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Inside

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Small Cities Pursue Prisons

But How Broad Are Economic Benefits?

By Morris Newman

Traditionally shunned as an undesirable use, prisons have become increasingly popular in California as a vehicle for economic development, particularly in rural areas with high unemployment. At least six cities in the state are currently vying for the privilege of developing prisons, but after a prison-building boom in the 1980s, lawmakers and voters in the state have been reluctant to appropriate funds in recent years.

Stricter sentencing laws, including the so-called "Three Strikes and You're Out" provision for repeat offenders, has brought California's prisons to a near-crisis level of overcrowding. But the legislature has not even placed a prison-building bond measure on the ballot since 1990, when former prosecutor George Deukmejian still occupied the governor's chair. The gap may be filled by private prison construction, which could contract with the Department of Corrections to lease badly needed prison space. Development of a major prison facility in California City may be the start of the trend.

In purely economic-development terms, prisons make good sense. The typical state penitentiary is a 2,000-bed facility that can cost more than $300 million to build. The prisons can employ up to 1,500 people, who earn salaries of up to $40,000 — high pay in the rural communities where they are typically built.

"Simply put, a prison means a lot of high paying jobs, compared to those in the distribution-warehouse business. The guards in our prisons make more than my policemen," says Donald S. Pauley, city manager of Corcoran, a Kings County city where two major prisons have been built in the past decade. "It's a relatively clean industry; there's no smokestacks. It meets all the criteria for an industry that a city wants to create," he added.

Prisons hold at least one other attraction for local governments:

Continued on page 9

State to Examine Fiscal Relationship With Locals

Lockyer Calls for Study To Inform Legislature

By William Fulton

Apparently frustrated by the ongoing financial woes of California's local governments, Senate Pro Term Bill Lockyer — widely regarded as the state's most powerful legislator — has decided to try to "solve" the problem once and for all. But the big question is whether Lockyer and the Legislature will give more autonomy to local governments as well as more money. If past experience is any guide, it's possible that the Legislature will instead favor a solution that gives local governments more money, but keeps power concentrated in Sacramento.

In the session that ended in mid-September, the Legislature took a step in the latter direction, providing some financial relief for local governments, but did so in a way that maintains power in Sacramento. During the legislative "off-season" between now and January, Senate staffers will be preparing a major report for Lockyer that will lay out options for resolving the local government finance issue once and for all.

"To better help the legislature reshape the state-local relationship for California's next century, a deeper level of analysis is needed," Lockyer wrote in an October 1 letter to Senate Local Government Committee Chair William Craven, whose staff will assist in the analysis. "Although local government agencies — cities, counties, and special districts — are integral to the functioning of the state, there is a paucity of objective data to help us evaluate relative needs and service levels. While there is enormous variation among local government agencies, additional information will give us a clearer understanding of these issues."

If any individual legislator can force through a major

Continued on page 10

Local Watch
Morris Newman

Redevelopment Opponents Sue In Mammoth Lakes

A long legal battle appears to be looming over an ambitious redevelopment plan to remake the Town of Mammoth Lakes in Mono County into a world-class ski resort. Advocates of the redevelopment plan, including many of the town's business leaders, argue that redevelopment powers are needed to modernize the town's tourist industry. Opponents assert that the project is an abuse of redevelopment law.

Mammoth Lakes, a resort town in the eastern Sierra Nevada of about 5,200 people that is the only incorporated city in the county, contains the Mammoth Mountain ski area. The resort has experienced a steady decline both in the sales of ski-lift tickets and hotel rooms. Even some critics of the redevelopment efforts acknowledge that the ski mountain needs to be modernized, and that the city needs to expand its capacity to accommodate tourists.

In May, the five-person town council voted 3-0, with two abstentions, to approve an 1,100-acre redevelopment area, covering 28% of the city's area. The project has a budget of $136 million. In the same month, the Mono County Board of Supervisors voted 3-2 not to oppose redevelopment in the county's largest town, a decision that seemed to remove the most formidable possible opponent to the plan. In June, the council certified a program environmental impact report for the redevelopment area.

The big beneficiary of the redevelopment plan is a Canadian developer, Intrawest Corporation, which bought a 33% interest in the Mammoth ski resort last year. Intrawest reportedly plans to spend up to $500 million to develop luxury hotels and upscale retail projects in Mammoth. Critics of the plan are particularly galled by the proposed use of $6 million in redevelopment funds to build a gondola that would transport skiers from the North Village shopping area up to the ski slopes on Mammoth Mountain.

In July, a group of city residents calling itself Friends of Mammoth, co-founded by Mono County Supervisor Andrea Lawrence, filed lawsuits in Mono County Superior Court against both the redevelopment validation plan and the redevelopment area EIR. Interestingly, the anti-redevelopment group is represented by a pair of law firms well known for representing redevelopment agencies: Kane Ballmer & Berkman of Los Angeles and McDonough Holland & Allen of Sacramento. The city has retained Sabo & Green of Calabasas.

The causes of action in the lawsuit include a lack of evidence to support a finding of blight, failure to establish the project area as sufficiently urbanized for redevelopment, the illegal inclusion of non-blighted property in the project area, and a lack of evidence that the method of financing the redevelopment project area was economically feasible, i.e., that the project could pay for itself over time.

In an interview, Lawrence said she was not opposed to some development, but said redevelopment was inappropriate in a lightly populated mountain community. She said she was "galled" by what she described as the hasty preparation of the redevelopment project and its EIR, which she claimed involved very little planning or community involvement. She also asserted that the finding of blight, which is the trigger mechanism for creating a redevelopment area, does not exist in Mammoth Lake; the project area includes both a portion of an existing golf course and a wooded area where a college is planned. "This is a gross overreaching of the California redevelopment law," she said.

She also voiced strong objections to the use of redevelopment tax increment as creating a subsidy for an affluent developer in an agricultural county with limited financial resources. "I am offended that people would be making a grab for resources that in a rural area are absolutely necessary, and at the cost and expense of legitimate taxpayers. It's a reverse Robin Hood: taking from the poor and giving it to the rich."

The wide-ranging CEQA lawsuit cites generally inadequate analysis that reached "sweeping conclusionary generalizations," as well as inadequate descriptions of the individual projects within the redevelopment area. Karen Johnston, the town's senior planner, described the latter suit as taking the "the shotgun approach" to a CEQA lawsuit, taking aim at "basically everything."

In September, the town staff prepared administrative records of the redevelopment project for both lawsuits. Mammoth Lakes' Johnston said she did not expect a fast resolution to either case. "We are in the very preliminary stages of these lawsuits," she said in late September. ❑

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Karen Johnston, senior Planner, City of Mammoth Lakes, (760) 934-8983.

State Park Land In Orange County Will Become Resort

The California Parks & Recreation Department has okayed development of a high-end resort on the site of the Crystal Cove historic district in Orange County. The partners include the developer of the popular Post Ranch Inn in Big Sur.

Parks & Rec purchased the site, which adjoins the 2,700-acre Crystal Cove State Park, from the Irvine Company in 1979. Located on the coast between Corona Del Mar and Laguna Beach, Crystal Cove is a 12.3-acre site with 46 wooden beach cottages. Built in the 1920s and '30s, the cottages are listed on the National Index of Historic Places, and are mostly occupied by renters. According to agency spokesman Ken Colombini, Parks & Rec has intended to develop Crystal Cove from the beginning, but was prevented from doing so until existing long-term leases on the cottages expired.

The development partnership known as Crystal Cove Preservation Partners, led by Resort Design Group and Post Ranch Company LLC, both of San Francisco, plan to rehab all of the cottages that are reparable, although at least seven appear beyond help. The developers also plan to build new units, for a total of 60 to 90 rental units, as well as a restaurant, three swimming pools and two nature centers, where materials on archeology and ecology are to be exhibited.

The proposal has received cautious support from at least one environmentalist group, Friends of the Irvine Coast. But an official of the Sierra Club claims the project violates the state park code on at least three grounds.

Post Ranch Inn won wide attention for creating a set of cabin-like hotel rooms scattered on an ecologically sensitive hillside overlooking the ocean; the luxury hotel has become one of the most popular on the Central Coast. ❑

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Environment Watch
Larry Sokoloff

Eagle Mountain Gets Second Approval

A giant landfill proposed for a site near Joshua Tree National Park has gotten a new lease on life, with approval of a second environmental impact report by the Riverside County Board of Supervisors. The board approved the Eagle Mountain landfill project by a 4-1 vote on September 9.

The board had last approved an EIR for the project in 1992, but San Diego County Superior Court Judge Judith McConnell ordered a new EIR prepared in 1994. That same year, Joshua Tree was upgraded by the federal government from a national monument to a national park, raising questions about the legal viability of a project located so close to its borders. (See *CP&DR*, November 1994).

Several legal and regulatory hurdles at both the state and federal levels must still be cleared before the landfill can begin operations.

As proposed, the project would be one of the nation's largest landfills. As many as 10,000 tons of trash per day would be transported to the site by rail cars. Up to 20,000 tons of trash per day may be allowed after seven years. The landfill is expected to operate for between 50 and 90 years.

McConnell heard the case because Riverside County was one of the defendants in the lawsuit challenging the EIR. The Fourth District Court of Appeal in San Diego found the EIR to be adequate in 1996 (See *CP&DR*, April 1996).

The landfill site is a former Kaiser Steel iron ore mine located about 60 miles from Palm Springs. A sophisticated liner system is supposed to prevent groundwater contamination.

The national park's southeastern boundary is located about 1 1/2 miles from the landfill site. While the National Park Service opposes the project, it agreed to a plan last year that may mitigate some environmental problems and resolve future ones.

The agreement between the National Park Service and Mine Reclamation Corporation, reached in December 1996, requires that an independent panel of scientists meet to examine any allegations of adverse impacts on the desert ecosystem from the landfill.

Additionally, the agreement requires Mine Reclamation Corporation to control odors, reduce the visibility of air plumes from the park, prevent windblown debris, prevent an increase in predatory animals, fund long-term groundwater monitoring sites, and fund an environmental mitigation trust to be administered by the county.

McConnell is now expected to review the second EIR and issue an opinion in coming months. In court papers, opponents are expected to argue that the new EIR does not address the air impacts to the National Park. Additionally, the EIR does not address impacts to wilderness areas of the Park which surround the landfill on three sides, said Brian Huse, Pacific Region Director of the National Parks and Conservation Association, a group which has opposed the landfill and was among the plaintiffs in the EIR lawsuit.

Huse also said a BLM land exchange, required to make the project work, raises significant environmental issues. The land the BLM will receive is habitat for desert tortoises, which will be diminished when trains for landfill roll across the area, Huse told the Desert Sun newspaper in Palm Springs.

Two changes made since the first EIR was approved are a reduction of lighting on the property and a decision not to operate at night, said Rick Daniels, president of Mine Reclamation Corporation, the developer of the project.

Daniels said that the landfill is separated by a range of mountains from the park, and is 35 miles from the nearest campground.

An earlier problem for the landfill was a challenge to the project from Eagle Crest Energy Corp., which once sought to use the landfill site for a hydroelectric power project. Eagle Crest won a 1994 court battle in the District of Columbia Circuit Court of Appeals, which allowed it to continue seeking a permit for the Federal Energy Resources Commission. But Eagle Crest representatives have been rarely heard from during the past two years, according to officials dealing with the landfill project. Eagle Crest's lawyers did not return calls for this story.

Eagle Mountain officials must now acquire several permits from local and state agencies, including the state's Integrated Waste Management Board, before they can operate the landfill.

Eagle Mountain is not the only landfill planned for the deserts of Southern California. Already on track is the Mesquite Regional Landfill, planned for eastern Imperial County. In April, the IWMB approved a state permit for the Mesquite Regional Landfill. That same month, a Sierra Club writ challenging the landfill was discharged by Superior Court Judge Artie Henderson (See *CP&DR*, July 1997).

But Mesquite does not have any contracts for its landfill yet, raising the question whether Southern California needs the additional landfill capacity that it and Eagle Mountain will provide. California municipalities are under state mandate to decrease the amount of solid waste they produce, and recycling efforts have picked up steam in recent years. Meanwhile, other landfills are planned for the deserts of Arizona and Utah.

Eagle Mountain President Rick Daniels said he expects that as aging landfills are closed throughout Southern California, his company's site will gain business. Daniels indicated that it would be difficult for other landfills to open in urbanized areas.

"A landfill is in that locally unwanted land use category," he said.

A third proposed landfill, the Rail-Cycle project near Barstow in San Bernardino County, is bogged down in controversy. The project was approved by the Board of Supervisors in 1995.

A nearby landowner subsequently sued the county, claiming that Rail-Cycle proponents managed to taint the environmental review process. The case, *Cadiz Land Co. v. County of San Bernardino*, BCV02341, was argued in early August before Superior Court Judge Carl Davis, and should be decided by early November.

The Rail-Cycle landfill is being proposed by Waste Management Inc. and Santa Fe Railroad.

In March, the Rail-Cycle project manager was arrested. A former community liaison officer—a parolee using an assumed name—told police that he and others had paid local residents to testify in favor of the project. ❑

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Schools Watch
William Fulton

School Facilities Package Still Being Promoted

Even though a proposed school facilities package fell apart in the Legislature at the 11th hour, builders and education lobbyists are still hoping to get a school bond proposal — and perhaps a constitutional amendment lowering the required vote for local school bonds — on the June 1998 state ballot.

The entire school package will be reintroduced when the Legislature reconvenes in January. Placing the bond issue on the June ballot would require a waiver of legislative rules, but this time limit is not viewed as a major impediment.

However, it will be a much harder task to get all the interest groups in Sacramento — including disparate education interests, the cities, and conservative Republicans in the Assembly — to sign off on the overall package. The effort to pass such a package early next year will be a strong test of the newly formed alliance between the California Teachers Association and the California Building Industry Association, which substantially shaped the package that died in mid-September.

At the end of the session, the proposed package included four inter-related bills that sought to provide a permanent fix to the school facilities funding problem, including:

- An $8 billion state bond to be placed on the June 1998 ballot, including $5 billion for K-12 education, $2 billion for higher education, and $1 billion for class-size reduction facilities.
- A constitutional amendment to lower the requirement for passage of local school bonds from two-thirds to simple majority vote.
- An increase in school developer fees to $3 per square foot in exchange for repeal of the *Mira/Hart/Murrieta* court cases, which give some school districts the ability to work with cities and counties to obtain more mitigation from developers. The package also called for a cap on developer contributions at 50% of total school construction cost.
- Statutory recognition of the common practice requiring local school districts to contribute 50% of the funds for a school construction project that obtains state aid.

The Legislature also kicked around the idea of requiring some type of "cost containment" strategy on the part of school districts if state funds are used to construct new schools. Republicans and Democrats on the committee could not agree on how to implement the cost-containment idea and no language was contained in the final package. However, cost-containment is viewed by most interest groups as an essential component in winning over the support of conservative Republicans in the Assembly, who have often blocked passage of school facilities reform.

Key interest groups, especially CTA and CBIA, chose to carry the package over to January, rather than allow some pieces of it — such as a school bond — to be passed independent of one another. "We [CBIA and CTA] had a blood agreement that this thing would rise or fall as a package," said CBIA lobbyist Richard Lyon.

The legislature has struggled mightily with school facilities in recent years in seeking to balance the interests of the state, local school districts, and developers. Total need over the next decade is estimated to be at least $20 billion. Currently, school districts are permitted by statute to impose a fee of $1.84 per square foot on new residential development, or probably about a third of actual construction cost. However, under the so-called *Mira* court doctrine, school districts can work with cities and counties to impose more "mitigation" on developers if such mitigation is called for in local general plans.

The political dynamics of the school facilities issue changed this year when the California Teachers Association and other mainline education groups, such as the California School Boards Association, decided to take a more active role in resolving the issue. Previously, the major lobbying group had been the Coalition for Adequate School Housing (CASH), an organization made up mostly of school facilities directors, as well as architects, bond experts, and others with a financial interest in new school construction.

Nine major groups joined together to form the Education Coalition and pushed for reform. But CTA was the most important player. Apparently motivated by a desire to find funding sources for class-size reduction that would not endanger teacher salaries, CTA hired Richard Simpson, longtime education aide to ex-Speaker Willie Brown and an expert in school facilities, as a lobbyist.

Simpson, in turn, was able to forge an important alliance with CBIA, which has always played an important role in school facilities negotiations because of the builders' desire not to be burdened with high school fees. According to Lyon, CBIA made several important concessions in this year's package, including (1) a commitment that the builders would serve as the "backstop" for the local 50% share of school construction if necessary, and (2) a willingness to link the developer fee portion of the package to the actual passage of a school bond. In the past, CBIA has supported changes in the developer fee law only in exchange for placing a bond on the ballot.

But at the end, the education community fragmented, the cities opposed development fee reform, and Assembly Republicans resisted the idea of a simple-majority vote for local school bonds.

Although the Education Coalition provided a united front at first, the power shift within the education community actually caused some problems. For many school districts, the main issue has been whether to "trade away" their power under *Mira* and, if so, what to demand in return. Less powerful than in past years, CASH supported the proposed package, arguing to its members that the package was a worthwhile tradeoff.

However, many growing suburban school districts around the state, which benefit from *Mira*, objected to the CASH approach and formed their own organization, the Coalition for Equitable School Facilities Funding, which continued to oppose the package in somewhat shrill fashion. The day before the session ended, for example, CESFF warned that if the *Mira* tradeoff was passed, "growing school districts ... will be forced to support no-growth campaigns in order to guarantee adequate classrooms and schools for existing residents."

In addition, the League of California Cities also continued to oppose the *Mira* tradeoff, saying that the power of cities to consider school overcrowding issues in their own general plans should not be traded away as part of a school facilities package. ❑

CP&DR
LEGAL DIGEST

Gun Shop Zoning Valid

Firearms Dealers Not Entitled To More Constitutional Protection

The City of Lafayette's land-use regulations restricting the location of gun stores to commercial areas is constitutional on its face, the First District Court of Appeal has ruled. The court concluded that gun stores are not subject to a higher level of constitutional protection than other land uses, and also ruled that the state has not pre-empted local governments' land-use authority in this area.

Several gun dealers operating out of residential areas challenged Lafayette's ordinance, which required gun stores to obtain land-use permits. New gun dealers must be located in commercial areas and their stores are subject to architectural review. Existing gun dealers in residential areas must register with the city as non-conforming uses. The ordinance also required gun dealers to obtain a permit from the police department.

The gun dealers sued, claiming that the ordinance was pre-empted by state law and that it violated constitutional principles of equal protection and due process. But Contra Costa County Superior Court Judge James Trembath ruled in favor of the city on all the land-use counts, and the First District, Division 1, agreed.

The gun dealers argued that the land-use restrictions violated their constitutionally protected guarantee of free speech. But the court ruled that buying and selling firearms does not fall within this protection. "The laws at issue here," wrote Justice William Stein, "do not regulate speech; they regulate the activity of selling firearms." Thus, he concluded, Lafayette's ordinances must be scrutinized in the same fashion as any other land-use regulation — to determine whether they are reasonably related to promoting the public health, safety, comfort, and welfare.

Regarding the restrictions themselves, the court concluded: "As the operation of a firearm dealership is a commercial enterprise, there is a rational basis for confining that operation to commercially zoned areas. In addition, because dealerships can be the targets of persons who are or should be excluded from possessing weapons, it is reasonable to insist that dealerships be located away from residential areas, schools, liquor stores, and bars." The court also concluded that architectural restrictions are well within the purview of local governments to regulate.

The gun dealers had also argued that the land-use restrictions are too vague. The court acknowledged that they are "unquestionably nebulous" but said that the underlying standard of health, safety, and welfare was equally nebulous. The court rejected the gun dealers' due process argument by noting that applicants are permitted a hearing before the planning commission.

In general, the court found that the state had not pre-empted the entire field of regulating the sale of firearms. "That state law tends to concentrate on specific areas, leaving unregulated other substantial areas relating to the control of firearms, indicates an intent to permit local governments to tailor firearms legislation to the particular needs of their communities," Justice Stein wrote for the unanimous panel.

While the court did not find that any of the land-use regulations were pre-empted by state law, the panel did conclude that the ordinance's detailed specifications for the storage of firearms is pre-empted by the Penal Code, which also contains specific standards.❑

■ The Case:
Suter v. City of Lafayette, No. A073743, 97 Daily Journal D.A.R. 11940 (September 16, 1997).

■ The Lawyers:
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TAKINGS

Firm Can't File Taking Suit After Dropping Other Action

A development company that dropped an administrative mandamus action challenging a city's denial of its project cannot later file an inverse condemnation action on the same project, the Fourth District Court of Appeal has ruled.

The court used the case as an opportunity to warn developers not to avoid mandamus actions by using the argument that their development option had expired — as Mola did in this case. "Mola cannot set its own deadline for the completion of a successful mandamus action," wrote Justice Thomas Crosby for a unanimous three-judge panel of Division 3 of the Fourth District.

The ruling is the latest chapter in the lengthy legal battle between Mola Development Co. and the City of Seal Beach, near Long Beach, over development of the Hellman Ranch. A 70-home proposal from another developer is currently pending.

The current project proposal, however, is unrelated to the previous proposal made by Mola Development Corp., whose option to develop the property was canceled by the landowner, Hellman Properties, in late 1991. The cancellation of the option was an issue in the Mola lawsuit.

The Hellman property sits atop an earthquake fault and includes significant wetland areas. In 1989, the Seal Beach City Council approved a vesting tentative map and a development agreement permitting Mola to build about 300 houses on the property. However, a citizen group, the Wetlands Restoration Society, challenged the project approval, claiming the city's housing element was obsolete. Judge Ronald Bauer ruled in favor of the citizen group and ordered the city to rescind the approvals and revise the housing element.

In 1990, the Seal Beach City Council reconsidered the Mola project but rejected it by a 3-2 vote, claiming it was not consistent with the city's new general plan.

Mola then pursued two lawsuits against the city. In July of 1990, Mola appealed Judge Bauer's ruling invalidating the development approvals. In an unpublished opinion in October 1991, the Fourth District affirmed Judge Bauer's decision. (*Wetlands Restoration Society v. City of Seal Beach*, G009822, S024210.)

In September of 1990, Mola sued the city again, seeking a writ of administrative mandamus. Claiming the city had "finally and conclusively acted to prohibit development," Mola asked the court to overturn the city's quasi-judicial decision to disapprove the vesting tentative map. Mola also sued the councilmembers who voted against it, claiming they had violated the company's civil rights, and also sued for inverse condemnation.

A trial was scheduled for December 1991, 14 months after the case was filed, but in November 1991, Mola asked for a continuance because of the "normal, time-consuming pace of complex civil litigation". A new trial was scheduled for February 1992, but Mola's option on the Hellman Ranch proper-

ty expired in November 1991 and Hellman Properties refused to renew it. In February, four days before the scheduled trial date, Mola dismissed the mandamus claim without explaining why.

Subsequently, Orange County Superior Court Judge David H. Brickner granted the city's motion to exclude the civil rights and inverse condemnation claims because Mola had dropped the writ for administrative mandamus, which the judge claimed was the property remedy for any alleged wrongdoing.

On appeal, Mola — represented by noted property-rights attorney Ronald Zumbrun — made a series of arguments as to why the inverse condemnation action should be permitted to proceed, but the court rejected them all. In so doing, the court relied heavily on the California Supreme Court's ruling in *Hensler v. City of Glendale*, 8. Cal.4th 1 (1994), which, according to the appellate court "explains in great detail why property owners must first succeed in setting aside a city's decision through a judicial determination on mandamus before pursuing damages for a regulatory taking."

In *the Hensler* case, the Supreme Court concluded that mandamus review is necessary because "a court cannot determine whether a regulation has gone 'too far' unless it knows how far the regulation goes".

Mola argued that the administrative mandamus argument does not apply to allegations of federal civil rights violations, but the court disagreed. The court also rejected Mola's argument that the 1990 decision was final.

"Having failed to bring the mandamus proceeding to a hearing," the appellate court wrote, "Mola cannot rely on a silent record to challenge the fairness of the administrative forum, or to assert that some of the takings issues could not have been litigated." Quoting *Rossco Holdings Inc v. State of California*, 212 Cal.App. 3d 642 (1989), the court concluded: "Mola is 'drawn into a vacuum of [its] own making."

In strong language, the appellate court also rejected Mola's argument that it was exempt from *Hensler* and similar rulings because it had pursued mandamus review even though it had not finished it.

"[T]here is an obvious distinction between starting a task and completing it," the court wrote. "Diplomas are not awarded to students who diligently proceed through the initial years of high school. They must complete their senior year in order to graduate.

"So, too, with litigants," the court continued. "Mola is the legal equivalent of a high school dropout. It dismissed its writ petition rather than litigate it."

Finally, the court also used strong language to warn developers off the argument that they should be able to end-run mandamus actions because their development options had expired.

"[W]e decline to carve out a new exception to the administrative mandamus requirement for persons whose development rights (whether by option or some other form of consensual agreement) have been allowed to expire," Justice Crosby wrote. "Unless a government agency has an early opportunity to change the challenged decision, damage actions cannot be maintained. Were we to rule otherwise, we readily foresee a day when developers would negotiate increasingly shorter 'sweetheart' option agreements (one year? 30 days?) thereby avoiding the requirement for judicial review by administrative mandamus." ❑

■ The Case:
Mola Development Corp. v. City of Seal Beach, No. G014576, 97 Daily Journal D.A.R. 11277 (August 27, 1997).

■ The Lawyers:
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San Francisco Didn't 'Take' In Denying Hotel CUP

In a split decision, the First District Court of Appeal has ruled that San Francisco's decision to deny a conditional-use permit to convert residential hotel units to tourist use did not represent a taking of the landowner's property.

The two-justice majority of Division 1 of the First District also ruled that the heightened scrutiny standard contained in the California Supreme Court's recent decision in *Ehrlich v. City of Culver City*, 12 Cal. 4th 853 (1996), does not apply to the hotel conversion situation.

The basic issue in the case was whether the San Francisco Planning Commission would have granted the conditional use permit had the property owners, Claude and Micheline Lambert, agreed to pay a mitigation fee of $600,000 to compensate for the loss of residential hotel units in the city — and, if so, whether this fact changes the legal analysis. Under San Francisco's Hotel Conversion Ordinance, conversion of residential hotel units to tourist use is not allowed unless such a fee is paid.

The Lamberts own the Cornell Hotel, a 58-unit building in San Francisco. Since the passage of the Hotel Conversion Ordinance in 1981, 31 of the units have been classified as residential and 27 as tourist units.

The ordinance was passed amid a rash of hotel conversions and sought to stem the flow of conversions by requiring hotel owners to provide a one-to-one replacement of lost residential units. Under both the Hotel Conversion Ordinance and the city planning code, hotel owners such as the Lamberts cannot convert their hotels without a conditional use permit from the city planning commission. The constitutionality of the ordinance itself was upheld by the First District in *Terminal Plaza Corp. v. City and County of San Francisco*, 177 Cal.App.3d 892 (1986).

In 1990, the Lamberts sought to convert all the hotel's residential units to tourist use, but the planning commission denied the conditional-use permit. The Lamberts sued, but San Francisco Superior Court Judge William Cahill ruled in favor of the city, and the Lamberts subsequently appealed. (In a separate action, the Lamberts subsequently received city approval to "reclassify" seven of the 31 residential units as tourist units, but moved forward with the other lawsuit anyway.)

Much of the debate at the appellate court level revolved around whether San Francisco had withheld the conditional use permit because the Lamberts refused to pay the one-to-one mitigation fee, which totaled $600,000 in their case. The Lamberts argued that they were denied the conditional use permit because they refused to pay the mitigation fee, and therefore a taking occurred.

Furthermore, the Lamberts argued, the *Ehrlich* strict scrutiny standard, which deals with exactions, applies in cases such as this one where an exaction was not levied but, rather, a permit was denied because an exaction was not paid.

But the First District majority found the issue of the $600,000 mitigation fee irrelevant. "Lambert's argument, reduced to its essentials, is that a taking occurred when the Planning Commission refused to grant him a conditional use permit to except the Cornell Hotel from the limitations imposed on his hotel, and all others, by local regulation," wrote Justice William Stein in the majority opinion. Because he was seeking to alter an existing use, Stein added, Lambert was "applying for a property right he did not have. San Francisco's refusal to issue the permit thus deprived him of nothing."

The city's action, Stein concluded, "simply denied him a conditional permit to exploit a property interest. The question is whether San Francisco denied the permit for improper reasons." Stein concluded that the evidence on the record supports the city's action. The action, he said, clearly furthers the city's legitimate interest in pursuing its stated goals, including preservation of affordable housing, ensuring adequate residential housing in the downtown area, preventing an increase in traffic congestion and parking, and providing a quality living environment.

The majority also rejected the Lamberts' argument that the "strict scrutiny" standard of review should have applied. In both *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), the U.S. Supreme Court ruled that strict scrutiny applies in cases when a government agency imposes an exaction as a condition of permit approval. In the *Ehrlich* case, the California Supreme Court ruled that the strict scrutiny standard applies in some California exaction cases. The net result of all these cases is to require that mitigation fees be "roughly proportional" to the problems created by the development project. The Lamberts argued that this standard should apply because the city would have granted the permit had they agreed to pay the $600,000 fee.

Stein's majority opinion simply concluded that because no exaction had been imposed in this case, the strict scrutiny standard does not apply. Stein accepted the city's argument that the decision to deny the permit was made not under the Hotel Conversion Ordinance, which requires the mitigation fee, but under the city's planning code, which gives the planning commission unfettered power to deny a conditional use permit. In the opinion Stein acknowledged that "it is somewhat disturbing that San Francisco's concerns about congestion, parking, and preservation of a neighborhood might have been overcome by payment of a significant sum of money" but added: "[T]he fact remains that San Francisco did not demand anything from Lambert as a condition of a use permit. It simply denied the permit outright."

In a strongly worded dissent, Presiding Justice Gary Strankman disagreed with Stein — and, in fact, painted a somewhat different picture of the process by which the Lamberts were denied a permit.

Unlike Stein's majority opinion, Strankman's dissent went into detail about the demands for the $600,000 made by the city and the Lamberts' refusal to pay it. In fact, the Lamberts offered only $100,000. "I think the record is clear," he wrote, "that the City sought a mitigation fee from the Lamberts and denied the permit when they failed to offer a satisfactory amount."

Having concluded that the denial was based on refusal to pay the fee — a conclusion the majority opinion did not share — Strankman also concluded that the *Nollan-Dolan-Ehrlich* heightened scrutiny also applies. "I do not believe the results in *Nollan, Dolan*, and *Ehrlich* would have differed had the regulatory agencies demanded the exaction and then denied the permit when the demand was refused," he wrote: "To believe otherwise is to believe a regulatory agency can evade the constitutional safeguard of heightened scrutiny by a shrewd repositioning of its exaction demands. We should be intolerant of such evasions." ❑

■ The Case:
Lambert v. City and County of San Francisco. No. A076116, 97 Daily Journal D.A.R. 12189 (September 23, 1997).

■ The Lawyers:
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CEQA

Supplemental EIR Needed In Timber Harvest Case

The California Department of Forestry and Fire Protection should have required public review of analyses made by Louisiana Pacific Corp. on the cumulative impact of timber harvesting operations near the Albion River in Mendocino County, the First District Court of Appeal.

In making the ruling, the First District, Division 2, essentially concluded that a "minor deviation" to a timber harvest plan under the Forest Practices Act is not analogous to a supplemental environmental impact report under the California Environmental Quality Act. The court concluded that CEQA requires public review of such material, which is not afforded under the "minor amendment" classification.

"When the original plan contains essentially no information on [a] critical subject, and CDF has exercised its discretion in requiring the information, it cannot avoid public review and defeat the objective of CEQA by classifying the amendment to the plan as minor," wrote Justice James Lambden for a unanimous three-judge panel.

The filing of a timber harvest plan under the Forest Practices Act is considered equivalent to the preparation of an EIR under CEQA, and may be used to fulfill CEQA requirements.

In 1989, CDF approved two timber harvest plans submitted by Louisiana-Pacific to harvest second-growth forest on 280 acres of property in Mendocino County. Two years later, the state Board of Forestry enacted new regulation requiring timber harvest plans to contain cumulative impact analysis dealing with a variety of environmental issues. These new regulations emerged from the divisive debate over the spotted owl.

In *Public Resources Protection Assn. v. Department of Forestry and Fire Protection*, 7 Cal.4th 111 (1994), the California Supreme Court ruled that CDF had the power to apply the new regulations retroactively to previously submitted timber harvest plans. The *PuRePac* case, as it is commonly known, caused the Supreme Court to dismiss a similar but separate challenge by Louisiana-Pacific regarding application of the new regulations to the Albion River timber harvest plans.

Later in 1994, Louisiana-Pacific submitted material on a wide variety of environmental impacts associated with the Albion River harvest, including a cumulative effects evaluation. The company asked that the material be regarded as a "minor deviation" from the timber harvest plans, and CDF agreed.

Under the Board of Forestry's rule 895.1, minor deviations are by definition "minor in scope" and "can reasonably be presumed not to make a significant change in the conduct of timber operations and which can reasonably be expected not to significantly adversely affect" timberland productivity or environmental values. Minor deviations are not subject to public review.

Several environmentalists in Mendocino County sued CDF, claiming that the agency abused its discretion and violated CEQA and the Forest Practices Act by accepting the cumulative impact analysis as a minor deviation.

Before the appellate court, CDF and Louisiana-Pacific argued that a minor deviation under the Forest Practices Act is analogous to a supplemental EIR under CEQA. But the court disagreed.

"A supplemental EIR," wrote Justice Lambden, "differs significantly from the situation here. With a supplemental EIR, the public has already reviewed the cumulative impact analysis in the original EIR. The concern is whether the 'change' in the plan affects the prior analysis. Here, as [the plaintiffs assert], there 'has been no argument about changes in an already approved project or changed circumstances, because the public was never given the opportunity to critique the documentation and analysis that was submitted."

"Had a cumulative impact analysis been included in the original THPs (timber harvest plans)," Lambden wrote, "analogizing this statute to a supplemental EIR would have been more appropriate."

Louisiana-Pacific also argued that the public had a chance to review the Albion River logging operations when the company submitted a different timber harvest plan in 1991 that analyzed cumulative impact based on complete logging of the areas covered by the previous timber harvest plans. But the appellate court noted, among other things, that that the administrative record for the court case does not even contain the addi-

tional timber harvest plan the company referred to. ❑

■ The Case:
Schoen v. Department of Forestry & Fire Protection, No. A074723, 97 Daily Journal D.A.R. 10365 (August 7, 1997).

■ The Lawyers:
For Schoen: Rodney Richard Jones, (707) 937-0549.
For CDF: John Davidson, Supervising Deputy Attorney General, (415) 356-6365.
For Louisiana-Pacific (real party in interest): Jared G. Carter, Rawles, Hinkle, Carter, Behnke & Oglesby, (707) 462-6694.

LEGAL FYI

State Supreme Court Won't Hear Cases

The California Supreme Court has declined to review two unpublished Court of Appeal rulings of some interest to *CP&DR* readers, meaning the appellate court decisions will stand. The two cases declined by the court are:

• *FAIR v. City of San Buenaventura*, No. B105879, a case in which landowners in Ventura challenged the constitutionality of a citizen initiative requiring voter approval to convert farmland to urban use any time before 2030. Landowners had claimed, among other things, that because the initiative affects property currently in Ventura's sphere of influence but not yet inside city boundaries, that the property owners themselves were unfairly denied the right to vote on the measure. None of the Supreme Court justices voted to hear the case.

• *City of Lake Forest v. County of Orange*, No. D025946, a case in which the eight cities in south Orange County that are opposed to a commercial airport at El Toro Marine Air Station challenged the business-backed citizen initiative designating the base for commercial aviation in the county general plan. The cities claimed the state Aeronautic Act did not permit such an initiative. But the Court of Appeal ruled that the state does not pre-empt or preclude such an action. Again, none of the Supreme Court justices voted to hear the case.

Slow-Growth Measure Upheld in Ohio

In a split decision, the Sixth U.S. Circuit Court of Appeals has lifted a preliminary injunction preventing a small city in Ohio from imposing a California-style slow-growth ordinance imposing a numerical limit on the number of building permits issued per year.

Experiencing rapid growth, the City of Hudson, Ohio (population 21,000), imposed an annual cap of 100 houses per year, with some setasides and bonuses available for senior-citizen projects and mixed-use projects in the downtown area. The rationale of the city, which is located halfway between Cleveland and Akron, was to restrict residential development until the sewer system could be upgraded.

When the city's allocation system produced more qualified applicants than available allocations, the "winners" were selected by lottery. The lottery losers sued and U.S. District Court Judge David D. Dowd Jr. issued a preliminary injunction blocking the city's action, claiming the city had abused its discretion.

Writing for a two-judge majority, District Court Judge Thomas B. Russell — sitting by special assignment as part of the Circuit Court panel — lifted the injunction. Russell said that the restriction on homes was rationally related to the legitimate governmental concern of matching residential growth with infrastructure capacity, and concluded that "the lottery system is certainly a rational means of distribution because it avoids beauty contests between property owners and is more efficient for the city to administer."

In dissent, Judge Alan E. Norris did not dispute the theoretical validity of a numerical cap on housing units but argued that the ordinance should not have restricted the entitlements of property owners who had already received "platting approval" prior to the ordinance's enactment. He noted that approved lots with existing water, sewer, and road access were give "priority" status, that designation was meaningless since all the participants in the lottery (including the losers) were "priority" lot owners.

"When [the ordinance's] practical effect is to impose harm on a class of property owners which is clearly arbitrary and unreasonable, the ordinance runs afoul of substantive due process," he wrote.

The case is *Schenck v. City of Hudson*, 6th Cir No. 96-3881. ❑

Small Cities Pursue Prisons Aggressively

Continued from page 1

They bring a steady stream of revenue to their host cities, because prisoners are counted by state government as local residents. That method of counting entitles local governments to collect $65 per capita per year in subventions of state funds yearly. Although those subventions may seem modest to large cities, they can make a critical difference to small cities with a modest or unreliable tax base. (California cities receive state subventions of both gas tax and motor vehicle license fees, which in turn can be used for transportation-related activities, such as operation of a mass-transit system or road maintenance.)

In the past decade, at least seven cities have convinced state lawmakers to allow them to annex prisons: Soledad (1989), Blythe (1990), Susanville (1990), Calipatria (1991), Crescent City (1991), El Centro (1992), and Chowchilla (1996). In addition, the Legislature just passed a bill that would permit Tehachapi to annex the California Correctional Institute at Tehachapi, which lies 15 miles west of the city's border. (The Cortese-Knox bill requires the state legislature to approve all non-contiguous annexations).

At least another six cities are vying for new prisons. Local officials have certified environmental impact reports for prisons in California City, the Otay Mesa area of San Diego County, and the City of Delano. Other areas that have informed the Department of Corrections of their interest in developing a prison are the City of Taft in Kern County and the former Mather Air Force Base in Sacramento County. Sacramento had actually won approval for a prison reception center, a screening facility for inmates entering the prison system, at the site of the former Sacramento Army Depot. When Packard Bell decided to lease the entire site, Sacramento County officials offered a portion of Mather.

The Corcoran case illustrates the measurable economic benefits that prisons represent. With two prisons currently in operation, the city is home of 3,000 jobs for people employed by the state Department of Corrections, and another 200 to 400 jobs for employees of agencies who provide substance-abuse counseling. Currently, prison officials are "activating" the California State Prison and Substance Abuse Facility at Corcoran, popularly known as Corcoran 2. With 6,000 beds, including medium-, maximum-security beds and 1,500 beds for the treatment of substance abuse, Corcoran 2 cost $370 million to build and is the largest prison ever built in the state.

The benefits of the prison industry are measurable, at least in Corcoran. In 1993, when the city was considering construction of the second facility, officials evaluated the economic impact of the first prison. They found that service and staffing levels in the city had remained stable, while revenues were up. Without the added subventions during the intervening years, in fact, "we would have had additional debt of $1 million," according to Pauley. Prisons, he concluded, are "not so much an economic development activity as much as they are a revenue generating activity."

The presence of the twin economic engines, however, has not been an unalloyed boon for Corcoran. Many of the prison-related jobs are transfers from other areas, and only about 25% of personnel are Corcoran residents, according to Pauley. In addition, many of those highly paid personnel live in cities outside Corcoran, where newer housing and better shopping are located.

"Prisons in the Central Valley are very attractive to security officers, especially those in metropolitan areas of L.A. or San Francisco," Pauley observed. "They make the same money and the cost of living is significantly less, so they can live in a far better lifestyle."

The City of Delano, where North Kern State Prison opened in 1993, is another community that would like to build a second prison, according to City Manager Jeremy Tobias. The first facility opened in 1993. In a city of 28,000 people, "not counting prisoners," he envisions another 1,200-1,300 jobs coming to town. "In the San Joaquin Valley, you are looking at an unemployment rate of 30 percent," said Tobias. Although "we want to retain agriculture as our main employment base," the city wants to broaden its industrial base, according to Tobias. The city completed its first EIR for Delano 2 in 1992 and is currently updating a supplemental EIR, because of the lapsed time since completion of the first document.

"There is popular support for it," Tobias said of the second prison, citing a 70% approval rating for the first prison in a community survey conducted in the late 1980s.

Despite general support for a new penitentiary in Delano, some ambivalence appears to linger on, however.

Although he has heard "very little negative response" to efforts by the city to attract a second prison, "the one comment we do hear is we don't want Delano to become known as a prison capital," Tobias said. "We don't advertise that we're after a second one."

"It's kind of a Catch-22," he added. "City residents do not want Delano to be known as the prison capital of California, so it's a touchy issue for our reputation, but the city does like bringing in the jobs."

Meanwhile, California's prisons are becoming intolerably overcrowded, according to Ernest C. Van Sant, assistant deputy director for planning and construction with the Department of Corrections. Even with such emergency measures of "triple decking" of beds in cells built for two, the state's prisons could reach their ultimate capacity in the early years of the next decade.

Despite the demonstrated need for more prisons, and the clamoring of several cities for the facilities, California lawmakers and voters both seem indifferent to prison construction. Voters have not approved a prison bond issue since a $450 million measure in April 1990; the last prison bond considered by the voters was in November of the same year.

California City, languishing for a lack of a prison project, has contracted with a private prison developer to build a facility where the state prison was planned. The city is currently updating the EIR completed by the state for the planned but unbuilt state prison. The state already has 600 prison beds in privately built prisons, which are mostly low-security facilities, according to Van Sant. Surprisingly, the private developer, Tennessee-based Correctional Corporation of America, has not conferred with state officials on prison standards. Van Sant of the Corrections Department said the firm had a good reputation, and that prison standards tended to be similar from state to state.

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Legislators to Examine Local Fiscal Issues

Continued from page 1

local government finance package in 1998, it is probably Lockyer. In the last two years, the Hayward Democrat has emerged as the single most effective political leader in Sacramento — so powerful that the San Francisco Chronicle jokingly refers to him as the new Jesse Unruh. Lockyer will likely leave the Legislature after next year because of term limits, increasing the likelihood that he will be motivated to solve the problem in 1998.

Local governments — especially counties — have traditionally not fared well in Sacramento. However, because of term limits, the Legislature is quickly filling up with new members who come straight from elected positions in local government. This year, more than 30 members of the Assembly joined the new Assembly Local Government Caucus, co-chaired by Democrats Mike Sweeney, a former mayor of Hayward, and Tom Torlakson, a former member of the Contra Costa Board of Supervisors.

Though Sweeney and Torlakson clashed at times, their efforts — combined with stepped-up lobbying efforts by local governments — raised the profile of local government in Sacramento and put pressure on Lockyer to address local government finance problems.

In the closing days of the session, Lockyer orchestrated passage of AB 233, a bill that increases the state's funding of trial courts by $274 million in fiscal year 1997-98, and commits the state long-term to providing 58% of trial-court funding. Trial courts are a county responsibility. The bill also returns about $60 million in fine and forfeiture revenue to cities.

However, the Legislature took the deliberate step of passing the trial-court funding package instead of returning to local governments some of the property-tax revenues they lost in the big property-tax "shift" in 1992 and 1993.

Local government lobbyists say they are happy with the deal. Both cities and counties got more money out of the trial-court funding package than they would have gotten out of the proposed property-tax shift. Also, the funds provided in the trial-court funding package permit cities and counties to free up general fund money for other purposes. But AB 233 does not alter the fundamental balance of power between local governments and the state. Though a long-term commitment to trial-court funding is identified in the bill, cities and counties still must lobby in Sacramento each year for an appropriation.

Local government finances often play an important role in determining city and county land-use policies. Because Proposition 13 constrains the amount of property-tax revenue that cities and counties can receive, both cities and counties now place more emphasis on land uses that generate other types of revenue — such as shopping centers, which produce sales tax, and hotels, which produce bed tax.

This imbalance was compounded by the property-tax shifts of 1992 and 1993. In order to balance its own budget, the state shifted about 25% of the property tax in the state (more than $2 billion) away from cities, counties, and special districts and gave it to school districts instead. (The state government benefits financially from the shift because, under equalization laws, the state must provide all funding to school districts that does not come from property taxes.)

Since then, cities and counties have lobbied hard to have this so-called ERAF money returned to them. (ERAF stands for Educational Revenue Augmentation Fund, technically a separate financial item in the state budget that currently goes to school districts.) In August, when the ERAF and trial-court funding debates were in full swing, Lockyer began examining the possibility of creating a permanent "fix" to the local government fiscal problem. Because so little time was left in this year's legislative session, he postponed a major discussion until the fall, when the Legislature is not in session. The research report will be prepared by veteran experts in local government finance both in and out of state government, and will be coordinated by April Manatt, consultant to the Senate Local Government Committee.

There is little question that, in order to solve the problem, the Legislature will have to make a major long-term commitment to provide local governments — especially counties — with more funding. The question is how to structure the return of this revenue to the locals.

Under Proposition 13, the local property-tax rate is capped at 1% throughout the state, and the state government allocates the revenue to cities, counties, special districts, school districts, and other government agencies with a statutory claim on property tax. (Prior to Proposition 13, each agency set its own property tax rate, and taxpayers paid the cumulative total.) Although the state can and does "move money around" between cities, counties, school districts, and special districts, the allocation formula for dividing money up within each category — how much goes to each city, for example — is based on the pre-Proposition 13 tax levy imposed by that city.

Both lobbyists and legislative staffers say this allocation formula forms the basis of Lockyer's resistance to a simple shift of ERAF funds back to cities and counties. If more property tax revenue is returned to local government, it would be doled out according to the taxing practices of the mid-1970s, no matter what level of need exists in each city or county or what level of service is provided. Apparently, the research report now being prepared would analyze, among other things, which counties are most needy and whether they would receive adequate funding under a major ERAF shift.

In trying to craft a solution, Lockyer will have to confront two competing ideas of what the state-local fiscal relationship should be.

The first, embodied in last year's "community charter" proposal by the now-defunct Constitution Revision Commission, would return tax revenue to local governments but force them to work together to set local priorities and spend that money in an efficient manner.

The second, first proposed by the Legislative Analyst's Office in its "Making Government Make Sense" white paper in 1993, would return money to local government as part of a realignment of state and local revenues and responsibilities. In essence, rather than returning money and decision-making power to the locals, the "Making Government Make Sense" idea would return money to local governments to cover the costs of state priorities that local governments must implement.

The trial-court funding bill passed by the Legislature in September allowed Lockyer to provide more money to counties, yet target financial relief based on the state's own concept of how the problem should be solved. For example, the state will "buy out" its trial-court funding obligation in 20 small counties by providing a large amount of funding in 1997-98 but cutting off funding after that. At the same time, five "donor" counties — counties that provide more revenue in court fees than they receive in trial court funding — will receive additional revenue in recognition of their donor status.

By contrast, if the Legislature had provided simple ERAF relief, that money would have been allocated according to the 1970s formula contained in Proposition 13, thus preventing the Legislature from targeting the funds according to its own priorities. ❑

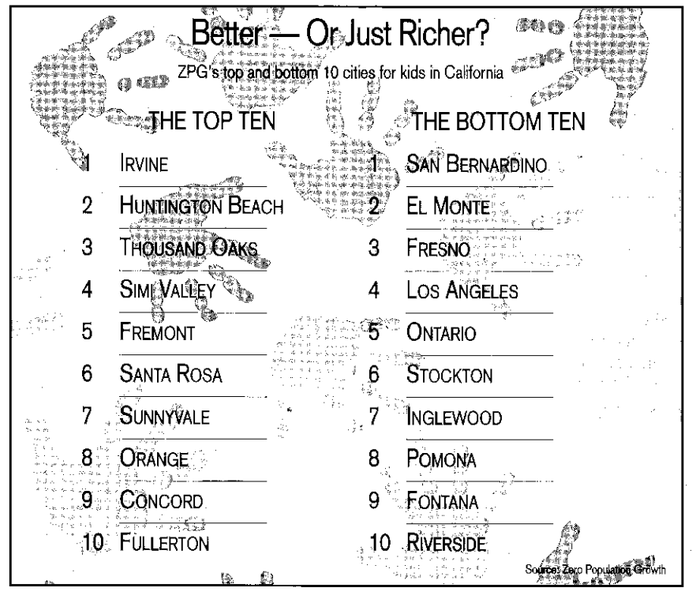
NUMBERS

Stephen Svete

Can Only Rich Kids Be Happy?

Parents! The results are in: the most kid-friendly towns have been announced by the Zero Population Growth. So pack up the sports-utility vehicle, put the house on the market, and move to — Naperville, Illinois?

Yes, it's the latest in an inexhaustible string of "best places" surveys. Launched by an obscure Rand McNally almanac in the late 1970s, the notion of ranking places for the benefit of the world's most consumerist, competitive, and locationally mobile culture has become a cottage industry. ZPG's Children's Environmental Index ("Our Children, Our Cities, Our Future") appears to target Yuppies who want to know, in typical American fashion, the best places to raise our growing offspring.



In theory, the ZPG report is designed to draw attention to the plight of little people in our nation's cities — to show folks where they can improve the infrastructure of nurturing. But the report may generate an undesirable side-effect. Already, local media in highly rated locales are crowing about their town's superiority, increasing the self-satisfaction — and cultural isolation — of America's "have" towns. The other side of this coin is the additional round of bad publicity heaped on the inner cities — both metropolitan cores and the inner suburbs.

The children's index incorporates five ranked indicators: health, education, economic conditions, crime, and environment. But as most sociologists will quickly assert, it is the e-word (it's the economy, stupid) that drives at least three of the other rankings: health, education, and crime. The health category weighs in with teen-pregnancy statistics — the real concern of ZPG — and another clear data set highly correlated with income. So it's no surprise that ZPG's most kid-friendly places are also some of the wealthiest. So much did money influence the final ranking that the first- and last-place towns — Naperville, Illinois and Gary, Indiana — are both in the same metropolitan region (Chicago). But Naperville ranked first in economics, and Gary was ranked 217th of the 219 cities included in the index.

A scan of the top ranking cities confirms the hunch. After Naperville comes Overland Park, Kansas, the well-to-do Kansas City suburb. Irvine, not exactly an economically diverse community, comes in third. The only towns in the top 10 that are not wealthy suburbs are Fargo and Sioux Falls. Meanwhile, Naperville's core city, Chicago, places 200th. Overland Park's core, Kansas City, ranks 147th. Irvine's core, L.A., comes in 201st.

Even big cities that normally rank high in livability ratings do only fairly well in the children's index. Seattle ranks 70th, Portland comes in at a middling 116, and progressive Minneapolis is ranked 122. There isn't one city that exceeds a population of 500,000 that makes the top 50, though San Jose comes close at 53. Aren't there some things about big cities that make them good places for children? What about San Diego's zoo or Chicago's Museum of Science and Industry? What about walkable neighborhoods or getting around town on transit? What about diverse cultures, architecture, foods, bookstores, languages?

Perhaps we ought to be concerned about the social ecology of metropolitan areas made of income-homogenous communities, populated by self-selected exiles from places that are ranked low in surveys like these. And maybe we should wonder whether these surveys simply reinforce a segregated, consumerist culture. After all, isn't the intention of identifying "the best" a way of encouraging its purchase? Can one really buy-into a kid-friendly town? What kind of contempt does this engender for more indigenous or central city American communities? Indeed, the ZPG report succeeds in raising many questions.

The Children's Environmental Index is ostensibly intended to encourage us to make our communities more kid-friendly. It even calls for policy initiatives that would reduce poverty as the most important way to improve. But in its effort to gain a wide readership, it may have stumbled into a shameless marketing ploy — creating an index that results in making readers feel good about suburban flight, thereby encouraging the phenomenon. And the geospatial outcome of that pattern can't be good for anybody's environment — social or otherwise. ❑

DEALS
Morris Newman

Put the Project Before the Subsidy

Well! I've often seen a cat without a grin," said Alice in Wonderland, "but a grin without a cat? It's the most curious thing that I ever saw in all my life!" In the case of the proposed sports arena in downtown Los Angeles, Lewis Carroll's verbal paradox could be restated as: "I've often seen a project without a subsidy, but a subsidy without a project?"

It is not exactly true that there isn't a project in the present case: developers Ed Roski Jr. and Philip Anschutz are proposing a 20,000-seat, $310 million sports arena on the site of the outdated North Hall of the Los Angeles Convention Center. The rub, in this case, concerns some other amenities that the developers claim they will build, including a long-awaited convention center hotel and a bustling shopping street. Yet Roski and Anschutz have refused to commit to these projects, or even to tell us what those projects would look like or how they would function. And all these refusals could appear to be part of a curious pattern of evasion on their part.

> *"L.A.'s arena developers must sell their concept as if they were dealing with a democratic society and not a small-town city council."*

To build the arena, the developers are asking the city to issue $50 million in tax-exempt bonds and to make available another $20 million from a reserve fund for the convention center. Roski and Anschutz also want to tap the redevelopment agency's power of eminent domain to acquire about 27 acres of old homes and aging commercial properties immediately north of the proposed arena. The city would lease the convention center site to the developers for $1 a year.

Critics of the proposed subsidies, foremost among them City Council member Joel Wachs, have claimed that the arena will be a self-contained fortress offering no benefit to the surrounding area. Yet the developers claim they are proposing a wholly different kind of project. Pointing to the benefits of recent downtown stadiums in the cities of Baltimore, Denver, and Phoenix, the developers say they want to build a project that revitalizes the downtown area, according to John Semcken, senior vice president of the L.A. Arena Development Co. LLC.

The mention of a convention center hotel is extremely heady, because downtown L.A. desperately needs one. The city invested $500 million in building the convention center in the 1980s. But today the convention center is losing about $38 million a year, in part because it cannot attract major conventions without an adjoining hotel.

But Semcken says the developers are not willing to invest in urban design, unless they have their subsidy in place: "We have already spent $10 million to $12 million so far to get the arena built. We are not putting money into a master plan or a concept plan until we are sure we are going to have a deal."

If that position — the unwillingness to conceive or design a project until it is funded — seems paradoxical, it is only one of several head-scratching concepts that the arena developers have expressed.

One sticking point about the deal is the developers apparent unwillingness to provide a guarantee of payment to shield the city's general fund from loss. Semcken said that the developers have expressed a willingness to provide a guarantee, but will not actually do so until the council approves the subsidy, "because there would be no reason to provide the guarantee until the subsidy is there," he said. A spokesman for Councilman Joel Wachs said that efforts by pro bono lawyers to structure a guarantee agreement with the developers had failed.

Semcken's Lewis Carroll-like reasoning did not stop there. The developers are also pushing a novel bond-repayment scheme, in which their sales-tax revenues go directly to pay off the bonds, rather than paying off both the bonds and city taxes. Why should the developers pay both city taxes and make the bond payments, Semcken argues, as city taxes would go toward the retirement of the bond anyway? Again, Wachs is opposed to such a strategy. Spokesman Greg Nelson points out that under the city's charter, waiving tax payments for any particular business is technically considered a subsidy.

Besides, why should the developers carry an "extra" burden of taxes above the tax money diverted to pay off the bonds, Semcken argues. "These are tax dollars that don't exist if the arena does not get built," he points out. But no other business in the city has been granted the privilege of retiring its public subsidy directly from tax proceeds.

So far, the developers have done a good job in enrolling the support of the city council. In May, the council voted 11-3 to approve a memorandum of understanding that gave the developers the right to negotiate for the arena site. That vote was remarkable in light of the developers' initial refusal to disclose how they planned to pay back the bonds.

Wachs and the developers are now in a serious dogfight. The councilman has announced that he is gathering signatures to put the arena subsidy up to a vote. The developers, apparently furious, have claimed that a ballot measure will kill the arena.

Now, I am a firm opponent of all subsidies on sports stadiums. The popularity of sports does not in itself constitute a public interest that warrants a public subsidy. Further, I am not very impressed by the reasoning behind the developers' various positions. But if Roski and Anschutz are serious about their plan to create a shopping street around the arena and the convention center, I would indeed support a subsidy — because I think that urban design and redevelopment is in the public interest. The only question is whether the design is any good, and that's one pig that nobody should buy in a poke.

Wachs and the developers might consider the following deal: Wachs would hold off on the petition drive for several months. In exchange, the developers would provide a detailed urban plan, plus performance guarantees, to be codified in a specific plan. The city needs more than assurances for putting $70 million into this project. The city should get something of permanent value to all residents: a vital urban district.

The developers must take the conventional route and prepare an urban design concept, and sell its concept as if they were dealing with a democratic society and not a small-town city council that can be arm twisted and blustered into a subsidy. L.A. residents deserve to know what they are getting for their $70 million: a great project — or a detached smile in the air. ❑