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Growth Bills Falter In Legislative Session

Special Report: Legislative Roundup
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California's 1989 legislative session began with a record-setting flood of bills dealing with growth management, planning, and development. It ended with just a trickle getting through to Gov. George Deukmejian's desk — and even fewer making it into law.

Both local government committee chairs put forth packages of growth-related bills, yet neither had much luck pushing them through the legislature. Several other similar bills — including several to permit the creation of regional and sub-regional planning bodies — also stalled during this legislative session.

The legislature did, however, show a willingness to act aggressively in dealing with specific planning and growth problems. Sacramento leaders agreed on an $18.5-billion gas-tax increase to fund transportation improvements that will go before the voters next June (SB 300 and AB471). They overhauled the solid-waste management law, giving the state a stronger role in overseeing local plans (AB 939). And they passed a bill linking water and sewer funding to provision of affordable housing (SB 966, part of Sen. Marian Bergeson's growth package) — though Deukmejian vetoed that bill.

"We made progress in vertical terms, on specific issues," said Peter Detwiler, principal consultant to the Senate Local Government Committee, which Bergeson chairs. "But not in horizontal terms. And that's no surprise."
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Appeal Court Upholds Walnut Creek Measure

In a case pending for more than two years, a state appellate court has upheld Walnut Creek's Measure H traffic-control initiative, declaring the measure to be a general plan amendment even though it was not labelled as such.

In overturning Contra Costa Superior Court Judge Richard Patsey, the First District Court of Appeal in San Francisco gave considerable deference to initiative powers when compared with state planning law. In fact the court rejected many opportunities to conclude that Measure H should not be regarded as a general plan amendment, even though it contained several defects.

"(N)either the absence of a proper label, nor excessive specificity and self-execution, nor internal inconsistency is a bar to construction of Measure H as a general plan amendment," Justice Donald King wrote for a unanimous three-judge panel. "Admittedly, the initiative process is not the ideal method for amending general plans ... (b)ut initiatives are seldom models of technical legal perfection. In light of the judicial policy requiring interpretation of Measure H in such a manner as to implement the expressed will of the people of Walnut Creek and confer validity, the initiative *must* be construed as a general plan amendment because it *can* be so construed."

Measure H was the first major initiative in the state that linked
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Florida Mulls Expansion Of State Growth Law

Florida is considering new legislation that would make its already strong growth-management law even tougher.

In particular, Republican Gov. Bob Martinez is supporting a task force's suggestion that all metropolitan counties be required to create an urban growth boundary and that rural and exurban development be required to pay the full marginal cost of services they need.

These proposals were contained in a growth package that got shot down in political crossfire during Tallahassee's legislative session last spring. However, Martinez may reintroduce the bill during a special legislative session in November intended to deal with transportation funding.

The Martinez proposals constitute a follow-up to Florida's sweeping 1985 growth-management law, which instituted a top-down system of land-use planning review in the state. (*CP&DR*, August 1988.) Under that law, local plans are reviewed by state officials for conformance with several statewide goals.

One of those goals was "compact urban development." However, even the 1985 law's most enthusiastic supporters, such as former Secretary of Community Affairs John DeGrove, acknowledged that this term was too vague to be very
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COURT CASES

Court Again Rejects EIR on Goleta Hotel

Santa Barbara County's environmental analysis for a proposed beachfront hotel in Goleta has been rejected for the second time by the state Court of Appeal.

A three-judge appellate panel in Ventura said that the county must perform a "current analysis" on all proposed alternative sites and cannot reject those sites out of hand by relying on the local coastal plan and related documents.

"Even where the lead agency determines that ostensibly feasible alternatives are infeasible, remote, or speculative, it must include some minimal discussion in the EIR (environmental impact report) to show how it arrived at this conclusion," wrote Justice Arthur Gilbert for a unanimous panel in *Citizens of Goleta Valley v. Board of Supervisors*.

Hyatt's lawyer, Timothy Tosta, criticized it as undermining a local government's planning processes. "What it says is, you can't rely on zoning, you can't rely on the general plan, you can't rely on political subdivisions," Tosta said. "I think even planning directors will wonder what the hell they're supposed to do in this situation."

But the winning lawyer, Phil Seymour of the Environmental Defense Center in Santa Barbara, said the local coastal plan had never even contemplated a large resort hotel on Haskell's Beach, the site of the proposed Hyatt. He said the coastal commission wanted the site used for only limited visitor-serving uses, such as campgrounds.

The decision is a follow-up to an important appellate court ruling involving the same case. In *Citizens of Goleta Valley v. Board of Supervisors*, 197 Cal.App.3d 1167 (*Goleta I*), the same appellate panel ordered the EIR rewritten to include an expanded alternatives analysis, even though Hyatt Corp. does not own any other sites in the area. (*CP&DR*, February 1988.)

In the supplemental EIR, the county analyzed only one alternative site, a nearby parcel called Santa Barbara Shores. Several other alternative sites were mentioned but not analyzed because the local coastal plan, as well as two sets of administrative findings by the coastal commission, stated that they were inappropriate for commercial use. The supplemental EIR was found adequate by Santa Barbara Superior Court Judge William L. Gordon.

When Santa Barbara environmentalists appealed, however, the appellate court found the supplemental EIR inadequate. Santa Barbara County had argued that the EIR "scoping" process had revealed all sites except Santa Barbara Shores to be "remote and speculative." However, the appellate court ruled, the state's guidelines for the California Environmental Quality Act, which carry the force of law, "do not permit the use of scoping to bypass current study and discussion in the EIR of a reasonable range of potentially feasible alternatives to the proposed location of a project."

Furthermore, the court rejected Hyatt's argument that the local coastal plan, which dates from 1980, and the two sets of coastal commission findings, prepared in 1980 and 1985, are "functionally equivalent" to an EIR. Of the coastal commission reports, the justices wrote: "Even if they were the functional equivalent of an EIR, there is no evidence that the coastal commission conducted any alternative site analysis in its report, or that the Board even considered such evidence from any source."

As for the local coastal plan, the justices wrote: "Review of a previous LCP is an inadequate substitute for specific study and analysis in the EIR of the currently proposed project."

In one remarkable passage, the court didn't merely criticize the county's action, but proscribed what the county should have done. "(T)he board could have cited the various reports it had actually considered, explained briefly its current investigation of a reasonable range of alternative sites, reported the discussions with current planning staff regarding those sites, and then stated specific conclusions based on those facts," the opinion stated. "In this way, the board could perhaps have shown how the objectives of the project could not have been reasonably or feasibly met at these sites."

The full text of Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County, 2d. Civ No. B037615, appeared in the Los Angeles Daily Journal on September 27, 1989, beginning on page 11920.

Contacts: Phil Seymour, lawyer for environmentalists, (805) 963-1622.
Tim Tosta, lawyer for Hyatt, (415) 984-3816.

Lodi Initiative Struck Down By Appellate Court

A Lodi initiative requiring voter approval before the city may plan for development in its sphere of influence has been struck down by an appellate court as interfering with state annexation laws.

In making the ruling in *L.I.F.E. Committee v. Lodi*, the Third District Court of Appeal in Sacramento concluded that the state has clearly pre-empted the field of annexation, and that the Lodi measure does not simply permit the electorate to direct the city council on whether to proceed with a particular annexation. "The language of the ordinance is overbroad," wrote Justice Robert K. Puglia for a unanimous three-judge panel. "It is not restricted in its application to annexation proposals initiated by the city and cannot be judicially reformed."

The *L.I.F.E.* case has a long and complicated history. In 1981, city voters approved Measure A, which removed from the general plan all property outside the city's boundaries but inside the sphere of influence, and further required another public vote to bring any of this property back into the general plan. A general plan amendment often precedes annexation.

Since that time, more than 20 measures have appeared on the ballot seeking to bring sphere-of-influence land back into the general plan, but only a few have passed. In the November 1987 election — which represents the high-water mark of anti-growth sentiment in the state — 10 such measures were on the ballot and all failed.

Several developers in Lodi sued, claiming that Measure A was frustrating their attempts to annex to the city. The city's case was not helped much by the fact that former City Attorney Ronald M. Stein, in his ballot analysis of Measure A in 1981, said it would "add a condition to the procedures for annexation."

In court, the city tried to argue that Measure A was merely the voters' check on the city council's actions on annexation. However, as the appellate court pointed out, individual landowners may also initiate annexation proceedings, which are passed on not by the city but by the county Local Agency Formation Commission, technically a state agency.

The full text of L.I.F.E. v. City of Lodi, 3d Civ. No. C000443, appeared in the Los Angeles Daily Journal Daily Appellate Report on September 12.

Contacts: Dan Curtin, lawyer for L.I.F.E. Committee, (415) 937-8000.
Mark Weinberger, lawyer for Lodi, (415) 552-7272.
Ron Stein, former Lodi City Attorney, (209) 477-8171.

Poll Shows Strong Anti-Growth Sentiment in South

In a dramatic shift in public opinion, the Field Institute's California Poll has found that Southern Californians hold stronger anti-growth views than residents of the Bay Area.

Sixty-seven percent of residents surveyed in Los Angeles and Orange Counties said there is too much population growth in their community, compared to only 50% of residents in the Bay Area. Statewide, 58% complained about too much population growth.

Southern Californians also objected more strenuously to commercial and multi-family housing growth. In L.A. and Orange County, 38% of Southern Californians complained about too much commercial growth, compared to 28% of Bay Area residents. The difference in perceptions on multi-family housing is even more noticeable — with 51% of L.A./Orange residents saying too much is being built in their community, compared with only 34% of Bay Area residents.

Attitudes toward construction of single-family homes are sharply different. Bay Area and L.A./Orange residents held similar views, with about half saying not enough is being constructed and only about 15% objecting that single-family construction is too rapid. These percentages held throughout the state except in parts of Southern California outside Los Angeles and Orange Counties — an area that includes Riverside, San Bernardino, and San Diego counties. A third of surveyed residents in these areas objected to the amount of single-family construction.

Four out of five Californians surveyed advocated expanded public transit facilities, while two-thirds favored expanding roads and freeways; these figures held fairly constant throughout the state. By contrast, however, support for growth controls appeared stronger in the South.

About half of all Southern Californians favor residential growth controls, compared to about 40% of Northern residents. Some 41% of L.A./Orange residents favored restrictions on business growth, compared with 33% elsewhere in Southern California, 32% in the Bay Area, and 26% elsewhere in Northern California.

Perception of Amount of Growth

	Statewide	Bay Area	L.A./ Orange
Population Growth			
Too Much	58	50	67
About Right	36	44	28
Not Enough	4	2	3
Commercial Growth			
Too Much	30	28	38
About Right	47	46	46
Not Enough	21	22	15
Multifamily Housing			
Too Much	44	34	51
About Right	33	31	31
Not Enough	18	30	14
Single-Family Housing			
Too Much	19	15	16
About Right	34	28	38
Not Enough	41	51	50

Reducing Traffic Congestion: Preferred Methods

	Statewide	Bay Area	L.A./ Orange
Expand Public Transit	81	83	86
Expand Roads/Freeways	66	64	71
Limit Residential Growth	46	42	48
Limit Business Growth	34	32	41

BRIEFS

First L.A. Citizens Panel Begins Meeting

The first of 35 neighborhood-level citizen planning committees has begun meeting in Los Angeles's Sylmar district, perhaps opening a new era for citizen participation in L.A.

For several years, Los Angeles officials have been planning a system of citizen planning boards similar to New York's 59 community boards. (*CP&DR*, January 1987.) However, unlike New York's board members, who are elected, all citizen board members in Los Angeles will be appointed by city council members.

The Sylmar panel is the first of five "pilot" panels to be set up this year. The panel's chief task will be to revise the city's community plan for the area, subject to approval by the city council. Eventually, all the panels will informally review most large development proposals in the city.

Judge Upholds Sacramento Linkage Fee

A federal judge in Sacramento has upheld the city's office-housing linkage fee, which assesses commercial developers from 5 cents to $1.04 per square foot to construct low-cost housing in the city.

Commercial Builders of Northern California had challenged the fee as unconstitutional under the U.S. Supreme Court's 1987 decision in *Nollan v. Coastal Commission*. "The main argument is whether the construction of new buildings causes an increased demand for low-income housing," the builders' attorney, Christine Savage, told the *Sacramento Bee*.

The trial court ruling came from U.S. District Court Judge Edward J. Garcia, who became familiar with land-use issues when he imposed a judicial moratorium on development in the Lake Tahoe area several years ago. The builders plan to appeal the linkage fee ruling to the Ninth U.S. Circuit Court of Appeals in San Francisco.

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SPECIAL REPORT

1989 Legislative Scorecard: A Bill-by-Bill Summary

Here is a list of state legislative bills, both successful and unsuccessful, dealing with growth and related issues:

Enacted

Housing

SB 1282 (Seymour): Requires local agencies to revise housing elements to address loss of subsidized housing and replacement costs. *Chapter 1451, Statutes of 1989.*

AB 1274 (Hauser): Gives preference in Proposition 77 and 84 bond funds to local governments that administer regulatory policies in a manner that encourages production of low-income housing. *Chapter 1193.*

AB 1863 (Hauser): Revises density bonus provisions and encourages production of low-income housing through waiver of local building and zoning regulations. *Chapter 842.*

LAFCOs and City-County Conflicts

SB 1057 (Davis): Revises LAFCO law to require fiscal review for all incorporations, reviewable by the state controller. *Chapter 1384.*

SB 1258 (Bergeson): Requires cities to accept county development agreements for annexed areas. *Chapter 664.*

Land Use, Permits, and Fees

SB 255 (Bergeson): Establishes 1991 deadline for completion of airport land-use commissions to adopt their plans. *Chapter 306.*

AB 886 (Cortese): Among other things, establishes specific review periods for environmental documents under CEQA. *Chapter 907.*

AB 2060 (Costa): Requires 60-day waiting period for application of new or increased development fees for all development projects, not just residential. *Chapter 848.*

Transportation

SB 300 (Kopp) and AB 471 (Katz): Increases state gas tax and distributes some funds to local government for transportation purposes. *Chapters 105 and 106.*

AB 40 (Eastin): Requires the lead agencies of transportation projects to prepare "regional transportation impact analyses" for large projects. *Chapter 626.*

Vetoed

Housing

SB 966 (Bergeson): This bill gives preference in allocation of water and sewer bond funds to cities and counties that have made substantial progress in meeting their regional housing allocation.

AB 486 (Clute): Prohibits conversion of mobile home parks to another use unless the action is consistent with housing element.

Land Use, Permits, and Fees

AB 2200 (Cortese): Requires consideration of state Environmental Goals and Policies Report in preparation of local plans. Requires report to be issued every two years.

Local Agency Finance

AB 253 (Cortese): Revises County Service Area law to facilitate the use of this increasingly popular technique in incorporated areas.

Still Alive

Housing

SB 727 (Leroy Greene) and AB 1002 (Eastin): Both bills would require that regional jobs/housing balance be considered in local land-use plans. *Still in original committees.*

SB 1278 (Seymour) and AB 2236 (Costa): These bills would have made eligibility for state housing funds contingent on a valid housing element. *SB 1278 failed passage in Senate Housing Committee. But AB 2236 passed the Assembly and now rests in Senate Housing Committee.*

SB 1279 (Seymour): Requires that cities and counties spend development fees in accordance with their housing elements. *Still in Senate Housing Committee.*

SB 1280 (Seymour): Requires a city or county that is planning to reduce its low-income or affordable housing to prepare a economic impact analysis. *Still in Senate Rules Committee.*

AB 145 (Costa): Proposes a $710-million bond issue to fund wildlife conservation, parkland, and recreation programs. *Assembly inactive file.*

AB 447 (Bradley): Authorizes a county to contract with a city for construction of low- and moderate-income housing. *Still in Assembly Housing Committee.*

AB 1217 (Hauser): Limits application of development fees if local government does not have an adequate general plan or housing element. *Still in Assembly Local Government Committee.*

Air and Water Quality

SB 712 (Leroy Greene): Expands regional air-quality attainment plans to include consideration of jobs-housing balance. *Passed Senate, now rests in Assembly Natural Resources Committee.*

AB 2203 (Cortese): Requires cities and counties in non-attainment areas to include an air-quality element in their general plan. Requires state Air Resources Board to set guidelines. *Passed Assembly, now rests in Senate Appropriations Commitee.*

Regional Governance

SB 303 (Deddeh): Implements San Diego's Measure C by establishing a regional growth management board. *Still in Senate Local Government Committee.*

SB 846 (Leroy Greene): Prepares for possible merger of city and county of Sacramento. *Senate Inactive File.*

SB 969 (Bergeson): Reorganizes SCAG and creates county regional associations. *Passed Senate, rests in Assembly Local Government Committee.*

SB 1332 (Presley): Establishes Model Subregional Planning Act to create advisory sub-regional planning boards. *Passed Senate, in Assembly Local Government Committee.*

AB 1512 (Farr): Establishes county and regional study groups to encourage cooperative decision-making; allocates $6 million to fund such groups. *Still in Assembly Ways and Means Committee.*

LAFCOs and City-County Conflicts

SB 1225 (Boatwright): Requires counties to negotiate with cities to approve development in city's sphere of influence. Amended to incorporate provisions of AB 2202 (Cortese). *In conference committee.*

SB 968, SCAG 19 (Bergeson); AB 2204, AB 2205, and ACA 38 (Cortese): All these bills would make it easier for local agencies to share sales or property tax by removing the constitutional requirement that tax-sharing be approved by voters in both jurisdictions. *Each bill passed originating house and now rests in local government committee of opposite house. Subject of joint interim hearing Nov. 17 in San Jose.*

Land Use, Permits, and Fees

SB 965 (Bergeson): Sets specific statewide goals and policies on growth management to guide local agency decision-making. Also requires that all plans in a county be reviewed and revised concurrently. *Still in Senate Local Government Committee.*

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The success of such bills in the legislature, however, may suggest the beginnings of a trend. Both the gas-tax deal and SB 966 make state funds contingent on greater local planning efforts. SB 966 requires that state officials give preference in water and sewer funding to jurisdictions that have made substantial progress in meeting regional housing goals. The gas-tax deal contains an even more remarkable requirement: that local governments to embark on "congestion management programs" — essentially, vehicle trip-reduction programs — for new development projects in order to qualify for any portion of the new funds.

Not everyone likes these provisions. Deukmejian vetoed SB 966 partly, he said, because he saw no connection between provision of housing on the one hand and water and sewer grants on the other. And the building industry is lobbying to change the gas-tax deal because of the congestion-management provision. Nevertheless, it marks the first time the state has used its power in funding local governments as a stick to require more growth management. And, remarkably enough, the local government lobbyists seem resigned to accept this fate, at least if the requirement involves a brand-new source of funds, as the gas-tax deal did. "The difference between the Katz bill (the gas-tax deal) and the Bergeson bill (SB 966) is that the Katz bill says, Here's new money and to get new money you have to jump through these hoops," said Sheryl Patterson, a lobbyist with the League of California Cities. "I think we can live with that." (By contrast, SB 966 would have added a new "hoop" local governments must jump through to obtain funds from an existing program.)

If this approach proves politically palatable, lobbying groups as diverse as builders and environmentalists may try to use it in Sacramento to achieve their goals in local land-use planning. Most of the growth-related bills were not actually killed this year but simply didn't make it all the way through the legislature. Since next year is the second half of a two-year legislative session, the legislature will simply pick these bills up in January where they left off this fall — meaning some might still pass.

While the legislature appeared eager to deal with issue-specific bills, it showed virtually no interest in dealing with the broad regional planning problems that generated so much discussion at the beginning of the session. Though small pieces of the Cortese and Bergeson packages did make it through the legislature, they created little excitement, and other bills were mired in interest-group infighting.

Part of the problem was that these bills appeared to have no discernible constituency in their favor. Despite the rash of publicity that growth issues received just prior to the legislative session, no mayors, no builders, no citizen groups rushed to Sacramento to say solutions were urgently needed. "The real problem was that these things were thought up by staff people after they had a bunch of hearings," said Donald V. Collin, chief lobbyist for the California Building Industry Association.

In part, however, this constituency has failed to materialize because, while all the interest groups claim that a problem exists, none wants to give anything up in order to solve it. The building industry usually supports bills that would make it more difficult for local government to restrict housing construction, as well as proposals such as the gas-tax increase that would provide more tax money for infrastructure construction. But builders are wary of additional planning requirements which, they believe, might cost them money — such as the congestion-management provisions of the gas-tax bill, which they are presently trying to change.

Cities and counties are engaged in such a rabid fight with each other for revenue that they often stand in the way of bills that would permit redistribution of tax funds, even if it would reduce the fiscal incentives to encourage sprawling development. In addition, local governments zealously guard their home-rule powers, as well as funding programs through which they receive fund automatically, rather than as an incentive to do more planning.

Finally, slow-growth lobbyists — despite their insistence that they are involved in Sacramento lobbying — have a hard time interesting their supporters in aggressive state legislation. In fact, the only time they seem to get involved is when their power to place land-use initiatives on the local ballot appears directly threatened.

This year, slow-growthers made headlines in Sacramento only once: when the Sierra Club and the Greenbelt Alliance dropped their support of AB 842, by Assemblyman Pete Chacon, D-San Diego, because they claimed he welched on a deal with them. Originally they had opposed the bill, which would have required cities and counties to prepare reports on the likely impact of land-use initiatives on fiscal impact and general plan consistency. When Chacon dropped the mandatory portion of the bill — permitting, rather than requiring, the studies — Sierra Club and Greenbelt dropped their opposition and "went neutral" on the bill. However, it was amended in the Senate to broaden the scope of analysis in such reports to permit discussion about the cost of housing and economic growth. At that point, the groups renewed their opposition. The bill is still pending in a Senate committee.

The Gas-Tax Bill and Congestion Management

One of the most remarkable achievements of the legislative session was the inclusion of the so-called "congestion management plan" provisions in the gas-tax bill signed by Deukmejian in June (Chapters 105 and 106, Statutes of 1989).

The gas-tax deal would double the state gasoline tax — increasing from 9 to 14 cents per gallon next year and adding another penny each year until 1994. The proceeds — expected to total $18.5 billion over 10 years — would be used for a wide variety of road construction, rail construction, and transportation management projects. The whole package is expected to go before the state's voters in June.

Almost a third of this money — $6 million total — would go to cities and counties for local projects. But to receive any of those funds, local governments must adopt a "congestion management program," which would include a trip-reduction program, analysis of the relationship between land use and transportation, and a regional computer-modeling program to determine the impact of new development on traffic. "For the first time, we have forged the link between transportation and land use, and I think it will always be there," said Assemblyman Richard Katz, D-Sepulveda, chairman of the Assembly Transportation Committee, sponsor of the bill.

After Deukmejian signed the bill, however, the building industry — and, in particular, the Irvine Co. — apparently began to have second thoughts about what the congestion-management program would mean for them — since, among other things, local governments may be forced into requiring more trip-reduction efforts from builders. And so the California Building Industry Association, along with other interest groups such as the state's contractors, have begun to lobby Katz and Deukmejian to make some changed.

CBIA lobbyist Collin is uncharacteristically quiet about what the

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also died in Bergeson's committee, but some of its provisions wound up in SB 1225 (Boatwright), which is still pending. Meanwhile, AB 2206, which would authorize local governments to require developers to set aside land for open space, is still pending.

One Cortese bill that might have a chance next year is AB 2203, which would require local governments to prepare air-quality elements as part of their general plans. Cortese committee aide Randy Pestor says its passage is unlikely unless a new funding source for this additional work can be found. One possibility: a pending $4 increase in motor-vehicle registration. In the L.A. area, local governments, the Southern California Association of Governments, and the Air Quality Management District are all fighting over how this money will be spent.

The Bergeson package was not as wide-ranging as the Cortese package, but contained certain controversial elements and therefore had a tougher time. SB 966, which links water-sewer funding to housing, got as far as Deukmejian's desk. But nothing else got through the legislature.

SB 965, which would require updates of local general plans consistent with state policies by 1994, is still pending in Bergeson's own committee. SB 967 — similar to SB 966 in that it would have linked state transportation funds to housing — didn't even get out of the Senate, failing in the Appropriations Committee. Bergeson's tax-sharing bills are still pending. And SB 969, a SCAG reorganization bill that would provide some measure of independence for county-level regional associations, has passed the Senate but is pending in Cortese's Assembly committee.

Perhaps the most interesting regional planning bill — SB 1332 by Sen. Robert Presley, D-Riverside — is still alive as well. This bill would permit the creation of sub-regional planning bodies to work on growth-management plans that could cross city and county boundaries if necessary. This bill has passed the Senate and is also pending in Cortese's committee. A somewhat similar bill, AB 1512 by Assemblyman Sam Farr, D-Monterey, did not make it out of the Assembly this year.

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Peter Detwiler, Senate Local Government Committee, (916) 445-9748.
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blight needed under redevelopment law. *Passed Senate, in Assembly.*

SCA 2 (Leonard): Permits a simple majority vote for infrastructure bonds under certain circumstances. *Passed Senate, in Assembly Local Government Committee.*

ACA 25 (Bradley): Reduces vote requirement for local general obligation bonds from two-thirds to 60%. *Still in Assembly Local Government Committee.*

Transportation

AB 35 (Eastin): Revises circulation element to include TSM measures and address consistency with regional transportation and air-quality plans. *Passed Assembly, rests in Senate Appropriations Committee.*

AB 1520 (Cortese): Requires the Metropolitan Transportation Commission to establish a special gas tax in the Bay Area to provide additional funding for mass transit and highway renovation. *Still in Assembly Transportation Committee.*

Dead

Housing

AB 1290 (Hauser): Requires that cities and counties maintain an acceptable level of low- and moderate-income housing, no matter what local initiatives may have been passed regulating growth. Places burden of proof of local agency's compliance with state housing policy on the local agency itself. Codification of attorney general's opinion. *Failed passage on Assembly floor.*

LAFCOs and City-Council Conflicts

AB 2201 (Cortese): Requires LAFCOs to consider the regional jobs/housing balance effects of a governmental reorganization. *Passed Assembly, failed passage in Senate Local Government Committee.*

Land Use, Permits, and Fees

SB 713 (Leroy Greene): Restricts the imposition of conditions on general plan or zoning amendments which are more restrictive than those permitted under Subdivision Map Act. *Failed passage in Senate Local Government Committee.*

AB 2202 (Cortese): Requires cities and counties to prepare an annual report on consistency of plans with state guidelines. Also revises procedures for referral of general plan amendments between cities and counties. *Passed Assembly, failed passage in Senate Local Government Committee. City-county referral provisions included in SB 1225 (Boatwright).*

Transportation

SB 967 (Bergeson): Gives preference in doling out state highway funds to cities and counties that have adopted local traffic mitigation programs and have housing elements approved by the state. *Failed passage in Senate Appropriations Committee.*

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building industry doesn't like about the congestion-management program. "The less I say about it, the better," he said told *CP&DR*.

Irvine Co. lobbyist David Booher said he's seeking "just some technical clarifications," especially with regard to the computer modeling process. "There's concern that the way the modeling is set up in the bill doesn't reflect what actually goes on in the real world," he said. Building industry lobbyists also say it's possible that the program could boomerang by denying funds to communities with congested roads, thereby encouraging developers to build in distant, rural areas where they can afford to build all new roads.

But Katz doesn't believe all this post-passage controversy has much to do with "technical clarifications." "What they'd like to do is leave in place something that looks like it does something, but maintains the status quo," he said.

In particular, he said, builders dislike the fact that the bill specifies that all local development plans must assure a transportation level of service of at least "E" — still congested, but short of gridlock. "What bothers them is when the bill includes any specific standard that can be measured against," he said. "What they'd rather have is a lot of ambiguity with exemptions and waivers and grandfather clauses. Their goal is to continue to do whatever they want to do."

Katz also fears that if the congestion-management provisions of the gas-tax deal are weakened, the Sierra Club and other environmentalists will oppose it at the polls next June. He has invited the building industry to prepare its case and then present it to him; currently, a task force of people in building and related industries is meeting, with local government representatives joining them. But he has given every indication that he will not do anything that weakens the intent of the congestion-management program.

Regional Planning Bills Stalled

While several single-issue bills did pass the legislature, legislative proposals to encourage broad-based planning — and, especially, regional-level planning — didn't do nearly as well. However, while a few have been defeated outright, most are still alive in Sacramento and could conceivably make it to the Deukmejian's desk next year.

After interim hearings last year, Dominic Cortese, D-San Jose, chairman of the Assembly Local Government Committee, and Marian Bergeson, his Senate counterpart, each introduced a package of bills dealing with growth issues. Both were cautious, reflecting the modest interest by most legislators in growth issues even after the growth-control frenzy of 1987 and 1988. Even so, neither got very far.

Both, for example, introduced bills that would make it easier for cities and counties to share property and sales tax revenues (SB 968 and SCA 19 by Bergeson, AB 2204, AB 2205, and ACA 38 by Cortese). Competition for tax revenues often leads to competition for development between cities and counties, as well as sprawling development in uncorporated areas. (See *Special Report: Annexation and Development*, *CP&DR*, August 1989.) These bills would permit tax-sharing agreements without the electoral vote now required by the state constitution.

Local government lobbyists opposed the bills and changed their stance to neutral on the Cortese bills when he agreed that they should not apply to annexation agreements. Each has passed its own house and now sits in the local government committee of the other house. Cortese and Bergeson will hold a joint legislative hearing on this issue and other growth bills Nov. 17 in San Jose.

The legislature passed Cortese's AB 2200, but Deukmejian vetoed it. This bill would have set up a separate office of planning in the Governor's Office of Planning and Research and requires OPR to prepare an environmental goals and policies report every two years. Deukmejian said OPR was part of his office and the legislature shouldn't tamper with it. But Deukmejian did sign AB 886, which makes certain technical amendments to the California Environmental Quality Act.

Other pieces of the Cortese package met with varying fates. AB 2201, which would have required Local Agency Formation Commissions to consider the regional jobs/housing balance effects of its actions, failed in Bergeson's Senate committee. AB 2202, requiring expanded interagency referral of general plan revisions,

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1989 Legislative Scorecard: A Bill-by-Bill Summary

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SB 1288 (Seymour): Prohibits communities from requiring new developments to fund existing infrastructure deficiencies. *Passed Senate, pending in Assembly Local Government Committee.*

AB 655 (Jones): Proposes $200 million bond issue for purchase of development rights for agricultural land. *Still in Assembly Natural Resources Committee.*

AB 842 (Chacon): As amended, now permits, rather than requires, local governments to refer an initiative to staff for review of potential effects. However, study could include traffic, open space, air quality, and water quality. *Passed Assembly, in Senate Elections and Reapportionment Committee.*

AB 1661 (Costa): Automatically extends life of residential building permits even if a growth-limiting resolution or initiative has been passed. *Passed Assembly, in Senate Inactive File.*

AB 1979 (Areias): Amended to declare conversion of agricultural land is a significant environmental impact under CEQA and specifies that mitigation would be to relocate proposed project onto lower-quality ag land. *Passed Assembly, in Senate Local Government Committee.*

AB 2206 (Cortese): Expressly authorizes a local agency to require developers to set land aside for open space before a development project is approved. *Still in Assembly Local Government Committee.*

AB 2439 (Ferguson): Defines the issuance of a building permit as a "ministerial act" rather than a "discretionary act," meaning such permits are not subject to review under CEQA. *Still in Assembly Local Government Committee.*

AB 2460 (Hannigan): Prohibits a public agency from approving a development project unless infrastructure funding is identified. *Passed Assembly, sent to interim hearing by Senate Local Government Committee. Hearing scheduled for Oct. 11 in Irvine.*

Local Agency Finance

SB 308 (Seymour): Creates infrastructure financing districts that would permit use of tax-increment financing without finding of

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Appellate Court Upholds Walnut Creek Growth Measure

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future development to traffic congestion. Passed in November 1985, the measure prohibited future development in certain parts of city if traffic congestion were too severe. *Contra Costa Times* publisher Dean Lesher sued, contending that Measure H was inconsistent with the city's general plan.

In January 1987, Judge Patsey ruled in Lesher's favor. Patsey concluded that the initiative should have been written in the form of a general plan amendment and that it was inconsistent with 11 overall policies in the general plan, such as the one calling for city policies "to enhance Walnut Creek's subregional position as the administrative and professional office center of Central Contra Costa County." (*CP&DR*, February 1987.) This ruling motivated citizen groups throughout the state to hire lawyers to help them cast their initiatives in the form of general plan amendments.

Walnut Creek appealed, but also took action to integrate Measure H and its principles into the city's general plan. The appellate court postponed consideration of the case for a year while this process took place. In February, the city council approved a new general plan — but because the plan called for changes to Measure H, it had to be placed on the ballot. Walnut Creek voters rejected these changes in June.

Subsequently, Walnut Creek worked hurriedly to integrate Measure H's provisions into its old general plan. The city council adopted this general plan on August 8, just two days prior to oral argument before the Court of Appeal. The city then argued that the appeal was moot because Measure H and the general plan were now consistent.

However, the Court of Appeal refused to decide the case on the issue of mootness, saying the issue would require further briefs and fact-finding. "We are already on the brink of appellate litigation ad infinitum in this case," King wrote. The justices further confined their review to the alleged inconsistency between Measure H and the general plan that was in effect at the time of the election in 1985.

Then, the appellate court acknowledged considerable deficiencies in Measure H and addressed the question of whether it could be construed as a general plan amendment.

The court also noted that in its specificity and self-execution, Measure H resembled a zoning ordinance more than a general plan. But "our state constitution contains many provisions that are specific and self-executing, some of which were created by initiative" — most notably Proposition 13.

Interpreting Measure H as a general plan amendment would create an internal inconsistency in the plan. But, the court said, "Given the people's clear expression of intent (in Measure H) to turn away from the policy of tolerance and acceptance (of traffic) contained in the former plan's circulation element, absent adoption of a new general plan," the court's only option would be to order the city to rewrite the general plan according to the principles of Measure H — which the city has done.

The only other barrier to concluding that Measure H was a general plan amendment, the court said, was the fact that the initiative did not label itself as such. "In view of the profound duty of the courts to 'jealously guard' the initiative process, the will of the Walnut Creek voters cannot be thwarted based on such a hypertechnicality."

In subordinating state planning law to local initiative power, the appellate panel was honoring a California judicial tradition dating back some 15 years. In three cases between 1974 and 1980, the state Supreme Court affirmed the right of citizens to place most land-use issues on the ballot. Since then, courts have frequently rejected builders' attempts to subject such initiatives to the California Environmental Quality Act and other procedures that would be required of the same action if it were adopted by a city council.

The full text of Lesher Communications Inc. v City of Walnut Creek, 1st Civ. No. A037865, appeared in the Los Angeles Daily Journal Daily Appellate Report on September 19, beginning on page 11678.

For a full discussion of the legal relationship between state planning laws and local initiative powers, see "Ballot-Box Zoning," by William Fulton, California Lawyer magazine, May 1988.

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Florida Considers Expansion of Statewide Growth Law

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useful. So Martinez, who succeeded Democrat Bob Graham as governor after the law was passed, appointed a task force on "urban growth patterns," charged with finding ways to implement this provision of the law.

Late last year, the task force released an interim report calling for several controversial steps, such as the designation of "urban service areas" and marginal-cost pricing for services to remote developments. The final report, issued in June, contained more than 30 recommendations.

Martinez included the interim recommendations in a growth-management bill in the legislature earlier this year. However, this bill quickly got caught up in a political battle over infrastructure funding and local-option taxes.

Last year when the state began reviewing local plans for the first time, the most contentious issue was how to finance new roads and other infrastructure required by the plans. To relieve the problem, Democratic legislators proposed removing the referendum requirement for local-option sales and gasoline taxes.

But Martinez was opposed to this action, saying that local governments had other means for raising revenue, such as impact fees, and arguing that a tax election is one of the few ways to force local governments to confront the question of paying for growth. "It gives cities ... the opportunity to debate growth," he said before this year's legislative session began. "In the absence of that process, there isn't going to be a public debate on growth."

After Martinez successfully killed the proposal last year, however, he quietly agreed to include it in his growth-management package this year. Despite widespread support for the idea, key Democratic leaders in the Florida House of Representatives refused to bring the bill up for a vote, hoping to embarass Martinez.

Now Martinez may bring the matter up again at the November special session. In the meantime, however, DeGrove's successor as secretary of community affairs, Tom Pelham, has been taking administrative steps to pursue the goal of "compact urban development." In reviewing local plans, Pelham has apparently stopped short of ordering an urban growth boundary, but he has required local governments to include a strategy to contain urban sprawl that meets with the state's approval.

"Final Report of the Governor's Task Force on Urban Growth Patterns" is available from L. Benjamin Starrett, project director for the Florida Department of Community Affairs, (904) 488-8466.

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