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New Reports Continue Debate Over Sprawl

BIA Responds To Bank Reports

By
Morris Newman

Three newly published reports seem likely to push hot buttons in the mounting debate on urban sprawl vs. sustainable development.

A report by the President's Commission on Sustainable Development appears to endorse the New Urbanist philosophy of contained development. On the opposing side of the issue, the Building Industry Association of Northern California issued "The Case for Suburban Development," a refutation of last year's "Beyond Sprawl" report. A third paper, from UC Berkeley professor Elizabeth Deakin, reports surprisingly brief commute times in major U.S. cities — a theme that is likely to be seized upon by pro-development forces as "proof" that the impact of traffic congestion on commuters, as well as the need for mass transit, has been overstated.

Although land-use professionals have debated the merits of laissez-faire development versus controlled growth for years, the debate flared into a wider public arena last year with the publication of "Beyond Sprawl." Issued jointly by Bank of America, Greenbelt Alliance, the California Resources Agency, and the Low-Income Housing Fund, the report essentially argued that the postwar pattern of suburban development would ultimately be harmful to the state's economy, would hurt the environment, worsen congestion, and erode the state's supply of agricultural land. The study endorsed the concept of transit-oriented development, but stopped short of recommending urban growth limits.

Alarmed by the publicity generated by "Beyond Sprawl", the BIA commissioned two academics with a long paper trail of pro-development publications — *Continued on page 8*

Election Brings Modest Gains for Slow-Growthers

Number of Local Ballot Measures On the Rise

By
William Fulton

Slow-growth forces around the state won about 56% of local land-use ballot measures in the March primary election — replicating the historical success rate for biennial primary elections in California.

The overall number of ballot measures was up significantly. Sixteen different land-use issues appeared on local ballots, the highest primary-ballot figure since June of 1990, when 19 measures appeared. (Some issues involved two ballot measures.) Until this election, the number of land-use issues in both primary and general-election ballots had been dropping steadily since 1988.

Statewide, the state school bond issue easily passed, replenishing the state school bond program with $3 billion in new funds. This result is sure to take pressure off of developers, who would have been asked by local school districts around the state to make up the difference if the proposal had failed. The last school bond proposal, placed on the ballot in June of 1994, was the first such proposal ever to fail.

And some local election results also grew out of local planning issues. In the San Bernardino County city of Adelanto, for example, three sitting members of the city council were ousted through the recall process. Adelanto has had financial difficulties because of litigation surrounding control of George Air Force Base and water rights in the Mojave River Basin. (*CP&DR*,November 199.5.)

The increase in ballot measures doesn't seem to portend a resurgence of the ballot in land-use policy. As was the case in last November's election, most ballot measures were confined to a few jurisdictions which historically have had a lot of ballot *Continued on page 10*

After a one-year experiment with an alternative, the Oxnard City Council has decided to reinstate the five-member city planning commission.

Last year, Oxnard abolished the planning commission, becoming the largest city in the state to operate without one. In its place, the city created a Land Use Advisory Board which included four public members and Community Development Director Richard Maggio. In addition, Maggio was given greater authority as a hearing officer to decide some cases previously reviewed by the planning commission.

However, the switch stimulated a backlash in the city, led by a former mayor who claimed the new setup would truncate public review of development projects. An attempt to place the issue on the ballot did not obtain enough signatures.

Under the new arrangement, Maggio will retain some hearing officer responsibilities, dealing with such issues as alcoholic beverage permits and parcel maps.

Oxnard was by far the largest city in the state without a planning commission. About 30 cities have no planning commission, but most of them have a population of 10,000 or fewer. A few cities in the 30,000-40,000 population range have no planning commission. Oxnard's population is approximately 157,000.

Modesto Sphere Expansion Shot Down

Modesto's attempt to make a claim along the Highway 99 corridor north and west of the city has been shot down by the Stanislaus County Local Agency Formation Commission. But Modesto — the county's predominant city — expects to return with a scaled-down proposal in the future.

Modesto's proposal to expand its sphere of influence by more than 12 square miles represented the city's first step toward implementing the new general plan adopted by the city last year. Focusing on economic development issues, the Modesto general plan targeted the Highway 99 corridor as the probable location of a new industrial park and other non-residential development.

> *"Most of Modesto's sphere of influence is immediately north of the city — not along the Highway 99 corridor, where the path of growth is expected to go."*

However, the proposed sphere expansion would have intruded into prime agricultural lands and also would have swallowed the unincorporated community of Salida. Most of the land has Williamson Act farmland preservation contracts. The Stanislaus County LAFCO rejected the sphere expansion by a 3-2 vote. Voting against the city were both county supervisors who sit on the LAFCO plus Tim Durbin, the mayor of Patterson.

With a population of 181,000, Modesto currently covers about 33 square miles. The current sphere of influence, which has been in place since 1984, includes about another 18 square miles. Most of this sphere, however, is immediately north of the city — not along the Highway 99 corridor, where the path of grow is expected to go.

City Manager Ed Tewes acknowledged that some political interests in the county wanted Modesto to try to grow to the northeast, away from prime agricultural lands. But, he said, "It was not appropriate for us to grow in the northeast," primarily because the economic development potential was not as great.

Tewes and Community Development Director Phil Testa said the city may return to the LAFCO at some point in the future with a scaled-down proposal for a sphere expansion that is concentrated on areas the city has targeted for business and industrial park development.

Sub-Regional Plans Completed in Bay Area

Two sub-regional planning strategies — one in the Tri-Valley area of the East Bay and the other in Sonoma County have been completed after several years of work.

Both documents encourage local governments in their areas to adopt consistent policies containing urban growth and, in some cases, focusing new development around existing cities and communities. Both were undertaken with funding from the Association of Bay Area Governments. According to ABAG Planning Director Gary Binger, they were undertaken as a means of keeping the idea of regional planning alive after the BayVision 20/20 effort died in 1994.

Prior to encouraging the sub-regional efforts, the ABAG Board of Directors adopted seven regional growth goals that sub-regions were required to follow in order to qualify for funds.

The seven goals were:

- Compact, city-centered development.
- Growth directed toward existing infrastructure.
- A move away from long-distance, single-occupancy auto commuting.
- Firm urban growth boundaries.
- Increased housing supply.
- Long-term protection of agricultural land and open space.
- An emphasis on economic development.

The Tri-Valley area straddles the Alameda-Contra Costa County line and includes Danville, Dublin, Livermore, Pleasanton, and San Ramon. The area has been a hotbed of dispute and litigation over inter-jurisdictional land-use issues, partly because of the controversial Dougherty Valley project approved by Contra Costa County. Most of the planning strategy's goals require voluntary cooperation by the local governments and greater inter-governmental coordination.

The Tri-Valley communities specifically rejected creation of a joint-powers authority to implement sub-regional planning goals. The Tri-Valley Council will continue to serve as an informal networking organization.

The Sonoma County sub-regional group called on each jurisdiction in the county to create its own Urban Limit Line and review the county's eight existing "community separators" (greenbelts) to determine if they should be changed. ❑

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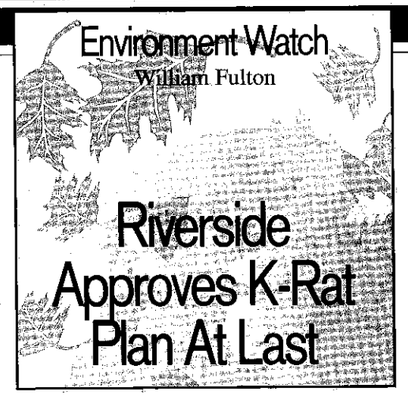

Riverside County's long-term conservation plan to protect the Stephens' kangaroo rat has finally been approved by local officials — but not before both the state and the federal government made financial concessions to lighten the load on the county and its developers.

Still in question, however, is the future of the county's $1,950-per-acre mitigation fee, which has been the cornerstone of the county's interim plan since 1990. The program has collected $30 million in fees and has assisted in setting aside 40,000 acres of habitat since that time. "It's unlikely that under any circumstances the fee will stay at $1,950," said Brian Loew, executive director of the Riverside County Habitat Conservation Agency.

The plan was approved by the RCHCA on March 21. Plan approval had been up in the air in part because the board of the RCHCA, a joint powers authority between the county and seven cities, had undergone an almost complete turnover since last fall.

A crisis started brewing in January, when four of the eight members of RCHCA endorsed a plan to kill the $1,950 fee immediately and disband RCHCA altogether if the federal government did not move quickly to approve the plan. The proposal was floated by Moreno Valley City Councilwoman Bonnie Flickinger and Hemet City Councilwoman Robin Lowe.

In order to gain passage, both state and federal wildlife officials made last-minute concessions. Deputy Interior Secretary John Garamendi, the former California insurance commissioner, committed $3.1 million in federal funds in February in order to complete acquisition of the K-rat preserve. In March, state Resources Undersecretary Michael Mantell committed $2.1 million in state appropriations to manage habitat lands.

Both these financial commitments had previously been the responsibility of the RCHCA, which would have had to pay for them out of additional development fees. RCHCA still has more than $10 million in development fee money available, and has committed to a total of $11.7 million in additional land acquisition.

Final approval from the U.S. Fish & Wildlife Service is scheduled for early May. Following that approval, RCHCA and the state and federal agencies will begin negotiating a broader plan to preserve multiple species, rather than just the kangaroo rat.

Riverside County has been a somewhat reluctant participant in habitat conservation planning since the K-rat was listed as endangered by the U.S. Fish & Wildlife Service in 1988. The listing forced Riverside County and its cities to set aside tens of thousands of acres as a study area, jeopardizing many development projects the county had already approved. The $1,950-per-acre fee was imposed as part of an interim plan in 1990. Since then, acquisitions by the RCHCA and donations from other landowners — principally the Metropolitan Water District of Southern California — has created a permanent reserve of approximately 40,000 acres.

Negotiations between RCHCA and state and federal officials have been tense, however. In particular, Riverside County politicians have been reluctant to participate in broader multi-species conservation planning efforts. They refused, for example, to formally enroll in the state's Natural Communities Conservation Planning program, a multi-species planning effort that grew out of the threatened listing of the California gnatcatcher as endangered. ❑

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Fish & Game Again Collecting Fee

The Department of Fish & Game's on-again, off-again fee for reviewing documents under the California Environmental Quality Act is on again.

Fish & Game reinstated the filing fee for local development projects as of February 22. Projects approved prior to that date won't be subject to fees.

The reinstatement came after Sacramento Superior Court Judge Jeffrey Gunther ordered Fish & Game to start collecting the fee. Gunther had previously ruled the fee unconstitutional and, Fish & Game has taken an official position against the fee, even though the agency benefits financially from it.

Last summer, Fish & Game agreed to stop collecting the fee as part of a legal settlement with several plaintiffs who challenged the fee as an illegal tax. (*CP&DR Environmental Watch*, July 1995.) The legal settlement came after Gunther had initially ruled against the fee. But the settlement was subsequently challenged by the California Association of Professional Scientists (CAPS), the union that represents most of the biologists who work for Fish & Game.

CAPS argued that a state department cannot stop enforcing a state law unless ordered to do so by an appellate court. Gunther agreed and ordered the state to begin collecting the fee again.

The Fish & Game fees were instituted by a bill that passed the legislature in 1990. Local development applicants subject to the California Environmental Quality Act must pay $850 for Fish & Game to review environmental impact reports and $1,250 for the department to review negative declarations.

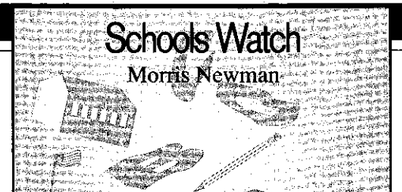
As Fish & Game's revenue from hunting and fishing licenses has declined, the fees have provided a new source of revenue, bringing the agency approximately $3 million per year, or about 2% of its total budget. The fees have always been controversial because no other state agency has statutory authority to collect such fees and because local governments were required to collect the fees for Fish & Game.

The fee was originally challenged in 1991 by Redding property owner Albert Mills. Mills claimed that the fee was not a fee for service and therefore constituted a tax. He further argued that as a tax, the fee was invalid because it did not pass the Legislature by a two-thirds vote. Mills later formed Californians for Fair Government Fees, representing 112 other applicants who had paid the fees. Mills's lawyer, Walter McNeill of Redding, filed a separate suit because of a Fish & Game fee he had paid personally.

Last March, Gunther ruled in favor of Mills, saying that the fees were really taxes because the state had never determined the actual cost of reviewing environmental documents before passing the law. Pessimistic about the chances of success on appeal, the agency agreed to a settlement which called for refunds to Mills, McNeill, and members of Mills's group, as well as a ban on further collection of the fees. ❑

Schools Watch

Morris Newman



District Pulls Out of Modesto Project

The Modesto City School District has pulled out, with apparent reluctance, from an unusual deal in which the school district would have been both the anchor tenant and a lender to a key redevelopment project in Modesto. The district's withdrawal has jeopardized, but not doomed, the $17 million Plaza office building, planned for the downtown area of the city.

The deal-breaker is the school district's lack of confidence in the growth potential of property tax revenues, which are the basis of tax increment. The district had planned on using a portion of the tax increment that the district receives from several local redevelopment agencies to cover the debt service for its portion of the Plaza office building during the next 40 years.

Under the elaborate financial plan the Modesto school district, together with the Stanislaus County Office of Education, would have each contributed $5.7 million to $6 million, while the Modesto Redevelopment Agency would have added $5 million. (*CP&DR*, September 1994) Together, the school district and the county education agency would have been the anchor tenants in the office building, which, in turn, would have been the anchor of an ambitious redevelopment complex involving a 12-screen multiplex theater, a parking structure, restaurants and shops. In short, the school district would have taken the familiar role of public agency-as-anchor tenant in a center-city redevelopment project.

The school district was willing to do the deal, as long as the plan could be paid entirely out of its tax-increment income stream; the school district has insisted that its general fund remain untouched.

Falling property values and expectations of low inflation rates in the next several years, however, have convinced the school district to change its plans. The project is "another victim of the recession," according to Debbe Bailey, Modesto schools planning director. "Back in 1994, we were expecting annual (tax increment) revenues for 1995-96 of $160,000 to $180,000, and we saw $130,000." Ideally, the school district wanted to maintain an extra $1 million in its tax-increment kitty to cushion the district's general fund against any downturn in tax-increment revenues. The deal's "numbers" assumed annual inflation of 2%, but inflation was 1.19% in 1995 and is projected to be only 1.11% this year, according to Bailey. Those low numbers translate into inadequate growth in tax increment and called into question the school district's ability to cover its debt service on the office building with tax increment alone. "Without having a pot of money building up, the cushion really starts to go down to about $300,000 or even $200,000. It does not take much to eat up a $200,000 margin," said Bailey, adding, "That would bring us perilously close to dipping into the general fund."

Bailey expressed regret about the district's withdrawal from the Plaza project. "It's a project that we are absolutely supportive of," she said. And the district needs a new home: "We are running a $150 million operation out of a 1923 school building, the kind that you can't put kids in anymore because it's not structurally sound."

Stanislaus County Office of Education, however, has still not officially pulled out of the Plaza project, although Superintendent Martin Petersen was vague about how the county or the developer —a partnership of Wilmore Development of Costa Mesa and Regent Partners of Atlanta, Ga. — might make up the difference. "Even though the Modesto piece fell through, there still may be an opportunity to make the project go."

Simi School District Sells Land

It's well known that school districts play a pivotal role in the home building process, because districts hold the keys to the approval process. Few school districts, however, can claim the kind of clout enjoyed by the Simi Valley Unified School District, which actually owns 1,800 acres of residential land, complete with entitlements to build 652 homes.

The school district in the western Ventura County did not set out to become a major landowner, of course. Instead, the district accepted the land in 1989 from the original developer, Olympia/Roberts school, in lieu of a elementary school building which the developer had promised to build for the school district. (*CP&DR*, May 1994).

The new deal is a creative new twist on a equally creative — if failed — deal between the school district and the original developer of the residential land. In 1982, Olympia/Roberts, a partnership between The Roberts Group and the Canadian-based developer Olympia & York, agreed to build the new elementary school for the school district, in exchange for the district's agreement to waive the customary developer/school fees for Wood Ranch, a 3,000-acre master planned community. In 1989 after building three of the four "villages" at Wood Ranch, the developer donated the nine-acre school site, along with five existing houses, to the school district, as planned.

Three years later, however, the developer found itself unable to make a $250,000 payment toward the elementary school, stemming from Olympia & York's well-publicized financial problems at the time, and it became apparent that the developer would not be able to build the school, as promised. Shortly after, the partnership gave back the housing subdivision to its lender, Wells Fargo Bank. The school district negotiated with the lender to provide funding for the elementary school, without success. Eventually, after 18 months of negotiation, the lender agreed to give 1,800 acres of land, including entitlements to build 652 homes, to the school district.

At that point, the school district found itself in the highly unusual role of major landowner. The district set up a new entity, known as the Simi Valley Unified School District Foundation for Educational Excellence, to serve as the marketing arm to find a new homebuilder for the unbuilt phase of the subdivision, known as Long Canyon. After considering the bids of several homebuilders, the foundation in 1994 chose New Urban West, which had built 2,000 homes in the neighboring city of Moorpark, as the homebuilder to complete the construction of Wood Ranch. New Urban West agreed to buy 250 acres of the land, which contain the residential entitlements; the remainder of the land will remain open space. Neither the school district nor the homebuilder would divulge the sales price, although the Los Angeles Times reported the price to be about $7 million. At any rate, the price was high enough to pay for the $6.1 million elementary school out of the proceeds.

New Urban West vice president Tom Zanic says the community has been receptive to the deal. "The community has been looking forward to a new school for some time, so making progress to eventually build that school has a real positive spin to it," he said. Simi Valley Superintendent Mary Beth Wolford said she feels comfortable with the new developer and believes New Urban West will complete the subdivision up to the high standards set by the original developer. ❑

CP&DR
LEGAL DIGEST

Ehrlich Case Sets New Rule

Divided Court Lays Down Policy on Exaction Standards

By William Fulton

Land-use lawyers around the state are scrambling to determine how planning in California will be affected by the California Supreme Court's fractured and somewhat confusing ruling in *Ehrlich v. City of Culver City*.

At the very least, experts say, the ruling is likely to stimulate more fee justification studies — and probably more General Plan-level policies used to impose fees. The ruling might even mean fee justification studies required for mitigation measures imposed under the California Environmental Quality Act.

In a ruling issued on March 5, the Supreme Court affirmed Culver City's power to impose a recreation impact fee on a developer's attempt to demolish a closed, private tennis club and build condominiums on the site. The court also determined that Culver City's Art in Public Places program was a justifiable use of the city's police power. *(CP&DR Special Supplement,* March 1996.) "This was a victory for us," said Andrew Schwartz, an assistant city attorney in San Francisco who wrote the amicus brief for a group of California cities.

Most significantly, the court's ruling stated that judges should hold exactions to the so-called *Nollan-Dolan* standard of scrutiny (essential nexus and rough proportionality) only when they are imposed ad-hoc on a specific development project. Exactions imposed as a result of legislative action — such as a General Plan policy — need be held only to the lower "reasonable relationship" standard contained in AB 1600, the state law governing impact fees. This ruling further expands the growing gap in California planning law between legislative and quasi-judicial actions — and may lead some lawyers to push for reconsideration of the broad definition of a legislative act.

"More and more things will be treated as legislative," said D. Barton Doyle, a lawyer with Brobeck Phleger & Harrison in Los Angeles and a former general counsel to the Building Industry Association of Southern California. "Being screwed collectively is easier to pass constitutional scrutiny than being screwed individually."

As in the recent gravel mining case, *Hansen Bros. v. Nevada County*, the Supreme Court was badly split, with only three justices (representing a plurality, not a majority) signing the court's opinion.

Already, the *Ehrlich* ruling has had repercussions on other cases. The Second District Court of Appeal, Division One, granted a rehearing in a rent control case from Santa Monica that had been decided only a week before *Ehrlich* was handed down. The Second District reaffirmed its ruling, but Santa Monica hopes to have it de-published by the Supreme Court as a result of *Ehrlich*. (See accompanying story.)

The immediate question in the *Ehrlich* case is whether it will stand. Property owner Richard Ehrlich and his daughter, lawyer Lisa Ehrlich, are clearly gunning for the U.S. Supreme Court to overturn the California Supreme Court ruling. But the fact that the Cal Supremes remanded the case back to the City of Culver City creates a complicating factor.

"The U.S. Supreme Court is not likely to take a case which has been remanded," said lawyer James Burling of the Pacific Legal Foundation, who has been assisting the Ehrlichs with their case. (Burling is also representing Santa Monica landlords in the parallel rent control case.) "First we've got to knock the remand out." To that end, Burling said, the Ehrlichs are likely to seek rehearing before the California Supreme Court.

To understand the possible impact of the *Ehrlich* case, it is important to understand the different standards the courts have used in determining when exactions and fees are constitutional. Beginning with *Associated Home Builders Inc. etc. v. City of Walnut Creek*, 4 Cal.3d 633 (1971), the California Courts concluded that there must be a "reasonable relationship" between project and exaction. This standard was widely interpreted to mean that an indirect connection between the two was sufficient. Significantly, this standard was incorporated into AB 1600 (Govt. Code §66000 et. seq), the state mitigation fee law, when it was passed in 1987.

However, also in 1987, the U.S. Supreme Court ruled in *Nollan v. California Coastal Commission*, 483 U.S. 825, that an "essential nexus" between project and exaction was required. This standard was widely interpreted as meaning that indirect connections were not sufficient. *Nollan* also caused the widespread practice of doing "nexus studies" to justify fees.

The U.S. Supreme Court's 1994 ruling in *Dolan v. City of Tigard*, 114 S.Ct. 2309, further refined the *Nollan* standard to require "rough proportionality" between exaction and project.

In the *Ehrlich* case, the plurality opinion clarified two points. First, Justice Armand Arabian stated that the *Nollan-Dolan* test applies not just to possessory situations — where the developer is required to deed over land or provide improvements — but also to monetary fee situations. And second, Arabian stated that the *Nollan-Dolan* test must be merged with the AB 1600 test. He concluded that the *Nollan-Dolan* test applies in cases where the exaction is imposed on an ad-hoc basis, while the less stringent AB 1600 case applies in cases where the exaction is imposed as the result of a legislative action such as a General Plan revision.

The possible consequences of this last point are far-reaching. According to two lawyers from Landels, Ripley & Diamond in San Francisco, Arabian's ruling could mean that the *Nollan-Dolan* test applies to mitigation measures imposed under CEQA. "Since proposed mitigation measures are often individualized fees, the agency may be required to prepare a rough proportionality analysis (in the EIR or the agency's record) to justify the particular fee amount," wrote Skip Spaulding and Michael Zischke in a recent advisory to their firm's clients.

At the very least, experts agree, more exactions and fees will be enacted as part of a legislative program. In this regard, the *Ehrlich* ruling would appear likely to strengthen the power of General Plans and further contribute to the growing legal gap between legislative and quasi-judicial actions. For example, the courts have also ruled that school districts may seek mitigation above the state-set maximum fee only if such mitigation is called for in a local government's legislatively enacted policy documents, such as the General Plan.

However, this gap could lead some lawyers to urge the California Supreme Court to reconsider its expansive definition of a legislative action. In a series of cases culminating in *Arnel Development Co. v. City of Costa Mesa*, 28 Cal.3d 511 (1980), the Supreme Court ruled that even such narrow actions as general plan amendments and zone changes are legislative in nature, while actions such as variances and conditional use

permits are quasi-judicial.

The *Ehrlich* case involves a property that had housed a private tennis club. After the tennis club was closed, the property owner, Richard K. Ehrlich, requested permission from the city to build condominiums. As conditions of this approval, the city imposed a $280,000 recreation fee (to mitigate for the change of use from a private recreational use) as well as an Art in Public Places Fee. Ehrlich sued but the Court of Appeal in Los Angeles ruled in favor of the city. Ehrlich's appeals reached the U.S. Supreme Court, but after ruling on *Dolan* the court returned the case to the California courts to re-examine in light of Dolan. (*Ehrlich v. City of Culver City*, 114 S.Ct. 2731 (1994)).

The court issued a mixed ruling in the case of Culver City's recreation fee itself. The court concluded that "the city has met its burden of demonstrating the required connection or nexus between the rezoning ... and the imposition of a monetary exaction to be expended in support of recreational purposes as a means of mitigating that loss." However, the court concluded that the record was insufficient to prove that $280,000 was a reasonable sum to pay for the mitigation. The case was remanded to Culver City itself "for additional proceedings in accordance with this opinion.

In addition to dealing with the recreation fee, the plurality opinion concluded that the Art in Public Places fee was a legal exercise of the city's power to review aesthetic issues in a development project.

In a split similar to that in the *Hansen Bros.* case, the *Ehrlich* ruling — written by now-retired Justice Armand Arabian — was signed by only two other justices, Chief Justice Malcolm Lucas and Justice Ronald George. In a concurring opinion, Justice Stanley Mosk agreed with most of the ruling but stated that, in his view, the heightened takings standard laid down in *Nollan* and *Dolan* should be limited to dedications of property, not monetary exactions.

Justice Joyce Kennard wrote a concurring and dissenting opinion in which she agreed with the decision on the Art in Public Places fee but said that she would have found the recreation fee unconstitutional. Fifth Amendment protection, she said, "does not evaporate when we discontinue a use of our property that we gratuitously undertook and that the government could not constitutionally have required us to continue, no matter how greatly the community may have benefited from that use." She also took issue with the plurality opinion's decision to intertwine the statutory scheme of AB 1600 and the constitutional takings protections. Justice Marvin Baxter concurred in her ruling.

Finally, Justice Kathryn Werdegar wrote a brief concurring and dissenting opinion agreeing with most of the plurality opinion but, like Kennard, also stating that she believed the case could have been decided without addressing AB 1600. ❑

■ The Case:
Ehrlich v. City of Culver City, No. S033642, 96 Daily Journal D.A.R. 2558 (March 5, 1996).

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TAKINGS

Rent Control Case Swept Up in Ehrlich Swirl

The Second District Court of Appeal, Division One, has ruled that a Santa Monica landlord is entitled to pursue a regulatory takings claim against the city's rent control board in a dispute involving allowable rent increases. However, the city's attorneys are now seeking de-publication or review by the California Supreme Court in light of the *Ehrlich v. Culver City* ruling, which was issued a week after this case. After a re-hearing, the Second District panel issued a revised ruling stating that the previous ruling is consistent with the *Ehrlich* case.

"I'd say the chances of de-publication are in the high 90s," said Ralph Goldsen, lawyer for the Santa Monica Rent Control Board. "Miriam Vogel is already the most de-published justice in the case and this will add to her record."

In the ruling, Vogel specifically rejected the conclusion reached by the First District Court of Appeal in *Blue Jeans West v. City and County of San Francisco*, 3 Cal.App.4th 164 (1992), which stated that only possessory situations, rather than regulatory takings situations, are subject to the high level of scrutiny called for in the famous *Nollan v. California Coastal Commission case*. "We believe the trend toward more far-reaching (and numerically more) socially engineered land-use regulations supports our interpretation of *Nollan* and our conclusion that its rules apply to regulatory as well as possessory takings," Vogel wrote.

In the *Ehrlich* case, the plurality opinion also concluded that regulatory and possessory situations should be treated alike — but decided that they are not always subject to the heightened scrutiny of the *Nollan* case. Instead, the court said, the heightened scrutiny should apply to quasi-judicial decisions of local government but not to legislative enactments.

While acknowledging that regulatory takings must be determined on a case-by-case basis, Justice Vogel concluded that a regulatory taking claim is supportable if the regulation "(1) denies an owner the economically viable use of his land without (2) substantially advancing a (3) reasonably necessary and (4) legitimate state interest." She further said that these issues should be determined in light of the trial court's consideration of:

- The regulation's economic impact on the owner.
- The extent of interference with an owner's reasonable investment-backed expectations.
- The character and nature of the regulation.
- The extent (if any) to which the owner benefits from the regulation.
- The nature and importance of the public interests which the regulation serves.

Vogel sent the case back to the trial court with instructions to use this standard if the regulatory takings issue comes to trial. But in her ruling she made her own feelings clear. "If, in fact, Santa Monica's rent control law has reduced rather than increased the number of rental units available to those intended to be benefited by that law, then the regulation has no relationship (nexus) at all to its stated public purpose," she wrote. The landlords in this case made the claim that more low-income residents lost their apartments under Santa Monica rent control than in comparable surrounding cities.

The underlying case involved Santa Monica Beach Ltd., the owner of a 12-unit apartment complex in Santa Monica. In 1993, Santa Monica Beach won a $3 permanent rent increase and a $58 temporary rent increase from a hearing officer for the Santa Monica Rent Control Board. After the board itself upheld this decision on appeal, Santa Monica Beach sued, claiming a regulatory taking had occurred. ❑

■ The Case:
Santa Monica Beach Ltd. v. Superior Court of Los Angeles County, No. B097056, 96 Daily Journal D.A.R. 2155 (February 27, 1996).

■ The Lawyers:
For Santa Monica Beach Ltd: James S. Burling, Pacific Legal Foundation, (916) 641-8888.
For Santa Monica Rent Control Board: Anthony A. Trendacosta, General Counsel, (310) 458-8781.

CEQA

Eagle Mountain EIR Upheld by Appellate Court

Riverside County's approval of the controversial Eagle Mountain landfill — and the environmental documentation that went along with it — have been upheld by the Fourth District Court of Appeal in San Diego.

Affirming a decision by Superior Court Judge Judith D. McConnell, the Fourth District found the environmental impact report to be adequate and also upheld the county's use of a development agreement, even though the project still requires land exchange between the Bureau of Land Management and the property's owners.

Most significant is the fact that the Fourth District upheld the way the EIR dealt with the environmental impact of materials recovery facilities (MRFs). These facilities, whose locations are not specified in the EIR, will prepare trash to be deposited at the Eagle Mountain landfill. The court concluded that the MRFs will be in place whether or not Eagle Mountain landfill is built, and that a general discussion of their environmental impact is sufficient. "Even though MRFs or other solid waste transfer and processing stations are proposed to be used to process the, trash before it is deposited, they will not change the overall 'scope or nature of the initial project or its environmental effects'," wrote Justice Richard Huffman for a unanimous three-judge panel.

The Eagle Mountain landfill project has been the subject of great controversy in Riverside County ever since the Board of Supervisors approved it on a 3-2 vote in 1992. Located on the site of the former Kaiser Steel Co. iron-ore pit, the landfill would take up more than 2,000 acres and have the capacity to accept up to 20,000 tons of trash daily for more than a century.

In 1994, Judge McConnell ordered a new environmental impact report. Among other things, she said, the EIR should have spent more time describing the cumulative impact of the project and wrongly dismissed a possible hydroelectric project associated with the landfill as remote and speculative. She also ruled that the evidence was insufficient to support the EIR's conclusions regarding the desert tortoise habitat and the proximity to Joshua Tree National Monument.

However, Judge McConnell ruled in favor of the county on certain other issues. She said the MRFs need not be included in the project description, and she ruled that the development agreement is valid even though the landfill's proposed operator, Mine Reclamation Corp., does not currently own the land. (The deal would involve a land exchange between MRC and the Bureau of Land Management.) The National Parks and Conservation Association appealed those portions of the ruling.

In ruling for the county on the MRF issue, the appellate court placed great emphasis on Judge McConnell's conclusion that the MRFs could be separated from the landfill as a legally separate project. The court noted that processing trash through an MRF (to ensure compliance with AB 939, the recycling law) was a condition of approval imposed by the county and no decision has been made about where to place the MRFs, or who will build or operate them.

"Deferral of environment assessment does not violate CEQA where an EIR cannot provide meaningful information about speculative future projects," the court wrote. "Moreover, the landfill project makes no commitment to build MRF's as future facilities; these processing facilities will be built separately."

On the issue of the development agreement, the court also affirmed Judge McConnell's decision to rule in favor of the county. The National Parks and Conservation Association ruled that the development agreement should be ruled invalid because MRC currently has no legal interest in the property in question. According to the county, the development agreement will become effective when the land is transferred.

"Although the agreement is binding on the parties according to its terms," Justice Huffman wrote, "the agreement does not bind the use of the land unless and until the land transfer is accomplished. The development agreement interrelates these two concepts in a manner compatible with the purposes of the statute." ❑

■ The Case:
National Parks and Recreation Association v. County of Riverside, No. D022183, 96 Daily Journal D.A.R. 2241 (February 28, 1996)

■ The Lawyers:
For National Parks and Recreation Association: Joel Moskowitz, Gibson Dunn & Crutcher, (213) 229-7000.
For Riverside County: Jay Vickers, Deputy County Counsel, (909) 275-6322.
For Kaiser Steel Resources: Scott W. Gordon, Bruen & Gordon, (510) 295-3131.

Groundwater Plan Didn't Violate CEQA, Court Rules

The Rancho California Water District did not violate the California Environmental Quality Act in constructing new facilities associated with a groundwater pumping and recharge program, the Fourth District Court of Appeal has ruled. The water district was sued by the Temecula Band of Luiseno Mission Indians, who were concerned about the impact of the recharge program on the quality of their own drinking water.

Most of the case was issued in unpublished form by the Fourth District. However, in a small published portion of the case, the court concluded that judicial review of a construction project added to the program later should cover only the incremental effects of that project and does not trigger the need for a supplemental environmental impact report.

Rancho California began the groundwater pumping and recharge program in 1984. The district concluded at that time that, although the water quality would be degraded and the water level would drop up to 200 feet, the program would not have a significant impact on the environment. Five years later, the water district decided to reroute and redesign a previously planned pipeline required to bring imported water to the recharge areas. Once again, the water district conducted a CEQA review and found no significant impact on the environment. The Luiseno Indians, who live close to the recharge area, then sued, claiming a wide variety of CEQA defects.

Among other things, the Luiseno claimed that the project could have significant cumulative impacts when considered either with the original program or with a related plan to blend imported water with wastewater. The Luiseno also claimed that the project description of the pipeline in the 1989 initial study was inaccurate because it failed to mention the 1984 recharge program. In the published portion of the case, the Fourth District ruled in favor of the water district on procedural issues associated with these two issues.

On the issue of the project description, the court ruled that the Luiseno had not exhausted their administrative remedies. "[T]he District made it clear at the public hearing that the Project represented a modification of the 1984 Project," the court wrote. "The Luisenos, however, did not object that the project description was inaccurate; they never asserted that the project description failed to mention the 1984 program." ❑

■ The Case:
Temecula Band of Luiseno Mission Indians v. Rancho California Water District, No. E012898, 96 Daily Journal D.A.R. 2773 (March 8, 1993)

■ The Lawyers:
For Luiseno Mission Indians: Barry Fisher, Fleishman, Fisher & Moest, (310) 557-1077.
For Rancho California Water District: C. Michael Cowett, Best Best & Kreiger, (619) 595-1333.

New Reports Continue Debate Over Sprawl

Continued from page 1

Peter Gordon and Harry W. Richardson, both of the University of Southern California — to critique the BofA report. "The Case for Suburban Development" disputes the claims in "Beyond Sprawl" that agricultural land is endangered by leapfrog development: "Hundreds of millions of acres of grassland/pasture are available for crop production if agricultural product prices were to rise," the report says. The report cites further studies that claim that "the world is perfectly capable of feeding 12 billion people 100 years from now," and rejects claims that development can harm endangered species.

The report criticizes urban-growth boundaries as anti-market, characterizing the use of such boundaries in Portland, for example, as a "result of top-down command-and-control planning rather than the expression of individual preferences." The authors reject "compact" development and transit-oriented development (TOD) patterns as the solution to congestion: "Suburbanization has been the dominant and successful congestion reduction mechanism...decentralization is the traffic safety valve." They suggest that TODs and other forms of compact development could actually increase the number of automobile trips, by making trips shorter and hence more affordable.

Jim Sayer, executive director of Greenbelt Alliance, ridiculed what he described as BIA's feigned objectivity in issuing the report. "The BIA spent $20,000 on a couple of professors who don't like planning and feel that laissez-faire is the way to go, and they got what they paid for." He added that Greenbelt plans to issue a rebuttal to the BIA report in the unspecified future. (In its own publication, BIA pointed out that they made no attempt to interfere with Gordon and Richardson's research or their findings.)

Peter Calthorpe, the San Francisco-based architect and champion of transit-oriented development, rejected one of the report's conclusions: that TODs would require unacceptable levels of fixed-rail construction. Gordon and Richardson cited a 1994 book by Anthony Downs of the Brookings Institution. According to Downs, if TODs were built to accommodate the population growth of 237,000 people in the average major metropolitan area during the 1980s, it would require 95 miles of new rail construction, assuming a TOD at every 1.5 miles. Calthorpe described the analysis as "flawed," because Downs assumed that all TODs must be built along a fixed-rail system, whereas many TODs could be built on bus lines that "feed" into the regional rail system. "The total growth in the rail system would be one-fifth what he predicted," Calthorpe said.

The report from the President's Commission on Sustainable Development echoes many favorite themes of Vice President Al Gore, particularly the desire to reconcile environmentalism with economic development and to use market forces and local efforts, rather than big government, wherever possible, to achieve environmental goals. The fourth chapter of the report echoes many themes of the New Urbanism: historic preservation, energy efficiency, discouragement of sprawl, encouragement of urban "brownfields" development, regional transit strategies, community-based planning, mixed-use development and growth management.

The report also endorses the value of architecture and urban planning to enhance community life: "Communities built with sidewalks, town squares, houses with front porches, parks, and other public meeting places encourage people to interact... Although well-designed communities and buildings may differ in style, scale, or location, they are all durable, integrated into their natural setting, and efficient in serving their purposes."

Peter Katz, acting executive director of The Congress for the New Urbanism," cautiously praised the urban-design portion of the commission report. "My overall sense is that it's all things that no one can object to, like motherhood and apple pie." He expressed concern whether "design," a frequently used word in the report, referred to pleasing architecture or good urban design. He was concerned that the report could be construed as emphasizing well-designed buildings above well-designed communities. He was also cautious about the report's concept that new development should be based on the "carrying capacity" of a region, that is, the ability of the local infrastructure to support a certain number of people.

Carrying capacity might be a moving target, according to a paper by Elizabeth Deakin and Chris Porter, "Socio-economic and Journey-to-Work Data: a Compendium for the 35 Largest U.S. Metropolitan Areas." The study reports reporting short commute times in major U.S. cities, and only minor changes in times between 1980 and 1990.

New York had the longest travel time of 33.2 minutes (in the 50th percentile travel time). Oakland, with 24.2 minutes travel time, ranked seventh on the list, while Los Angeles ranked eighth (also 24.2 minutes), San Francisco ninth (24 minutes), San Diego was 27th (21.2 minutes) and Sacramento 35th (20.6 minutes). In an interview, Deakin suggested that the stability in commute times reflected a pattern of people moving closer to the workplace, often commuting from suburb to suburb.

Richard Lyon, legislative advocate for the California Building Industry Association, said the Deakin report "bears out a change in land-use patterns. In past generations, jobs moved to a location and then housing followed. That land use pattern seems to have reversed: now, jobs are attracted to housing."

Deakin, however, says the deeper message of the survey is the impact of housing affordability on commuting. Urban housing simply costs more than suburban housing, and that factor influences both home buying and commuting behavior, she said. "Most of us would rather be in a four-bedroom house in the suburbs than in a smaller house closer by, with a tiny yard and a leaky roof, that we could probably afford closer by. We are making the trade off, even if we are unhappy with the commute," she said.

And although some analysts might use her results to argue against the importance of mass transit, Deakin said an anti-transit message should not be read into her research. What readers can't see in the figures on comparatively short car commutes, "is where we might have been, had we not made those investments" in mass transit, she said.

■ Contacts:

Peter Katz, acting executive director, Congress for the New Urbanism, (415) 291-9619.

Elizabeth Deakin, professor, UC Berkeley Institute of Transportation Studies, (510) 642-4749.

Peter Gordon, professor, University of Southern California, (213) 743-2172.

Richard Lyon, California Building Industry Association, (916) 443-7933.

Peter Calthorpe, Calthorpe & Associates, (510) 548-6800.

Jim Sayer, executive director of Greenbelt Alliance, (408) 983-0539.

Web address for White House President's Commission Report: http://www.whitehouse.gov/WH/EOP/pcsd/index.html

County-by County Results of March Election

Contra Costa County

Danville

Danville voters killed a 40-unit townhome development proposed by Kaufman & Broad. The town council had approved the project, but residents of a nearby single-family subdivision placed a referendum on the ballot, citing concerns about the townhome project's impact on a neighboring creek. Residents overwhelmingly turned out against the townhome project.

Measure E (referendum): No, 65.2%.

Lake County

In a close election, Lake County voters rejected a proposal to require the county the petition to state to build a prison within the county limits.

Measure S: No, 52.8%.

Los Angeles County

Diamond Bar

Voters in this city in eastern Los Angeles County rejected an attempt to replace the city's general plan with an alternative proposed by a citizen group.

Measure D: No, 66.6%.

Napa County

Measures W and X sought to obtain voter approval for the $500 million Suscol Creek project, which would have included 1700 houses, a 390-room hotel, and two golf courses on 1100 acres of land. Voter approval is required under Napa's longstanding agricultural policies, which were upheld last year by the California Supreme Court in the *DeVita* case.

Measure W: No, 83.6%

Measure X: No, 85.8%.

Orange County

Measure S, placed on the ballot by political leaders in South Orange County, would have repealed the 1994 initiative, backed by business, that changed the county general plan to require commercial aviation at El Toro Marine Air Base after it closes. The defeat of the measure means the general plan still calls for an airport.

Measure S: No, 59.8%.

San Bernardino County

Voters defeated two measures affecting the proposed Rail-Cycle landfill project near Barstow. Measure L would have placed a ban on large landfills in the huge unincorporated areas of San Bernardino County, making it more difficult to build the project. Measure M would have imposed a tax on Los Angeles County trash hauled to the site, making it easier to build. Voters rejected both.

Measure L (landfill ban): No, 52.8%.

Measure M (landfill tax): No, 41.5%..

San Diego County

Carlsbad

Measure E was a citizen initiative that would have restricted development on 281 acres of land in La Costa. The Green Valley Crossing project would include 280,000 square feet of commercial development and 400 homes, with 207 acres of open space. Saying the measure violated the 1986 Growth Management Plan, a citizen group would have cut the project to 200,000 square feet of commercial, 200 residences, and 225 acres of open space.

Measure E: No, 57.1%

City of San Diego

Proposition C permits construction of two resort hotels in the "future urbanizing area" of northern San Diego. Under the growth management system that dates back to Pete Wilson's days as mayor, development in the FUA (a kind of urban reserve system) requires voter approval. Hotel developers agreed to contribute $12 million toward wildlife mitigation.

Proposition D sought to clarify the land-use status of the San Diego Naval Training Center, which is closing in 1997. There was some dispute as to whether the Naval facility was located in the future urbanizing area, requiring voter approval for land-use changes. Proposition D clarified that it is located in the urbanized area, meaning no voter approval is required.

Proposition C: Yes, 60.0%

Proposition D: Yes, 68.1%

San Francisco

Voters in San Francisco approved Measure B, allowing a new stadium for the San Francisco Giants to exceed the height limit in the China Basin area. The new stadium would be privately financed. The vote was so overwhelming that the San Francisco 49ers football team is now considering a November ballot measure for a new stadium.

Measure B: Yes, 66.5%.

San Mateo County

Pacifica

Pacifica voters rejected the proposed Sea Garden Events Center project, which would have been located on privately owned beachfront property. This was the second time a proposal for the property has been defeated by voters.

Measure C: No, 65.6%.

Santa Barbara County

In a relatively close election, Santa Barbara County voters reaffirmed a 1985 vote restricting the construction of onshore oil support facilities to two specific locations. Measure A96 also specifically prohibits oil production on shore.

Measure A96: Yes, 53.7%.

Santa Clara County

Saratoga

Voters in Saratoga approved a sweeping growth control measure that requires city approval for most zone changes and increases in density.

Measure G: Yes 54.5%.

Ventura County

Measure T would have permitted a landfill to be constructed at Weldon Canyon in between Ventura and Ojai. It was placed on the ballot by Taconic Resources, a San Diego-based firm that holds an option on the property. Taconic spent far less than expected on the campaign.

Measure T: No, 71.3%.

Simi Valley

This measure extends the city's growth control ordinance, first imposed in 1986, but increases the number of building permits per year from 332 to 544.

Measure Q: Yes, 80.9%.

Ventura

Measure S would have prohibited the City of Ventura from providing tax breaks to new development project. The measure was triggered by the proposed expansion of the Buenaventura Mall, which provides a sales-tax rebate to developer LaSalle Partners. The campaign was financed mostly by the owners of the Esplanade Mall in neighboring Oxnard. A second ballot measure aimed only at the Buenaventura Mall may appear on the November ballot.

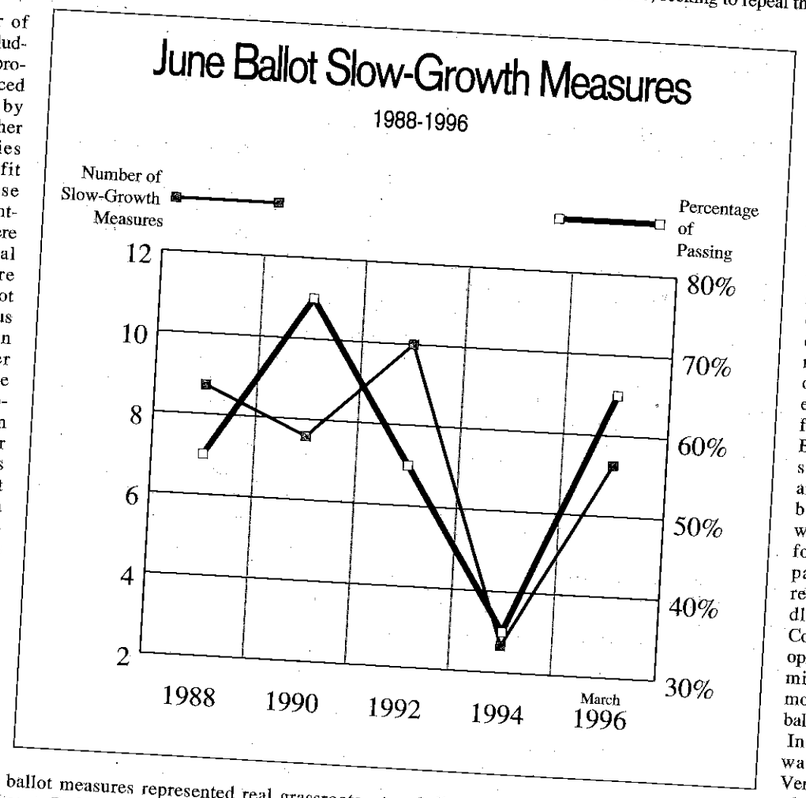
Measure S: No, 64.7%. ❑

Slow-Growthers Make Modest Gains in March

Continued from page 1

activity, such as Ventura, San Francisco, Pacifica, and San Diego. And most ballot measures did not represent grassroots revolts against growth. Rather, they represented the further institutionalization of growth management (and ballot measures) as a method of creating land-use policy in California.

At least four of the 16 issues (including two landfill proposals) were placed on the ballot by developers or other private companies that would benefit from the land-use change. Significantly, however, all were defeated. Several proposals were placed on the ballot because of previous policy decision requiring voter approval of land-use changes of development projects. In Napa County, for example, a Texas developer sought voter approval for a golf course development on 1,100 acres of land — as required under the county's general plan policies upheld by the California Supreme Court in last year's *DeVita* case. About 85% of the vote went against the project.



Only a few of the ballot measures represented real grassroots opposition to development. Perhaps the most significant case was Saratoga in Santa Clara County, where voters approved approved a citywide growth control measure that requires most zone changes and density increases to go on the ballot for approval. Projects that conform with existing planning policies would not be subject to a vote.

At least two neighborhood disputes made their way onto the ballot, and results were mixed. In Danville, voters killed a Kaufman & Broad townhome project that had already been approved by the town council; the referendum was placed on the ballot by residents of a neighboring single-family subdivision. In Carlsbad, however, voters rejected a measure designed to scale-down development on a 280-acre parcel of land at La Costa.

In Orange County, the north-south battle over the future of El Toro Marine Air Base continued, and once again the north won. In 1994, voters approved a business-sponsored initiative changing the general plan to require a commercial airport at El Toro after it closes. This year, voters rejected another initiative sponsored by political leaders from cities around El Toro, seeking to repeal the first initiative.

In several cases, voters expressed support for additional growth. In San Francisco, voters approved the idea of breaking the height limit in China Basin to construct a new, privately financed stadium for the Giants baseball team. The measure was widely perceived as a referendum on the idea of a new stadium, and the outcome was considered a major victory for Mayor Willie Brown, a stadium supporter. Brown and the 49ers football team are now working on a new football stadium as part of a plan to redevelop the Candlestick Park area. Commercial redevelopment of the 'Stick might generate the money for the football stadium.

In another closely watched election, Ventura voters overwhelmingly defeated a ballot measure that would have prohibited the use of city tax funds to subsidize development projects. The measure was aimed at Ventura's deal with LaSalle Partners to redevelop Buenaventura Mall, which calls for Ventura to rebate 50% of the project's new sales-tax revenues to LaSalle in exchange for the developer's promise to build a parking garage and make road improvements.

The campaign was financed mostly by the owners of The Esplanade mall in neighboring Oxnard. The Esplanade's two anchor stores, Sears and Robinson-May, have already committed to moving into the expanded mall in Ventura. Defeat of the measure is not the end of the story, however. Another measure to overturn the specific approval of the Buenaventura Mall is in the works, and Oxnard has sued Ventura over the project. ❑

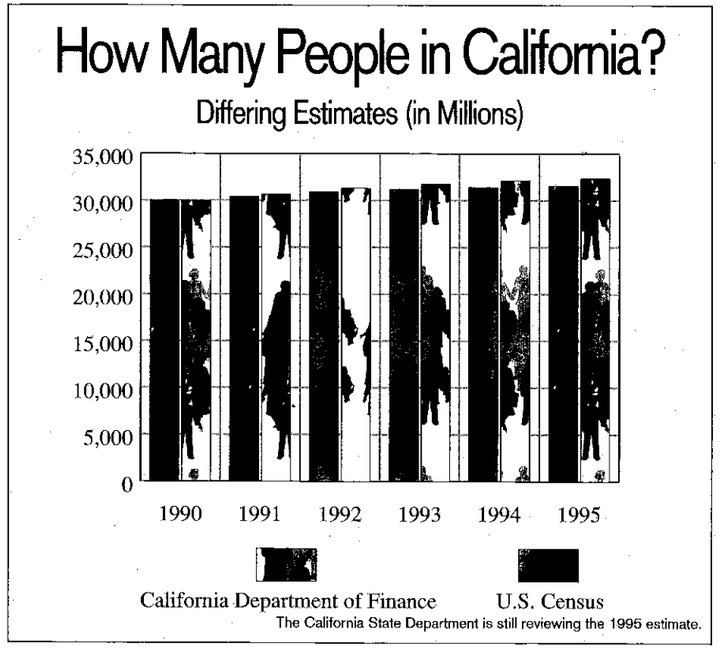
NUMBERS

Stephen Svete

Whose Figures Should You Buy?

The latest news in California's demographic statistics is the U.S. Census Bureau's 1995 population estimates for states and counties. The more important news is this: just ignore those numbers. That's because it is well known in demographer circles that — aside from the decennial census — federal estimates of California's population are off the mark. California's demographics are guided by complex and rapid changes in job markets and international trends in emigrant countries. And these are things that the Census is just not good at tracking.

During the five-year recession, relative growth numbers kept edging downward due to our gargantuan baseline figures. But that dynamic may be changing again, considering the way the economy is picking up steam. Consider the news from Oregon (*CP&DR Numbers*, September 1995) that a job-related migratory shift back toward California was occurring. Though this year's numbers are not yet available, California officials and economic reports since that time appear to bolster the theory. That story underscores why things like driver's license change records have become as important as indicators as birth and death statistics. It may also underscore why off-year federal estimates are irrelevant — the Census does not use such data, so their new figures for California are largely being yawned at.



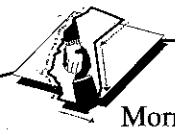
"The state numbers are widely considered more reliable than the Federal Census Bureau numbers" for non-decennial census years, says Steve Wood, a demographer with the Ventura County Resource Management Agency. Wood explains that in addition to the very timely drivers license change data, the state incorporates residential building data and employment data from surveys of large employers conducted annually.

So if the state's numbers are so good, why do the Feds prepare annual reports that nobody uses? First, the service is provided for all states, and those who do not do their own forecasting or estimating can use the federal numbers. Second, according to Wood, the federal and state numbers provide points of comparison.

In the case of Ventura County, for example, county-prepared demographic statistics are used for internal purposes only. "The state numbers are very good, but they are provided at the jurisdictional level only — and are therefore extremely gross. Our data must be used at census tract of traffic-analysis zone level, and we therefore develop and forecast our own data for these purposes," says Wood. But wait, there is a further glitch: the county numbers are acknowledged to be lower even than the federal numbers, which are known to be lower than the State's, which are acknowledged to be closest to actual. Wood explains: "We don't make adjustments to our data every year, but rather monitor what the State provides." Again, the county does not publicize their data set, but uses it for internal purposes.

State officials indicate that only a handful of programs are linked to non-decennial census statistics, and that even those are tied to other input factors. So funding is apparently only a minor concern. And perhaps that's why there's not any controversy over annual estimates from the Department of Census that everyone acknowledges to be wrong.

If the demographic estimate game appears to be an intergovernmental free-for-all, that's because it is. But not to worry: even though the disparities will grow from year-to-year through each decade, everything will get synchronized after the decennial numbers come out. In the meantime, just ignore the 31.6 million figure published by the feds in March. The state assures us that the July 1995 number was more like 32.4 million. And if you're anxious to quote facts at cocktail parties about growth and population, wait until May. That's when the DOF will release its — largely accurate — numbers. ❑



DEALS
Morris Newman

Was Disney Too Hard on Anaheim?

The City of Anaheim succeeded earlier this month in getting what it wanted from The Walt Disney Company: a deal in which Disney will buy controlling interest in the California Angels baseball franchise and contribute $70 million toward the renovation of the Anaheim Stadium. The conventional wisdom is that Anaheim got shellacked. The city "caved and caved and caved until it hurt," was the assessment of L.A. Times sportswriter Mike Penner.

To be sure, it would be misleading to say the deal went in the city's favor. The entertainment company structured the negotiations as a high-pressure war of nerves, in which the city would lose everything if it didn't satisfy Disney's demands. Anaheim made big concessions at the last minute, not the least of which was an agreement to downscale its largest and most ambitious redevelopment project ever: the $1 billion Sportstown surrounding the "Big A." I don't intend to sugarcoat the roughhousing that Disney gave to the home of Disneyland. But Disney may have had good reason for holding out for some of its demands.

"In public-private partnerships, winner should not take all."

A lot is riding on the deal. If the agreement goes forward, the city will be able to hold on to its long-time baseball team, whose lease is up in five years. Team owner Gene Autry is 88 and needs to think about transferring ownership. The stadium, built in 1966, needs $100 million in renovation. (Ironically, much of that cost will go to reducing the number of seats in the stadium, while expanding the outfield. Anaheim had expanded the stadium in the 1970s to accommodate its former football team, the Rams, and the resulting hybrid didn't work for anyone).

Beyond baseball, the buy-the-team-and-fix-the-stadium deal is a cornerstone of the city's Sportstown project, which City Manager Jim Ruth described in a press conference last month as "our economic engine for the future." Indeed, the masterplan has "golden goose" written all over it. The 50-acre project is a textbook case of a city trying to jam as many income-generating uses as possible into a single redevelopment area. Penner described it as "George Jetson Plans a Sports Complex."

In the plan, the existing Big A stadium is surrounded by the "Orchards District," a giant traffic circle containing several layers of "entertainment retail" and a hotel. Surface parking for the stadium is located directly south of the Big A. To the east is the Gateway district, the "grand entry" into Sportstown, with a football stadium and another hotel, as well as additional "entertainment retail" space. Immediately north of the Big A is the "A Station District," with a transit station, a 150,000-square-foot NFL Experience All Star FanFest Exhibit Area and 900,000 square feet of office space.

Disney now appears as if it will be a big player in Sportstown, but that does not necessarily mean that the company likes the project. Disney's corporate style is to control the land uses surrounding areas of major investment, such as Disneyland. The company's delayed "second gate" theme park, now planned for the area currently taken up by the Disneyland parking lot, may start construction this year. By investing heavily in local sports teams — Disney already owns the Might Ducks and its arena — the company appears to be shoring up its existing and future investment in an aging city.

In May 1995, Disney prexy Michael Eisner approached Angels president Jackie Autry about buying a percentage of the team. Disney struck a deal to buy 25% for an undisclosed amount, with an option to buy the remaining interest a later time. In September, Anaheim announced a deal with Disney, in which the "Big A" stadium would undergo a $100 million renovation for baseball only. In January of this year, Disney offered $70 million toward stadium renovation, in return for keeping virtually all the revenues produced by the stadium. Disney also demanded that the city keep football out of the Big A; it is conceivable, but not established, that Disney also wanted the city to avoid football together.

At that time, Disney set a 60-day deadline on talks with the city. Eager to make the deal work, the city offered $30 million toward the renovation. Those demands, however, did not sit well with several members of the Anaheim City Council, who were angered that the deal would prevent Anaheim from recouping its investment in the stadium renovation, as well as putting the kibosh on one of the city's dearest goals: bringing another NFL team to the home of Disneyland. In March, the deadline came, and both sides appeared to wash their hands of the deal.

In early April, however, the two sides mended their differences. In the final version of the deal, the city resolved the parking problem by guaranteeing 12,500 parking spaces for the baseball stadium, or enough to accommodate a capacity crowd of about 45,000 fans. Disney would control almost all the stadium revenues — concessions, parking, advertising — and would rename both the stadium and the team. The city, for its part, would contribute $30 million to the stadium, as before, but held out the possibility of a future sports-related tax, that would give nothing to Disney. The city agreed to forego football in the Big A for at least one year. And the city agreed to reduce the size of Sportstown by at least 17% — just enough to provide the promised parking — although city spokesman Bret Colson downplayed the significance of that concession. "The Sportstown concept has always been flexible," he said, adding that the current masterplan was "just one of many incarnations of what ultimately might be a final plan."

Disney was probably right to hang tough on parking and control of the stadium: when it comes to packaging entertainment and packing in the crowds, Disney probably knows as much or more than any other entity in the world. Still, Disney should have taken better care of Anaheim, by offering it a slice of the stadium revenues to pay off the city's debt. In public-private partnerships, winner should not take all. One of these days, Michael Eisner will learn that it is not weakness to leave your partner with something more than shellac. ❑