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Inside

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Fresno Area Stung By FBI Probe

Clovis Projects Overturned; Fresno Targeted

By Morris Newman

The continuing zoning scandal in the City of Clovis, centering on city council members who allegedly accepted or solicited bribes and other favors from developers, is now spreading to the neighboring City of Fresno and could eventually reach the Fresno County Board of Supervisors. The FBI investigation known as "Operation Rezone" is offering a rare peek into corruption and influence-peddling surrounding land-use decisions, which are frequently suspected in many cities but rarely confirmed.

Since Operation Rezone started in March 1994, one former Clovis city councilman and a number of development-industry professionals have been indicted by a federal grand jury on a host of charges relating to alleged and attempted bribes, as well as federal tax offenses. Although federal officials have declined to comment on specifics of the ongoing investigation, as many as 25 public officials and developers may end up indicted.

"This case demonstrates that, unfortunately, the suspicions of members of this community, that money sometimes trumps good government when elected officials deal with developers, are well founded," said Charles J. Stevens, U.S. Attorney for the Eastern District of California, in a June statement.

The Clovis story is also unusual because it is leading to a rare form of land-use change: a reformist city council has reversed several general plan amendments that were approved earlier by councilmen now accused of corruption.

"We would like to think that this kind of thing happens in Singapore. We don't want to acknowledge that people are paying for influence in our own backyards," said Kent Hamlin, a recently elected Clovis councilman who is leading the effort to reconsider some of the decisions made by the previous council.

"I can't describe how widespread this has become. It's unbelievable," he added.

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Court Ruling Endangers Many Local Taxes

Santa Clara Transportation Tax Struck Down

The California Supreme Court's recent ruling to uphold Proposition 62 has thrown billions of dollars in local taxes around the state into question, including transportation sales taxes, utility users taxes, and other new revenue sources enacted in the last decade.

In *Santa Clara County Local Transportation Authority v. Guardino*, the court struck down the passage of Santa Clara County's transportation sales tax in 1992, saying such special taxes require a two-thirds vote under Proposition 13 and Proposition 62, a statutory clarification of Prop 13 passed in 1986. However, the court also ruled that under Prop 62 any general tax imposed by local governments must be placed on the ballot and approved by at least a simple majority of voters.

According to April Manatt, consultant to the Senate Local Government Committee, some $3 billion in general local taxes have been levied since 1986. However, she said, it is unclear how much of this money — if any — was collected through revenue sources approved by the voters. Manatt and other experts also say it is unclear whether the Prop 62 ruling will apply retroactively to taxes already in place, or only prospectively to future taxes.

Regarding the 17 counties (other than Santa Clara) that have transportation sales-taxes, it appears that they are not affected because the statutes of limitations on such taxes have run out. However, the ruling also means that if those taxes require voter approval to be renewed then a two-thirds "super-majority" would be required.

The Supreme Court's ruling in the *Guardino* case is the latest in a long series of rulings interpreting local government taxation powers under Proposition 13 and related statutory provisions.

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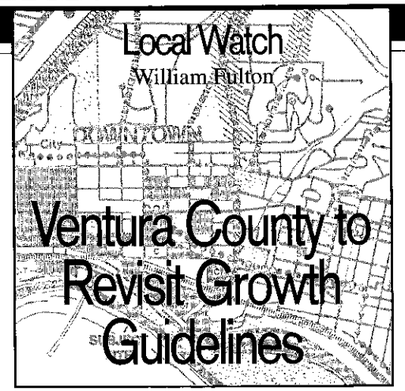

Embroiled in a controversy over a proposed low-density development in a rural area, Ventura County officials are reviewing their longstanding growth policy, which calls for the channeling of urban development into the county's 10 cities.

A task force including two supervisors and 10 city representatives will examine the county's 26-year-old "Guidelines for Orderly Development" to determine whether they need updating. In particular, the task force will look at the question of how "urban" and "rural" development should be defined.

The task force was created in response to a proposal by the Knightsbridge Development Co. to create 189 residential lots near Somis, a rural area located between Camarillo and Moorpark. Last July, the county Board of Supervisors voted to permit Knightsbridge to move forward with its request to change the land-use designation on the property from 40-acre agricultural lots to one-acre rural lots. The board has yet to vote on the actual general plan amendment itself.

As in many other counties, Ventura County's general plan defines one-acre lots as rural, not urban, in character — meaning they could be allowed in unincorporated territory under the county's orderly development guidelines. Under a special county screening process, however, the supervisors review proposals even before applications are formally filed.

Historically, few projects have made it through this "screen." "The Board of Supervisors has routinely denied general plan requests at the screening level," said county planner Bruce Smith.

But in July, the Board of Supervisors voted 3-2 to permit Knightsbridge to apply for the zone change and prepare an environmental impact report. Among those voting to let Knightsbridge through the screen were two new supervisors, Judy Mikels of Simi Valley, in whose district the Knightsbridge property is located, and Frank Schillo of Thousand Oaks. They were joined by veteran Supervisor John Flynn of Oxnard.

The move prompted an angry reaction by the county's mayors, who unanimously voted to oppose the Knightsbridge project. "We will be another Orange County if this kind of change in philosophy continues," Thousand Oaks Mayor Jaime Zukowski told the Ventura County Star.

In response, the Board of Supervisors then agreed to revisit the Guidelines for Orderly Development and, especially, address the definitions of urban and rural development. Supervisor Mikels, a conservative Republican, told the Los Angeles Times that: "Nothing is absolute in land planning and land-use decisions." But she also indicated her willingness to reconsider the one-acre definition of rural.

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Water Bill Signed; Housing Element Bill Vetoed

Gov. Pete Wilson has signed SB 901, the landmark water-planning bill, but vetoed SB 936, a housing element reform bill.

Both bills were passed by the Legislature this year. Wilson had until mid-October to decide whether to sign or veto legislative bills.

SB 901 was probably the most important land-use planning bill to come out of this year's legislative session. Carried by Sen. Jim Costa, D-Fresno, the bill would require cities and counties to consult with water agencies on water supply issues before approving large projects, and would also require local governments to make findings about water supply before adopting statements of overriding considerations on such projects under the California Environmental Quality Act. The bill was signed as Chapter 881, Statutes of 1995.

Wilson's veto of SB 936, a housing element reform bill carried by Senate Housing Chairman Tom Campbell, R-Stanford, came as something of a surprise. Campbell's bill would have given local governments somewhat more flexibility in negotiating their "fair share" housing numbers with COGs and HCD. But in his veto message, Wilson criticized the bill's provisions to turn fair-share disputes over to an administrative law judge and allow some local governments to decrease housing construction needs based on locally adopted policies "such as rent control."

However, Wilson signed AB 1715 (Goldsmith), which establishes a pilot self-certification program for local governments in the San Diego region, to be administered by the San Diego Association of Governments. Chapter 589, Statutes of 1995.

Also, in the housing arena, Wilson vetoed AB 997, which would have required the California Debt Limit Allocation Committee to allocate to local agencies at least two-thirds of the total amount of the state ceiling on private-activity bonds that are reserved for housing.

Other bills of interest signed by Gov. Wilson:

AB 555 (Aguiar), which restores the requirement for local officials to notify landowners before ordering the merger of parcels. Chapter 162, Statutes of 1995.

AB 1287 (Cortese), which creates "environmental subdivisions" so landowners can sell part of their property for offsite mitigation. Chapter 955, Statutes of 1995.

AB 189 (Hauser), which rewrites the procedures for using redevelopment after disasters. Chapter 186, Statutes of 1995.

SB 275 (Costa), which enacts the "Agricultural Land Stewardship Act" for landowners willing to keep their land in agricultural production. Chapter 931, Statutes of 1995.

SB 333 (Campbell), which standardizes the statutes of limitations for most land-use lawsuits at 90 days. Chapter 253, Statutes of 1995.

AB 258 (McPherson), which extends the deadline for the Fort Ord Reuse Authority to approve its land-use plan. Chapter 14, Statutes of 1995.

AB 1379 (Thompson), which requires full pass-through of tax-increment funds to water agencies. Chapter 137, Statutes of 1995.

SB 81 (Marks), which gives base reuse authorities up to 10 years to bring base buildings up to local zoning codes. Chapter 469, Statutes of 1995.

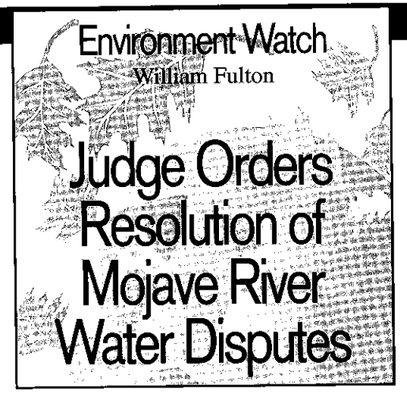
Sprawl Could Be Expensive, Report Finds

Urban development in the Central Valley could reduce agricultural commodity sales by $2 billion per year and cause an urban taxation deficit of $1 billion per year between now and 2040, according to a new report released by the American Farmland Trust.

In the report, AFT predicted the loss of 1 million acres of farmland in the valley over the next 45 years and used computer mapping to predict probable future development patterns. Using current assumptions about service levels, AFT predicted that this new urban development would generate approximately $5.1 billion in revenues and $6.1 billion in service cost — a $1 billion deficit. AFT also identified that another 2.5 million acres would be placed in a "zone of conflict" — land that would not be converted for urban development but might feel development pressure.

The report concluded that if the valley adopted "compact growth" policies, the loss of agricultural land and commodity sales would be cut in half, while urban service costs would drop so much that local governments would realize a small surplus rather than a $1 billion deficit.

■ Contact:
Eric Vink, American Farmland Trust, (916) 753-1073.



Cutting through dozens of competing claims, a trial judge has established a new system of water allocation in the High Desert of San Bernardino County. The decision will force farmers, water suppliers, and such cities as Barstow and Hesperia to accept "equitably apportioned" cuts in water supply.

The ruling is expected to facilitate further urban development in the Victor Valley and other parts of the High Desert. "We are generally supportive," said Frank Williams of the Baldy View chapter of the Building Industry Association. "We're concerned about a reliable supply of water."

The ruling may actually accelerate the already-fast urbanization of the area by encouraging some farmers to go out of business and sell their water rights for urban development.

Not all of the water users in the Mojave River basin have accepted Riverside County Superior Court Judge E. Michael Kaiser's resolution of the water problem. In particular, the City of Adelanto and about a dozen farmers are resisting the decision.

Water rights have been an increasing problem in the High Desert in recent years. The area is served by 6,000 wells in the Mojave River basin and also receives some water from the State Water Project. The area's groundwater is severely overdrafted, but farming continues to thrive while urban development is booming. "Ninety percent of the economy is dependent on this overdraft," said Fred Fudacz, a lawyer who represented the Apple Valley Ranchos Water Co.

According to state estimates, the four Victor Valley cities — Victorville, Hesperia, Apple Valley, and Adelanto — grew 29% in population from 1990 to 1995 and now make up a mini-metropolis of almost 200,000 people. Barstow, located about 25 miles downstream, grew by only 5% and filed three lawsuits over water use by new urban development upstream. Among other cases, Barstow sued the region's leading water purveyor, the Mojave Water Agency, over the provision of water to a large project, Rancho Las Flores, that was eventually annexed to Hesperia.

"Barstow objected to what was going on upstream," said the city's water lawyer, Arthur Kidman.

The adjudication overseen by Judge Kaiser began with another suit Barstow brought against Adelanto, the Mojave Water Agency, and a series of other upstream users. The water agency then filed a broad-ranging cross-complaint that opened the door for a full adjudication.

The Mojave River basin water rights issue was complicated because thousands of well owners, including farmers and municipalities, used a wide variety of legal theories in order to assert their claims. Some lawyers involved in the case believed that the array of legal theories was so complex that years and perhaps decades of litigation would be required to sort them out. "Nobody knows if a riparian right has priority over municipal groundwater," said James Markman, a lawyer who represented Hesperia. "It would take the world's largest computer to figure it out."

Instead of sorting through these claims one at a time, however, Judge Kaiser chose to take the bold step of applying a doctrine known as "equitable apportionment." Refusing to grant legitimacy to any individual water claim, he concluded that all users were at fault because virtually all development in the region has taken place since the overdraft problem first arose in the 1950s. Therefore, he ordered all parties involved to share in water cuts and named the Mojave Water Agency to serve as "water master" of the region.

Under Kaiser's plan, all water users in the basin will be required to participate in a "rampdown," reducing their water usage over a period of several years until the overdraft is eliminated. Water users that use more water than called for in the rampdown plan must pay assessments to the Mojave Water Agency, which will use the money to buy water rights from other water users in the basin or from the State Water Project. (The basin includes five sub-areas, each of which has an identified "safe yield" under Kaiser's ruling. Kaiser created assessments for exceeding the safe yield of each subarea and also for situations in which one subarea uses so much water there is not enough left over for other subareas.)

Lawyers involved in the case predict that Kaiser's ruling will drive some small alfalfa farmers in the area out of business. The alfalfa farmers, who use large amounts of water, may not be able to survive with less water and probably can't afford to pay the assessments required to maintain current levels of water use. Thus, it appears likely that many of them will sell their water rights to the Mojave Water Agency, which will fund the purchases with the overdraft assessments.

Kaiser also imposed a wildlife preservation assessment on the water users as well. Under this arrangement, all water users will pay an assessment to the state Department of Fish & Game if the groundwater table drops so low that it damages riparian vegetation.

■ Contacts:
William Brunick, lawyer for Mojave Water Agency, (909) 889-9301.
Fred Fudacz, lawyer for Apple Valley Ranchos Water Co., (213) 612-7823.
James Markman, lawyer for Hesperia, (714) 990-0901.
Michael Jackson, lawyer for Adelanto, (916) 283-1007.
Arthur Kidman, lawyer for Barstow, (714) 755-3100.

House Committee Passes Species Bill

A dramatic revision of the Endangered Species Act has been approved by the House Resources Committee.

The committee approved HR 2275, the species bill, by a 27-17 vote in early October after nearly 10 hours of contentious debate. Rep. George Miller, D-Martinez, the former chairman of the committee, predicted that President Clinton would veto the bill if it passed Congress in its current form.

HR 2275 is largely the work of Rep. Richard Pombo, R-Tracy, chairman of a species task force, and Resources Committee Chairman Don Young, R-Alaska. The bill includes a wide range of proposed changes to the law, including:

- Eliminating the law's prohibition on modification of an endangered or threatened species' habitat.
- Compensating private property owners affected by the law.
- Encouraging more delegation of power to the states.
- Encouraging conservation planning processes.
- Streamlining consultation processes with the U.S. Fish & Wildlife Service.
- Requiring peer review for biological opinions.
- Narrowing the ability of environmental groups to sue under the law, while broadening the ability of individual property owners who have been harmed to sue.
- Eliminating the so-called "God Committee," which can be convened by the Interior Secretary in controversial cases and can take economic issues into account.
- Requiring private landowner consent prior to declaring private property as habitat for an endangered species. ❑

Castle Air Force Base officially shut down as a military installation in September and faces a long haul toward economic recovery. Local base reuse officials say they are optimistic that new tenants will eventually replace the 6,000 jobs lost with the closing of the Merced County facility. For the time being, however, base officials are gamely trying to sign up tenants for the 2.7 million square feet of buildings on the 3,000-acre base.

An airfield with one of the longest runways in the state is Castle's strongest asset. But Dick Martin, executive director of the Castle Joint Power Authority, sounds uncertain whether the community can support a general aviation airport, which would be the most lucrative reuse of the airfield. "We have a fine airport. That's the good news," he said. The bad news, Martin added, is that "we are next to one of the most sparsely populated areas of California. We know that passenger planements will not be anywhere near enough to justify a commuter airport, so we have to find some other kind of combination of uses, whether that is maintainancing aircraft, or storage, or even building lighter-than-air ships." The largest of Castle's new crop of tenants, in fact, is Worldwide Aeros Corporation, a maker of helium-filled airships. The company currently employs 700 people, but hopes to expand to 1,600.

An aviation feasibility study, funded by the Federal Aviation Administration, offered three different scenarios for Castle's airfield, without naming a preference for any of them: (1) a general aviation airport for small aircraft; (2) a general aviation airport with commuter air service that would grow over time, as the local population expands; and (3) a mix of different aviation-related businesses, such as an aircraft-service center, and a training facility for pilots of wide-bodied aircraft. The Air Force in September assigned a master lease, "in furtherance of conveyance," for the 1,500-acre airfield to the Castle Joint Powers Authority.

For the time being, base reuse authorities at Castle are busying themselves trying to explore every possible alternative for the base. Like a number of other retired bases in California, Castle is vying to become the site of a federal prison for 3,000 inmates, which could provide an additional 700 jobs for the area. The proposal must first make its way through a long cycle of congressional authorization and allocation. In addition, a Utah-based company is negotiating with the state Department of Corrections to build and operate a private low-security prison for 500 inmates.

The Castle JPA is also working hard to lease parts of the base's existing buildings to new tenants. Officials are hoping that the new LAMBRA (Local Agency Military Base Recovery Area) designation, which gives certain bases the same advantages as enterprise zones, will also be a draw for business. Among the notable tenants besides Worldwide Aeros are Challenger Learning Center, a training facility for youth who want to pursue careers in aviation; two aviation charter companies; an electronic security firm, and Cascade Drayage, a food-storage business. In addition, 14 public agencies are expected to take occupancy at Castle under public benefit transfers, including the U.S. Postal Service, Bloss Hospital, the Merced Union High School District and the Castle Air Museum Foundation.

S.F. Presidio Won't Be Privatized

U.S. Representative Nancy Pelosi, D-San Francisco, has won a tough fight against Republican congressmen who wanted to privatize the Presidio. Pelosi's proposal to set up a public trust fund to administer the San Francisco army post was approved by a vote of 317 to 101 on September 19. Although Republicans had complained that the Presidio's $25 million annual budget was too costly and that the Presidio should be sold off to private interests, Pelosi was able to convince lawmakers that the complexity of local zoning made the sales unfeasible.

Pelosi's plan is to lease the 870 buildings in the Presidio, and she accepted a compromise that requires the former base to become financially self-sufficient in 12 years. Senate approval is expected, because Senate Majority Leader Bob Dole endorsed the plan in June. A presidential signature is possible this year.

Separately, the long controversy over control of the Presidio's coveted golf course has been resolved. Although the Sixth Army had originally attempted to retain control over the links, the National Park Service signed an agreement in July with a private operator, Arnold Palmer Golf Management Company of Orlando, Fla., to operate the course as a private club offering memberships to the public. Palmer, which was one of 12 firms bidding for the right to operate the links, agreed to pay the park service $10 million over the next 10 years, and will spend another $3 million to upgrade the 90-year-old course. The company took over management of the course on September 1.

Base Shorts

The federal government and local reuse authorities are beginning to foment plans for the future of Skaggs Island in Sonoma County. The Skaggs Island Reuse Committee envisions reusing the existing buildings on the 4,000-acre base to house administrative buildings for cultural organizations, an ecological research station, a computer-training center and affordable housing. Among the educational institutions which have expressed interest in setting up shop at Skaggs are UC Davis, Napa Valley College, Solano Community College, and the Sonoma County Office of Education. The U.S. Fish and Wildlife Service is eyeing 3,000 acres of diked farmlands for conversion to wetlands and habitat for migratory waterfowl. Eventually, Fish and Wildlife would like to annex the land to the adjoining San Pablo Bay National Wildlife Refuge....

Is Superfund designation a turn-off for business? That's apparently the conclusion of the Alameda Reuse and Redevelopment Authority, which is overseeing the conversion of Alameda Naval Air Station in Alameda County. Both Alameda and the Marc Island Naval Shipyard have been proposed as Superfund clean-up sites by the U.S. Environmental Protection Agency. But officials of the Alameda reuse authority have said they are worried that Superfund designation would create a bad image for the base, which is scheduled to close in April 1997. Alameda officials claim the military will clean up the naval facility without the added muscle of a Superfund listing. But at least one environmental group, Arc Ecology, claims that the bases with Superfund status receive better attention from the Pentagon and are remediated more quickly than otherwise. The military estimates it will cost $200 million to remediate Alameda, and $300 million for Mare Island....

Mather Air Force Base, which formerly vibrated to the roar of military aircraft, may someday resonate with the sound of formula race cars. Rancho Cordova business leaders are currently studying a proposal by Grand Prix Association of Long Beach to build a $100 million, 200-acre speedway at the former air force base. The promoters claim the race track could create up to 1,500 jobs and generate between $75 million and $150 million for the surrounding community. Possibly fearing a negative reaction from local residents, Rancho Cordova leaders are taking a neutral position on the proposal, saying they need community input before making a decision. ❑

CP&DR
LEGAL DIGEST

Outside Evidence Disallowed By Court

Scientific Report Ousted From Ward Valley CEQA Challenge

A California appellate court has disallowed the admission of late, external evidence into a court case challenging the proposed Ward Valley low-level radioactive waste facility.

A group of plaintiffs led by the Fort Mojave Indian Tribe sued the California Department of Health Services, challenging the agency's environmental impact report and license to US Ecology Inc. to construct and operate the facility. Los Angeles Superior Court Judge Robert H. O'Brien rejected the tribe's contentions but later remanded the case to DHS to be reconsidered in light of a scientific report known as the "Wilshire Report."

However, the Second District Court of Appeal ruled that the Wilshire Report, which was not part of the case's administrative record under the California Environmental Quality Act, should not cause a re-examination of the licensing decision. The report and associated materials, wrote the court, "did not qualify as the type of information about environmental impacts or their mitigation that requires reopening a completed EIR under CEQA."

DHS considered the Ward Valley site under two separate regulatory tracks: CEQA and U.S. Ecology's license application under the state's Radiation Control Law. During these proceedings, three U.S. Geological Survey geologists wrote a memorandum on their own initiative raising concerns about the Ward Valley site and about the EIR. The focus of these concerns dealt with the possibility of radioactive waste contaminating the Colorado River, which supplies agricultural and drinking water for Las Vegas, Arizona, and Southern California, and alleged that these concerns had not been adequately dealt with in the EIR. These concerns were included in a three-page document that became known as the "Wilshire memorandum," after the last name of one of the geologists.

US Ecology responded to the Wilshire memorandum as part of the licensing and EIR approval process. Then, in September of 1993, DHS certified the EIR and approved US Ecology's license for Ward Valley. Coincidentally, two weeks before the EIR and licensing approval, the Interior Department announced the proposed designation of critical habitat for the desert tortoise, an action which potentially affected the Ward Valley property.

In October of 1993, the Fort Mojave tribe and other plaintiffs sued DHS, challenging both the CEQA actions and the licensing decision. In subsequent months, two important events occurred. In early 1994, the Interior Department published its final designation of critical habitat for the desert tortoise. And in December 1993, the USGS geologists issued the so-called "Wilshire Report," a 39-page document that expanded on the themes included in the Wilshire memorandum. This report prompted a 22-page response from DHS, which was issued in January 1994. Judge O'Brien admitted both documents into evidence "for the limited purpose of evaluating whether to remand the case."

Subsequently, O'Brien rejected the tribe's claim that the desert tortoise action required a subsequent EIR. But he also ruled that the Wilshire Report constituted "significant new scientific analysis," though not significant new data. Even if the report's material was contained in the case's administrative record, O'Brien said, it had not been placed in proper perspective anywhere except in the Wilshire Report.

O'Brien then remanded the case to DHS for the limited purpose of reconsideration in light of the Wilshire Report and its response. He concluded that the Wilshire Report was likely the kind of material that would require a subsequent EIR, rather than a supplement or addendum to the existing EIR. DHS moved for a new trial, but O'Brien rejected the request. Subsequently all sides appealed.

On appeal, the Second District Court of Appeal, Division Two, reversed O'Brien's decision to remand the case in light of the Wilshire Report. However, the court did not, as DHS and US Geology asked, rely on the California Supreme Court's recent ruling in *Western States Petroleum Association v. Superior Court*, 9 Cal.4th 559 (1995), in which the high court ruled out admissibility of evidence outside the administrative record except in rare exceptions. The appellate court said that the Supreme Court did not specifically overrule a line of Court of Appeal cases permitting late evidence under Code of Civil Procedure 1094.5(e), the provision used by Judge O'Brien.

Instead, the court concluded that O'Brien's decision "differs markedly" from "traditional invocations" of this particular code section. It involved a wide-ranging scientific inquiry, not a disciplinary or enforcement action; and the Wilshire Report "was a restatement and elaboration about possible features of the site which they had previously discussed in the Wilshire memorandum and which, along with that memorandum, DHS has already taken into account." The appellate court also concluded that the Wilshire Report did not rise to the level of material that calls for a subsequent or supplemental EIR.

"Particularly after DHS provided an even more extensive analysis of the report in response to the court's tentative decision, remand to require such constitution be conducted yet again, in a physically 'pre-approval setting,' exceeded the court's proper discretion," the appellate court wrote.

The appellate court also ruled against the Tribe's assertion that the EIR itself was faulty on a variety of grounds, including the argument that it was inadequately descriptive, that US Ecology's safety record was not good enough, and that the desert tortoise impact was considerable. In addition, the court rejected US Ecology's argument that O'Brien should have used to an "independent judgment" standard instead of a "substantial evidence" test. ❑

- The Case:
  Fort Mojave Indian Tribe v. California Department of Health Services, No. B084629, 95 Daily Journal D.A.R. 13573 (October 10, 1995).
- The Lawyers:
  For Fort Mojave Indian Tribe: Roger Lane Carrick, Cadwalader, Wickersham & Taft, (213) 955-4600.
  For California Department of Health Services: Paula Lauren Gibson, Deputy Attorney General, (213) 897-2447.
  For US Ecology: James L. Meeder, Beveridge & Diamond, (415) 397-0100.

CEQA

Substantial Evidence Test Applies Even If Information Was Withheld

The "substantial evidence" test serves as the standard of review in determining whether an environmental impact report should be prepared, even if project opponents argue that the lead agency broke the law by not disclosing conflicting evidence.

That is the ruling in a recent case from the Fourth District Court of Appeal in San Bernardino dealing with a proposed co-composting facility near the Chino dairy area. The court left almost all of the case unpublished except for the portion dealing with the standard of review.

The co-composting plant was proposed by the Chino Basin Municipal Water District in response to water quality problems identified by the Regional Water Quality Control Board. According to the water quality board, the Chino Dairy Preserve's 400,000 cows create nearly 600,000 dry tons of manure per year, half of which remains stockpiled in the Chino basin, seeping into local groundwater. In 1990 the Chino water district proposed mixing the manure with its own sludge, co-composting them, and trucking the sludge to other agricultural areas.

The water district began the process of obtaining land by eminent domain for a site. In 1991 and 1992, the water district prepared and then certified the environmental impact report. But the water district was then sued by resident Roland Barthelemy and a group known as the Southern California Association for Responsible Environmental Development, or SCARED. Among other things, SCARED argued in court that the EIR should have discussed the possibility that the project might eventually use green waste instead of manure; that the EIR failed to include information about a variety of alternatives, including trucking uncomposted manure out of the Chino Basin; and that the EIR failed to include "good faith, reasoned responses" to public comments.

Affirming a lower court ruling, the appellate court ruled in favor of the water district. Most of the substantive complaints about the EIR were rejected by the court in unpublished portions of the opinion. But in a short published portion, the court addressed the question of what the judicial standard of review should be for claims that an environmental impact report omitted relevant information — a claim that, the court said, lay underneath most of SCARED's other arguments.

"Determinations in an EIR must be upheld if they are supported by substantial evidence; the mere presence of conflicting evidence in the administrative record does not invalidate them," the court wrote. "A project opponent cannot obtain a more favorable standard of review by arguing that the EIR failed to disclose the conflicting evidence, and therefore the lead agency has not proceeded in a manner required by law; the project opponent must also show that the failure to disclose the conflicting evidence precluded informed decision-making or informed public participation."

Furthermore, the court said, "even in determining the prejudicial effect of the failure to disclose, a court must resolve any factual issues in favor of the lead agency, if supported by substantial evidence.... The failure to include information in an EIR normally will rise to the level of a failure to proceed in the manner required by law only if the analysis in the EIR is clearly inadequate or unsupported." ❑

- The Case:
  Barthelemy v. Chino Basin Municipal Water District, No. E012228, 95 Daily Journal D.A.R. 13607 (October 10, 1995).
- The Lawyers:
  For Barthelemy: John Quirk, Bright & Brown, (818) 243-2121.
  For Chino Basin Municipal Water District: Thomas L. Woodruff, Rourke, Woodruff & Spradlin, (714) 564-2605.

No EIR Needed For Project Located In Historic District

The City of West Hollywood did not need to prepare an environmental impact report before approving an AIDS housing project in a historic district, the Second District Court of Appeal has ruled.

The city approved the project, which included restoration of some buildings and demolition of others, shortly after creating a "Craftsman District" in the neighborhood. A group of neighbors sued, claiming an EIR was required because the project could affect the nature of the historic district. But L.A. County Superior Court Judge Robert H. O'Brien ruled in favor of the city, and the appellate court affirmed O'Brien's ruling.

The city created the tiny Craftsman District along Hancock and Palm Avenues in West Hollywood, in between Santa Monica and Sunset boulevards, in 1993. The district includes only five properties. At that time, the city specifically agreed to exclude four structures at the rear of one particular property from the Craftsman District, though two structures at the front of the property were included.

Only a few months later, however, the West Hollywood Community Housing Corp. proposed construction of Palm View, a 40-unit low-income housing project for AIDS victims on the property in question. The proposed building project called for restoring the two historic buildings on the front of the property and demolishing the four rear buildings that had been excluded from the Craftsman District. Both the city's Cultural Heritage Advisory Board and the City Council approved the project. The city adopted a mitigated negative declaration for the project in early 1994.

Subsequently, the neighbors sued. O'Brien ruled in favor of the city, then granted a retrial so that the neighbors would be able to participate in an oral argument before the judge. In May of 1995, O'Brien again ruled in favor of the city, saying that there was no "fair argument" that the project could have a substantial adverse change in historic resources.

The neighbors appealed, but the Second District, Division Seven, ruled in favor of the city on all counts. The neighbors, the court wrote, "overlook the evidence in the record which overwhelmingly support the conclusions set forth in the initial study and the city's findings that, although the historic structures will be relocated, they will not be changed adversely."

The appellate court also concluded that the rear structures are not historic resources as defined under the California Environmental Quality Act because they are not listed in or eligible for listing in the California Register of Historic Resources. ❑

- The Case:
  Citizens for Responsible Development in West Hollywood v. City of West Hollywood, No. B093044
- The Lawyers:
  For Citizens for Responsible Development: James B. Hicks, Andrews & Kurth, (213) 896-3100.
  For City of West Hollywood: Terry Kaufmann Macias, Richards Watson & Gershon, (213) 626-8484.
  For West Hollywood Community Housing Corporation (Real Party in Interest): Amy G. Nefuse, Latham & Watkins, (619) 236-1234.

POLICE POWER

Challenge to Regional Agreement Is Ripe for Lawsuit

A landowner challenge to the Pleasanton Ridge regional planning agreement is ripe for adjudication even though the landowners have not sought general plan amendments or development permits under the agreement, an appellate court has ruled. Along the way, the court concluded that the regional planning agreement constitutes "an impermissible divestment by respondents of their power."

The case involves a memorandum of understanding among Hayward, Pleasanton, and Alameda County to revise their general plans in unison regarding the 13,000-acre Ridgelands area. This property has been the subject of a lengthy controversy among local jurisdictions and landowners who want to develop. Part of the property is in the City of Hayward, while part is located inside Pleasanton's sphere of influence. (*CP&DR*, April 1992.) A bill giving state approval to the arrangement passed the Legislature last year but was vetoed by Gov. Pete Wilson.

Several landowners in the area sued the three jurisdictions, claiming the MOU is invalid on its face because it involves an unlawful delegation of land-use power to other agencies. Alameda County Superior Court Judge William Dunbar ruled in favor of the government agencies on a variety of grounds, saying, among other things, that the landowners had not proven they would be affected by the MOU and that the landowners had not filed land-use applications that could be subject to policies adopted under the MOU. Dunbar granted the government agencies' demurrer without leave to amend.

On appeal, the landowners argued that they did not need to file an application for a general plan amendment because a facial challenge is sufficient to demand judicial relief. The appellate court agreed. "Appellants' complaint demonstrates a genuine controversy between the parties concerning the abnegation of respondents' individual governmental and administrative powers," the court wrote. "These allegations sufficiently state a claim for declaratory relief."

Furthermore, the court criticized the MOU as an impermissible contracting away of police power. While lauding the policy goal of "a cooperative effort to protect a valuable regional asset," the court almost reluctantly added: "What the law has designed to be the exclusive power of an individual jurisdiction has become a contingent power, dependent on the concurrences of other jurisdictions," the court wrote. ❑

- The Case:
  Alameda County Land Use Association v. City of Hayward, No. A067490, 95 Daily Journal D.A.R. 13823 (October 16, 1995)
- The Lawyers:
  For Alameda County Land Use Association: Michael R. Nave, Meyer, Nave, Riback, Silver & Wilson, (510) 351-4300.
  For cities: Michael J. O'Toole, Hayward City Attorney, (415) 877-8515, and Michael H. Roush, Pleasanton City Attorney, (510) 484-8003.

SLAPP

'Averment' Not Sufficient To Deflect SLAPP Provisions

The mere "averment" that hostility between two parties is common knowledge is not sufficient in opposing the "special motion to strike" under California's so-called SLAPP law, the First District Court of Appeal.

Using such reasoning, the First District affirmed a trial judge's use of the SLAPP law to dismiss a defamation lawsuit filed by a former member of the East Palo Alto Sanitary District Board of Directors against 10 other individuals. It was the third SLAPP ruling from an appellate court in the last two months.

A. Peter Evans was successfully recalled from his office by a group of citizens who accused him of various wrongdoings including spending taxpayer money on parties, hiring friends as consultants, and so on. He then sued the 10 individuals, claiming that the recall petition was defamatory. In response, the individuals filed a special motion to strike Evans' suit under Code of Civil Procedure §425.16, the so-called SLAPP provision. The SLAPP provision permits a motion to strike if a judge finds that the lawsuit in question was "brought primarily to chill the valid exercise of the constitutional rights of freedom of speech," unless there is a probability that the plaintiff will prevail.

In filing the SLAPP motion, the defendants relied on a declaration by Dennis Scherzer, another sanitation district board member who had apparently worked with the recall committee, though he was not one of the 10 individuals sued. In his declaration, Scherzer claimed that Evans, who is black, had falsely accused him of being a racist and that he had discussed the accusations made in the recall petition with the recall organizers before it was circulated.

In response, Evans told the court that he and Scherzer are political enemies, and that this adversarial relationship "is a matter of common knowledge to the defendants, throughout the community and in the public media that the defendants claim to rely on as a main source of information." However, he failed to persuade San Mateo County Superior Court Judge Walter H. Harrington Jr., who granted the motion to strike and found that Evans had not proven constitutional malice or falsity of the statements, the tests required for libel.

The appellate court upheld Harrington's ruling. While acknowledging that the record contained one incident between Scherzer and Evans (when Evans accused Scherzer of being a racist), the court said, "Evans failed ... to establish that the defendants knew of such hostility....

"Evans's sole assertion on this point in his opposing declaration was his averment, on information and belief, that the 'adversarial relationship' between the two was a matter of common knowledge....The problem with this averment is that information and belief, within the context of a special motion to strike a SLAPP suit, is inadequate to show that 'a probability that the plaintiff will prevail on the claim'."

The court added: "If the adversarial relationship between Evans and Scherzer was, as Evans averred on information and belief, 'common knowledge' in the community and public media, then Evans could have shown this by submitting declarations to that effect by members of the community and evidence of specific news media exposure of that relationship (e.g., newspaper articles). He did not do so."

Evans also argued that the allegations against him were "wild representations" of criminal misconduct, the court said: "[A]las, there is nothing inherently improbable about malfeasance in public office." The court did not address the question of whether the claims against Evans were true or not; but the court did say that the allegations were not "so inherently probable that only a reckless person would have put them into circulation." ❑

- The Case:
  Evans v. Unkow, No. A066860, 95 Daily Journal D.A.R. 13369 (October 6, 1995).
- The Lawyers:
  For A. Peter Evans: William M. Simpich, Oakland.
  For Victor Unkow and other recall petitioners: Tony Tanke, Belmont.

INITIATIVES

Law Against 'Park Barrel' Initiatives Is Struck Down

A state law aimed at the Planning and Conservation League's "park barrel" initiatives violates the First Amendment rights of campaign contributors, the Third District Court of Appeal has ruled.

The case involved SB 424 from 1991, which prohibits the inclusion of specific projects in initiative petitions in exchange for a campaign contribution. The bill was aimed at PCL, which has run several bond initiative campaigns using this method, including Propositions 70 (1988) and 116 and 117 (1990). At the time, the bill's sponsor, Sen.

Quentin Kopp, I-San Francisco, wrote: "It is prohibited by law to trade money for law in the Legislature, but it's perfectly legal — and presumably appropriate — to do so in the initiative process."

Subsequent to the passage of SB 424, PCL prepared a "safe drinking water" initiative in 1994, which would have imposed a monthly surcharge on non-agricultural water users. PCL then obtained contributions from three organizations in exchange for the inclusion of specific projects funded by the surcharge.

But when PCL submitted the initiative to Attorney General Dan Lungren, the organization did not include a statement required under SB 424 that the initiative includes no appropriation in exchange for campaign contributions. Lungren refused to place the measure on the ballot and PCL sued. Sacramento County Superior Court Judge James T. Ford ordered Lungren to place the measure on the ballot and Lungren appealed.

On appeal, PCL contended that SB 424 infringed their First Amendment rights of speech and association by prohibiting the pooling of resources to qualify an initiative measure for the ballot. Such an approach, PCL argued, favors wealthy individual organizations over organizations that must pool resources. In response, Lungren argued that the law does not prohibit anyone from contributing to an initiative measure or to suggest which projects should be funded by such an initiative. Rather, he argued, SB 424 only prohibits a linkage between the two.

Concluding that SB 424 "has more than an incidental impact on First Amendment rights," the Court of Appeal concluded that SB 424's provisions must be examined using the legal standard of "strict scrutiny." Under this standard, a law must not be vague; it must not be over- or under-inclusive; and it must further an overriding state interest, yet still be drawn with narrow specificity in order to protect First Amendment rights.

The court acknowledged that fear of corruption is a "compelling" governmental interest. Yet, the court said, corruption concerns "lack resonance in the context of a ballot measure."

"Whatever else may be said about it, the practice condemned by SB 424 is hardly an invitation to corruption," the court wrote. "Not only does the voting public decide the pertinent political issue, but the voters are made fully aware that particular appropriations are included in the measure. The electorate can decide whether to support a measure containing specific appropriations of particular concern to special interests, just as the proponents can decide whether to risk rejection of the entire measure by the inclusion of a particular appropriation."

In addition, the court found the law "under-inclusive" because it dealt only with acquisition or construction of real property, rather than a broader range of government activities. ❑

- The Case:
  Planning and Conservation League v. Lungren, No. C016761, 95 Daily Journal D.A.R. 12761 (September 26, 1995).
- The Lawyers:
  For PCL: George Waters, Olson, Hagel, Fong, Leidigh, Waters & Fishburn, (916) 442-2952.
  For Attorney General's Office: Floyd D. Shimomura, Assistant Attorney General, and Cyrus J. Rickards, Deputy Attorney General, (916) 323-1995.

LAND TITLE

Land Created by Hydraulic Mining Is 'Natural,' Not Artificial

The California Supreme Court has reaffirmed a longstanding rule that land created in riverbeds as the result of "artificial" activity belongs to the state and not to upstream property owners. However, the court also concluded that this doctrine does not apply to land created in the Sacramento River as a result of hydraulic gold mining more than a century ago — meaning such land does, in fact, belong to private property owners.

The specific case involved 12 acres of dry land located at Chicory Bend in the Sacramento River. The land did not exist at the time of California statehood in 1850, when the state claimed ownership of the riverbed. It was created "gradually and imperceptibly" over a period of decades, possibly as a result of wing dams, levees, dredging, and possibly also a loosening of soil upstream created by hydraulic gold mining between approximately 1850 and 1880.

The State Lands Commission claims ownership of the property under the longstanding doctrine — traceable back to the Roman Empire — that riverbed lands created by "artificial" means belong to the state. But a group of property owners now claim ownership of the property. They concede that lands created by wing dams, levees, and dredging would be artificial lands that belong to the state. But they contend that these lands were created by the long-term sediment flow resulting from the hydraulic gold mining, which they claim should be viewed as natural rather than artificial.

There is little doubt that the hydraulic gold mining had an enormous impact on the rivers around Sacramento at the time. According to one report, the bed of the Sacramento River rose 12 to 15 feet between 1872 and 1882 because of the amount of mud and debris in the river. Thousands of acres of farmland were covered with mining debris. Indeed, levees, wing dams, and dredging were instituted in response to these problems.

In its ruling, the Court of Appeal re-interpreted the longstanding rule about artificially created land, claiming that an 1866 ruling (*Dana v. Jackson Street Wharf Co.*, 31 Cal. 118) had been misapplied without critical analysis for almost 130 years. Concluding that "little in the California landscape or its significant waterways remains in a completely natural state," the Court of Appeal ruled that land created by accretion belongs to private property owners even when created as the result of artificial action. In dissent, Justice Arthur G. Scotland concluded that a distinction should be made between the original debris deposited in the river in the 19th Century, which he said was artificial, and "the gradual and imperceptible accumulation of mining debris" deposited at Chicory Bend over the last century, which he characterized as natural.

On appeal, the California Supreme Court adopted Justice Scotland's reasoning. First, after a lengthy review of California case law, the court reaffirmed the artificial-natural distinction. "The state has no control over nature; allowing private parties to gain by natural accretion does no harm to the public trust doctrine," wrote Justice Armand Arabian for a unanimous court. (Two justices wrote concurring opinions.) "But to allow accretion caused by artificial means to deprive the state of trust land would effectively alienate what may not be alienated."

Arabian then moved on to the specific instance of Chicory Bend. Theoretically, he said, the debris that collected at Chicory Bend "might be viewed as artificial." But, he added, "the connection between mining and the accretion at Chicory Bend is too attenuated to render the accretion artificial under California's rule."

"Accretion," Arabian wrote in the court's ruling, "is not artificial merely because human activities far away contributed to it. The dividing line between what is and is not in the immediate vicinity will have to be decided on a case-by-case basis, keeping in mind that the artificial activity must have a direct cause of the accretion before it can be deemed artificial." ❑

- The Case:
  State of California v. Superior Court, No. S037729, 95 Daily Journal 11839 (September 5, 1995).
- The Lawyers:
  For State Lands Commission: Richard S. Frank, Supervising Assistant Attorney General, (916) 445-8178.
  For landowners: Edgar B. Washburn, Washburn, Briscoe & McCarthy, (415) 421-3200, and Stuart Somach, McDonough, Holland & Allen, (916) 446-7979.

Fresno Area Stung By FBI Probe

Continued from page 1

Among those indicted to date by a grand jury in Sacramento:

• Jeffrey T. Roberts, a Friant-based lobbyist, pleaded guilty in June to charges of aiding and abetting then-Clovis City Councilman Leif C. Sorensen in an attempt to extort $10,000 from real estate investor William C. Tatham. The latter paid the councilman $2,500, in return for Sorensen's favorable vote on Tatham's development project. Tatham, the "whistle blower" in Operation Rezone, helped implicate Sorensen in the alleged shakedown.

• Former Councilman Leif Sorensen was charged in August with a "pattern of racketeering activity." He was also charged in three separate counts for extortion under color of official right, and two counts with attempted extortion, as well as charges relating to money laundering and witness tampering. Sorensen has pleaded innocent to the charges, but resigned the council on September 1. He was replaced by former Clovis Mayor Tom Stearns, whom Sorenson had defeated for office three years ago.

• Developer Patrick R. Fortune was charged at the same time for witness tampering, tax fraud and "defrauding the citizens of Clovis of their right to honest service of elected officials." Facing up to 18 years in prison and a $750,000 fine, Fortune pleaded guilty and agreed to cooperation with the investigation. Since that time, Fortune claims he arranged a $27,000 loan for then-Clovis Mayor Dave Lawson shortly before a 1992 vote on one of Fortune's development projects. Lawson filed for personal bankruptcy in 1994, saying he still owed $24,000 on the note, and resigned from council shortly after.

Also indicted in August were development consultant Kenneth Crabtree, real estate agent Jack L. Williams and his son David, and restaurateur David R. Milutinovich, on various charges relating to aiding and abetting attempted extortion, obstruction of justice, conspiracy to commit the same, money laundering, and perjury before a grand jury. In addition, developer John C. Thomason agreed to cooperate in exchange for immunity from prosecution.

Former Mayor Lawson and Councilman Glynn Bryant, who joined Sorensen in many of the controversial land-use decisions, are both targets of the federal investigation but have not been charged with any wrongdoing. Federal officials are mulling a 1992 loan of $5,000 that Bryant originally said was from his brother. In March 1994, after the start of Operation Rezone, Bryant filed amended campaign-finance statements saying that the loans were from developer Fortune. Critics of Bryant claim he has a conflict of interest, because he participated in council votes affecting Fortune's projects.

According to their critics, the era of questionable land-use decisions started in 1992, when Sorensen and Bryant were elected and Lawson became mayor, forming a solidly pro-development majority in the council. The campaigns of all three men were heavily supported by the development industry. Developer Fortune has told federal investigators that Vickie Miller, manager of Lawson's mayoral campaign, solicited a $20,000 "loan" from the developer to help finance Lawson's mayoral campaign in 1992. Miller has denied soliciting the loan.

Last summer, the new Clovis City Council asked City Planner Dwight Kroll for a list of all projects approved in the previous three years, while noting that "very rarely does the council go back and revisit plan amendments." On September 5, the Clovis council voted 4-0 to reverse the general plan amendments on two properties controlled by developer Fortune: a 60-unit apartment building near the Williamsburg Manor subdivision, which had previously been zoned for single-family homes, and a property zoned for commercial use, where Fortune had planned a McDonald's outlet, which was returned to residential use. (Councilman Bryant, who had voted for the earlier changes, joined the majority in reversing the general plan amendments.)

Councilman Hamlin emphasized that the general plan amendments were being rescinded because the prior changes were "lousy land use decisions," and not because they had been tainted by scandal. Notwithstanding, Hamlin said he would have liked to have reversed many other plan amendments, including a 24-acre residential subdivision located within a future industrial area, but could not because the projects had either proceeded to the tentative-vesting-map stage or were under construction.

Recently, Operation Rezone has expanded to Fresno. Investigators are looking into a $70,000 loan made in September 1993 to City Councilman Robert Lung, an outspoken champion of development, which was arranged by developer Thomason through a business associate. The loans were second mortgages on a commercial building and two rental houses, which have since gone into foreclosure. Lung maintains he was unaware of Thomason's role in obtaining the loans. Subsequently, Lung voted in favor of two projects of Thomason.

Investigators are also looking into the relationship between developers Farid Assemi and Rodney DeLuca and two former Fresno councilmen, Robert C. Smith and Thomas MacMichael.

Smith is being investigated for his alleged role in an alleged attempt by developer DeLuca to extort a favorable vote on a project from Councilman Michael Erin Woody, who was then negotiating with DeLuca to buy a home lot. In September 1994, Woody was part of the majority vote that changed the land-use designation of a DeLuca-owned property from multi-family to single-family, to prevent the construction of apartments for low-income farm workers. DeLuca also abruptly terminated negotiations with Woody and telephoned the councilman's parents, reportedly saying: "Your son will have a chance to redeem himself next week," presumably during the council vote on a $312,000 subsidy for two other DeLuca projects. Woody claims that Smith pressured him to vote for the subsidy, although Smith has denied doing so. The council approved the subsidy, although decided in September to reconsider the subsidy to DeLuca.

MacMichael, who left the Fresno council in May 1993, is being investigated for possible conflict of interest because he voted on projects of the two developers while negotiating with DeLuca to build two homes in a subdivision owned by Assemi. MacMichael told the Fresno Bee there was no conflict because he bought the home lots for fair market value, and not in a favorable deal.

Nick Yovino, Fresno planning manager, said it was too early to tell whether Fresno would experience reversals of land-use decisions like those in Clovis. Regardless of land-use decisions, further indictments are expected in both Fresno and Clovis. ❑

- Contacts:
  Charles Stevens, U.S. Attorney for the Eastern District of California, (916) 554-2700.
  Nick Yovino, planning manager, City of Fresno, (209) 498-1560.
  Kent Hamlin, city councilman, City of Clovis, (209) 297-1703.
  Dwight Kroll, city planner, City of Clovis, (209) 297-2300.

Court Ruling Endangers Many Local Taxes

Continued from page 1

In 1992, Santa Clara County voters approved a half-cent sales tax for transportation purposes by 54.1% of the vote. The tax was immediately challenged as a violation of Proposition 13, which requires a two-thirds vote for approval of new taxes being used to fund activities traditionally funded with property taxes. In a split decision in 1993, the Court of Appeal struck the tax down. (*CP&DR*, November 1993). In late September, the California Supreme Court affirmed the lower court's ruling by a 5-2 vote.

The Supreme Court's 5-2 ruling specifically upheld the constitutionality of Proposition 62, the 1986 statutory initiative requiring that all new local taxes be placed on the ballot for a vote. Special taxes as defined under Proposition 13 require a two-thirds vote, while general taxes require simple majority approval.

Before the Supreme Court, the Santa Clara County Local Transportation Authority challenged the constitutionality of Prop 62 on two grounds, both of which were related to the idea that a vote on new taxes is a referendum. First, the agency argued that Prop 62 violates the state constitutional prohibition against subjecting tax statutes to a referendum. And second, the agency argued that the two-thirds tax requirement for special taxes — the provision that applied to the Santa Clara County tax — violates the constitutional declaration that a referendum needs only a simple majority to pass.

But the Supreme Court did not buy the referendum argument. "Despite the superficial similarities between Proposition 62 and the constitutional referendum," Justice Stanley Mosk wrote for the majority, "a close reading of their terms reveals their essential differences."

Along the way, the Supreme Court invalidated a Court of Appeal ruling, *City of Woodlake v. Logan*, 230 Cal.App.3d 1058, which found parts of Proposition 62 unconstitutional.

The ruling was a big blow to Santa Clara County. With a previous 10-year transportation sales tax due to expire, a manufacturers' association there had promoted passage of a new sales tax measure, and specifically tailored it to fall within the confines of *Rider v. San Diego County*, 1 Cal.App.4th 1 (1991), which also struck down a simple-majority local sales tax passage.

According to former county Supervisor Rod Diridon, one of the leading transit advocates in Santa Clara County, the measure was expected to raise $3.4 billion over a 20-year period, with 92% of the funds to be applied to transit and light-rail projects. Among other things, the ruling means there is no local funding for major Santa Clara County highway projects, including improving the interchanges near I-880 and Highway 101, and widening Highway 101 south of San Jose, where it is still only four lanes. In addition, any expansion of the fledgling light-rail system is also unfunded now.

He said Santa Clara County officials are considering how to scale down their transportation program and/or seek to craft a new measure that would be more likely to win a two-thirds vote. But with the court ruling in place, he claimed: "There's no course of action that's viable."

ruling in place, he claimed: "There's no course of action that's viable."

Statewide, however, local government advocates are concerned about the impact of the vote requirement on the array of local taxes that have come into wide use since Proposition 13, especially utility users taxes, business license taxes, bed taxes, and even excise taxes on new development.

Apparently the only question answered definitively by the Prop. 62 ruling is that these provisions apply only to general-law cities, not to charter cities. Two 1993 Court of Appeal cases upheld that position and the Supreme Court did not challenge them.

More difficult to answer, however, are questions surrounding the vulnerability of existing taxes that may violate the Supreme Court's ruling. Some local taxes may not have been placed on the ballot, as required by Proposition 62, but the statute of limitations against them may have run out.

The power for counties to impose sales taxes for transportation comes from a variety of state laws which contain their own statutes of limitations. Furthermore, a 1992 bill carried by Senate Transportation Chair Quentin Kopp, SB 1845, calls for the *Rider* ruling to be applied only prospectively, not retroactively. Regarding general taxes, Manatt said they appear to be governed by general state statutes that call for a three- to four-year statute of limitations.

However, the general statutes of limitations usually apply from the date at which the tax was last paid. Thus, there is a "rolling" statute of limitations that is renewed every year, when taxes are paid anew. Manatt said this provision could call a large number of local taxes into question even if they were originally passed in the late 1980s.

Senate Local Government Chair William Craven, R-Oceanside, has scheduled a committee hearing on Proposition 62 and the fallout from the *Guardino* case for January 24 in Sacramento.

The Supreme Court's ruling was challenged in dissent by Chief Justice Malcolm Lucas, who is retiring, and Justice Patricia Werdegar. In an uncharacteristic dissent, the conservative Lucas warned that the ruling "has seriously undermined the ability of local government to finance sorely needed projects and improvements through local tax measures. Finding portions of Prop 62 unconstitutional, he quoted the dissent in the Court of Appeal's ruling at length. In a separate dissent, Justice Werdegar concluded that "Proposition 62 has the same effect as a referendum, in that every new tax within its terms must be approved by the voters before taking effect."

The full text of *Santa Clara County Local Transportation Authority v. Guardino*, No. S036269, 95 Daily Journal D.A.R. 13017, appeared in the *Los Angeles Daily Journal Daily Appellate Report* on October 2, 1995. ❑

■ Contacts:

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NUMBERS

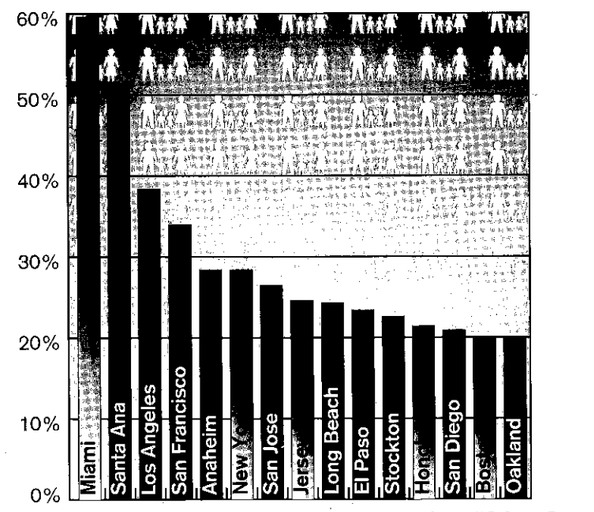
Stephen Svete

Dealing With The 'Us v. Them' Syndrome

Since the days of John Smith and Pocahontas, immigrants have been a mixed bag for those already living in America. Now they are once again a point of great political consternation. Statue-of-Liberty nostalgia for an idealized "nation of immigrants" no longer seems to have a place in the Prop 187-era.

In California, the policy debate — and the electorate's rage — focuses on the illegals. But even a complete end to illegal immigration will not halt the fundamental changes to the emerging demography of our cities and ag-belt towns. That's because 75% of our foreign-born residents are here legally. And all by themselves, these legal immigrants are influencing our state profoundly.

Even though we have the nation's largest population, a higher percentage of us are foreign-born (20%) than any other state. The 1990 census showed that 6.4 million Californians are born outside of US borders — and that represents 32.6% of all foreign-born American residents. Of all of America's counties, Los Angeles is America's most popular home for foreign-born, with 2.9 million residents originating abroad. That total is over three-times the number of runner-up Dade County, Florida. And nine of the 15 most-foreign cities are in California: Of those, Santa Ana is 51% foreign-born — placing the Orange County seat second in rank nationally in this category. Only Miami ranked higher, with 58%.



The impact of immigration on our planning and development system is enormous. "You can take every rule-of-thumb we know and you can throw it out the window," says Dowell Myers, Assistant Professor of Urban and Regional Planning at USC, and an author of a forthcoming paper on planning for immigrants. "Many of us are obsessed with differences among the racial groups. But blacks and whites appear very similar when we compare ourselves to foreign-born Asians and Latinos." Part of the strong impact is due to the lack of any real acculturation program offered by federal or state officials. But such a service assumes a broad cultural consensus about what is essentially American, a concept that sounds increasingly...well, foreign.

So instead, we opt for a do-it-yourself acculturation program. And that approach, from a sheer mathematical perspective, will lead to big cultural shifts over the long run. Everything from housing (overcrowding standards and housing-type preferences), transportation (transit and pedestrian system use) and urban design (architectural preferences and signage control) is a new ball game in the internationally-influenced Golden State. Is it fair to ban street vendors and require one-person-per room to avoid overcrowding penalties when a good proportion of us have always consumed street food and lived in the same house as our extended family?

Let's at least admit that immigrants actually solve many of California's planning problems, though they never get credit for it. For example, Latin Americans are repopulating — and even purchasing houses in — Los Angeles's rust belt corridor between downtown and Long Beach. Perhaps immigration's biggest long-term effect on the nation (and our own nation-state) is on the future population. Not only does annual immigration typically top 1.2 million annually to the U.S., but fertility of immigrants is higher than the domestic average. The figures have resulted in three revisions (since 1989) of the US Census department's Year 2050 projected estimate of population — from 300 million, to 383 million, to 392 million. The Center for the Immigration Studies illustrates how dramatically that estimate could change if immigration were held to zero: a 2050 population of 310 million — still up 45 million from today's 265 million, but far less than we'd otherwise have.

The no-immigration scenario is obviously unrealistic, and brings to mind a number of California's local growth-control measures. But like those local-level attempts to control movement, it points out some compelling reasons to think about population control in general. And to ponder what the future California will be like when it consists mostly of Latin American agricultural towns and Pacific Rim metropoli and aging suburban rings populated with third-generation Europeans. ❑

Places

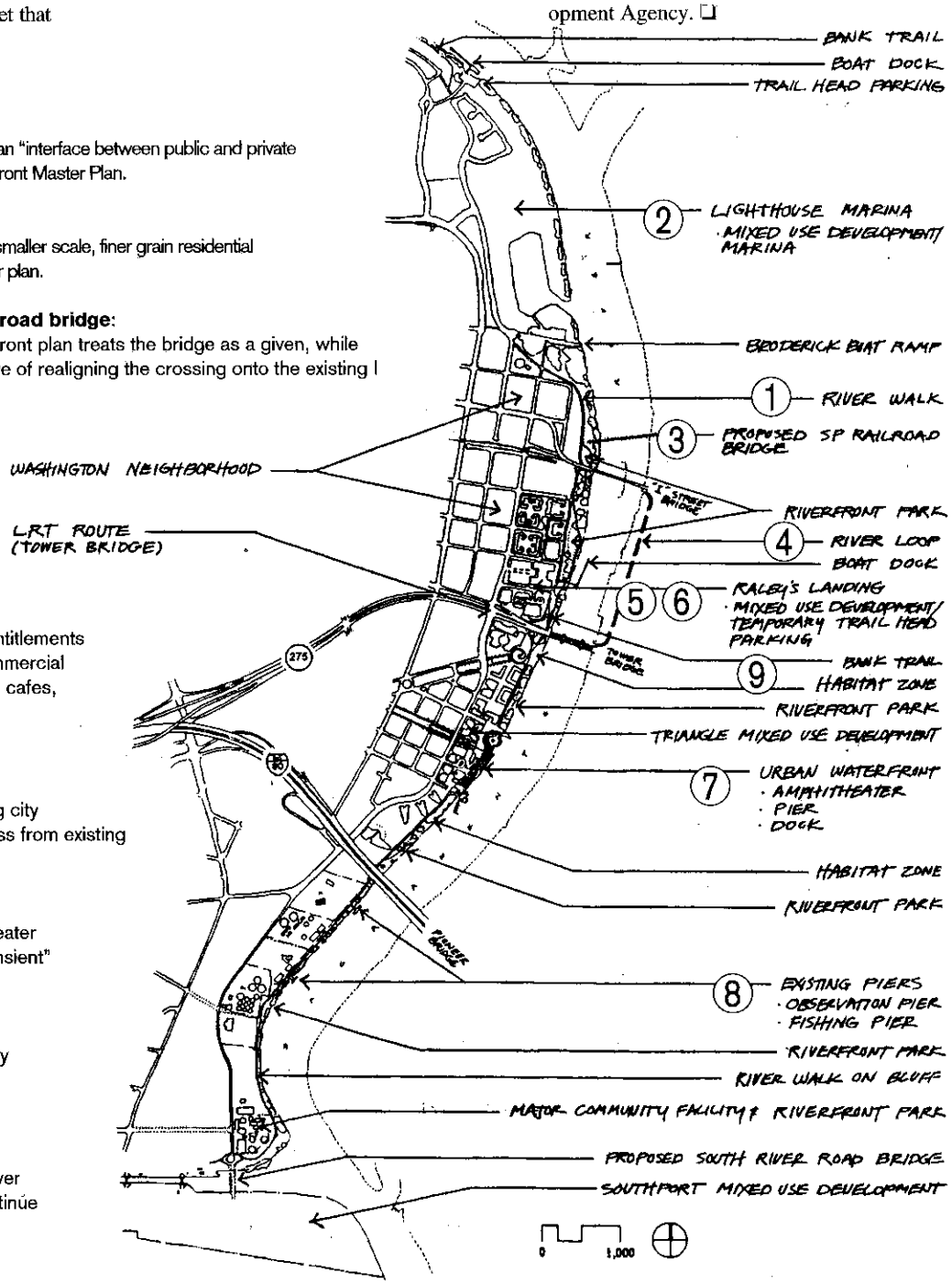
Morris Newman

West Sacramento's Riverfront

The west bank of the Sacramento River is arguably the most attractive natural resource in the City of West Sacramento. The densely forested riverbank has varied topography, changing from levees to bluffs along a meandering course. Much of the riparian habitat remains intact. And the site of the proposed West Sacramento Riverfront Master Plan lies directly across the river from downtown Sacramento, and within walking distance of the Capitol Mall and Old Sacramento state park. In its current state, however, the riverfront is a neglected margin that attracts vagrants and frightens away most other people.

As proposed, the plan envisions a River Walk, varying in width from 12 to 25 feet that stretches nearly five miles along the riverbank, passing by a marina, a low-density neighborhood, several proposed mixed-use developments, habitat zones, and several new parks. The plan's strengths are in identifying the many points of interest along the river, and in offering a convincing strategy to activate the riverfront. (One delightful idea calls for water taxis along the river.) The plan's chief weakness is the lack of urban-design guidelines that would require developers to provide high quality public spaces which would open onto the River Walk. (The plan does endorse the concept in principle.)

The plan was prepared by Sasaki Associates Inc. for the West Sacramento Redevelopment Agency. ❑



1 River Walk:
This pedestrian and bike bath provides an "interface between public and private uses," according the West Sacramento Riverfront Master Plan.

2 Low-density mixed-use:
This proposal is intended to reflect the "smaller scale, finer grain residential character of the area," according to the master plan.

3 Proposed Southern Pacific Railroad bridge:
The City of Sacramento's own riverfront plan treats the bridge as a given, while West Sacramento proposes the alternative of realigning the crossing onto the existing I Street bridge.

4 River Loop:
Would strengthen the pedestrian and bike connection to Sacramento, via the I Street or the Tower Street bridges

5 Mixed-use commercial projects:
Several of these projects already have entitlements to build. The plan anticipates that the commercial projects will "animate the River Walk with cafes, restaurants and stores."

6 Pedestrian-oriented streets/pathways:
The River Walk connects with the existing city grid at a number of points, allowing access from existing neighborhoods.

7 Urban Waterfront:
This park would feature an amphitheater observation pier, terraced steps and "transient" boat docks.

8 Water taxi:
These vehicles could serve as a "key connection" among different commercial developments on both sides of the river.

9 Transit:
A proposed light rail line would deliver people to the water front, and would continue on to Sacramento via the Tower Street