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Inside

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Cities Face Dilemmas in Expanding Airports

More Capacity Needed But Neighbors Resist

By Morris Newman

Communities throughout California are rushing to expand airports or to build new facilities. The reasons are obvious: Demand for increased airport capacity appears on the rise in every major metropolitan area, while at the same time cities have viewed airports as economic juggernauts.

At the same time, however, airports find themselves increasingly landlocked by developing communities, and airport boosters increasingly find themselves being brought to court by dissenting cities or angry homeowners. "Balancing economic impact versus neighborhood impact is the common theme of all airport projects," said City Councilman David Pandori in San Jose, which is aggressively trying to expand its small airport.

In some cities, mayors and city councilmembers are being elected on anti-airport platforms. All these issues raise serious questions whether California will be able to "grow" its airports to meet the growing demand.

Major expansions are either planned or contemplated at virtually every major metropolitan airport in the state, including San Francisco, San Jose, and Oakland in the Bay Area; and Los Angeles, Burbank, Ontario, and San Diego in Southern California. Meanwhile, new airports have been created from several former military bases, including the former George Air Force Base and the former Norton Air Force Base, both in San Bernardino County.

Airports are facing extraordinary demands on their capacity. At San Francisco International Airport, about 40 million passengers are expected to arrive and depart this year. By 2006, that number *Continued on page 9*

Legislature Flinches on School Issue

But Passes Bills On City Secession, Species

By William Fulton

The Legislature approved reform of the state Endangered Species Act and made it easier for dissident areas to withdraw from existing cities prior to wrapping up its 1997 session in mid-September.

In a major disappointment, however, the Legislature failed to reach consensus on a major proposed revision of the school facilities financing system. For the moment, failure of the school package has left California without even a proposed state school bond issue for 1998, though the Legislature might still place a measure on the ballot after it reconvenes in January.

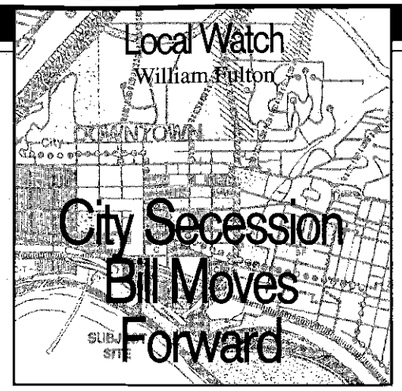
Gov. Pete Wilson has until mid-October to sign or veto bills sent to him by the Legislature.

This year's legislative session was the first to be shaped dramatically by term limits, which were imposed by a citizen initiative in 1990. All longstanding members of the state Assembly were forced to leave office last year, meaning the lower house consisted almost entirely of members elected since 1992. (A few Assembly members were veterans who had left office and later returned.)

Many of the new members were formerly members of county Boards of Supervisors or City Councils, meaning a renewed interest in local government in the Assembly. Meanwhile, the Senate is increasingly populated by legislative veterans who have moved over from the Assembly.

Compared to the 1996 session, which was consumed by a partisan fight over control of the Assembly and its speakership, the 1997 session focused much more on substantive issues. Legislators focused especially on three topics of special concern to local governments:

• Two key bills reforming the California Endangered Species *Continued on page 12*



The Legislature has approved a bill removing a city council's veto power when a portion of any city in California wants to secede. The action was taken in response to secession leaders in the San Fernando Valley, who hope to withdraw from the City of Los Angeles. But as passed, AB 62 would reform the secession process statewide, not just in Los Angeles.

However, the bill does create several special processes designed to kick-start the San Fernando Valley detachment. Among other things, the bill directs the Los Angeles County Local Agency Formation Commission to initiate detachment proceedings for the Valley and creates an eight-member Special Commission on Los Angeles Boundaries that will conduct a special analysis of the Valley detachment.

The San Fernando Valley, annexed to Los Angeles in 1913, has a population of approximately 1.3 million people. If the Valley were to successfully detach and incorporate separately, it would be the second-largest city in the state (after Los Angeles, which would have a remaining population of more than 2 million) and the sixth-largest city in the United States. Despite periodic rumbling in most of the state's large cities, no significant detachment has occurred since 1920, when Monterey Park detached from Montebello. And never in California history has a large and heavily populated territory detached from a city after many years of association.

The bill passed the Legislature easily in the final few days, winning a 23-5 vote in the Senate and a 50-15 vote in the Assembly.

If signed by Gov. Peter Wilson, the bill will represent a major step forward for Valley cityhood advocates, who have been agitating for secession for more than 20 years. The Daily News, a daily newspaper headquartered in the San Fernando Valley, immediately conducted a contest to name the new city, which elicited such proposals as Shake-N-Bake, Toon Town, Robberville, Pleasant Valley, Los Diablos, Valley of St. Catherine of Bononia of the Oaks, and Fault Line City USA.

However, the newspaper itself suggested that the city might be called "Riftsville" because of apparent friction between two competing secession groups, the longstanding Valley VOTE and the newly formed San Fernando Valley Secession Board. Created when the bill passed, the Secession Board includes such longtime activists as lawyer Richard Close, former U.S. Rep. Bobbi Fiedler, and former Assemblywoman Paula Boland, whose bill in 1996 first stimulated the latest legislative action.

More interesting from a statewide perspective, however, are the subtleties contained in the final bill, which represent both big changes from past practice and political compromises apparently designed to protect the political power of the L.A. County LAFCO.

The new bill defines the simultaneous detachment of city territory and incorporation of that territory as a new city as a "special reorganization". The revision of detachment procedures statewide is a major reversal in policy and was broadened to include the entire state, rather than just Los Angeles.

The dual majority system was in place from 1889 to 1977, when it was replaced by the City Council veto system, apparently at the request of the City of San Jose, which was then attempting to fight off a proposed secession in part of the city. The revised law now conforms with the state's procedures for forming new counties, which also requires a dual majority. Despite many votes, however, no new county has ever been created under the system. The procedure for incorporating a new city out of unincorporated county territory remains unchanged. Residents of the proposed new city have the right to vote, but no "dual majority" requirement creates a right to vote among residents of neighboring communities.

As passed by the Legislature, AB 62 does appear to take steps to preserve the power of the L.A. County LAFCO in the "special reorganization" process. Last winter, Senate Pro Tem Bill Lockyer, D-Hayward, introduced a bill (SB 176) calling for the creation of a special, state-appointed commission on Valley secession. At the same time, Assembly Members Tom McClintock, R-Simi Valley, and Bob Hertzberg, D-Van Nuys, introduced AB 62, which simply called for a repeal of the City Council veto.

But the L.A. County LAFCO apparently felt threatened by Lockyer's bill, which cast doubt upon the commission's power to manage what would surely be the most highly publicized local government boundary change in California history. In recent years, LAFCOs around the state have chafed because local officials have increasingly gone directly to the Legislature, rather than through the LAFCO process, to have specific boundary changes made.

In March, the L.A. County LAFCO took the unusual step of holding a breakfast in downtown Los Angeles for legislators, partly to hear the legislative proposals but also partly to persuade the legislators that the focus of boundary activity should remain with the LAFCO, rather than with a new commission. Lockyer was to have been the keynote speaker but he missed his plane that morning. (*CP&DR,*, April 1997.)

The final version of AB 62 does contain Lockyer's proposal for an eight-member commission, but places it under the control of the LAFCO. As sent to the governor, the bill calls for the Special Commission on Los Angeles Boundaries to be created with two appointments from the governor, one each from the Assembly Speaker and the Senate Rules Committee, and four from the L.A. City Council. The four state appointments would come from a list of recommendations made by community groups in the San Fernando Valley.

The bill states the special commission will come into being only if the state legislator appropriates funds for it. Lockyer's bill originally called for an appropriation of $1.2 million for the commission, but McClintock, a fiscal conservative, balked at the idea of including an appropriation in his bill. The commission would report back to the LAFCO within nine months.

The Valley's attempt to secede is the first major effort since San Ysidro sought to break off from San Diego in the early 1970s. In that case, some land and business owners in the 25-square-mile area applied for detachment from San Diego because Mayor Pete Wilson's growth management strategy favored development in center city areas, rather than outlying areas like San Ysidro. According to a report from the Senate Housing and Land Use Committee, the effort died when the state attorney general successfully sued on the point that the Local Agency Formation Commission should have prepared an environmental impact report on the move - a cost that detachment proponents were unwilling to bear. ❑

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Over the bitter objections of hard-line environmentalists, the Legislature has passed two bills reforming the California Endangered Species Act, including one important bill that gives the state Department of Fish & Game explicit permission to issue "incidental take" permits for urban development.

The Senate gave the final okay to SB 231 and SB 879 on September 12, the final day of the legislative session, despite an unsuccessful last-ditch effort by Senate Natural Resources Committee Chair Tom Hayden to stop them. Hayden took the unusual step of holding a committee hearing on the bills on the second-to-last day of the session. But SB 879 — the incidental take bill — passed out of his committee with only his vote in opposition, and won easily the following day on the Senate floor by a vote of 34-3. Only Hayden, John Burton, and Barbara Lee — three of the most liberal members of the Senate — voted against it.

As passed by the Senate, SB 879, carried by Democratic Sen. Pat Johnston, would appear to render moot most of the major issues in *Planning and Conservation League v. Department of Fish & Game*, a case now pending before the California Supreme Court. Last spring, the First District Court of Appeal ruled that Fish & Game Code Section 2081 does not give the state authority to issue "incidental" take permits to allow land to be converted to urban development. In a subsequent modification, the First District also ruled that the 1991 Natural Communities Conservation Planning Act does not create independent authority for such take. (*CP&DR, Legal Digest,* July 1997.)

The issue of "incidental take" is important because, in recent years, the Department of Fish & Game has routinely issued take "permits" to landowners who provide mitigation for endangered species habitat lost to development, or who participate in the state's ambitious NCCP program. Even many environmental lawyers presumed that the state had such authority, which is analogous to powers available to the U.S. Fish & Wildlife Service under the federal Endangered Species Act. However, the state's legal power has been in question ever since the spring of 1994, when the Fourth District Court of Appeal questioned that power in dicta in a case from Riverside County. The First District built on the Fourth District's reasoning in making its ruling last spring.

SB 879 therefore provides the state and landowners with a long-awaited legislative "fix" to the incidental take problem. The bill permits the Department of Fish & Game to authorize a "take" of endangered or threatened species if:

1. The take is incidental to an otherwise lawful activity.
2. The impacts of the take are minimized and fully mitigated. The mitigation must be "roughly proportional" to the impact of the action being permitted.
3. The mitigation measures are fully funded.
4. Survival of the species would not be jeopardized.

Craig Manson, general counsel for the Department of Fish & Game, characterized the rough proportionality requirement as a "ceiling" — meaning landowners could not be required to mitigate more than their fair share — and the no-jeopardy requirement as a "floor," meaning some permits would simply not be issued.

The debate over SB 879 sundered the usually unified environmental movement in Sacramento. The Planning and Conservation League — lead plaintiff in the pending court case — supported the bill, as did the National Audubon Society and many other mainline environmental groups.

"This bill, for the first time, will give us a clean, enforceable standard for full mitigation," said PCL lobbyist Joe Caves at the Hayden hearing. "This is not lessened mitigation. Full mitigation, 100%, is the purpose of this bill."

John McCaull, lobbyist for the National Audubon Society, emphasized that the bill also subjects the 2081 permit process to the California Environmental Quality Act for the first time. The bill calls for the state to write regulations pursuant to CEQA. He said that this requirement, combined with mitigation requirements, solves most of the concerns that environmentalists have with the 2081 process.

Hard-line environmentalists felt differently, however. The San Bernardino Valley chapter of the National Audubon Society lobbied heavily against the bills, while the Natural Resources Defense Council opposed them. Testifying at Hayden's hearing, Kate Neiswender, San Bernardino Audubon's lawyer, responded to the bill's supporters by saying: "I'm happy to be here because I've sued most of them."

She called the bill "a giveaway" that "leaves a huge amount of discretion to Fish & Game, which is unfortunately subject to political pressure." In particular, she disagreed with McCaull's belief that cumulative impacts would be handled through the CEQA process. "Each of these permits is issued in a vacuum, as an independent destruction of endangered individuals," she said. "There is no plan for melding each permit, and each mitigation plan, together, so that long-term survivability is enhanced."

The Audubon Society has more than 50 chapters in California, each of which is free to disagree with the national organization's position.

Hayden himself said: "I feel this is the saddest day for the environment in the 14 years I've been in the Legislature."

After the PCL ruling last spring, the state stopped negotiating any new 2081 permits. The state resumed negotiating such permits after the Supreme Court took the PCL case but warned that they could be under a "legal cloud" if the Supreme Court upheld the First District ruling. The final language of SB 879 grandfathers in old 2081 permits so long as Fish & Game determines that they conform with new guidelines.

The other bill, SB 231, carried by Democratic Sen. Jim Costa, authorizes the Department of Fish & Game to devise regulations specifying for incidental take of species in routine agricultural operations. ❑

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In a novel strategy to resolve a long-standing debate over the use of public subsidies to build a new baseball stadium, the Fresno City Council has approved in concept a $28 million dollar stadium that would be publicly financed and owned.

Technically, the council approved a study that compared different financial packages, and instructed city staff to consult with stadium experts and put together a disposition and development agreement on a stadium.

In the same meeting, the council voted against putting the stadium question on the ballot, apparently heading off a last-ditch effort by dissident council members to derail the project.

Although the decision for a city-owned stadium appears to be a reversal for the Diamond Group, the private company that originally proposed the stadium, President John Carbray sounded upbeat about the deal. Diamond would operate the stadium, and would inherit the facility from the city in 30 years, after the stadium is fully paid off. Diamond has also arranged to purchase an AAA minor-league team, the Tucson Toros, which will now be known as the Fresno Grizzlies; the franchise will function as a farm team for the San Francisco Giants. The Grizzlies are committed to the Fresno Stadium for 30 years. If the Diamond Group is unable to operate the team at any point during that time, the city has the first right to buy the team.

The Diamond Group has the right to assume ownership of the stadium if it refinances the city's debt or otherwise pays off the remaining debt on the facility.

Diamond's Carbray sounded confident that the team will be profitable, no matter what. "We went back and checked the record. Out of 172 teams, there has not been a professional baseball team since 1982 that has gone bankrupt, so it's not really a high-risk situation," he said.

Carbray said location was a strong factor for the Fresno stadium, which is expected to be built in the downtown area. "We are in central California, where we have unbelievably good weather from February to November.

The stadium will have at least 12,500 seats and no more than 15,000. The facility can be expanded to another 5,000 seats. About 6,000 parking spaces will be available in the four-block radius of the stadium in downtown Fresno. "I think it will be copied," said Carbray.

In addition, the stadium will be designed to be a "multi- purpose" facility that is intended to function equally well as a concert venue. Carbray claimed the stadium would be "outstanding" for concerts and soccer games as well as baseball. The stadium, in fact, is being designed with the features of a concert venue, including plentiful electrical outlets, dressing rooms for "talent," and a entrance-and-egress design intended for large crowds.

During the five years of negotiation, The Diamond Group had proposed city subsidies to the stadium. At different times, those proposals ranged from $9 million to $39 million. At one time, the private developer had asked to build a 50,000-seat-stadium. In recent months, the deal appeared to be on the verge of falling apart, with council members grousing that they wanted to talk to another developer, and the developer saying that other cities in the region might be interested in a stadium.

Councilman Henry Perea, who has been on the council only since January, championed the concept of a city-owned facility. "One thing that I always believed, and that my constituency supported, was if the city is to use its financial credit to back a stadium, we should rightfully own the stadium," he said in an interview. Perea added that he would not have supported any level of subsidy to a private developer.

"It may have been just as much psychology as business," explained Perea. "You don't buy a car and give it to someone else to drive when you are making the payments," he said.

Councilman Perea sounded proud of the final deal. "The stadium will belong to the people," he said. ❑

Base Reuse Update

Meanwhile, back on the military base reuse front...

A 157-acre portion of the former Norton Air Force Base near San Bernardino will be broken into smaller parcels, rather than used as an international trade center.

The Inland Valley Development Agency, which is the authorized base reuse agency for Norton, decided to subdivide the property after being disappointed by proposals from developers for the entire site. Three developers proposed purchasing the entire site: Majestic Realty, Charles Co., and Space Center. But, IVDA Co-Chairman Jerry Eaves told the *San Bernardino Sun*, "The offers were not good offers". Under the proposals, the developers had planned to attempt leasing 12 existing buildings immediately to generate an annual revenue stream of about $1.2 million.

However, IVDA has tentatively decided to keep the usable buildings and rent them out itself. The agency will subdivide the unused parcels and sell them. IVDA is said to be negotiating with Amrepro Inc., a fiberglass recycling company, to lease six of the 12 buildings...

And in Sacramento, the state government appears ready to buy a 12-acre parcel of land at the former Mather Air Force Base for about $2.3 million to house a new center for the state Offices of Emergency Services. Under the proposed agreement, Sacramento County will spend about $1.3 million to demolish old buildings and prepare the site, then sell the property to the state for $2.3 million, providing the county with a $1 million profit. Ironically, the state OES is moving because its current headquarters is prone to flooding.

The deal is the first significant land deal since the county took over Mather from the Air Force in 1993, and represents a success for McCuen Properties, the private development company hired by the county to market the location. ❑

CP&DR
LEGAL DIGEST

Ballot Measures Subject to CEQA

Albany Item Placed on Ballot As Result of Earlier Initiative

A development agreement for a proposed gaming facility at the Golden Gate Fields racetrack in Albany should have undergone environmental review before it was submitted to voters for approval, the First District Court of Appeal has ruled.

The First District, Division One, concluded that the 1994 voter approval of the development agreement constituted project approval, thus foreclosing future opportunities to deal with environmental impacts under the California Environmental Quality Act. The court found that provisions in the development agreement law cannot be considered an adequate substitute for CEQA review.

The court also ruled on several other aspects of the wide-ranging case. For example, the 1994 approval was submitted to the voters in conformance with a 1990 citizen initiative requiring voter approval of any development project in the waterfront district. The First District ruled that such a vote does not mandate subsequent city approval of a project and therefore does not trigger the CEQA process.

The court also concluded that the 1994 ballot measure, which specifically mentions Ladbroke Racing California Inc., does not violate the constitutional prohibition on favoring individual private companies in the language of initiatives. The court reasoned that the 1994 measure was not an initiative itself but, rather, was submitted to the voters by the City Council only as a result of the passage of the 1990 initiative.

Development of the Albany waterfront property owned by Catellus Development Co. has been one of the most controversial issues in that Alameda County city for almost a decade. The property is leased to Ladbroke for Golden Gate Fields, but attendance and revenue from the racetrack have dropped by half in the last decade.

The East Bay Regional Park District has been trying to assemble a trail and park system ringing in the entire eastern shore of the San Francisco Bay, and the Albany general plan requires that future development must accommodate those plans. In 1990, a citizen organization placed a successful initiative on the ballot, Measure C, requiring voter approval for future waterfront developments.

In 1994, the City Council supported construction of a new gaming facility at Golden Gate Fields that would consist of some 150 gaming tables in a 125,000-square-foot facility that would be open all the time. The council placed the gaming issues — specifically, ordinances permitting and regulating gaming in the city — and the development issues — a development agreement and zone change — on the ballot in 1994 as a single ballot measure. The measure passed with about 51.5% of the vote.

In 1995, Citizens for Responsible Government, an Albany citizen group, sued the city on a wide variety of charges, mostly having to do with CEQA compliance. Berkeley and other neighboring cities later joined the suit on the side of the citizen group as amicus curiae, while 43 other cities joined as amicus on the other side of the case.

The appellate ruling turned mostly on the question of whether a development agreement could be submitted to the voters without CEQA review. Though courts have sometimes ruled that voters may approve land-use projects without following all procedural requirements such as CEQA, the First District did not make such a ruling in this case.

Writing for a unanimous panel, Justice Douglas E. Swager concluded that "the city council approved a project within the meaning of CEQA when it submitted the development agreement to the voters in resolution 94-72. The critical consideration, in our opinion, is that the city council submitted a fully negotiated development agreement to the voters, together with other measures required for its immediate implementation." The First District relied heavily on two other rulings: *Fullerton Joint High School District v. State Board of Education*, 32 Cal.3d 779 (1982), and *People ex rel v. Younger v. Local Agency Formation Commission*, 81 Cal.App.3d 464 (1978).

Swager noted that the voters approved a 95-page agreement "not the general concept of a development agreement".

"Like the conditional approvals in the Fullerton and Younger decisions, the action of the city council committed it to a definite course of action that was contingent only on the outcome of the election."

The city argued that the development agreement contained a process for environmental review that satisfied the CEQA requirement. The development agreement specified the types of information required "to address any potential adverse environmental impact" and required that "all reasonably feasible mitigation measures" become conditions of approval.

The First District rejected this argument for two reasons. First the court quoted CEQA Guidelines, Section 15004 (b), which "encourage the project proponent to incorporate environmental considerations into earliest conceptualization, design, and planning at the earliest feasible time". This provision, Swager said, means that "the appropriate time to introduce environmental considerations into the decision-making process was during the negotiation of the development agreement."

Second, the court noted that "by entering into the development agreement, the City contracted away its power to consider the full range of alternatives and mitigation measures required by CEQA". Swager found that by limiting the city to "reasonably" feasible mitigation measures, the development agreement imposed "a qualifying term not found in CEQA". Also, Swager used several examples of specific language from the development agreement that appear to limit the exactions and mitigations the city can require of the development in areas of environmental concern.

These concerns were limited to voter approval of the development agreement itself, however. The court found that submission of the zoning amendment to the voters, a step required under the 1990 Measure C, was exempt from CEQA. In making this decision, the court relied heavily on *Lee v. City of Lompoc*, 14 Cal.App.4th 1515 (1993), a case in which the Second District Court of Appeal concluded that CEQA doesn't apply to a City Council's decision to submit a zone change and general plan amendment to the voters because such an action does not constitute final development approval.

The court also concluded that the specific mention in Ladbroke in the 1994 Measure F does not violate the state constitution's prohibition on the mention of individual companies in initiatives. This issue was recently dealt with in a land-use context in Pala Band of Mission Indians v. Board of Supervisors, 54 Cal.App.4th 565 (1997), which struck down a voter-approved initiative because it called for construction of a landfill by a specific company.

The First District distinguished the Albany case from the Pala decision, however. Measure F was not a citizen initiative, Swager noted, but a measure placed on the ballot by the Albany City Council pursuant to a city ordinance adopted by initiative. "We note," he said, "that it would be difficult, if not impossible, to draft a meaningful ballot measure involving development agreement without some reference to the parties to that agreement." ❑

■ The Case:
Citizens for Responsible Government v. City of Albany, No. A073708, 97 Daily Journal D.A.R. 10014 (August 5, 1997).
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For Ladbroke Racing California Inc. (real party in interest): Robert W. Loewen, Gibson Dunn & Crutcher, (714) 451-3894.

EMINENT DOMAIN

Eminent Domain Suits Can Include Setoff Analysis for Transit Access

The California Supreme Court has jettisoned a century-old rule in the field of eminent domain, thus permitting government agencies to count potential increases in property value as the result of public works projects to offset the price paid for land required for those projects. The decision is likely to reduce the amount of money that government agencies, especially transportation agencies, will be required to pay when they take property by eminent domain.

The landmark revision came in a case between the Los Angeles Metropolitan Transportation Authority and a private property owner along the Green Line light-rail route. Continental Development Co. owned a business park in El Segundo with existing buildings, but the MTA initiated an eminent domain action because a small part of the property — approximately five feet in width — was required for Green Line construction.

A jury awarded Continental about $106,000 for the property but more than $1 million to compensate the landowner for the supposed visual impact of the Green Line on views from offices in the adjacent building. The MTA moved for a new trial, arguing that its lawyers should have been permitted to raise the question of whether Continental's property value would actually increase as a result of the Green Line's construction.

Before the case went to trial, Los Angeles County Superior Court Judge Harvey A. Schneider denied MTA's motion to introduce the issue of increased property values, concluding that proximity to the rail station was "merely the benefit of access" and "confers no peculiar or unique benefit of the defendant's property". The Court of Appeal affirmed Schneider's decision and the jury award.

In a split decision, however, the Supreme Court ruled in favor of the MTA. In so doing, the court majority overturned a well-established 1902 ruling, *Beveridge v. Lewis*, 137 Cal. 619.

In *Beveridge*, the court distinguished between general benefits, which "consist of an increase in the value of land common to the community generally", and special benefits, which "result from the mere construction of the improvement, and are peculiar to the land in question."

Writing for the majority in the MTA-Continental case, Justice Patricia Werdegar wrote that *Beveridge* should be overturned "to the extent it holds that only 'special' benefits may be offset against severance damages."

Henceforth, she wrote, "the factfinder ... shall consider competent evidence relevant to any conditions caused by the project that affect the remainder property's fair market value, insofar as such evidence is neither conjectural nor speculative." In the MTA case, the effect is to allow evidence suggesting that Continental's land value will increase.

The ruling is potentially important in public transit projects, because experts often debate whether proximity to a transit station increases or decreases the value of nearby property.

Werdegar's majority opinion was opposed by Justices Joyce Kennard and Marvin Baxter, who wrote separate dissenting opinions. In a lengthy opinion, Kennard wrote: "I see no need to upset this long-settled rule of California law." Baxter wrote a separate opinion agreeing with Kennard's reasoning but saying he would go even further in restating the Beveridge rule.

The case began when the MTA brought an eminent domain action against Continental in order to acquire a small portion of Continental's property on Rosecrans Avenue in El Segundo. The MTA sought to acquire an air-rights easement, a construction easement under the air-rights easement, and a 373-square-foot strip of land running along one side of the property. Continental's total property was 14 acres divided into three lots, and was adjacent to the company's 86-acre business park.

At the time the case was filed, Continental's property was vacant, but by the time the case came to trial, Continental had built a four-story office building. The Green Line did not start operating until after the trial.

In ruling that the rail station conferred no "special benefit" on the Continental property, Judge Schneider declined to consider consultant declarations and reports from the MTA concluding that, based on experience in other cities, proximity to the rail station could increase the value of Continental's property by as much as $4 million. Continental presented evidence showing it had spent $400,000 to install double windowpanes, though the MTA disputed whether this investment was needed.

The jury that awarded Continental just over $1 million did not "break out" the rationale for its award, but apparently the jury was responding in full to Continental's request for approximately $400,000 compensation for the visual impact. The MTA moved for a new trial, based on three grounds. First, the MTA argued that the award for visual impact was not supported by substantial evidence. Second, the MTA claimed that Judge Schneider erred in not permitting the MTA to cross-examine Continental's appraiser, Joseph Hennessey, on the question of whether the Green Line might increase the value of Continental's property. Third, the MTA claimed Judge Schneider erred in not failing to instruct the jury to break out its verdict amount. Schneider denied motion for a new trial, and the Court of Appeal affirmed his ruling.

The Supreme Court majority, however, overturned the Court of Appeal's decision and ordered a new trial. In the majority opinion, Justice Werdegar traced the entire history of "benefit offsets" against severance damages in California law, back to and including the Railroad Act of 1861. The Railroad Act, which regulated land condemnation by private railroad companies, specifically permitted that such "offsets" be counted. Some 40 years later, in the Beveridge case, the Supreme Court specified that special benefits — "peculiar to the land in question" — may be offset in a condemnation case, whereas general benefits cannot. The rule has been in place for the last 95 years, having been most recently reaffirmed in the then-controversial case *Pierpont Inn v. State of California*, 70 Cal.2d 282 (1969), which dealt with the state's condemnation of beachfront property in Ventura for Highway 101.

In her majority opinion, Werdegar said the court majority had to revisit the Beveridge case because of ambiguity over how special and general benefits are defined. "The more expansively the community is defined," she stated, "the more likely the benefit will be deemed peculiar and, hence, a special benefit entitling the condemnor to a setoff."

After a lengthy discussion, Justice Werdegar concluded: "The severance damages Continental claimed for noise and loss of view are ... 'special' to the same degree as the benefits the Green Line allegedly will confer. Fairness requires parity of treatment." With these words, the majority overruled part of the *Beveridge* decision and erased the distinction between special and general benefits. Werdegar noted that "the rule we adopt today is not the majority view on the United States" but added: "Like our sister minority jurisdictions, we are persuaded the rule we announce today is ultimately the most workable and the most fair to all parties concerned."

In her dissent Kennard questioned whether it would be easier to calculate general and special benefits together than special benefits alone. "It is one thing to say that a freeway interchange may bring some general benefit to all the properties in the large area served by the surface streets connecting with the interchange; it is quite another thing to attempt to quantify that benefit." She also noted that there are 565 other properties as close or closer to the station than Continental's property, and in her view no evidence exists to suggest that the benefit of proximity to Continental's property was somehow different or peculiar than these others. Thus, she said, on the basis of special benefit alone, she would affirm the Court of Appeal.

In sum, she wrote: "To refuse to compensate the landowners for ... damages by offsetting against them the general benefits that all in the vicinity of the project receive unfairly forces the landowner to pay for benefits that others receive for free."

In a separate dissent, Justice Baxter went further than Justice Kennard and said: "Even if prior cases have not stated the rule in precisely this way, I would make clear that when part of a larger parcel is taken for a public project, the value of any benefit conferred by the project upon the remainder may be deemed 'special,' and may thus be set off against cognizable severance damages to the remainder, only when the benefit is 'reasonably certain, immediate, and nonspeculative' and is shared, if at all, only by other parcels similarly subject to a partial taking. In other words," she concluded, "any benefit conferred by the project upon condemned and uncondemned parcels alike must be considered 'general' and not subject to offset, even if the benefit is clear and present, and its diffusion throughout the community is not particularly broad."❑

■ The Case:
L.A. County MTA v. Continental Development Corp., No. S051436, 97 Daily Journal D.A.R. 11021 (August 25, 1997).
The Lawyers:
For MTA: Mary Lou Byrne, Nossaman Guthner Knox & Elliott, (213) 612-7845.
For Continental Development: Angelo J. Palmieri, Palmieri Tyler Wiender Wilhelm & Waldron, (714) 851-9400.

OUTDOOR ADVERTISING

Agoura Hills Restrictions on Pole Signs Are Struck Down

Agoura Hills' ban on pole signs along Highway 101 violates state law because it discriminates on the basis of height and size and because local topographical features make it hard to see other types of signs, the Second District Court of Appeal has ruled.

In an opinion written by Presiding Justice Joan Dempsey Klein, Division 3 of the Second District concluded the city's ordinance violates Business & Professions Code Section 5499, a part of the state's outdoor advertising law, which restricts the circumstances in which local governments can ban "on-premises advertising displays."

The city's 11 pole signs have been the subject of major controversy ever since Agoura Hills incorporated in 1983. The signs were originally erected along a scenic stretch of Highway 101 when the area was governed by Los Angeles County.

The city banned pole signs in 1985 and gave owners of existing signs a seven-year amortization period. Voters rejected two referendums in 1993 that would have changed city policy to permit the signs to stay. The city was sued by such retail chains as Denny's, Burger King, Unocal, Texaco, Jack in the Box, Fence Factory, and Roadside Lumber. (In some cases the plaintiffs were local franchisees for these chains.)

Section 5499 bans restrictions on freestanding outdoor signs based on height or size if "special topographical circumstances would result in a material impairment of visibility of the display." In the Agoura Hills case, Klein accepted the retailers' argument that the city's ordinance was a de facto restriction based on height and size, and that "special topographical circumstances" were indeed at work.

The key to the Second District's ruling was Klein's conclusion that the city's ordinance regulates based on height and size even though the ordinance's language does not make this distinction per se. Klein noted that the ordinance exempts some signs from the ordinance, including political and other non-commercial signs of 18 square feet or less that are no more than six feet in height. Also exempted are residential nameplates, agricultural signs, residential and commercial real estate advertising signs, and gasoline price signs. The ordinance does not regulate these signs if they are under a certain size and height. (These dimensions vary on the type of sign.)

The city had argued that this ordinance did not regulate based on height and size. Among other things, the city argued that the signs exempted in the ordinance are not pole signs "as a matter of common understanding, both in the sign industry and among regulatory agencies," because they do not exceed six feet in height. "Although the concepts are vague," the city argued, "as a rule of thumb, generally the term 'pole sign' is reserved for a sign mounted on a pole or other support that one can walk under."

Wrote Klein in response: "The city's contention pole signs are inherently tall, and that the ordinance contains a blanket prohibition on pole signs, is unpersuasive." The ordinance, she noted, defines a pole sign as any sign that is "supported by uprights or braces placed upon or into the ground and detached from any building" without making any reference to height.

"In sum," she wrote, "contrary to the City's argument, the ordinance does not ban 'pole signs' as a class. Rather, the ordinance bans those pole signs which are large or tall."

Regarding the issue of "special topographical features," the appellate court disagreed with L.A. County Superior Court Judge Stephen D. Petersen's interpretation of this language, but not in a way that caused the higher court to overturn Petersen's decision. Petersen rejected the city's argument that this term refers only to naturally occurring topographical surface contours and stated that it refers to many non-natural items, including vehicles traveling on the freeway.

However, the appellate court concluded that even if this definition is narrowed to include only natural topographical features, there is little question that the removal of the pole signs impairs the ability of business owners to attract customers. Based on visual simulations, Justice Klein stated, "there is substantial evidence to support the trial court's determination that conforming signs would be materially less visible or less effective at conveying the owner's messages in public."

The appellate ruling did not discourage the neighboring city of Calabasas from adopting a ban on pole signs on September 5, four weeks after the ruling. Calabasas, which incorporated in 1991, also inherited the signs from L.A. County. Sign owners will have 15 years to remove the signs. ❑

■ The Case:
Denny's Inc. v. City of Agoura Hills, No. B098621, 97 Daily Journal D.A.R. 10317 (August 7, 1997).
The Lawyers:
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For City of Agoura Hills: Michael F. Den and Deborah M. Cook, Kronick, Moskovitz Tiedemann & Girard, (916) 321-4500..

ZONING

Judge Finds Rialto Adult Ordinance Unconstitutional

A federal judge in Los Angeles has found the City of Rialto's adult entertainment ordinances to be unconstitutional and will soon issue a permanent injunction against the city blocking the ordinances' implementation. The judge acknowledged that the two ordinances in question are constitutionally independent of one another but refused to sever them in his legal analysis.

C.R. of Rialto Inc. originally sought a temporary restraining order from U.S. District Court Judge Robert J. Timlin to permit the firm to "return" to providing "erotic performances" at its location in Rialto. Timlin denied the TRO but later indicated that he would issue a permanent injunction. Rialto fought this action on several technical grounds, claiming among other things that C.R. had stipulated that it would not seek a preliminary injunction and that the two ordinances Timlin found could be severed from one another.

One municipal code section permits adult businesses in general commercial and commercial manufacturing zones. But another code section prohibits adult businesses from within 1,000 feet of residential zones or other specified uses. C.R.'s consultant submitted evidence to suggest that there is no land in Rialto located within the general commercial or commercial manufacturing zones. Timlin concluded, therefore, that the ordinances are unconstitutional on their face. Under a series of cases stretching back to Renton v. Playtime Theatres Inc., 475 U.S. 41 (1976), federal courts have found that the First Amendment rights of adult business owners can be violated if local ordinances prohibit such businesses within city limits or make it practically impossible for them to locate there.

As the city submitted no evidence to refute C.R.'s analysis, Timlin found the ordinances, "as they are applied together, unreasonably limit the ability of an adult oriented business to locate within the city, and violate the business operator's First Amendment rights."

However, the city also argued that under a separate section of the municipal code, the two other code sections should be severable. The city argued that the zoning restriction and the distance restriction, taken individually, are not unconstitutional. C.R. did not agree. By invoking the severability section of the municipal code, the city argued, the two sections could be found constitutional.

But Timlin disagreed, and he used the city's own argument to do so. While conceding that the two provisions are constitutional when viewed independently, he noted that the severability section of the municipal code permits sections to be severed when they are invalid or unconstitutional. Since both provisions are constitutionally independently, he said, he cannot sever them from one another.

"Lacking any judicial or statutory authority allowing this court to sever a facially constitutional provision of a zoning regulation such as Chapter 18.105 for the purpose of allowing another facially constitutional provision of such regulation to exist, and in its application be constitutional but not constitutional if applied together with the severed facially constitutional provision, the court declines to sever section 18.105.060 from the Code," he wrote. ❑

■ The Case:
C.R. of Rialto v. City of Rialto, No. CV 96-0171, 97 Daily Journal D.A.R. 10521 (August 14, 1997).
The Lawyers:
For C.R.: John Weston, Weston, Sarno, Garrou & DeWitt, (310) 442-0072.
For Rialto: Robert Owen, Rutan & Tucker, (714) 641-5100.

CEQA

Court Makes Expansive Ruling On Standing for CEQA Cases

Any party may bring litigation challenging an environmental impact report so long as that party questioned the adequacy of the EIR at any time prior to its certification, the Sixth District Court of Appeal has ruled.

In an unpublished portion of the same case, the Sixth District affirmed a trial judge's ruling that the Monterey Peninsula Water Management District's EIR on the New Los Padres Dam and Reservoir was inadequate in its discussion of the likely impact of the project on the cultivation of wine grapes.

Galante Vineyards and other local viticulturalists had sued the water district after certification of the EIR, which assessed the impact of a 24,000 acre-feet dam and reservoir on the Carmel River in Monterey County. The district began the process of environmental documentation for a new dam in 1982. After preparing a draft environmental impact report/environmental impact statement, the water district actually changed the location of the project and chose a less environmentally damaging alternative.

In 1991, after the new location was selected, the district circulated a supplemental draft EIR/EIS. After state and federal resource agencies requested that additional alternatives be explored, the district circulated a second supplemental draft EIR/EIS in 1994. During the review period, one individual criticized the draft for an inadequate discussion of local viticulture. Whereas the draft EIR/EIS dismissed the area as "sparsely populated" with "no industry other than several vineyards," commenter Charity Crane claimed that the local viticulture industry "is thriving and the area has achieved recognition world wide for its quality of wine." Air pollution from dust, Crane argued, would harm the viticulture.

Bernardus Winery expressed an opinion in an undated letter to the U.S. Army Corps of Engineers, and Galante Vineyards complained about the EIR/EIS in a letter to the water district dated some three months after the close of the comment period. (The letter was dated prior to the district's public hearing on the project and its certification of the EIR, however.) Four vineyards ultimately sued, including Bernardus and Galante, but not include Charity Crane.

The water district argued that they did not have standing to sue because they had not participated in the formal review process for the second supplemental draft EIR/EIS. The district pointed especially to Section 21177 of the California Environmental Quality Act, a provision added as part of the broad-ranging CEQA reform that passed in 1993. This section limits standing to those parties who raised issues "during the public comment period provided by this division OR prior to the close of the public hearing on the project before the issuance of the notice of determination."

The water district's lawyers argued that this language limits standing to those parties who may have participated in a public hearing during the official public comment period — rather than those parties who participated prior to a public hearing held after the public comment period had ended, as was the case here.

The court acknowledged that the phraseology is confusing and pleaded with the Legislature to clarify it. However, the court concluded: "We conclude that any party may bring an action ... if it has raised an objection to the adequacy of an EIR prior to certification."

In an unpublished portion of the case, the court concluded that the final EIR was inadequate as regards viticulture and affirmed the trial court's decision to order the water district to prepare an addendum. ❑

■ The Case:
Galante Vineyards v. Monterey Peninsula Water Management District, No. H015346, 97 Daily Journal D.A.R. 10649 (August 15, 1997).
The Lawyers:
For Water District: David C. Laredo, De Lay & Laredo, (408) 646-1502.
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Cities Face Dilemmas in Expanding Airports

Continued from page 1

is expected to jump by 11 million. San Jose International Airport currently accommodates 12 million passengers annually; that number is expected to rise to 17.6 million when the latest expansion reaches completion in 2010. Other airports report comparable rates of growth.

In many cases, however, airports have little room to grow. In the Bay Area, the three biggest air hubs — San Francisco International, San Jose International and Oakland — are all expanding within their existing footprints. "There is no room to grow except through efficiency," according to the San Francisco Business Times. In San Jose, "we are so tight for space that we are building an eight-story parking structure for rental cars," said Pandori.

Another space-constrained airport is Lindbergh International Airport in San Diego, which covers only 474 acres and is bordered by the ocean, military installations and industry. After local politicians abandoned a plan to develop a civilian airfield in Miramar Naval Air Station several years ago, the airport added another eight gates to the airport's western terminal, which open in January. Fortunately for Lindbergh, two of its largest neighbors — the 90-acre site of General Dynamics' Convair plant and the 40-acre Naval Training Center — have vacated their buildings. "It's a limited area," conceded Lindbergh spokesman Jim Anderson. The airport is also starting an 18-month master-plan study to see what further use can be eked out of the site.

In San Jose, expansion plans may be nearly obsolete by the time they are finished, according to a critic of the master plan there. On June 10, the San Jose City Council voted 10-1 on a $809 million airport plan that is expected to nearly double air traffic at the facility. Councilman Pandori, who represents several residential areas that expect noise impacts from the expanded facility, cast the sole dissenting vote.

> *"Airports are facing extraordinary demands on their capacity. In many cases, however, airports have little room to grow."*

Pandori said that he opposed spending so much money on an airport that would not have a useful life beyond 10 or 15 years, based on the current pattern of growth. "It does not make long-term economic sense to invest money in a location that isn't going to serve the long-term needs of the valley," he says. "We are painting ourselves into a corner." In addition to the space limitations in San Jose, Pandori cited the evening curfew on freight flights, which is a disadvantage for computer-related businesses that rely heavily on air freight.

He recommended that the city look seriously into developing a new airport at Moffett Field, a former military facility in Mountain View now owned and operated by NASA. "From an economic point of view, we are going to have to bite the bullet on the long-term planning of our airport," Pandori said. The city council approved a motion to create a task force to study the feasibility of building a commercial airport at Moffett on the same night it approved the airport master plan. But NASA officials have expressed opposition to a civilian airport at Moffett, which is currently used as a test site for experimental aircraft.

But attempts to create new airfields can encounter resistance, even when the need is indisputable. In Orange County, John Wayne Airport is experiencing large increases in traffic and is fast approaching capacity. County officials are pursuing plans to build an international airport on the site of the El Toro Marine Corps Air Station, which closes in 1999. Although those plans have been twice endorsed by county voters, a group of cities surrounding the air field have filed lawsuits challenging the airport environmental impact report, citing inadequate mitigations for noise, traffic and other impacts.

The dissenting cities, in fact, were formerly part of a base-reuse authority that was disbanded by the count, because some members expressed opposition to an airfield. In August, the county board of supervisors voted 3-2 not to allow dissenting cities to insert a report about alternative uses at El Toro in the final EIR unless they dropped the lawsuit. Lake Forest City Councilman Richard Dixon, chairman of the El Toro Reuse Planning Authority, said in the hearing prior to the vote that scrapping the lawsuit would be "unacceptable and unrelated to the development of a non-aviation plan." (The California Supreme Court recently decided not to review the case, which the cities lost.)

In Burbank, tensions over airport expansion have opened political cracks between the airport management and City Hall, as well as between City Hall and local airport opponents. Officials have proposed adding up to 13 new gates, for a total of 27, at L.A.'s second-most-popular airport. In 1995, two airport opponents were elected to the city council, Ted McConkey and Bob Kramer, who has since become mayor. A third councilman, David Golonski, was elected last year with the endorsement of McConkey and Kramer, and anti-airport activists believed they had a reliably anti-airport block on the five-person council.

In May, the council and the three-person airport commission approved a "21st Century Plan" for the airport that recommended adding only two new gates, a cap on the number of commercial flights, and a 10% limit on the growth of air traffic. Kramer created controversy, however, when he decided unilaterally to open talks with the Airport Authority — a nine-person board with representatives from the cities of Burbank, Glendale and Pasadena — shortly after becoming mayor this summer.

He raised eyebrows by choosing an airport booster, Brian Bowman, as part of the city's negotiating team. Worse, in the eyes of critics, Kramer's team scrapped parts of the 21st Century Plan by agreeing to allow the creation of five new gates and scrapping the cap on commercial flights. ❑

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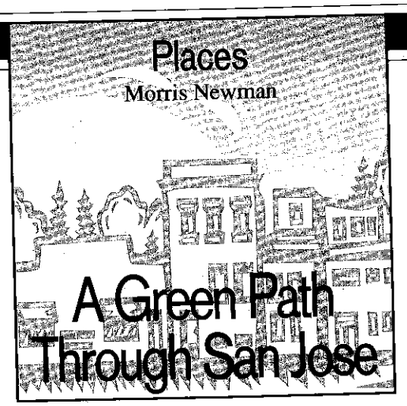
David Pandori, councilman, City of San Jose (408) 279-5351.
Jim Anderson, spokesman, Lindbergh International Airport, (619) 686-8050.
Richard Dixon, councilman, City of Lake Forest, (714) 461-3400.



Could this really be flood control? A linear park meanders through the downtown area of San Jose, along the banks of the Guadalupe River. Actually, the river is the connecting link for a series of different parks and outdoor spaces — meadows, formal terraces, playfields, habitat — all strung together like beads on a necklace.

At one point, soaking-wet children cavort through waterfalls and "interactive fountains" that leap up unexpectedly from the pavement. At another point, the linear park broadens into meadowlands with wide pedestrian paths. At yet another point, the landscape turns into a field of earthen "wave berms," which look like six-foot ocean waves rendered in turf. In short, a downtown area that had nearly forgotten its relationship to the river will soon have a park that invites active use, both through its extraordinary design and the many points of public access. And a densely developed area of high-rise buildings has the unique amenity of water and riparian wildness in the center of town.

Welcome to the Guadalupe River Park. (Our narrative is still a little fanciful, because the third and final phase of the park, which goes through the downtown area, remains to be built, until environmentalists and planners work out some technical problems about water temperature). To judge from the plan alone, the River Park is the best demonstration yet for using flood mitigation as an opportunity to create an active park in a downtown area. For millions of other Californians — I am one — who have lost their rivers to channelization, the plans for the River Park stir up envy. Perhaps more importantly, the Guadalupe project may provide some important philosophical lessons in how to make a flood-control channel into something more than a concrete sink.

It's not that the planners or ecologists had an easy time. The Guadalupe River channel is a far cry from nature, at least in a pristine state. Much of the river has already been lined in concrete by the U.S. Army Corps of Engineers, which proposed a concrete, U-shaped channel along much of the river. Banks will be raised, and much of the river's natural channel will be widened. Further still, much of the River Park in the downtown area runs parallel to Route 87, and is crossed by both Route 880 and the 87-Interstate 280 interchange. The elevated freeways will cast long shadows over much of the parklands. In other words, the river will be a profoundly altered landscape.

To their credit, the design team of the current version of the project (known as the "refined Guadalupe River Park Master Plan Project") have not tried to create a phony natural landscape. Instead, the designers — a team led by Hargreaves Associates, in association with AN West, AGS Geotechnical Engineers and H.T. Harvey and Associates — have been wise enough and confident enough to create an unambiguously man-made landscape that offers a pleasant contrast to the natural-seeming meander of the river and unkempt look of habitat.

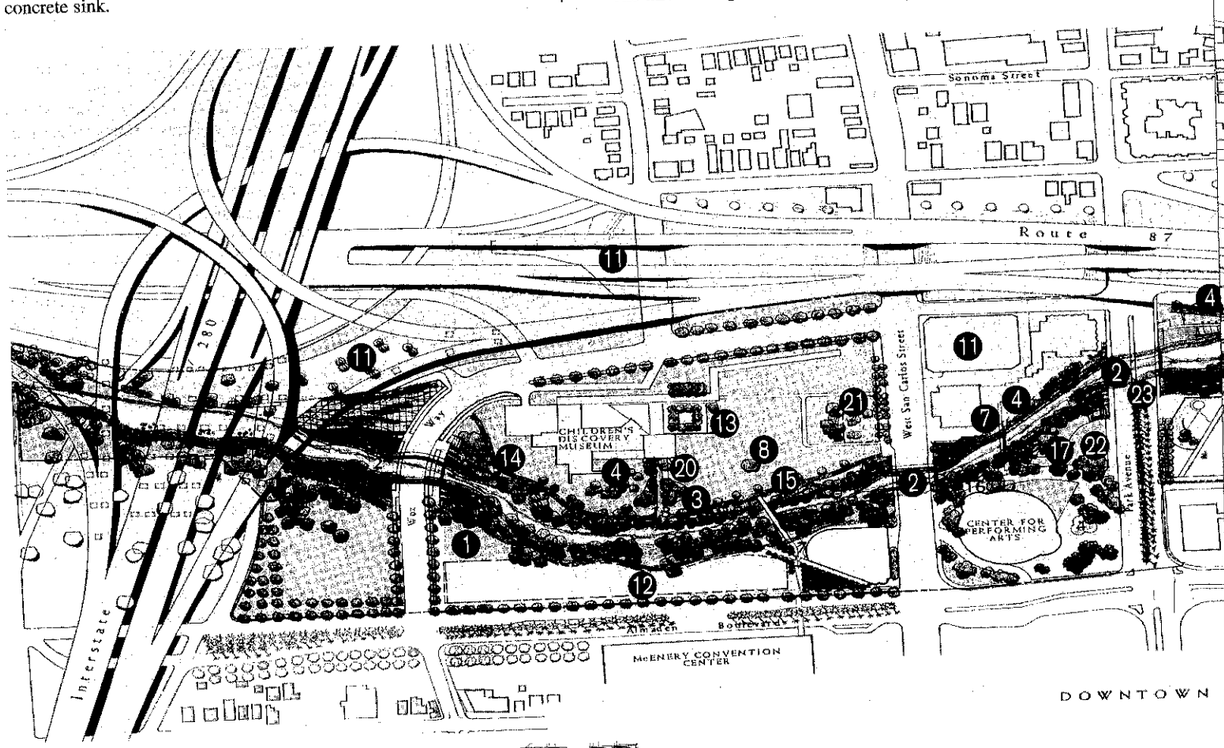
The river and the River Park are soon to be used as a "generator" of urban design. Two major facilities, the Children's Museum and a future sports arena, have been designed to maximize their frontage along the river bank. "These facilities and other key locations along the river have inspired the design of a series of plazas, terraces and open-space 'events' that punctuate the course of the river as it makes its way through the city," according to a statement found on Hargreaves' web site.

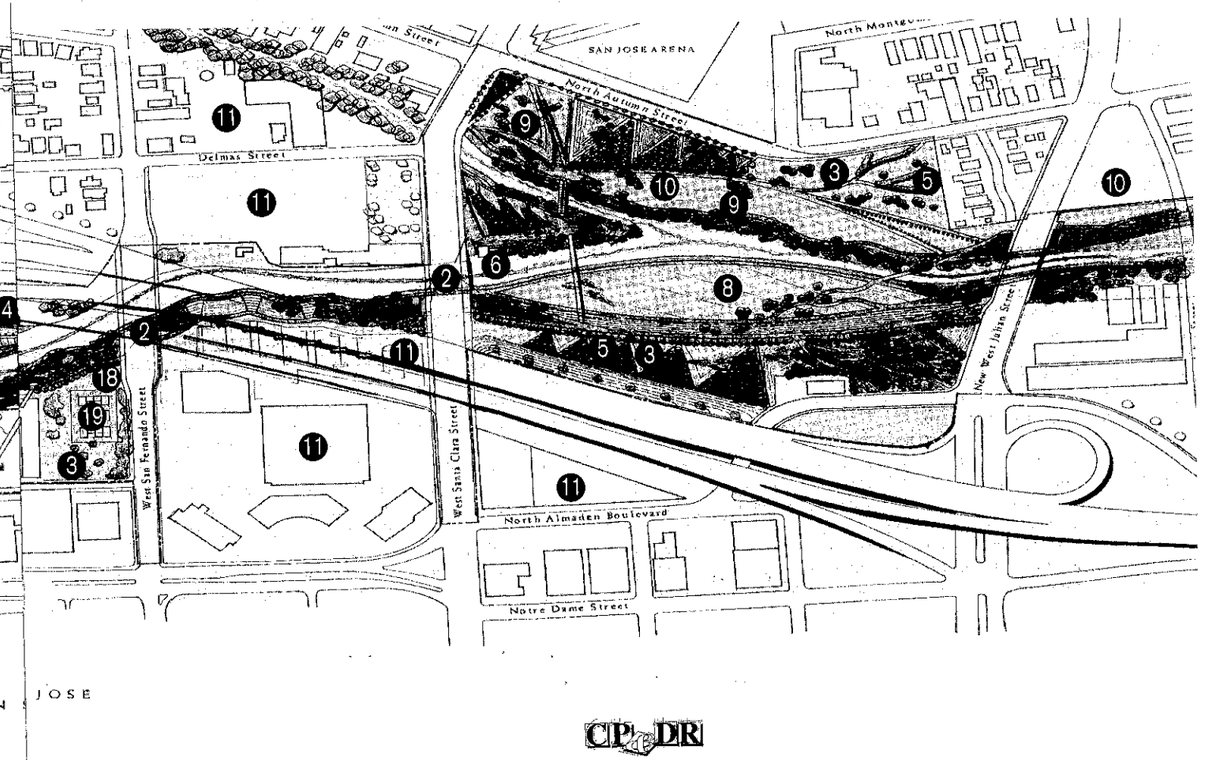
The three-mile path of the River Park is studded with "events" that poke into the city, and other places where the city pokes back. Starting in a southeasterly direction from the San Jose International Airport, the first mile of the River Walk is the portion that most resembles a traditional city park, with picnic areas, walking trails and plentiful green. From that point on, however, the "footprint" constantly changes in response to local conditions and ownerships. At points, the river narrows almost to the width of a city street, only to flare out into full glory a block later.

At first glance, an observer might feel disappointment. Wouldn't it be nice if the park could be a greenbelt of uniform thickness, like the greenbelt that runs through Chicago? At second glance, however, we realize it is precisely this changing, site-specific nature of the River Park that makes it more than a green space. It becomes an active element that relieves the city grid of monotony and provides opportunities to site buildings in unusual ways.

The city's brochure about Guadalupe River Park describes the project as a "great urban park." Despite my dislike of hype, I am inclined to agree that Guadalupe River Park, when completed, will be the kind of unique, site-specific feature that city planners can only dream about. As an Angeleno, the example of creating a trans-city recreational resource out of a flood control channel has a deep emotional tug for me. Our environmentalists have been advocating something very similar for the channelized Los Angeles River, which is the very worst example of what can happen when flood control is pursued as a single-purpose project. (Unfortunately for the L.A. River, it flows through numerous municipalities, which means that any kind of cooperation on land use is well nigh impossible.) Meanwhile, the Corps has stepped up its program of raising new concrete banks along this barren eyesore that rightly should be the green heart of the city.

In downtown San Jose, we will have to see whether the execution of the Guadalupe River Park lives up to its design, and whether the actual experience is as rich as the architects' drawings. Perhaps I have been seduced by the superb graphics of the designers: The night after I first looked at the scheme for the Guadalupe River Walk, I dreamed about rivers all night. Hopefully, the completed River Walk will make other people dream about rivers, too. ❑





Legend

1 River Walk
2 Access Point
3 Children's Play Area
4 Water Feature
5 Picnic Area
6 Visitor Center
7 Pedestrian Bridge
8 Play Fields
9 Public Assembly
10 Carousel
11 Parking
12 Private Development Site/Parking Lot
13 Riddler Plaza
14 San Jose Sister City
15 Dublin Sister City
16 Okayama Sister City
17 Vera Cruz Sister City
18 Tainan Sister City
19 McEnery Park
20 Parade of Animals
21 Monopoly in the Park
22 Veteran's Memorial
23 Historic Features of Park Avenue Bridge

Legislature Flinches on School Issue

Continued from page 1

Act were passed on the last day of the session, despite passionate attempts by Sen. Tom Hayden and hard-line environmentalists to stop them. (See Environmental Watch, page 3.)

• Responding to demands from the San Fernando Valley section of Los Angeles, the Legislature passed a bill that reforms the method by which dissident areas can proceed with withdrawing from a city and forming a new one. The bill, AB 62, would eliminate the veto power of the existing City Council and replace it with voter approval from both the proposed new city and the remainder of the old city — returning to the formula used for almost a century until the law was changed some 20 years ago. (See Local Watch, Page 2.)

• After coming very close to consensus among the affected interest groups, the Legislature failed to pass a wide-ranging compromise in the area of school fees and school facilities financing. Up until the last week of the session, major interest groups were kicking around a proposal to place a $20 billion bond issue on next year's ballot, combined with a series of other reforms, including simple-majority passage of local school bond issues, a change in permissible development fees for schools, and a cost-containment strategy in new school construction.

However, consensus could not be reached in the last week of the session — meaning that this perennial problem remains unsolved.

• The Legislature also passed SB 466, a consensus proposal establishing a mediation process for annexations that was supported by both cities and counties. The bill emerged from its own mediation process — involving representatives of the League of California Cities and the California State Association of Counties — after an acrimonious dispute on the same issue last year.

School Facilities: Failure

The school facilities issue was probably the most ambitious attempt by the Legislature this year to deal with a pending local government issue. The question of how to pay for new school facilities has been a stalemated, four-cornered debate in Sacramento for more than a decade, with school districts, local governments, developers, and the state all blocking each other and therefore blocking a permanent solution. (See *CP&DR*, Special Report on School Mitigation, 1995.)

Under a 1986 agreement, school districts, developers, and the state are supposed to share the cost of new school construction. School districts can impose a fee on new development of $1.84 per square foot, which school experts say represents about a third of the cost. The remainder of the money is supposed to come from state school bonds, which require a simple majority vote, and local school bonds, which require a two-thirds vote. However, school enrollment has been much higher over the last decade than was anticipated at the time. Other factors have also come into play as well.

School districts are sometimes able to extract higher fees from developers if the local city or county has policies contained in its general plan through the so-called "Mira" process — named after the court case that established this power. For the past several years, the fate of the Mira doctrine — and attempts to lower the required vote for local school bonds to a simple majority — has been the focal point of legislative discussion. The California Building Industry Association has sought to eliminate the Mira doctrine and create a more uniform and predictable development fee. But some school districts — especially rapidly growing suburban districts that rely heavily on development fees — have resisted "trading away" their Mira power in the Legislature.

This year, however, the politics of the school facilities issue seemed to change when powerful education lobbyists entered the fray. In previous years, most lobbying had been done by organizations focusing on school facilities, such as the Coalition for Adequate School Housing (CASH). This year, however, the powerful California Teachers Association and the California School Boards Association took a more active role, joining seven other organizations in the "Education Coalition" to make a strong effort to resolve the school facilities issue. In addition, Sen. Leroy Greene, D-Carmichael, chairman of the Joint Legislative Committee on School Facilities, began pushing for stronger action as well. Long the "godfather" of school facilities in the Legislature, Greene, who is almost 80 years old, will be term limited out next year.

In the waning days of the session, a compromise deal appeared likely to pass. The deal included:

• Placement of $8 billion in school bonds in the 1998 ballot.

• A constitutional amendment to reduce the local bond passage requirement to a simple majority vote.

• Elimination of Mira in exchange for a $3-per-square-foot development fee. (Higher fees would have been permitted under certain specified conditions.)

• A cost-containment strategy calling for a cut in school construction costs of approximately 20%.

The package appeared likely to be sent to the governor after a dramatic vote in the Senate on September 10, when ailing Sen. Ralph Dills was wheeled into the Capitol to cast the deciding vote on the constitutional amendment. However, the package never even came to a vote in the Assembly because of Republican resistance to the simple-majority vote and school district resistance to the cost-containment requirements.

Annexation

The Legislature did pass SB 466, a bill that contained compromise language worked out between cities and counties regarding annexation.

As sent to the governor, the bill extends the negotiating period for a tax agreement between cities and counties on annexations from 30 to 60 days.

The bill permits a city and a county to mutually select a consultant to perform an independent fiscal analysis, then creates a process by which cities and counties can hire first a mediator and then an arbitrator, whose findings would not be binding. The law would be in effect until 2005.

The issue of annexation rules has been a long-standing dispute between cities and counties. Among other things, counties view aggressive annexations as a threat to their revenue, while cities want to exert more control over the development standards in areas they may annex in the future. In several cases over the past few years, counties have cut off annexation agreements with cities over financial disputes. The issue was raised to a high profile last year in the Legislature, when a bill favoring the cities, AB 2846, sponsored by Assemblyman Michael Sweeney, D-Hayward, was voted down in the Assembly Appropriations Committee (*CP&DR*, July 1996). ❑