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Inside

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HUD Backs Off Challenge to Bakersfield Homeowners

Agency Sought to Squelch Opposition To Group Home

By Morris Newman

Putting to rest a court case that raised protests from conservatives and liberals alike, the U.S. Department of Justice has settled a lawsuit brought against five homeowners in the City of Bakersfield. Citing the Fair Housing Act, the federal government had filed a civil-rights suit against the group for going to court to block the establishment of a group home in their neighborhood.

"I was outraged by what occurred," said Edward R. Jagels, district attorney for Kern County, adding, "We are clearly in an untenable situation if the act of entering court to determine your property rights can be the substance of a civil rights action." Neither Jagels nor his department were involved in the case.

To the Justice Department, the issue is a clear-cut case of housing discrimination. "In our view, the defendants took action on a discriminatory basis to keep six handicapped individuals out of their neighborhood," said Brian Heffernan, deputy chief of civil rights division in Justice's Housing and Civil Enforcement section. He likened the alleged attempt to exclude a home for disabled people from Stockdale to racial discrimination in housing.

The case of the so-called Stockdale 5 is one of several recent instances in which the Justice Department, acting at the behest of the U.S. Department of Housing & Urban Development (HUD), has attempted to squelch opposition to housing efforts by launching investigations or lawsuits against people who challenge certain residential uses in court, or, in some cases, even those who merely speak out publicly against such projects. Settlement of the suit leaves unanswered several *Continued on page 10*

Panel Calls for Reforms in Local Government

Constitution Would Permit 'Community Charters'

By William Fulton

Reviving a long-running discussion about how local government in California is organized, the state's Constitution Revision Commission has proposed giving local agencies expanded authority over how their revenue is allocated and how their regulatory power is distributed.

The proposal appears to be one of several indications that a political consensus is emerging to permit localities more flexibility over taxation and regulatory power. A Southern California Association of Governments committee is moving toward similar recommendations. The issue's urgency has been heightened by recent financial troubles in Orange and Los Angeles counties, which are forcing local governments across the state to re-examine the structure and financing of local governments.

In fact, the commission's recommendations came out at the same time as a pitched legislative battle over whether to transfer transit funds to the general funds of both L.A. and Orange counties. Gov. Pete Wilson vetoed one such proposal in August but left the door open to the concept.

In preliminary recommendations adopted in August, the commission suggested that local government agencies — including school districts — be given the power to create "community charters." Subject to voter approval, these charters would permit local officials to restructure regulatory authority and tax revenue (including property tax, now allocated by the state) according to local consensus. They would also be given the power, under certain circumstances, to issue general-obligation bonds with only a simple majority vote, rather than the two-thirds vote requirement imposed by Proposition 13.

"Since the 1890s, local government has been a locally organized *Continued on page 9*

Sacramento's redevelopment chief, John Molloy, will take over as administrator of the Los Angeles Community Redevelopment Agency in early September.

Molloy becomes the fourth administrator at the troubled agency in the last decade. He takes over an agency wracked with financial problems, riddled with conflicting agendas, and struggling for survival in the middle of a political tug-of-war between Mayor Richard Riordan and some members of the City Council.

Once Los Angeles's most powerful agency, the CRA has lately been in a cutback mode, with the staff scheduled for a 10% reduction because of declining property-tax increment. A recent management audit said the agency was rudderless, as board members view it as an economic development agency while staff members see it as a housing agency.

Riordan recently proposed a reorganization of city departments to combine CRA with other economic development agencies and appointed Dan Garcia, former president of the city planning commission, as head of the CRA board. Garcia recently told The Planning Report, a Los Angeles insiders' newsletter, that while "I'm not hostile toward housing," the CRA must create "a renewed focus on economic, job-creating activity."

In response, some council members, including Mark Ridley Thomas, who represents South-Central Los Angeles, have countered with a proposal to put the agency completely under the council's control.

Meanwhile, the city has transferred certain expenditures — for the convention center, for example — to the CRA budget in order to help the city's own financial problems. But financial experts fear that the L.A. CRA will soon be in a budget bind similar to that of the San Jose redevelopment agency, which recently had to be bailed out by the San Jose city general fund. (*CP&DR*, August 1995.) At the same time, the agency is moving forward with new project areas resulting from the 1992 riots and the 1994 Northridge earthquake.

Molloy, who holds both a master's in planning and a doctorate in public administration from USC, has worked for Sacramento County since 1975, when he began as an assistant planner. Since 1991 he has been executive director of the Sacramento Housing and Redevelopment Agency, the combined city-county redevelopment agency. In an interview he staked out few specific positions but said: "My job is to use the redevelopment tool as an effective agent to revitalize those parts of L.A. that need help."

■ Contacts:
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John Molloy, Sacramento Housing and Redevelopment Agency, (916) 440-1333.

More Indictments in Clovis

A Clovis councilman, a Fresno developer, a former Fresno city planner, and three others have been indicted in the ongoing FBI investigation into zoning corruption in the Fresno-Clovis area.

Clovis Councilman Leif Sorenson has been indicted on 15 counts of racketeering, extortion, and other federal crimes in connection with several instances in which he allegedly demanded $5,000 to $10,000 for his support of local development projects.

Fresno developer Patrick Fortune has been charged with conspiracy to tamper with a witness for his alleged attempt to persuade development consultant Jeffrey Roberts, a former Fresno County planner, not to talk to the FBI. Roberts previously pled guilty to involvement in an extortion scheme, a move that cracked the case open. (*CP&DR*, August 1995.)

Also indicted was Kenneth Crabtree, a onetime Fresno city planner who is now a vice president of R.J. Hill Co., a development consulting firm. Crabtree is also accused of attempting to tamper with Roberts as a witness.

Also indicted were real estate salesman Jack Williams and his son David Williams and restaurateur David Milutinovich. They are accused of conspiring to obstruct justice for allegedly orchestrating grand jury testimony by David Williams that the FBI claims was false.

Meanwhile, the Clovis City Council is investigating whether to place a moratorium on two Fortune development projects previously approved by the city. And the Fresno Bee reported that the case is expanding to include investigation of "past and present members of the Fresno City Council."

Wilson Vetoes Transit Village Bill

Gov. Pete Wilson has vetoed AB 1338 (Sweeney), the so-called "transit village" bill that would make some funds available for transit-oriented real estate development projects.

Under the bill, the Governor's Office of Planning and Research would have been required to adopt guidelines for sustainable community development. Metropolitan planning organizations and transportation planning agencies would have been authorized to establish transportation planning revolving funds, making loans to local governments interested in making land-use plans that conform with the OPR guidelines.

"Given the limited dollars for transportation planning purposes, it is inappropriate to permit the use of these funds for other planning purposes at this time," Wilson wrote in his veto message.

■ Contacts:
Randy Pestor, office of Assemblyman Mike Sweeney, (916) 445-8160.

Stadium Update

Following our roundup of sports stadium proposals from around the state last month, several new developments have occurred, including the following:

• In Sacramento, the city agreed to accept a 100-acre baseball stadium site as a gift from developer Buzz Oates and then lease the site to Maguire Thomas Partners, who owns the adjoining Arco Arena, to build a minor-league stadium that could be transformed into a major-league ballpark.

• In Oakland, the football Raiders signed a deal with the city and Alameda County that was widely ballyhooed as involving no public funds. But the San Jose Mercury News reported that under the deal, city and county taxpayers could be on the hook for as much as $5 million in revenue guarantees if ticket sales are slow — as they have been so far.

• Despite initial reluctance by Mayor Tom Minor, the City of San Bernardino moved closer to purchasing a 29-acre railroad site for a new minor-league baseball stadium. The city stepped up the pace in August, after Dave Elmore, owner of the San Bernardino Spirit, said he would move the team if the city did not come through.

• The neighboring Riverside Pilots, also a minor-league baseball team, announced that they would move to Lancaster because Lancaster has built a new baseball stadium and Riverside has not. The Lancaster stadium, adjacent to an outlet mall, was built for $10 million but the team will pay $300,000 per year while keeping all baseball-related revenue.

It was the second time in five years Riverside lost a baseball team to a smaller city with a new stadium; in 1990, a previous team moved to Adelanto. The move has renewed discussions among Riverside, Moreno Valley, Perris, and Riverside County about building a new stadium at March Air Force Base. ❑

In an apparently unprecedented move, state and federal agencies have agreed in principal to give local governments permitting power over a large amount of low-quality wetlands in Sonoma County.

Under a plan recently accepted by local, state, and federal agencies, vernal pools in the Santa Rosa Plain would be categorized by quality and a mitigation banking system would be established permitting property owners to compensate each other for lost vernal pools. The first private mitigation bank was established in mid-August by Santa Rosa developer Ilan Silberstein, who is building an artificially created six-acre vernal pool site in Wikiup and offering shares in the projects for sale to developers who must mitigate vernal pool problems created elsewhere in the county.

The Sonoma County vernal pool planning process was kick-started with a $250,000 federal appropriation to the Army Corps of Engineers that was orchestrated largely by Rep. Lynn Woolsey, who represents part of Sonoma County. According to Sharon Moreland of the Corps, vernal pools had become a major stumbling block to development in the area, especially in the City of Santa Rosa, and relations between the Corps and the local governments were deteriorating.

The Corps then hired CH2M Hill, an engineering firm, to coordinate a planning process that included local, state, and federal agencies, as well as developers, environmentalists, and farmers in the area. The resulting plan identified approximately 5,900 acres of property that could be used as vernal pool preserves. About 26,000 acres of land was earmarked as low-quality areas with a low priority for protection, and another 22,000 acres was identified as areas of unknown quality.

The proposed plan has two significant elements to it: the transfer of some permitting authority to the local governments, and the creation of a market for vernal pool lands.

The plan calls for the Corps to write a "general permit" for local governments, principally Sonoma County and the City of Santa Rosa, for development on vernal pool areas that are identified as low quality in the plan. The general permit would require local governments to fulfill many conditions, including mitigation. Currently, local governments in Sonoma County — as in most other parts of California — simply refer landowners to the Corps and the state Department of Fish & Game to deal with wetlands issues.

The mitigation banking and trading component would complement the local permitting. Landowners wishing to build on low-quality wetlands could buy shares of a mitigation bank on high-quality wetlands, thus providing landowners who own high-quality wetlands with a revenue source even if they cannot build on their property. Landowners whose property is categorized as unknown would have to perform a biological study to determine whether it is of high or low quality.

Silberstein's decision to create a mitigation bank in August was viewed by the agencies and their consultants as a positive move. "Other landowners are coming forward with sites," said Niall McCarten, the project manager for CH2M Hill. The Sonoma County Open Space District, which is funded by a quarter-cent sales tax, may also step in to buy land or conservation easements to help create mitigation banks.

One big question, according to local planners, is how the Sonoma County Farm Bureau will view the project. Since much of the potential mitigation property is used as agricultural land, many farmers apparently believe that this plan will force them to bear the burden of mitigation for urban development in the City of Santa Rosa. However, McCarten said that in the second phase of the project, the vernal pool task force may seek the assistance of the Farm Bureau in identifying property owners interested in providing mitigation land.

The vernal pool plan isn't likely to move forward, however, without another federal appropriation for the second phase, which would include writing the general permit, identifying landowners interested in providing mitigation land, and other steps.

Under prodding by Woolsey and her Republican counterpart, Frank Riggs, who also represents part of Sonoma County, the House of Representatives has included a $250,000 appropriation for the second phase in next year's federal budget. However, the Senate did not include such an appropriation, and the matter is now pending before a conference committee.

■ Contacts:
Niall McCarten, CH2M Hill, (510) 251-2426.
Sharon Moreland, Army Corps of Engineers, (415) 744-3318.
Chuck Regalia, Santa Rosa Department of Community Development, (707) 524-5555.
Jeremy Graves, Sonoma County, (707) 527-1900.

Pombo Set to Introduce Species Bill

Rep. Richard Pombo, R-Tracy, chairman of the House task force on endangered species, is planning to introduce an Endangered Species Act reform bill in early September.

After holding seven field hearings last spring, including three in California, Pombo said the law as written suffers from the following problems:

1. Excessive regulation from a top-down bureaucracy.
2. Excessive burden on individual property owners, sometimes discouraging species protection by those property owners.
3. Too much emphasis on preservation of undeveloped land, rather than management to increase species populations.
4. Excessive reliance on litigation.
5. Too much emphasis on a species-by-species approach.

On August 1, Pombo and the House Republican Policy Committee announced five principles that will be used in guiding the House bill:

1. The use of "accurate, non-politicized science." In a recent press release, Pombo stated that this means the use of peer review, blind studies, and the option to challenge the science being used.
2. Inclusion of social and economic considerations in the conservation planning process.
3. Inclusion of incentives to encourage private property owners to participate in habitat conservation.
4. An increase in state and local participation, thus allowing federal agencies to work "in a flexible manner with those closest to the issue."
5. Compensation for property owners who are affected by listings and habitat conservation plans.

■ Contacts:
Mike Hardiman, press secretary, Rep. Richard Pombo, (202) 225-1947. ❑

Base Watch

Morris Newman

Navy Plans to Give Hospital Site to Long Beach

The Navy is finalizing plans to transfer the former Naval Hospital to Long Beach, but surrounding cities are seething about being locked out of the reuse process.

From the point of view of the Pentagon and Long Beach, the deal is a model of base reuse: The city plans a 100-acre, $100 million power center on the 30-acre hospital site, which is being joined to two other parcels already controlled by the city. The retail center will employ nearly 1,500 people, a net increase of 400 above the number of jobs at the former hospital. The process is nearly concluded: the military issued the Final Environmental Impact Statement on the shopping-center plan in August, and a Record of Decision is expected on September 19.

But surrounding cities are not cheering. They protest that they will suffer economic and environmental harm from the project by bearing much of the traffic to and from the retail center, which could generate up to 15,000 trips daily, according to the environmental statement. Residents of Hawaiian Gardens say they fear a street-widening proposal that could remove a row of backyards from that working-class city. Officials of the same city express fears that the power center will weaken the city's efforts to create a shopping street in the city's downtown area. And they are indignant about a suggestion in an earlier draft of the EIS that would make surrounding cities pay the costs of traffic mitigation for the power center, even though they receive no direct benefit from the retail development.

Above all, the cities assert that they were unfairly locked out of the decision-making process because the Navy recognized Long Beach as the sole local reuse authority. Captain Robert Kiesling, the Navy's base realignment officer responsible for Southern California, defended the decision as proper because the hospital property is located entirely within Long Beach city boundaries, making the city the sole "zoning authority" for the parcel. The front of the hospital, in fact, sits on the border of the city, facing the southern boundary of Lakewood, a bedroom community of 30,000 people.

"We are disappointed by the Navy's decision, but we are not surprised," said Lakewood spokesman Don Waldie, adding that "the Navy has done precisely what we predicted three years ago that they would do: endorse without reservations the 1-million square-foot power center." Although Lakewood officials have tried to insert themselves into the base reuse process by meeting with the Navy regularly, "it seemed to go in one ear and out the other. We were ignored."

Waldie said he was peeved at Long Beach for settling for a project that promises a rich crop of sales tax, rather than holding out for a industrial or high-tech use that would provide higher-paying jobs.

Hawaiian Gardens Mayor Kathleen Navejas described the conflict underlying the Naval Hospital conversion as one of "environmental justice," echoing a pet phrase of President Clinton's. The Navy, she said in a statement, "can't dump more traffic, air pollution and unemployment in my community merely because Long Beach wants to build a shopping center that only benefits Long Beach."

Barry Steinberg, a former military lawyer hired by Lakewood to advise the city on the federal base-reuse process, described the decision by the Navy to deal only with Long Beach as "unconscionable." He pointed out that the southern portion of Los Angeles County and the northern edge of Orange County are made up of a cluster of small communities, all of which may feel the impact of the center. He suggested that the Pentagon's decision to deal only with Long Beach, rather than form a joint-powers authority, reflected the military's inexperience during the early phases of the base-closure process. Recently, Steinberg said military officials told him privately they now view the decision as an error. "They say they will never it do this way again," Steinberg said, adding, "That remains to be seen."

Lakewood's Waldie said the city had not decided whether to sue the federal government. Federal law requires such suits to be filed within 60 days of the time a Record of Decision is issued.

State Picks 3 Bases For Enterprise Zone-Type Program

The California Trade and Commerce Agency selected three former military bases in July to receive a set of enterprise-zone-like tax breaks and financial incentives. George Air Force Base, Mare Island, and Castle Air Force Base have each been selected to receive the incentives under the Local Agency Military Base Recovery Area (LAMBRA) program.

Not unlike enterprise zones, participating companies receive tax credits and wage credits for locating or expanding their businesses within designated bases. The business incentives include credit for both the sales tax and use tax spent on equipment and machinery, up to $20 million; hiring credits for wages paid to employees during the first five years of their employment; and a 15-year net operating loss carryover.

The program lasts for eight years. The selection of the three former bases hinges on a set of conditions, to be fulfilled within 120 days of selection. The selection of the first three bases is the first step in a two-round designation process, to occur during the next four years.

Feds Invade Closed Bases

Federal agencies are flocking to mothballed military bases. The Federal Aviation Administration is expected to consolidate four Northern California air traffic control units at Mather Air Force Base near Sacramento. If finalized, the FAA move could import 230 jobs to the area and be the impetus for a construction project worth about $100 million. Mather is also in the running for the regional, four-state headquarters of the Federal Emergency Management Agency (FEMA), which could bring another 170 jobs to the area.

The U.S. Forest Service plans to transfer its regional headquarters from San Francisco to Mare Island Naval Shipyard near the City of Vallejo. The federal agency expects to save $2.3 million through the move by using a building rent-free. The move is pending Congressional approval. Mare Island is scheduled to close in April 1996.

Separately, Mare Island has signed its first private tenant. XKT Engineering is a Napa-based steel fabrication concern with 40 employees. The company will occupy 64,000 square feet in several buildings and pay $6,400 a month in rent on the five-year lease.

Castle Used For AIDS/Homeless Housing

Castle Air Force Base is providing free housing for homeless residents of Merced County who have AIDS or the HIV virus. The duplex is being administered by the Lighthouse program, which provides services to about 900 HIV patients in Merced, Fresno, Madera, and Mariposa counties. The annual budget of $16,000 comes from the federal Ryan White Care Act, administered through the State Office of AIDS. The base is scheduled to close September 30. ❑

CP&DR
LEGAL DIGEST

Patents Don't Make Legitimate Lots

Map Act Case Clarifies Little-Used Section of Law

In a case dealing with a rarely tested section of the Subdivision Map Act, a Mendocino County property owner is not entitled to five certificates of compliance based on five old federal patents underlying one 480-acre parcel that was the result of a recent and legal lot split.

The case involved Subdivision Map Act §66499.20 1/2, which permits the merger and resubdivision of previously existing parcels. The Mendocino County case involved a 480-acre parcel owned by Steve Gomes which had been created as the result of the subdivision of 3,725 acres of land near Cave Creek into four legal parcels in 1975. However, underlying Gomes's 480-acre property were five government patents, issued by the federal government during the 19th Century, referring to five parcels ranging in size from 38 to 166 acres.

Gomes argued that he was entitled to five certificates of compliance under the Subdivision Map Act based on these patents. (Certificates of compliance constitute proof that the lots are legal, thereby making them available for sale.) He was denied by the county planning commission and the Board of Supervisors and then filed suit. Mendocino County Superior Court Judge Morton R. Colvin concluded that the underlying patents had been wiped out under §66499.20 1/2 by the 1976 lot split, and the Court of Appeal upheld his reasoning.

Gomes made a variety of arguments before the appellate court, all to no available. For example, Gomes argued that the property did not constitute "subdivided lands" under the law because previous case law had determined that identification of lots on a USGS survey map from the 19th Century did not constitute the legal creation of lots.

However, the appeals court rejected this argument based on *Lakeview Meadows Ranch v. County of Santa Clara*, 27 Cal.App. 4th 593 (1994), which ruled that parcels conveyed by federal patents are lawfully created. (*CP&DR*, September 1994.) "*Lakeview*," the appellate court said, "is fatal to appellant's argument."

Gomes also sought, unsuccessfully, to use the only published case that deals directly with §66499.20 1/2, *Negron v. Dundee*, 221 Cal.App.3d 1502 (1990). In that case, a landowner divided property into five parcels and then leased them all to different individuals for commercial purposes without complying with the act. One parcel included an easement for parking with an adjoining parcel. When one of the lessees sought to further subdivide the illegal lot, the court ruled that the section did not apply to the situation — thus preserving the easement, which would have been extinguished — because no subdivision of the property had previously been filed.

The appellate court concluded that *Negron* actually bolstered the county's case. "*Negron* is consistent with our conclusion that the statute does apply in this case, in which the creation of parcels by patent did not require the filing of a subdivision map, but was nonetheless lawful," the court wrote.

The appellate court also rejected the property owners arguments that the section does not apply because under local ordinance the 1976 lot split was accomplished by unilateral agreement, not by filing of a parcel map. Also rejected was the landowner's argument that the situation should have been controlled by other sections of the Subdivision Map Act covering lot mergers initiated by the local agency. ❑

■ The Case:
Gomes v. County of Mendocino, No. A068276, 95 Daily Journal D.A.R. 11013 (August 17, 1995).

■ The Lawyers:
For Gomes: Jared G. Carter, Rawles, Hinkle, Carter, Behnke & Olgesby, (707) 462-6694.
For Mendocino County: H. Peter Klein, County Counsel, (707) 463-4446.

CEQA

City May Ignore Information On Historic Value of Property

The Claremont City Council did not abuse its discretion in deciding that historical information regarding the Pomona College campus was irrelevant to the council's approval of a new building on the campus, an appellate court has ruled.

The case involved a proposed three-story, 62-foot educational building known as the Hahn Building on a 57-acre property the college has owned for almost 100 years. In 1991, the city denied a conditional use permit for the building based on its height, which had been the subject of opposition in the city. Subsequently, Pomona College redesigned the Hahn Building as a two-story, 45-foot building. The city then approved the building and a mitigated negative declaration calling for pedestrian pathways in the area to remain open to the public.

In 1992, Citizens' Committee to Save Our Village sued Claremont. A year later, the Citizens' Committee won a favorable ruling from the trial court, which ordered the city to set aside its decision because the City Council had not made the required written findings.

Shortly thereafter, the city asked the Citizens' Committee and Pomona College to submit information regarding whether or not the proceedings under the California Environmental Quality Act should be reopened for additional evidence. The Citizens' Committee responded by claiming to have new evidence regarding the historical significance of the landscaping on the site. Referring to several local history books, the committee contended that the landscape plan for the site had been prepared in the early 1900s by Samuel Parsons & Co., a renowned landscape architecture firm.

Upon reconsideration, the council concluded that the new evidence was "irrelevant and/or untimely" and voted to reaffirm its earlier approval of the project and the mitigated negative declaration. Subsequently, the Citizens' Committee sued again, claiming that the site contained historically significant landscaping and that the council had abused its discretion in refusing to allow the new historical evidence into the proceedings.

Los Angeles County Superior Court Judge Gregory C. O'Brien ruled in favor of the city and the Second District Court of Appeal, Division Seven, affirmed.

Writing for the court, Superior Court Judge Thomas W. Stoever, sitting on the appellate court by special designation, said that the core of the Citizens' Committee's case was whether a historically significant landscaping plan had been prepared, executed, and maintained for 90 years, and whether the plantings on the property were the result

of this plan.

"There is no evidence, direct or circumstantial, indicating that landscaping work pursuant to the Parsons' layout was completed," Stoever wrote. "There is no evidence, direct or circumstantial, that any specific plan of landscaping was maintained or continued during the intervening ninety (90) years. ... Finally, there is no credible evidence, direct or circumstantial, that landscaping in accordance with the alleged Parsons' plan is in existence at the present time."

Even assuming that the landscaping is of extraordinary historical significance, he added, "it is dumfounding that the record for the period between 1905 and the present is utterly silent with respect thereto."

Furthermore, Stoever wrote, the city council and the trial judge "weighed the historical evidence relied upon by applicants and found it to be insubstantial." He added: "The facts of this case present a fundamentally local issue. The Claremont City Council is uniquely situated to determine the existence or nonexistence of an allegedly significant local historical resource."

While acknowledging that it might have been preferable for the city to admit the historical evidence and base its decision on the merits, "the administrative record discloses that the City Council did not ignore appellants' information purporting to demonstrate historically significant landscape design." ❑

■ The Case:
Citizens' Committee to Save Our Village v. City of Claremont, No. B083336, 95 Daily Journal D.A.R. 11131 (August 21, 1995).

■ The Lawyers:
For Citizens' Committee: Carlyle Hall, (310) 470-2001.
For City of Claremont: Wynn S. Furth, Best, Best & Krieger, (909) 989-8584.
For Pomona College: James M. Harris, Sidley & Austin, (213) 896-6606.

Supplemental EIR Not Required For San Diego Transit Line

San Diego's Metropolitan Transit Development Board does not need to produce a supplemental environmental impact report for a proposed rail line even though the final alignment calls for construction of a 20-to-30 -foot berm through the San Diego River Valley, rather than an 8-to-10-foot berm as called for in the original EIR, the Fourth District Court of Appeal has ruled.

MTDB's actions had been challenged by the River Valley Preservation Project after the agency engaged in a lengthy decision-making process over how to build the so-called Levi-Cushman segment of a light-rail line running through Mission Valley from Old Town to Jack Murphy Stadium. The Levi-Cushman segment involved property owned by the Levi and Cushman families and the Chevron Land and Development Co. which has been used as the Stardust Golf Course. Chevron Land was planning to develop the property in a way that would incorporate the light-rail line. The property is partially within the 100-year flood plan of the San Diego River.

In 1991, MTDB proposed constructing the light-rail line through the golf course on an 8-to-10-foot berm, while other necessary flood control improvements would have to wait until the Chevron Land proceeded with private development. In late 1992, MTDB began examining alternatives that might be required to accommodate revised plans for the Chevron Land development. The new MTDB alternative called for a 20-to-30-foot berm, rather than an 8-to-10-foot berm.

In 1993, MTDB approved an addendum to the original EIR finding that the higher berm would not involve any new environmental impacts and would, in fact, reduce noise, vibration, and visual impacts. Later, however, MTDB stipulated a broader design for the higher berm, calling for a widening Valley Golf Course and proposed reconfiguring it from an 11-hole course to a nine-hole course.

River Valley Protection Project sued, challenging the lack of supplemental EIR, but lost. The RVPP then filed a motion for a new trial, claiming that plans to widen the San Diego River were more extensive than previous evidence indicated and that public agencies had recommended against the issuance of development permits because of potential adverse impacts to aquatic resources and lack of sufficient hydrologic information. Again RVPP lost.

"The question we must decide," wrote Superior Court Judge Herbert Hoffman, sitting by assignment on the appellate panel, "is whether the height increases and slope changes in the berm created substantial environmental ramifications that will require major revisions of the EIR."

In answering the question, Hoffman relied heavily on *Fund for Environmental Defense v. County of Orange*, 204 Cal. App. 3d 1538 (1988), which also dealt with the question of a supplemental EIR. In that case, the appellate court concluded: "Problems that had already been analyzed and reviewed were expanded or increased by a change in circumstances. But the record supports a finding that the increase in effect was not 'cumulatively considerable'."

"Similarly here," wrote Judge Hoffman, "MTDB in the original EIR carefully reviewed, discussed, and analyzed the effects of the floor flows from the use of elevated berms....The change in circumstances here does not raise any new effects which the EIR had not already reviewed and analyzed." ❑

■ The Case:
River Valley Preservation Project v. Metropolitan Transit Development Board, No. D022078, 95 Daily Journal D.A.R. 10175 (August 1, 1995).

■ The Lawyers:
For River Valley Protection Project: Craig A. Sherman, (619) 231-8502.
For Metropolitan Transit Development Board: Christopher W. Garrett, Latham & Watkins, (619) 236-1234.

Appellate Reverses Ruling On Addition of CEQA Plaintiff

Reversing an earlier ruling, the Second District Court of Appeals has reversed a lower court ruling and decided that an individual's lawsuit under the California Environmental Quality Act can be amended to include an organization formed after the close of the administrative hearings on the matter.

The reversal, on a 2-1 vote, keeps alive a case against the United Water Conservation District. The plaintiffs challenged United's compliance with CEQA in a project using gravel pits near the Santa Clara River in Ventura County's percolation basins and eventually to water reservoirs.

The Fox Canyon Seawater Intrusion Abatement Project began with a proposed pilot project to convert one pit, known as Noble Pit, to a percolation basin. United's initial study found that the project would not have a substantial impact on the environment and therefore an environmental impact report was not necessary.

The Noble Pit hearings were attended by citizen John Garrison and his lawyer, Richard Francis, a former mayor of Ventura. Garrison did not speak at the hearings. But Francis, speaking as an individual, made numerous objections to the CEQA process, including unlawful segmentation of the Fox Canyon project, cumulative impacts, and the contention that United failed to assert the basis on which it considered itself the lead agency on the project.

However, United adopted a negative declaration on the Noble Pit in June of 1993.

Garrison then sued within 30 days, claiming an EIR should have been prepared. But United filed a demurrer, arguing that Garrison had not exhausted his administrative remedies because he had not commented at the public hearings. Judge Edwin N. Osborne then granted United's demurrer but granted Garrison permission to amend his complaint. In November, Garrison filed an amended complaint indicating he was suing as a member of the Coalition for Aquifer Honesty, a group whose members included both Garrison and Francis. United argued that the Coalition for Aquifer Honesty had been created merely as a device to get around the question of Garrison's exhaustion of administrative remedies. Judge Osborne agreed and dismissed the case.

Originally, the Second District, Division Six, ruled that while the Coalition for Aquifer Honesty did meet the exhaustion of administrative remedies test, the coalition could not be added to the complaint after the 30-day statute of limitations on CEQA lawsuits had run out in July of 1993. (*CP&DR*, June 1995.)

In the new ruling, however, the majority changed its direction on the statute of limitations issue. Proper amendments, wrote Presiding Justice Steven Stone, "'relate back' to the date of the filing of the original complaint, despite the amendments being made after the statute of limitations has expired....

"The relation-back doctrine applies here," Stone added. "The change effected by the amendment is one of form, not of substance, and should be allowed in the interests of justice."

Justice Kenneth Yegan dissented, saying: "The majority in one stroke have changed the law as to who is an 'aggrieved party,' expanded the relation back doctrine to give plaintiffs with no standing to sue the right to sue, and have undercut the letter and spirit of the 30-day statute of limitations for CEQA actions." ❑

■ The Case:
Garrison v. Board of Directors of the United Water Conservation District, No. B0819999, 95 Daily Journal D.A.R. 9969 (July 27, 1995).

The Lawyers:
For Garrison: Richard Francis, (805) 485-8888.
For United Water Conservation District: Philip C. Drescher, Drescher, McConica, Onstot, Schuck & Young, (805) 650-5271.

NON-CONFORMING USES

Brokers Need Not Reveal All Land Use Information

Real estate brokers do not have to disclose to prospective buyers the legal ramifications associated with the fact that a building is classified as a non-conforming use, the Fourth District Court of Appeal has ruled.

"It is not the obligation of the seller to research local land use ordinances and advise a buyer as to their effect on the realty," the court wrote.

The court stated that real estate brokers must reveal factual situations — in this case, the fact that a Poway house was located in a flood plain. However, the court concluded, the zoning consequences resulting from the fact that the house is in the flood plain are publicly available to the buyer and therefore the seller need not reveal it, the court said.

The case arose when the buyers of the Poway house sued the sellers as well as the sellers' real estate brokers. The buyers alleged that in the Real Estate Transfer Disclosure Statement, the sellers and their brokers had falsely stated that there existed no "nonconforming use" associated with the property. However, because the property was located in a flood plain, under the Poway Municipal Code it constituted a nonconforming use and could not be altered without new permits. The buyers alleged that this situation lowered the property's value by $215,000.

A San Diego trial judge ruled that there were no triable issues of fact and granted summary judgment to the sellers and their brokers. The Court of Appeal affirmed the lower court's ruling.

"The factual matter leading to the alleged defect in the house — that it was in a flood plain — was revealed to the plaintiffs," the court wrote. "The legal and practical effects of this state of affairs do not rise to the status of a fact — they are conclusions as to value resulting from the fact of the situs in a flood plain. The existence and effect of city ordinances regulating rebuilding or improvement of a house in a flood plain constitute information as readily available to the plaintiffs as to the defendants."

The court continued: "We believe that the common law disclosure requirements imposed upon the seller of real estate and his broker, as well as the more recent statutory disclosure requirements, require revelation of all factual matters bearing upon the quality of the property being sold which might be detrimental to value. Such factual matters would include, for instance, that the property was constructed on filled land, that the structure was in violation of building codes or zoning ordinances, that the structure had been condemned, and that it was termite ridden...

"The legal ramifications of the factual nature of realty, however, and a conclusion as to how they may adversely impact value, is not a 'fact' subject to required disclosure. If the buyer of property is accurately informed as to the zoning, for instance, it is not necessary for the seller also to advise concerning the detrimental aspects of any specific zoning. We think that this principle applies as well to the disabilities associated with owning a house in a flood plain. That disabilities may exist should be obvious to any buyer." ❑

■ The Case:
Sweat v. Hollister, No. D018807, 95 Daily Journal D.A.R. 10185 (August 1, 1995).

■ The Lawyers:
For Sweat (buyers): Charles F. Goria, Goria & Weber, (619) 692-3555.
For Hollister (sellers): Sandra L. Keithly, Keithy & Keithly, (619) 485-0652.
For Century 21 Tres Ranchos Inc. (broker for sellers): Charles S. Haughey Jr., Kinkle, Rodiger & Spriggs, (619) 233-4566.

ANNEXATION

9th Circuit Strikes Down Forcible Annexation in Oregon

A requirement by the City of Portland, Oregon, that certain residents be given a sewer connection subsidy only if they agree to annex to the city has been struck down by the Ninth U.S. Circuit Court of Appeals as an unconstitutional violation of voting rights similar to the poll tax.

"The Portland ordinance is an unconstitutional infringement on the fundamental right to vote," wrote Judge Pamela Ann Rymer for a three-judge panel. "It is designed to distort the political process by granting substantial subsidies based solely on whether a voter consents to annexation, and it cannot stand."

Because of an edict by the state's Environmental Quality Commission, Portland began providing sewer service to an area in East Multnomah County called "MidCounty," some of which was located inside the city and some of which was not. Instead of charging the actual cost of providing the sewers to each property — which could run several thousand dollars — Portland provided a subsidy to those residents of MidCounty who lived in the city. In addition, Portland offered to provide the same subsidy to MidCounty residents outside the city so long as they provided their "irrevocable consent as both cities and electors" to annex to the city.

Some homeowners sued in federal court, arguing that this requirement violates their federal constitutional rights to free speech and equal protection. They also sought declaratory and injunctive relief under 42 U.S.C. §§1983 and 1988, the federal civil rights statute. U.S. District Court Judge Helen J. Fry ruled in favor of Portland, but on appeal the Ninth Circuit reversed.

Under Oregon law, annexation may be accomplished either by a conventional election or by written consent of all voters and property owners (the "double consent"

requirement) in the area to be annexed.

The homeowners in this case argued that imposing a heavier financial burden only on those who oppose annexation violated equal protection under the Fourteenth Amendment. The city, by contrast, argued that there is no financial "penalty" involved and no federal constitutional right to vote on annexation.

The Ninth Circuit concluded that even though there is no constitutional right to vote on annexation, once the right to vote is granted, as it is under Oregon state law, that right is protected under the constitution. Thus, the court concluded, the annexation consent forms are "analytically like votes" and "are a substitute for them," and therefore they must legally be treated as votes.

The Ninth Circuit concluded that the financial subsidy provided to those who gave their consent to annex is similar to the poll tax considered in the landmark case of *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966). The Portland ordinance, the Ninth Circuit ruled, "severely and unreasonably interferes with the right to vote."

"Like the poll tax in Harper ... the subsidy here disproportionately affects the poor," Rymer wrote. "But unlike the poll tax, which applies regardless of how a voter casts his ballot, this subsidy is conditioned on how an elector votes. In this way, the Portland ordinance is even more distorting than a poll tax." ❑

■ The Case:
Hussey v. City of Portland, No. 93-35641, 95 Daily Journal D.A.R. 11147 (August, 21, 1995).

■ The Lawyers:
For Hussey: Elden M. Rosenthal, Rosenthal & Greene, Portland, Oregon.
For City of Portland: Tracey Pool Reeve, Office of the City Attorney.

ENDANGERED SPECIES

No Standing To Sue on Endangered Species Issue

A group of commercial and recreational water users in Oregon do not have standing to challenge federal actions under the Endangered Species Act because they do not have an interest in preserving the endangered species under scrutiny in the case, the Ninth U.S. Circuit Court of Appeals has ruled.

Two irrigation districts and two individuals who use water from the federal Klamath Project sued the U.S. Fish & Wildlife Service, saying steps recommended by the Service — including a minimum lake level — were not necessary to ensure the continued survival of the Lost River and shortnose suckers. The recommendations were accepted by the U.S. Reclamation Bureau, which runs the project and intended to implement them.

However, the Ninth Circuit concluded that the plaintiffs do not have a standing under the "zone of interests" test because they do not have an interest in preserving the fish. "[T]he plaintiffs do not seek to further the statutory purpose," wrote Judge Stephen Reinhardt for a unanimous three-judge panel. "Nor do they allege any community of interest of any kind between themselves and the suckers. To the contrary, they claim a competing interest — an interest in using the very water that the government believes is necessary for the preservation of the species."

In making the ruling, the Ninth Circuit relied heavily on the U.S. Supreme Court's ruling in *Clarke v. Securities Industry Association*, 479 U.S. 388 (1987), in which the court revived a long-dormant rule that under the Administrative Procedure Act, the interest sought to be protected by the plaintiff must be "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question."

As interpreted by the Ninth Circuit, the Clarke ruling holds that if a plaintiff is not directly subject to the regulatory action in question, the zone of interests test "denies a right of review if the plaintiffs interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot be reasonably assumed that Congress intended to permit the suit."

In reaching its conclusion, the Ninth Circuit rejected the plaintiffs' argument that zone of interests test is overridden by the Endangered Species Act's citizen-suit provision, which permits any citizen to file a civil suit under the act. "In light of our consistent use of the zone of interests test in determining the standing of plaintiffs who have sued under the citizen-suit provisions, we hold that the ESA does not automatically confer standing on every plaintiff who satisfies constitutional requirements and claims a violation of the court's procedures," the Ninth Circuit wrote. "A contrary ruling would permit plaintiffs to sue even though their purposes were plainly inconsistent with, or only 'marginally related' to, those of the Act."

"Because the plaintiffs' interests consist solely of an economic (and recreational) interest in the use of water, because their claims are at best 'marginally related' to the purposes that underlie the Act, and because, as the district court determined, their interests are inconsistent with the Act's purposes, we conclude that they lack standing."

In making the ruling, the Ninth Circuit drew many similarities between this case and its recent ruling in *Pacific Northwest Generating Co-Op v. Brown*, 38 F.3d 1058 (1994). In that case, purchasers of federally generated hydroelectric power challenged a federal biological opinion recommending the regulation of water flow to protect endangered salmon. In that case, the Ninth Circuit wrote: "The plaintiffs are entitled to standing because preservation of the salmon will, in the long run, reduce their cost. But the plaintiffs are not entitled to standing simply to complain about the additional cost of hydroelectric power. Nothing in the Endangered Species Act confers a cause of action for that purpose."

However, the Ninth Circuit was careful to state that it did not need to rely on *Pacific Northwest* in making this ruling. "Our conclusion follows from the fact that our court, and others, have regularly employed the zone of interests test in determining standing despite Congress' enactment of expansive citizen-suit provisions." ❑

■ The Case:
Bennett v. Plenert, No. 94-35008, 95 Daily Journal D.A.R. 11470 (August 25, 1995).

■ The Lawyers:
For Bennett and other plaintiffs: William F. Schroeder, Schroeder, Hutchens & Sullivan, Vale, Oregon.
For Plenert and U.S. Fish & Wildlife Service: Ellen J. Durkee, U.S. Department of Justice, Washington, D.C.

Constitution Panel Calls For 'Community Charters'

Continued from page 1

structure in California," said the commission's director, longtime Sacramento fiscal expert Fred Silva. "If it's a mess, that's because people have voted to make it that way." The idea of community charters, he added, would be to give local governments both the incentive and the means to reorganize in a more responsive way.

Under the community charter proposal, a group of neighboring local governments could get together and create their own charter. This charter would re-organize the distribution of regulatory power (such as land use) and the distribution of property and sales tax revenue according to whatever consensus is achieved by the local government.

Silva said the proposal holds the potential for local governments to solve a variety of problems among themselves, including the problem "fiscal zoning" — attempts by neighboring localities to "zone in" tax-rich land uses such as retailing and "zone out" tax-poor land uses such as housing.

Local government leaders have expressed support for the idea. Don Benninghoven, executive director of the League of California Cities, is vice chair of the Constitution Revision Commission. "It doesn't help cities a lot, frankly," Benninghoven said. "But it helps the public a lot. I think it's a great idea."

Steve Szalay, his counterpart at the California State Association of Counties, said: "In my estimation this represents a good shot at dealing with local issues on a regional basis."

However, Szalay also said that while he supports the charter community idea, more work still must be done on the fiscal relationship between the state and local governments, especially counties. Part of the reason for counties' financial troubles in recent years has been a mismatch of revenues and responsibilities. Counties are obligated to carry out state policy in the areas of health, welfare, and criminal justice, but Proposition 13 and property-tax shifts imposed by the state in recent years have made it more difficult for counties to meet these burdens.

The Constitution Revision Commission proposal calls for a comprehensive state/local fiscal realignment, but does not specify what that realignment should be. Instead, the commission suggested that the Legislature immediately initiate a realignment process and pay particular attention to unfunded mandates.

"In effect," the commission concluded, "the relationship between the State and local governments should be re-created."

The charter community idea bears a strong relationship to similar concepts being kicked around by a SCAG committee that is drafting the "public finance" chapter of the Regional Comprehensive Plan. The draft SCAG chapter concludes that local governments in Southern California (cities, counties, and special districts, not counting school districts) raise and spend some $30 billion per year. But, the draft notes, these funds are distributed in an uneven fashion, with some funds being collected directly by special districts and some being captured by redevelopment agencies. The draft calls for more "flexible fiscal management" among local governments in Southern California.

Silva, the staff director of the Constitution Revision Commission, is scheduled to meet with the SCAG Committee in September.

The Constitution Revision Commission's recommendations came out at the same time that the Legislature was debating whether to shift local transit funds in Los Angeles and Orange counties to bail out the respective general funds. In July, the Legislature passed SB 75 but Wilson vetoed it.

Under this bill, the state would have shifted $75 million a year in transportation planning and development (TDA) funds to the L.A. County general fund for five years. (These are the funds coming from the extra quarter-cent in the state sales tax, which are then redistributed to local agencies for transit purposes.) The state also would have shifted the entire quarter-cent in Orange County to the general fund — an amount totaling $77 million in 1995 and increasing to $170 billion in the year 2010.

The Orange County Transportation Authority opposed the shift, saying it would provide a windfall for the county by giving the county far more money than would be needed to pay off the bankruptcy bonds the county is planning to issue. Indeed, the entire county bankruptcy has created a rift between the county and OCTA.

Wilson apparently vetoed the bill not because of OCTA's opposition but because of his concerns about L.A. County. "I am concerned about the long-range impact this measure will have on transportation services in Los Angeles County," he said. "If SB 75 were to be signed, Los Angeles County could potentially lose the opportunity to receive up to $375 million over five years of federal matching funds."

Wilson countered by offering to support a one-time $50 million transfer of TDA funds to L.A. County, but only as part of a "larger solution required to provide needed fiscal relief for county governments."

Still alive is a separate legislative proposal that would permit Orange County to hold an election on the question of whether to transfer some Measure M transportation money to the county in order to help solve the bankruptcy problem. That bill is AB 50 by Assemblyman Mickey Conroy, R-Orange.

The 23-member Constitution Revision Commission was created by the Legislature to examine ways to change the state constitution. The community charter proposal is just one of several sweeping ideas contained in the commission's preliminary recommendations. Other proposals include:

- Creating a one-house legislature of 120 members.
- Reducing the number of statewide elected offices.
- Allowing the legislature to amend statutory initiatives after they have been in effect for four years.
- Replacing the current state budget process with a two-year budget cycle.
- Allowing localities to increase property taxes with a two-thirds vote and sales taxes with a simple majority vote.

The commission plans to hold hearings on the preliminary report this fall, then submit a final report to the Legislature and the governor next spring. Silva said the commission hopes that a broad revision of the constitution will be placed on the November 1996 ballot.❑

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HUD Backs Off Challenge to Bakersfield Homeowners

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property-rights issues pertaining to the right of the federal government to impose its will retroactively on communities governed by so-called "codes, covenants and restrictions" (CC&Rs).

The case centered on efforts by a Bakersfield company, Altaville Residential Care, to establish a board-and-care facility in a house within the upper-middle-class neighborhood of Stockdale. In June 1992, the Bakersfield residents sought a preliminary injunction and declaratory relief against the project in Bakersfield Superior Court. Although the facility conformed to zoning, the plaintiffs asserted that the board-and-care facility would violate the CC&Rs of the neighborhood, which banned the operation of private businesses in private homes. The court granted the injunction, and the project was temporarily halted.

At issue was whether the community-care facility was legal under state law. In 1979, state lawmakers approved changes to the California Health and Safety Code (§1566.5) that in essence recognized community-care facilities as residential uses that could not be barred by CC&Rs. In a subsequent appellate case, *Barrett v. Lipscomb*, 194 Cal. App. 3rd 1524 (1987), the Court of Appeal ruled that the state law did not apply to CC&Rs that existed prior to the law's enactment in 1979. (In January 1994, a state law went into effect that required state housing laws to conform to federal standards. Those standards apply retroactively to CC&Rs.)

In the fall of 1993, the Justice Department informed the defendants that they were being sued for civil penalties of $10,000 a day, per individual, plus unspecified punitive damages. "What I find Orwellian is that the civil-rights suit violated my clients' First Amendment rights," said the defendants' lawyer, David Lampe. The case, in fact, echoed a then-current case in the City of Berkeley, in which the Justice Department launched an investigation of three homeowners who had spoken out at a public hearing against a proposed homeless shelter to be located in their neighborhood.

The ensuing negative publicity embarrassed HUD. Roberta Achtenberg, then an assistant HUD secretary (and now a San Francisco mayoral candidate), issued a memo in September 1994 with guidelines that attempted to limit federal lawsuits to cases in which people were attempting to block projects with frivolous suits.

At this point, the furor surrounding the Stockdale 5 switched from the arena of property rights and contract rights (i.e. the enforceability of CC&Rs) to one of First Amendment rights. Liberal standard-bearers like Roy Malahowski, a lawyer with Greater Bakersfield Legal Assistance, publicly supported the right of the Stockdale 5 to petition their grievances in court without fear of reprisal. Malahowski made clear that he was not necessarily sympathetic with the original lawsuit brought by the Stockdale 5 against the board-and-care facility. Still, "if there is a fair question that exists, it should be tested by litigation, rather than suing the people who are trying to litigate. I feel very affronted by efforts to restrict our right to sue," he said.

In August, the Justice Department, apparently embarrassed by editorials in the Wall Street Journal and elsewhere, decided to settle the case by dropping the suit, in exchange for an agreement from the Stockdale 5 to drop any further objections to the board-and-care facility, according to Lampe.

Heffernan rejected notions that the Justice suit was a violation of the Stockdale 5's First Amendment rights. "The First Amendment right to petition is not absolute. The lawsuit was seeking an illegal objective, by using the court process to keep handicapped persons out of the neighborhood," Heffernan said. He noted that in August 1994, the judge in Federal District Court in Fresno had denied a motion by the plaintiffs to dismiss the case on First Amendment grounds, among others. He defended Justice's actions as not incompatible with the HUD memo instructing investigators to be mindful of First Amendment rights of protestors, because the HUD guidelines "cite litigation as conduct that, under certain circumstances, we can pursue. In the Bakersfield case, we challenged the filing of a lawsuit, and the HUD guidelines do not preclude that."

The case also attracted the support of the conservative Pacific Legal Foundation, a pillar of the property-rights movement. Staff lawyer Victor Wolski claimed that the Clinton Administration had engaged in a pattern of intimidation against property owners who protested or sued the government on housing issues. In Fort Worth, Texas, in the on-going case of *United States v. Wagner*, a group of homeowners who had filed suit against a group home, and later dropped the suit, were sued by the Justice Department years after the fact. And in Westlake Village, a small city on the L.A.-Ventura County border, HUD is reportedly investigating a group of people who have protested a proposed hospice in a residential neighborhood. He suggested that the federal officials pursued such investigations to discourage high-court challenges to federal housing laws.

"It is really insidious of the government to take this approach, because it is self-interested. If a court case were to come out the wrong way, it would be a big check on government's ability to regulate," Wolski said.

While expressing gratification that the Stockdale 5 were free of the federal suit, PLF's Wolski admitted "disappointment" that a chance to try an important property-rights issue had been lost. Left undetermined is whether federal actions that void CC&Rs by, for example, allowing a private business to be established in a residential neighborhood, is a "takings" case that entitles homeowners to compensation, or whether such actions violate First-Amendment protections against government intrusion on the enforceability of private contracts.

■ Contacts:

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David Lampe, attorney for Stockdale 5, (805) 325-8962.

Victor Wolski, lawyer in the property rights division, Pacific Legal Foundation, (916) 641-8888.

Edward Jagels, Kern County district attorney, (805) 335-2716.

Correction

In the July issue, *CP&DR* accidentally mixed up the numbers of two key bills dealing with housing element reform. Sen. Jim Costa's housing element bill is SB 1073, not SB 901 as identified by *CP&DR*. (SB 901 is Costa's bill on water supply and general plans.) Sen. Tom Campbell's housing element bill is SB 936, not SB 1073 as identified by *CP&DR*.

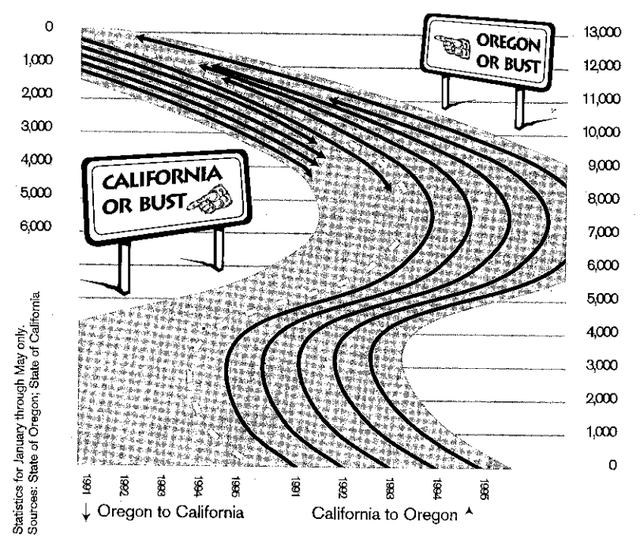
NUMBERS

Stephen Svete

Reversal of Fortunes

A half-decade of lousy economic news has taken a psychic toll on California. Even positive data now falls on deaf ears. Perhaps a neo-realist viewpoint has surfaced in the state. Californians now accept that there are outward bounds to economic growth and quality of life. This new attitude should be no surprise, because even hopeful news about the economy is often countered with a healthy helping of counterpoints. And Californians have emerged as a jaded, tougher breed. The dreamer has become the realist.

But hark, fellow Californians! The Portland Oregonian recently published a story that offers a glimmer of hope for we, the weary. In a July article by Foster Church, the Oregonian reports that the shared domestic migration trend between California to Oregon has reversed. In other words, in recent months, fewer Californians are moving to Oregon, and more Oregonians are moving south. Why? well, believe it or not, its all something about — get this — a growing job market here.



In the first five months of 1995, 10,800 Californians exchanged their licenses for licenses from the Beaver State — a 14% drop from the same period during 1994. And 4,700 Oregonians traded their tags for California ones, a 38% increase from the same period in 1994.

But don't worry, steely realists. There are still plenty of reasons not to become optimistic. For one thing, the net change in drivers still falls on the north side of the Siskiyou County Line. And job growth here still does not compare to job growth there, in relative numbers. Still, indulge us to explore this interesting glimmer of good news.

First, is it real? First Interstate Bank economist Lynn Reaser confirms that the California job market hasn't looked this good in years. "The state has added 250,000 non-farm jobs since July 1994," she says. "And small-business growth accounts for half of that."

And job growth affects migration patterns. Oregon state economist Paul Warner acknowledges a long-standing integral relationship between Oregon and California migration patterns. First, he says, these economic trends normally run a 10- to 12-year cyclical course. The positive cycle has been in effect since 1987, when net out-migration reversed and employment figures surpassed the nation's. It's easy to forget that Oregon had a negative net migration pattern with California until that year.

Oregon's job market has been steadily growing since the mid 1980s. And not surprisingly, Californians moved north, in part, to pursue new jobs. The peak years were the early 1990s. "In those years, there was a dual dynamic that we had not before observed." says Warner. " Not only was the Oregon economy expanding, but the California economy was contracting, so there was a 'push' effect added to the traditional 'pull' effect." Warner explains that much of the strength in the job market comes from high-tech concerns, some from California, that are simply experiencing a middle phase in their product-development cycle that requires them to expand in locations remote from the home office. He cites Intel as a major new Oregon employer. This Silicon Valley native firm has substantial branch operations in not only metropolitan Portland, but in Phoenix and Albuquerque as well.

So what about the reverse in migration? "Oregon" says Warner, "had two major pluses: growing jobs and relatively affordable housing. Now, that gap is closing with respect to California. We have even heard stories of folks coming to Oregon to evaluate job relocations and deciding against it because of the cost of our housing." So there it is. The California "push" factor is evaporating, because of a growing job opportunity situation here, and a closing of the gap in home prices.

We don't expect anyone to believe that our economy is really improving. It's hard to buy that line when housing prices are still plummeting and unemployment remains depressingly high. Even with this new story regarding our economy unleashed from a trend-setting metropolis of the ex-California west, don't expect the new brand of realists in the Golden State to get too excited. We've worked hard to become tough and skeptical, and we're not going to give this attitude up until we feel the change. ❑

Places

Morris Newman

Making Sunset Boulevard Walkable

West Hollywood's Sunset Specific Plan sets out to do the impossible: to remake one of the most automobile-oriented streets in California, the Sunset Strip, into a pedestrian environment, without essentially changing its character or its appeal to tourists. The plan proposes to beautify the street through the use of street trees, planted medians, arcades and a vocabulary of sensitively scaled public spaces. At the same time, the plan seeks to bolster the vitality of entertainment industry and other commercial uses on the boulevard by encouraging development at carefully pinpointed locations.

The Sunset Boulevard plan is notable for its fine-grained approach to the existing corridor, and its protective attitude toward its existing character, including the flamboyant billboards which are arguably the most notable feature of the streetscape. The plan divides the 1.2-mile stretch of Sunset Boulevard within West Hollywood into eight planning areas, each with its own density, landscape and urban design goals. Shown in detail here is the "Eastern Gateway" of Sunset Boulevard, at the border between West Hollywood and the City of Los Angeles, where the plan attempts to tweak the urban design quality in an area notable for hilly topography, curving streets, and the famous Marlboro Man billboard. ❑

1 Views and Topography.
The plan protects 28 "view cones" along the boulevard (the narrow part of the cone represents a person's point of view.) Here, the view cone preserves sight lines up the Hollywood Hills to the Chateau Marmont hotel.

2 Marlboro Man.
The plan is unique in its reverence toward billboards, long considered an enemy of urban design. The plan's intent is to "encourage the creation of semipermanent, long-term, nonstandard billboards, which may become symbols of West Hollywood and the Sunset Strip, such as the **Marlboro Man**." The plan adds that all "creative billboards" shall be approved through a "Creative Billboard Process."

3 New Public Spaces and Arcades.
The plan requires all new projects to set aside 15% of the gross site area as open space, which is to be "expansive and uninterrupted." The city has devised a vocabulary of small courtyards and "outdoor rooms" to guide developers, but does not require developers to follow those forms strictly. The plan also encourages the creation of arcades on the north side of Sunset to shelter pedestrians from sun, while "offering expanded opportunities for design on narrow lots."

4 Increased Density.
To retain the entertainment-industry businesses that have begun an exodus to West Los Angeles and Santa Monica, the plan allows an additional 1.2 million square feet of commercial space to be added to the boulevard. The Eastern Corridor is one of 10 places along Sunset where the plan recommends additional height and density on at least one site to accommodate major tenants. An 0.5 FAR bonus is available for projects that include housing.