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More Counties May Pass Stricter Air Measures

Following the lead of their counterparts in Los Angeles, environmentalists throughout the state are forcing the federal Environmental Protection Agency to crack down on local air-quality efforts in several smoggy areas.

Already this year, environmentalists in Ventura and Sacramento counties have reached legal settlements requiring EPA to assume control of the air-quality effort in those counties. Nearly identical settlements are expected soon in Fresno and Kern counties.

These legal settlements are likely to force local air-pollution officials in Ventura and the Central Valley to follow Los Angeles's lead into regulating vehicular traffic, and may strengthen the connection between air quality and land use. In June, for example, the Ventura County Board of Supervisors approved a regulation requiring large employers to prepare ridesharing plans for their employees. The South Coast Air Quality Management District in Los Angeles imposed such a requirement last year. And air-pollution officials in Sacramento County say that a variety of "trip-reduction" ordinances may be combined into a similar rule there in the near future.

In general, local air-pollution officials are cooperating with the EPA in preparing the so-called "Federal Implementation Plans," or FIPs. But many say their counties cannot hope to meet federal air standards unless the federal government *Continued on page 7*

Land-Use Initiative Killed By Hawaii Supreme Court

The Hawaii Supreme Court has ruled that land-use decisions should not be subject to ballot initiative because "zoning by initiative is inconsistent with the goal of long-range comprehensive planning."

The initiative's supporters have vowed to take the battle to the Hawaii Legislature and change the state planning and zoning laws the Supreme Court relied on in making its decision. "It's going to be a very hot political issue next year in the legislature and possibly in the governor's race," said Daniel Foley, the losing attorney. Meanwhile, the Honolulu City Council appears likely to reinstate the initiative's action, a downzoning of residential property near Sandy Beach on Oahu. (Honolulu has a combined city-county government that covers the entire island.)

California's strong initiative laws make a similar ruling here highly unlikely. However, the Hawaii decision did contain strong statements about the importance of comprehensive planning that could be used to bolster anti-initiative arguments in other states.

Development of the Sandy Beach property has become a *cause celebre* in Hawaii. The proposed construction of 211 homes in the area has been the subject of a series of lawsuits between the owners and developers of the property on one hand and Hawaii slow-growth advocates on the other. *Continued on page 4*

Sacramento Merger Plan Includes Local Boards

A special charter commission in Sacramento has proposed a sweeping merger of city and county governments and establishment of 20 "local community councils" with considerable land-use power.

The Sacramento Ad-Hoc Charter Commission predicted that such a reorganization would save the combined city and county $27 million a year and reduce competition for new development among Sacramento's governmental jurisdictions. Merger advocates hope that the idea will appear on either the June or November ballot next year.

The proposal did not receive universal support. Minority advocates said it could dilute their voting power, and cityhood supporters in several unincorporated communities said they were skeptical about whether the community council idea would be a preferable alternative to incorporation. Some observers also fear the balkanization of land-use policy, according to Paul Hahn, the commission's deputy director.

Here are some of the highlights of the merger proposal:

- The governing body would consist of 11 supervisors elected by district and a strong mayor, with such powers as line-item veto, elected at large.
- Local land-use decisions would be made by 20 local community *Continued on page 6*

L.A. City Council Passes Office-Housing Linkage Fees

With surprisingly broad support, the Los Angeles City Council has approved the passage of an office-housing linkage fee and Mayor Tom Bradley appears ready to support it. The fee is one piece of a package of housing legislation.

The linkage fee is but one of many actions taken recently by the L.A. city government on the growth management front. In recent weeks, the City Council has approved a new Department of Environmental Affairs and considered and rejected a plan to take over the Community Redevelopment Agency. Meanwhile, Mayor Tom Bradley has proposed a new policy to permit more mixed-use projects.

Here is a rundown of the recent action:

Housing: In late May the council gave conceptual approval to a linkage program. The fee, which will be between $2.50 and $7.50 per square foot, will be similar to San Francisco's, where the fees are placed in a trust fund and then doled out mostly to non-profit housing developers.

The fee was part of a broad housing package that received widespread support. Other elements include creation of a public-private housing partnership, creation of a city Housing Commission, strengthening of a long-standing city requirement that new residential projects contain 15% affordable housing, an increase in the real estate transfer tax, restrictions on the demolition of affordable housing, a $100-million bond issue to assist building owners with seismic improvements, and the creation of a special city unit to negotiate with owners of low-income buildings with federal subsidies that will soon expire.

The housing program garnered the support of Bradley, the housing advocates, and the development community, which dropped initial opposition to the linkage fee.

Environmental Affairs: Over Bradley's opposition, the council voted on June 28 to create a Department of Environmental Affairs, which will oversee environmental matters now handled by several departments. The agency's first-year budget will total about $700,000.

Environmentalists called the decision long overdue, while Bradley, fearing City Hall turf wars, had proposed the creation of an air-quality management office with limited authority.

Redevelopment: On June 27, the City Council decided not to wrest control over the Community Redevelopment Agency from Bradley. But Councilman Zev Yaroslavsky has threatened to sponsor a ballot initiative to take more redevelopment power away from the mayor.

L.A. CRA, by far the state's largest and wealthiest redevelopment agency, is governed by a board entirely appointed by Bradley. As housing and small business advocates have attacked CRA projects both downtown and in Hollywood, however, CRA has become an inviting political target for some members of the council, especially Zev Yaroslavsky, Bradley's would-be rival for mayor.

CRA has been subject to several ongoing controversies, including the Legal Aid Society's charges that it has performed poorly in the housing area, a lengthy legal challenge to its Hollywood redevelopment project, and the delicate negotiations going on between Bradley and county officials over an increase in the CRA's spending authority.

When Yaroslavsky proposed that the city council take over the CRA, he lost on a 9-6 vote. However, the council did grant itself veto power over agency budgets and decisions.

Mixed Use: Meanwhile, Bradley is working on a mixed-use policy that would permit more developments to include housing, commercial, and parking facilities in the same project.

Reflecting the postwar trend of separation in zoning, city policy now prohibits a neighborhood-level mixing of uses. The mixed-use idea for Los Angeles has been revived by current public debates about air pollution and jobs-housing balance.

Walnut Creek Hurries to Add Growth Measure to Plan

Walnut Creek officials are hurrying to incorporate their three-year-old growth-control initiative into the city's general plan before a court hearing in August.

The action became necessary in June, when the city council's own growth management plan, which would have taken the place of Measure H, was defeated at the polls in June.

A long-delayed appellate hearing on Measure H is now scheduled for August. Walnut Creek City Attorney Thomas Haas said the city hopes the revised general plan will correct any legal defects in Measure H and render the lawsuit moot.

Measure H was the first initiative in the state to tie development permits to levels of service at congested intersections. The measure prohibits construction of large projects if key intersections within the city are operating at more than 85% of capacity. But a Superior Court judge later ruled that the measure was inconsistent with the city's general plan.

Haas said that Measure H will be called an "overlay" in the new general plan. "It's no change at all in the way that we're doing business," he said. "But it's putting the provisions actually in the general plan text."

But lawyer Maria Rivera, who represents the newspaper publisher challenging Measure H, said remedial actions won't correct past legal defects. "We have maintained all along, and will pitch to the court, the fact that it doesn't matter what they do with Measure H," she said. "The issue still remains whether it was void when it was adopted." If so, she said, "that means it was enforced illegally for four years."

Walnut Creek voters approved Measure H in November of 1985. However, Dean Lesher, publisher of the Walnut Creek-based *Contra Costa Times*, challenged the initiative in court.

In January of 1987, Contra Costa County Superior Court Judge Richard Patsey overturned the initiative, saying it was inconsistent with the city's general plan. (*CP&DR*, February 1987.)

As the Measure H appeal moved forward at a glacial pace, the city council prepared its own growth management plan as an alternative to Measure H. Last August, the Court of Appeal in San Francisco granted Walnut Creek a one-year postponement, saying the case could be rendered moot.

As passed by the council, the city's growth management plan would have limited commercial construction in the city to 1.5 million square feet over a 15-year period, and would have prohibited any increase in residential densities without a corresponding decrease somewhere else in the city. Though three members of the current city council were supporters of Measure H in 1985, this growth management plan received only one "no" vote at the council.

When the growth-management plan was defeated by Walnut Creek voters, however, city officials had to scramble. Their current goal is to have a revised general plan, with Measure H as an overlay, in place by August. At that time, the city's lawyers appear likely to argue that the case is moot because Measure H is now consistent with the general plan.

Contacts: Thomas Haas, Walnut Creek city attorney, (415) 943-5813. Maria Rivera, McCutchen Doyle Brown & Enersen, lawyer for Lesher Communications, (415) 937-8000.

Correction

In last month article, "Caltrans Eyes Air-Rights Development on Harbor Freeway," *California Planning & Development Report* erroneously stated that Caltrans had commented on an environmental impact report for a project in Watts. In fact, the EIR being referred to involved the Watt City Center project along the Harbor Freeway in downtown Los Angeles. Also, the telephone number for Caltrans consultant Craig Lawson contained a typographical error. The correct phone number is (213) 312-8222.

BRIEFS

Playa Vista Project Reduced

The size of the proposed Playa Vista project in western Los Angeles has been cut dramatically to accommodate L.A. City Councilwoman Ruth Galanter, who used the project as a campaign issue in 1987.

Maguire Thomas Partners announced that the amount of office space would be cut from 6 million to 5 million square feet, while the amount of retail would drop from about 1 million to less than 700,000 square feet. Meanwhile, the number of residential units will increase from 8,700 to 11,000.

The decision to reduce the project's size is due to the influence of Maguire Thomas, which took over as managing partner from Howard Hughes Properties in February. JMB Realty Corp. also purchased an interest in the project at that time. Maguire Thomas's Nelson Rising has been meeting with community groups ever since the company joined the project.

Desert Tortoise Declared Threatened

The desert tortoise has been declared a threatened species by the California Fish and Game Commission, meaning its fate will have to be accounted for in future environmental reviews.

The tortoise is found in large areas of San Bernardino and Riverside counties, but mostly in remote areas away from the current path of urban development. Intense opposition to this declaration came from cattle and sheep farmers and off-road vehicle enthusiasts, who say their activities may be severely threatened.

State studies show that population of the tortoise, which can live for 90 years, has dropped 90% in 50 years and, in certain areas, 50% in the last seven years alone. An estimated 60,000 remain.

Developer Ordered to Restore Beach

Sacramento County supervisors will permit a developer to proceed with a Sacramento River condominium project — but not before certain environmental problems are solved.

In December, the supervisors cancelled permits for a planned marina at the 36-unit Sand Cove condominium project because it was discovered that substantial amounts of sand had been hauled away. An Indian burial ground was disturbed and bushes and trees damaged without permission.

In late June the supervisors approved site grading and improvements for the area, but required that the beach, the burial grounds, and the trees and shrubs be restored. They will withhold building permits until after the restoration is completed.

That is not the end of the problem, however, for the development group led by Connecticut-based Bill Cann. Cann still must get permits from the U.S. Bureau of Reclamation and Army Corps of Engineers and the State Lands Commission.

No Arena Deal in Anaheim

Orange County Supervisors have refused to sell a site near Anaheim Stadium to the city of Anaheim for an arena, saying the property should remain available as the possible site of a jail.

Anaheim had offered $8 million for the site and has been working with Ogden Corp. and the Nederlander Organization to develop an arena and attract a professional basketball franchise. The city sued the county three years ago to block construction of a jail on the site, and as a result the county is redrafting its environmental impact report.

The Anaheim site may seem particularly important to county officials now because the Irvine Co. is proceeding with plans to build homes on property at a site to be annexed to Anaheim, which it has been holding as a potential jail site.

Parcel Tax in East Palo Alto

Voters in the financially strapped city of East Palo Alto have approved a five-year property tax increase.

Measure A received 62% of the vote at a special election on June 20. The tax, which calls for an annual tax of $175 on residential parcels and $1,000 for each commercial or industrial parcels, is expected to raise $900,000 a year. East Palo Alto ran a budget deficit of $800,000 in the last fiscal year.

East Palo Alto is a poor and mostly black community of 18,000 people in San Mateo County, just across the Santa Clara County line from Palo Alto. The city's incorporation in 1983 was controversial because of its small tax base and marginal financial viability.

Developer Polls Neighbors

If you can't beat 'em, poll 'em.

That, apparently, is the attitude of the West Newport Oil Co., which manages a 500-acre oil field in Newport Beach for a variety of oil companies. Now that the oil companies are considering developing the property, West Newport hired Opinion Resarch of California to poll nearby residents about what they would like to see.

About 600 of the 2,700 neighboring residents responded to the six-page survey. And what do they want to see? Eight-six percent of them said they'd prefer homes to commercial or industrial development.

Roundup

Christine Reed will leave her post as head of the state Department of Housing and Community Development to run the Orange County Building Industry Association; she replaces **John Erskine**, who will practice law at BIA's favorite firm, Nossaman Guthner Knox & Elliott....**Won't They Ever Learn Department**: Raiders football team owner Al Davis is negotiating with Oakland (where the team used to play, the L.A. Coliseum (where the team plays now), and Sacramento in case his Irwindale stadium deal falls apart....**Wising Up**: Coto de Caza, the Orange County development owned by Arvida/JMB Partners and L.P./Chevron Land, hires Pamela St. Pierre from the city of Irvine as community relations administrator to deal with the area's unruly slow-growthers....The decision to uphold Hollywood's redevelopment plan (*CP&DR*, February 1989) has been **appealed by Hollywood's anti-redevelopment forces**.

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COURT CASES

Oceanside Growth-Control Lawsuit Will Proceed to Trial

A building industry challenge to Oceanside's growth-control ordinance must proceed to trial on the facts, a state Court of Appeal in San Diego has ruled.

The appellate court rejected the Building Industry Association of San Diego's efforts to win the case as a matter of law. BIA had argued that the growth measure, a numerical cap on housing construction passed in 1987, was facially invalid because it conflicts with both the city's general plan and state planning and zoning law. But the appellate court, like San Diego Superior Court Judge Jeffrey T. Miller, found that the BIA's challenge contains "triable issues of material fact" and denied the BIA's motion for summary judgment.

Proposition A, a citizen initiative which received 57% of the vote in April 1987, placed a cap of 1,000 units in 1987 and 800 units in subsequent years. On the same ballot, voters rejected Proposition B, a city council-sponsored measure that contained broad growth management provisions but did not call for a yearly cap on construction. (*CP&DR*, May 1987.)

After the BIA sued, Judge Miller rejected its motion for summary judgement. "I think BIA is correct and has eloquently argued that Proposition A 'appears," and I put quotes around the word 'appears' to be facially inconsistent with the city'a adopted general plan. ... However, the City has, at this point in time, barely successfully rebutted this facial inconsistency sufficently to raise triable issues of material fact."

The appellate court agreed with Miller. "Considering the scheme of law that makes the matter of consistency ever subject to revision and dependent upon the changing housing needs of a region," wrote Justice William L. Todd Jr., "we conclude the matter of conflict between a numerical growth control ordinance ... and a general plan or state laws, or both, must await determination of the underlying facts."

Todd and his colleagues came to the same conclusion regarding the question of whether Proposition A interferes with Oceanside's ability to provide its fair share of regional housing needs. Despite the city's flat-out contention that the needs can be met within the confines of Proposition A, the court said: "Such a conclusion awaits a determination of facts, some of which by necessity will have to be projections of the reasonable proability of accommodating regional housing requirements to the year 2000."

The full text of BIA v. Superior Court, No. D009161, appeared in the Los Angeles Daily Journal Daily Appellate Report on June 12 beginning on page 7409.

Land-Use Initiative Killed by Hawaii Supreme Court

Continued from page 1

Though the land is owned by the Bishop Estate, it is being developed by Kaiser Hawaii Kai Development Co. The property in question has been zoned for residential use for 35 years, but part of it lies within a "shoreline management area," requiring a special permit. Despite considerable opposition the city council approved the permit. Thereafter, the Save Sandy Beach Coalition began circulating an initiative to rezone the property from residential to preservation.

Land-use initiatives and referenda are not common in Hawaii. Citizens do not have initiative and referendum power at the state level, and counties may include such power in their charters at their own discretion. The only significant state court case in this area came in 1982, when the state Supreme Court ruled that a rezoning referendum on Kauai represented an additional discretionary permit required before a builder could obtain vested rights. (The case was *County of Kauai v. Pacific Standard Life Ins. Co.*, 653 P.2d 766.) The legal validity of a land-use initiative, however, had never been tested.

When it became apparent that the Sandy Beach initiative would qualify for the ballot, Kaiser and Bishop Estate sought to knock it off the ballot, much as builders in Orange County sought to do last year in California. The state Supreme Court let the election take place, however, and last November the Sandy Beach initiative won by a two-to-one ratio.

In May, the state Supreme Court issued a 4-1 decision ruling that the state legislature has delegated land-use powers only to the Honolulu City Council, not to the people themselves. This ruling came only a few days after oral argument, however, and the court did not issue the explanatory ruling until June 21.

When the explanation did come, land-use experts were surprised that the ruling relied only on state law and not on any constitutional issues, such as violation of due process. "None of us thought that would be the ground which they would pick," David Callies, a land-use law professor at the University of Hawaii and author of *Regulating Paradise*, a book about Hawaii land-use law. Because the constitutional issues weren't reached, of course, the case cannot be appealed to the U.S. Supreme Court.

In the 14-page opinion in *Kaiser v. Honolulu*, No. 13286, the Supreme Court held that the state's Zoning Enabling Act, passed in 1957, takes precedence over the initiative power of local voters. Having reached that conclusion, the court then ruled that "zoning by initiative is inconsistent with the goal of long-range comprehensive planning." In particular, the court relied on court cases from New Jersey and Washington state to support the conclusion. In a point vigorously disputed by both the losers and the dissenting justice, Edward Nakamura, the Supreme Court concluded that its own 1982 referendum ruling was not applicable to this case.

The underlying issue in the Hawaii decision — the apparent conflict between a one-shot initiative and a broad-ranging comprehensive planning process — has emerged in many cases in California, where state General Plan law and initiative powers are often at odds. But California's initiative and referendum powers are embodied in the state constitution and accorded great deference by the judiciary. Thus, in a long series of cases, both the California Supreme Court and appellate courts have reached the opposite conclusion as the Hawaii court — that initiative and referendum powers take precedence over state planning law.

Nevertheless, the Hawaii decision could become a factor in court cases in other states. Like the New Jersey and Washington state cases the court cited, the Sandy Beach decision reaffirms the concept that, on the state level, good planning must include "reasoned and orderly land use development."

Kaiser's lawyer, Kenneth Kupchak, said that if the Honolulu City Council proceeds with a downzoning of the property, his client will have to decide whether to sue yet again. He said both vested rights and a taking of property might provide the basis for the next round of legal action.

Kaiser Hawaii Kai Development Co. et al v. City and County of Honolulu, No. 13286, was handed down by the Hawaii Supreme Court on June 21, 1989.

Contacts: Daniel Foley, attorney for Save Sandy Beach Coalition, (808) 526-9500.
Kenneth Kupchak, attorney for Kaiser Development, (808) 531-8031.
David Callies, Hawaii Law School, (808) 948-6550.

COURT CASES

State Supreme Court Sets New Test for Adult Theaters

The California Supreme Court has established a new test in determining which movie theaters may be subject to geographical restrictions under city zoning ordinances.

By a 4-3 vote, the court ruled June 29 that theaters are subject to "adult" zoning restrictions if sexually explicit films constitute a "substantial portion" of all films shown or "account for a substantial part of the revenues."

The case, *People v. Superior Court (Lucero)*, S002438, arose when the Long Beach city attorney's office charged the owner and manager of the Lakewood Theater in Long Beach with a violation of the city's adult zoning laws, which prohibit adult theaters within 500 feet of residential areas and 1,000 feet of public schools or churches.

Such zoning ordinances are the subject of some legal dispute. Adult zoning ordinances are often challenged on First Amendment grounds. The U.S. Supreme Court has upheld the concept of separating adult theaters from incompatible uses. However, in recent months both state and federal appellate courts have struck down ordinances that require adult businesses to be separated both from incompatible uses and from each other, saying they left an unconstitutionally small number of locations within the city available. (For a fuller discussion, see *CP&DR*, March 1989.)

Furthermore, the legal question of what constitutes an adult theater is a difficult one. In *Pringle v. City of Covina*, 115 Cal.App.3d 151 (1981), a state Court of Appeal ruled that a theater, to be classified as an adult theater, must show adult films a "preponderance" of the time. In later appellate cases, this rule was interpreted to mean more than half the time.

Long Beach, however, tried to persuade the courts that a theater should be classified as an adult theater if it offers a single showing of an adult film. One appellate court bought this argument but the ruling was later decertified by the Supreme Court. And in the *Lucero* ruling Chief Justice Malcolm Lucas flatly rejected the idea. "Nothing in the Long Beach ordinance's state of purpose discloses the presence of significant deleterious effects on the community arising from the single showing of an adult film," he wrote for the majority.

Lucas also threw out the "preponderance" test from the *Pringle* case, replacing it with a requirement that theaters, to be considered "adult," must engage in a "regular and substantial course of conduct." This standard would apply to "all adult entertainment theaters offering adult fare as a substantial part of their regular business, but would not apply to theaters showing only occasional or incidental adult movies."

San Francisco's Proposition M Upheld by Appeals Court

An appellate court has upheld the passage of Proposition M, San Francisco's growth-control ballot measure, saying the measure is not subject to the California Environmental Quality Act, the Brown Act open-meetings law, or a city charter provision requiring that zoning matters be referred to the city planning commission.

The court also found that all of Proposition M should not be ruled invalid simply because certain portions of it are invalid — specifically, portions requiring the city planning commission to amend the city's general plan.

Proposition M passed narrowly in 1986. It established a limit of 475,000 square feet of office construction per year in the San Francisco downtown area and further added eight "planning priorities" to the planning code, which reoriented city planning policies more toward neighborhoods. (*CP&DR*, December 1986.)

The Residential Builders Association of San Francisco subsequently challenged Proposition M by suing the city, with San Francisco Campaign for Accountable Planning, the ballot measure's sponsor, intervening in the case.

Residential Builders claimed that Proposition M was not an initiative proposed by voters but, rather, placed on the ballot by certain members of the Board of Supervisors. Under San Francisco's city charter, an initiative may be placed on the ballot not only through voter signatures but at the request of one-third (four members) of the Board of Supervisors. Residential Builders claimed that when a measure is placed on the ballot by such means, it is not an initiative but a "voluntary referendum" created by an official action of the board. Such action would be subject to CEQA, the Brown Act, and the charter provisions demanding referral to the Planning Commission.

The appellate court disagreed, however. "There is no room for serious doubt that the charter's provision for 'one-third of the supervisors' to propose ballot measures was intended to be exercised independenly of the rest of the board rather than as a special, minority-vote rule for the board deliberating as a whole," wrote Justice Jerome A. Smith for a unanimous three-judge panel. "Simply put, independent action, not board action, was contemplated.

The full text of Residential Builders Association v. City and County of San Francisco, No. A040140, appeared in the Los Angeles Daily Journal Daily Appellate Report on June 29 beginning on page 8427.

Court Strikes Down Thermal Airport Land-Use Plan

The state Court of Appeal in San Bernardino has struck down parts of the Thermal Airport Land Use Plan — but has also set aside a lower-court ruling that the entire plan must be rewritten.

The decision arose out of a dispute between the Riverside County Airport Land Use Commission and the City of Coachella, which wanted to annex a piece of property identified in the Thermal airport plan as being influenced by airport operations. The Riverside County Local Agency Formation Commission denied the annexation application and the county airport commission found the Coachella general plan to be inconsistent with the Thermal airport plan.

Coachella then challenged the Thermal airport plan in court and won a victory before Riverside County Superior Court Judge Kenneth G. Ziebarth. In March of 1988, Ziebarth ruled that the Thermal airport plan did not comply with state law because it did not contain a noise study or a safety study and because it failed "to reflect the realistic growth of the Thermal Airport during the next 20 years." Ziebarth issued a writ of mandate ordering the Riverside County Airport Land-Use Commission to draw up a new plan for the Thermal airport. The commission then appealed.

The appellate court rejected a variety of arguments that the appeal was late and handled improperly. However, the court did conclude that the Thermal airport plan "is not a valid 'comprehensive land use plan' with which the commission can demand consistency."

However, the appellate court ruled that Ziebarth had gone too far in ordering a new plan drawn up, as that is a quasi-legislative act.

The full text of City of Coachella v. Riverside County Airport Land Use Commission, No. E005492, appeared in the Los Angeles Daily Journal Daily Appellate Report on May 31 beginning on page 6852.

Minority Population Grows Quickly in California

Minority populations are dramatically altering the demographic makeup of California and a few other selected states in the country, according to the U.S. Census Bureau.

Perhaps the most remarkable statistic is that Los Angeles County is the most multi-racial area in the country. It is the only metro area in the country with more than 1 million residents in each of the Census's three minority catogeries: Hispanic, black, and other races.

The Census Bureau recently released its estimates of minority population changes between 1980 and 1985. Here are some other highlights:

- A third of the nation's Hispanics (5.9 million) lived in California in 1985. Next largest populations were found in Texas (3.7 million), New York (1.9 million), and Florida (1.1 million). Between 1980 and 1985 the Hispanic population grew at a faster rate in California (29%) than in any other state with a large Hispanic population, though the growth rate in Florida was about the same.
- The number of Hispanics in California grew 50%, or about 1.3 million people, between 1980 and 1985. Texas had an increase of 700,000 and no other state added more than 250,000.
- One-fifth of all Hispanic-Americans, or about 3.7 million, lived in the Los Angeles metropolitan area. About 775,000 Hispanics lived in the San Francisco Bay area.
- With 2.1 million blacks, California was second only to New York, which had 2.7 million. California had the second-highest black growth rate among states with large black populations — 13 percent. First was Florida, with 16 percent.
- Los Angeles County was second only to Cook County, Illinois, in the number of blacks residents, with about 1 million. (New York City is made up of five counties.) Because of L.A.'s large population, however, the county was not among the percentage leaders. Blacks account for more than a third of the population of 11 American metropolitan areas, all in the South.
- A third of all residents of other races (Asians and Pacific Islanders and American Indians, Eskimos, and Aleuts) lived in California. The California total of 2.3 million was triple the number of the second-ranking state, Hawaii.
- San Francisco was the only metropolitan area in the country except for Honolulu where other races made up more than 10% of the population. In fact, Los Angeles (1 million) and San Francisco (751,000) ranked 1-2 among metro areas in the number of residents of other races.

"Population Estimates by Race and Hispanic Origin for States, Metropolitan Areas, and Selected Counties: 1980 to 1985," Series P-25, No. 1040-RD-1, is available prepaid from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Sacramento Merger Plan Includes Local Land-Use Boards

Continued from page 1

councils, each with five members elected by district.

- The city-county planning commission would consist of 11 local community board members, one appointed by each supervisor. This commission would prepare the general plan, and community plans would have to be consistent with this general plan.

Hahn said that the local community council was the most popular idea at the charter commission's public hearings. In unincorporated areas, where most Sacramento County residents live, planning advisory councils now review development proposals but exert no real control. "Whether it's true or not, there's a perception out there that, especially on unpopular land-use decisions, these planning advisory commissions make decisions and they're just completely overruled all the time," Hahn said.

Hahn also said that parochialism could be avoided if the city/county supervisors and planning commissioners make the tough decisions and leave implementation issues to the local community councils. "The amount of low-income housing needed would be in the general plan and, hopefully, it would be fairly allocated using a fair-share plan," Hahn said. "But then they will go into a community and say, You folks are going to take so many units of low-income housing, period. Where they put that low-income housing within the community would be decided in their community plans." To make the process work, he added, "I anticipate that we will have a much more specific general plan than we have right now."

Competition for development and tax dollars among jurisdictions in Sacramento has been intense in recent years, especially because many unincorporated areas are clamoring for cityhood. About two-thirds of the county's 1 million or so residents live in unincorporated territory and no new city has been created in more than 40 years. The merger effort was launched partly as a result of the bitter dispute over the proposed incorporation of Citrus Heights. The Local Agency Formation Commission approved the incorporation, but county supervisors opposed it, partly because some $2 million in sales tax revenue from Sunrise Mall would shift from the county's coffers to the new city's treasury. The county sued to stop the incorporation election and so far no election has taken place. Most recently, a Superior Court judge issued a potentially pathbreaking decision that an environmental impact report should be prepared for the incorporation. (*CP&DR*, March 1989.)

Sacramento County contains three other incorporated cities besides Sacramento — Galt, Folsom, and Isleton — with a combined population of less than 40,000 people. These cities are not currently included in the merged county government but could join if their residents so chose.

The 15-member charter commission was chaired by Roy E. Brewer. Its members included Tina Thomas, a well-known Sacramento environmental and land-use lawyer, and Julie Nauman, deputy director of the state Housing and Community Development Department and a former legislative staffer on local government issues.

"Proposed Charter and Final Report" is available from the Sacramento Ad-Hoc Charter Commission, 1010 8th St., Sacramento, CA 95814.

Contact: Paul Hahn, deputy director, (916) 440-5600.

More Counties May Pass Stricter Air Measures

Continued from page 1

elf regulates certain areas more strictly — such as offshore oil drilling, pesticides, and emissions standards on cars sold outside California. In fact, county officials from around the state have banded together to lobby for tougher controls in the new federal Clean Air Act, which Congress is debating now.

The five areas targeted by environmentalists — Los Angeles, Ventura, Sacramento, Fresno, and Kern — are legally vulnerable because the clean-air plans they adopted acknowledged that they could not meet federal clean-air standards by a 1987 deadline. Many other counties still don't meet federal standards, but aren't as vulnerable to legal attack because their air-quality plans said they would be able to do so by 1987. These other areas are under attack too, however. In mid-June, Citizens for a Better Environment and the Sierra Club Legal Defense Fund sued Bay Area air quality officials, saying that area's plan — while legally acceptable — was never carried out.

Restrictions on vehicle use may be particularly important to air-pollution control efforts in Ventura, Sacramento, and Fresno counties. These counties have relatively little heavy industry, and vehicle emissions play a significant role in creating smog. In Los Angeles, heavy industry is a major contributor to air pollution, while oil fields play an important part in the Kern County pollution problem.

Until recent years, reduction of vehicle emissions was the exclusive jurisdiction of the state Air Resources Board. However, in 1987, the state legislature granted the South Coast Air Quality Management District jurisdiction over so-called "mobile sources," giving AQMD power over commuting patterns and (at least theoretically) some land-use decisions. The legislature extended that power to all local air-quality districts last year.

But county officials around California say they will need help m the federal government on some air-pollution matters over which they have no jurisdiction, including pesticides, out-of-state vehicles, and offshore oil drilling. For this reason, the County Supervisors Association of California has created the CSAC Ad Hoc Committee on Clean Air Amendments to lobby Congress for tougher federal standards in those areas. "Our hope is to go to Rep. Henry Waxman and say, Here is the California position," said Susan Lacey, a Ventura County supervisor who is spearheading the effort. Waxman, a Los Angeles Democrat, is chairman of the House Subcommittee on Health and the Environment and has introduced a clean-air bill with Rep. Jerry Lewis, R-Redlands.

Local officials in California claim the gains they have made in air quality could be erased by loose federal regulation of pollution sources local governments cannot control. "The real fight is, can we get a bill that's tough enough to enable Los Angeles to do what it needs to do?" said James Lents, executive officer of the South Coast AQMD. "We estimate now that about a fourth of the cars operating in Los Angeles are cars built to national standards, not to California standards. We think over half the trucks out there are built to national standards."

Similarly, local governments claim pollution from offshore oil rigs — which is governed by the Department of the Interior — could hinder air quality efforts onshore. Recently, the Interior Department proposed the first offshore air-pollution standards especially for California. This proposal came after a two-year-plus attempt to negotiate a regulation fell apart, and local governments, oil companies, and environmentalists all say they will probably sue if it is adopted. However, the Waxman-Lewis bill contains a provision that would transfer jurisdiction over offshore pollution to the EPA.

Several local air-pollution officials say they do not understand why environmentalists are pushing EPA so hard when new local plans are being prepared under AB 2595, a state law passed last year. The so-called "California Clean Air Act" sets some stricter standards than the federal law for some pollutants and requires smoggy areas to show how they will reduce emissions 15% for every three-year period until those standards are met. "Why do we have to waste each other's time in court?" asked Cliff Calderwood, Kern County's deputy air-quality officer. His counterparts in Fresno and Sacramento counties posed the same question.

But environmentalists say that if these local areas didn't meet federal standards, they're not going to meet state standards, even if the state standards are tougher. "I don't anticipate any of those plans being submitted on time," said Joseph Brecher, an environmental lawyer in San Francisco who filed both the Sacramento and Fresno-Bakersfield suits. On the other hand, he added, "the one thing that might make them move is the fear that the feds will take over their prerogative of planning these things."

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Norm Covell, Sacramento APCD, (916) 386-6183.

NATIONAL BRIEFS

Bauman Heads Maryland County Planning

Washington land-use lawyer Gus Bauman, who made many appearances in California as counsel to the National Association of Home Builders, has been chosen as chairman of the Montgomery County, Maryland, Planning Board.

Bauman was selected 4-3 by a Montgomery County Council that the Washington *Post* described as "bitterly divided." Even though he spent nine years as litigation counsel to NAHB, the *Post* reported that both "growth hawks" and "growth doves" "cooed" about his selection.

For the past 18 months Bauman was worked for the prominent Washington land-use law firm of Beveridge & Diamond.

Real Estate Editors See More Restrictions

Seventy-nine percent of America's real estate editors predict greater commercial growth restrictions in their areas, according to a survey from the National Association of Real Estate Editors.

More than 80% of the real estate editors said local governments would require greater concessions from developers in the future. Some 87% predicted more cities will require linkage payments, primarily because such payments may make a project more politically acceptable.

Two-thirds of the real estate editors said the increasing difficulty of getting government approvals will slow down development, mainly because of the uncertainty factor.

International Report: Prince Piqued Over Planning

Prince Charles is in trouble again over his opinions on real estate development in Great Britain

Chartered Surveyors Weekly reported that the prince, speaking at the Building a Better Britain Exhibition, criticized British developers for "having no real interest in the lives of our villages and towns except for the profit they may engender."

Folsom, Slow-Growther Settle Lawsuit Over General Plan

The City of Folsom has settled its lawsuit with a slow-growth advocate, agreeing not to process any "generic" development agreements before city residents voter on a growth-control measure in August. But no sooner had the settlement been signed than the slow-growth plaintiff complained that Folsom had violated its spirit.

The stakes are high in Folsom, a Sacramento suburb that is one of the fastest-growing cities in the state. The city's current general plan calls for a population of about 70,000 in 20 years, while an initiative sponsored by attorney Robert G. Holderness would restrict population to 56,000 over 25 years, with a growth cap of 5.6% per year. The city currently has between 20,000 and 25,000 residents and grew by about 10% last year, according to the state department of Finance.

The battle in Folsom has been a nasty one. Jousting over the upcoming initiative began last December, when the city council asked for a financial analysis of the proposed initiative. (The resulting study showed a potential loss of $55 million in revenue.) Then, the city council began discussing the passage of several development agreements before the election.

County supervisors in Orange and Riverside counties used a similar strategy last year when confronted with growth-control initiatives. Each county locked in approval of more than 100,000 housing units via development agreements prior to the election. The initiatives failed in both counties, however.

Holderness sued, challenging the adequacy of the General Plan and its EIR for the General Plan, claiming that the documents did not explain how the city would pay for road improvements to accommodate new development. He also got into at least one shouting match with Folsom Mayor Jack Kipp during a council meeting.

In May, an East Bay builder, Homes By Dame, decided against pursuing a development agreement for a 1,700-acre tract before the election. However, a spokesman for Homes By Dame said he was confident the initiative would be defeated.

The lawsuit was scheduled to go to trial in early June, but the two sides settled at the last minute. Holderness called the settlement a victory for slow-growthers because large development agreements would not be hurriedly approved, as they had been in Orange and Riverside counties. But Folsom City Manager told the *Sacramento Bee* that the city council was moving in the direction of postponing the development agreements anyway. He called the settlement a "major victory" for the city because it means Holderness acknowledged the validity of the general plan. The settlement applied only to "generic" development agreements and not to site-specific agreements.

In late June, however, the Folsom Planning Commission recommended that the City Council approve three development agreements. Holderness complained that it was a violation of the settlement, at least in spirit. But Folsom officials said all three agreements were tied to specific sites, making them permissible under the settlement.

Contacts: Robert Holderness, (916) 448-8125.
Brad Cordick, City of Folsom, (916) 355-7200.

Novato Voters Kill Air Base Redevelopment Plan

Novato voters have rejected a private developer's proposal to redevelop a 400-acre site that was formerly part of Hamilton Air Force Base.

Berg-Revoir Corp.'s proposal, which would have included 2,500 houses and almost 3 million square feet of commercial development, was voted down by residents of the northern Marin County city by a two-to-one ratio on June 6.

The Novato City Council approved the project last February but placed a referendum on the ballot when several citizen initiatives began circulating, said Mark Westfall, the city's planning director. The referendum overturned the council's approval of a package of permits,, including general plan amendments, a redevelopment plan (the property is located in a redevelopment area), and a master plan for the site. "The council put the whole thing on the ballot in one package — 'This is Hamilton, yes or no'," Westfall said. "But the opposition saw that as a political ploy and made it a campaign issue."

Hamilton Air Force Base was a fighter airplane base until 1974. Today it containes little airplane activity but remains the location of considerable military housing. Berg-Revoir purchased the 400 surplus acres, about a quarter of the entire base, in 1984 and first came to the city seeking development approvals the following year.

The leading issue was the probable increase in traffic congestion along Highway 101. Prior to the election, local environmental groups and neighboring Sonoma Cuonty sued, challenging the environmental impact report. Action in the suit was postponed pending the outcome of the election.

And now that Berg-Revoir has lost the election, the developer may not build anything at all. In fact, according to Westfall, the developer is now trying to give the property back to the federal government, claiming it contains a previously undisclosed toxic waste problem.

Contact: Mark Westfall, Novato city planner, (415) 897-4341.

Cityhood Results: Lathrop Yes, Laguna Hills No

Lathrop is a city but Laguna Hills isn't.

Voters in Lathrop, a few miles south of Stockton on I-5, approved cityhood at a June election. Lathrop stands in the fast-growing commuting corridor between the East Bay and Modesto.

The creation of the City of Laguna Hills in Orange County lost by only 284 votes, and residents of the Leisure World retirement community were responsible. Voters outside Leisure World favored the incorporation proposal by a 5-1 ratio, but Leisure World residents, with a much higher turnout, rejected the incorporation by a 2-1 ratio.

Leisure World incorporation opponents said they didn't like the idea of being included in an outside incorporation proposal. The defeat throws various cityhood proposals in the Saddleback Valley into greater uncertainty. Several different proposals are being suggest ranging from the incorporation of a large City of Saddleback Valley to the inclusion of Laguna Hills in the upcoming Laguna Niguel incorporation election, now scheduled for November.