionate burden for toll-bridge repairs at the expense of their own projects. Only two of the state's seven toll bridges are in the south.

The timing of seismic improvements has become a political issue. Caltrans says it needs three years to complete all the seismic and upgrade work. That estimate irks Katz, a longtime Caltrans critic whose district was hard hit by the Northridge quake. Katz said AB 1958 is meant to hold Caltrans' feet to the fire and prevent bureaucratic delays. The bill passed in the Assembly and is awaiting a Senate vote. While reserving judgment on the bill "until the final version is on the governor's desk," Wilson administration spokesman Paul Kranhold said he doubts the governor supports the conception of "not maintaining the roads or filling in any potholes until all retrofitting projects are done."

Excluded from the funding ban in the Katz bill are ongoing interstate completion projects, as well as rail projects, in view of rail's usefulness in earthquake emergencies.

Katz and his staff have also expressed concern about what they call "back-room" deals among CTC staff, Caltrans, and officials from regional planning agencies such as MTC about how to deal with the STIP crisis. In late July, a group of transportation programmers from across the state met to decide which projects should go forward. Changing the STIP, said Katz staffer Stevens, "should be a public process, not 25 people in Room 2116 at Caltrans."

Remen said the meetings were merely informational, since the STIP cannot legally be reprogrammed until 1996. McMillan added: "Most of the same people at the (July) meeting were involved in the original STIP" and suggested that there may have been a similar lack of public scrutiny when the legislature imposed its guidelines on seismic work.

One thing both Katz and McMillan could agree on is that the transportation funding system — last amended with a gasoline tax increase in 1990 — is in need of serious review. According to MTC's McMillan, the '96 STIP process is "going to be a very critical crossroads for the state. "The amount of money is so small that there is no way we can reach consensus," McMillan said. Referring to the Legislature and the CTC, she added: "Frankly, we need to put the ball back in their court."

Katz, one of the architects of the 1990 transportation funding overhaul, did not disagree. "We need to revisit the long-term funding for transportation," he said. "We have some structural problems. The recession hit us hard, as did the bond rejections and the lack of (gas) tax revenue." Katz added that the state was a "victim of its own success," because improved fuel efficiency was diminishing the receipts of gasoline sales tax. Although he was uncertain on the best direction, one idea is to tie funding to vehicle emissions and other taxing methods that are "user-fee driven." ❑

■ Contacts:

Bob Remen, executive director, California Transportation Commission, (916) 654-4245.

Therese McMillan, finance manager, Metropolitan Transportation Corp., (510) 464-7700.

Assemblyman Richard Katz, chairman, Assembly Transportation Committee, (916) 445-1616.

John Stevens, consultant, Assembly Transportation Committee, (916) 445-7278.

Paul Kranhold, Governor's Office, (916) 445-4571.

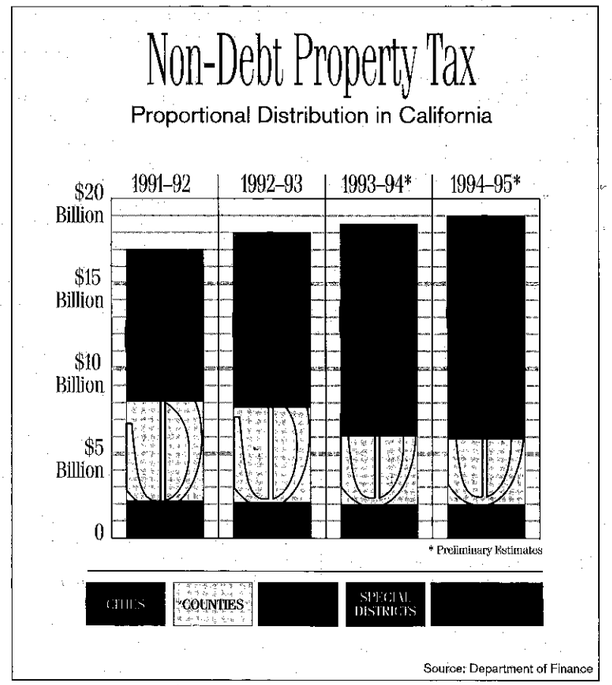
NUMBERS

Stephen Svete

Budget Passes, But in Emperor's Clothes

Observers of the annual state budget process this year might be reminded of the emperor who wore no clothes. But given the gravity of the fiscal problems faced by the state and by local governments — particularly counties — this is one fable that doesn't hold much promise for a happy ending.

Pete Wilson's budget staffers have played the role of the tailors and seamstresses, designing a budget that, in their words, embodies "the course we need to set today to successfully compete in a world economy." The legislature, playing the role of the loyal subjects, passed the budget without a major fight. But then, the bond rating houses, like the keen-eyed child in the story, defrocked the whole charade. In late June, they essentially announced that the budget was wearing no clothes when they downgraded California's once-stellar bond rating. Standard & Poor's dropped California to the second-lowest in the nation, ahead only of New York.



State budget crises have become as much a part of summer as baseball and beach towels, but the tone this year is different. A year ago, the story involved a fundamental redistribution of property tax revenues away from cities, counties, special districts, school districts, and redevelopment agencies. (*CP&DR Numbers*, July 1993.) It represented a strong-armed move by the state to use its constitutional authority to reorder the flow of tax revenues. Last year's budget resolution involved an emergency extension of the half-cent sales tax and a November vote to make the extension permanent and give the money to local governments for public safety. In hindsight, last year's budget — following on the 1992-93 budget — was a tentative step toward the current Sacramento mantra of "restructuring" — a wholesale shift in patterns of taxation and service delivery that all agree is necessary for the state's future fiscal soundness.

This year's budget doesn't include any further erosion of local government property tax revenues. On paper, at least, the numbers are the same. But it doesn't truly restructure anything either. Instead, it is simply an election-year budget.

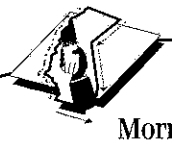
The cost of waiting to address the structural issues has been high — and speaks volumes about the courage (or lack thereof) among the state's political leaders. The 1994-95 budget, as passed, calls for $57.5 billion in spending, a 5.9% increase over last year. But it relies on $3.6 billion in federal immigration-related assistance over a two-year period — money virtually everyone in Sacramento agrees is dubious at best. When the money doesn't come, the budget's house of cards will fall.

"We all know that this year's budget was a fake because it's an election year," says Judi Smith of the League of California Cities. "Next year's where the action is, and we're afraid of what will happen then."

That's because next year a "trigger" bill may go into effect that could require automatic 50.7% cuts across the board for non-mandated programs. The trigger bill was crucial, because without such a provision the state could never have borrowed $3 billion to cover this year's deficit. Indeed, the state was forced to pay a cool $30 million as a sort of loan fee.

But this creative accounting has not impressed the credit rating services. And the state's now-even-lower bond rating comes with a pricetag of another $30 billion in higher interest on outstanding bonds.

So the emperor is indeed naked. And that raw truth underscores the biggest question: when will state and local government muster the courage to really restructure, so budgets can respond to our real fiscal situation? Because at this point it's hard to say which is more painful: raising taxes and cutting services, or watching our leadership create and adopt budgets that read like fairy tales. ❑



DEALS

Morris Newman

Anaheim Torn Between Two Lovers: Rams and Angels

An old folk tale tells of a middle-aged man with two wives, one young and one old. The young wife hates her husband's gray hairs and plucks them out. The older wife, for her part, takes her tweezers to the black hairs. In the end, the poor fellow has no hair at all — and probably curses the day he married either woman.

For some reason, this tale reminds me of the City of Anaheim and its ongoing relationships with two professional sports franchises, the Los Angeles Rams and the California Angels, both of which play in city-owned Anaheim Stadium. While the combination of two pro franchises in a single stadium would be cause for joy for most cities, the mood in Anaheim these days is decidedly glum.

Neither team is happy with the stadium, and each positively hates the other. The city is facing massive repair to the Big A following the Northridge earthquake. On top of that, the Rams are asking for substantial football improvements to the stadium to boost its profits (at the city's expense, of course). At the same time, some people are talking about an entirely new baseball stadium for the Angels that could cost $150 million.

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That poses a dilemma for Anaheim: how much more is it willing to spend to please its professional sports franchises?

The city is not exactly a skinflint when it comes to sports venues. Last year, Anaheim spent $105 million to build The Pond, a 20,000-seat arena. But perhaps Anaheim's lust for sports franchises, and their alleged economic benefits, has led the city to its current unhappy state, in which it finds itself alternately sued and threatened with abandonment by sports clubs.

In 1966, the city built the Big A, then an open-air, horseshoe-shaped baseball stadium of about 45,000 seats, as a build-to-suit for the Angels baseball franchise. In 1980, however, the Big A got even bigger, when the city succeeded in signing the Rams football club, in part by promising to reconfigure the stadium as a gridiron, adding nearly 24,000 seats, and enclosing the stadium.

It was clear that the baseball team felt supplanted by Anaheim's new sweetheart. The enlarged stadium was at best an awkward fit for baseball. To make matters worse, Angels owner Gene Autry, the affable former star of cowboy movies, was angered that the city had sweetened the deal with Rams owner Carroll Rosenbloom by offering development rights in part of the Big A parking lot to a real estate partnership including Rosenbloom and Cabot Cabot & Forbes.

In 1981, the Angels renewed their lease to the city, with the understanding that the city and the baseball team would resolve their differences at a later date; the ball club was apparently worried that new commercial buildings would roil the traffic pattern inside the parking lot by blocking important entrances and exits. When the city issued a conditional use permit to start construction on the office buildings in 1982, the Angels sued, and the case has stayed in court for 12 years. In May, the Fourth District Court of Appeal ruled that the city had the right to develop portions of the Big A parking lot because the parking lot was not technically an Angel leasehold.

Now that Anaheim has cleared up the unpleasantness with the Angels, however, the city finds itself scrimmaged once again by the Rams. In this situation, the normally volatile owner, Georgia Frontiere, has remained largely silent, while a front group of "concerned citizens" who call themselves Save the Rams have been doing the talking. "We've brought in the heavy hitters and the power brokers," said group spokesman Stan Powlawski, president of Corporate Bank in Santa Ana.

With the Rams lease soon to expire, the team is trying to position itself for the best possible deal from the city. To gain leverage in the discussion, Save the Rams claimed last spring that an unidentified investor was waiting to steal the football team off to Baltimore if the city did not comply. Now it appears that there is no investor and Frontiere does not want to sell, so Save the Rams is taking a different tack — turn over the Big A to the Rams and build another stadium for the Angels.

Save the Rams' Powlawski proposes that the city shell out $60 million to add luxury boxes at the Big A and reconfigure it for football only. To raise the money, he suggests refinancing the stadium. "We only owe about $30 million on it now," he observed. By refinancing it, "we could raise $50-60 million." A Rams spokesman would comment only that "we're open to all possibilities."

To accommodate the baseball team, Powlawski proposes a new baseball-only stadium of about 45,000 seats, which he claims would cost about $100 million. Angels spokesman Kevin Uhlick said Powlawski's estimate was too low and that a state-of-the-art stadium could run $170 million. (New baseball stadiums in Dallas and Cleveland opened this year after costing about that much.) He said the Angels are unlikely to put any of their own money into such a development, but hinted that the financing could be raised "using the resources of both Anaheim and the Angels" in such a way that the taxpayers would not be burdened. Rams booster Powlawski is also confident that financing could be found for the new baseball stadium "through some participation of both city and county."

If Powlawski has his way, Anaheim residents could fork out well over $200 million to give the Rams and the Angels the best possible stadiums. The city would presumably benefit economically, as the financial studies will undoubtedly prove. But is this a good idea?

I don't think there is any public interest whatsoever that dictates cities should subsidize wealthy sports clubs. But since I am apparently the only person in America who believes this, I don't expect my point of view to get very far — particularly in Anaheim, which is arguably the biggest sports booster among California cities. But the city should at least demand, and get, some up-front equity money from the Rams and the Angels for new construction. Maybe those enthusiastic gentlemen from the Save the Rams organization would be interested in ponying up for a new stadium. That way, at least, we can keep the hairs on the city's proverbial head from being picked clean. ❑