

# CALIFORNIA PLANNING & DEVELOPMENT REPORT



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## June Election Results: No Clear-Cut Victors

California's growth may continue unabated, but California's voters appear to have backed off slightly from their rabid slow-growth, anti-tax attitude of the late 1980s.

Despite the passage of several significant tax and bond measures on the state level, the June election revealed mixed results at the local level. Slow-growthers prevailed on about 55% of local issues — well below the 70-80% figure of a few years ago. At the same time, however, the few watershed slow-growth measures on local ballot went down to defeat. Two slow-growth measures lost in San Luis Obispo County, and a slow-growth initiative in booming Moreno Valley, east of Riverside, was defeated decisively.

The big news at the state level, of course, was the passage of Proposition 111, the gas-tax package that will provide \$18.5 billion over the next 10 years for transportation purposes. Prop. 111 will fund many long-delayed projects for state highways and local streets and roads. A companion measure, Proposition 108, will use \$1 billion of those funds for rail projects.

Meanwhile, two initiatives placed on the ballot by environmentalists also passed, and both could affect future development patterns in the state. Proposition 116 will allocate \$2 billion for rail development projects, while Proposition 117 will allocate \$900 million over 30 years for acquisition of wildlife habitat.

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## Florida Suit Challenges School Fees as Tuition

Home builders in Florida have prepared a novel legal challenge to school impact fees, which — if successful — could challenge school fee systems in California and throughout the country.

In a split decision, a Florida appellate court has already ruled that school impact fees in St. John's County, near Jacksonville, constitute a form of tuition and therefore violate the state constitution's guarantee of a "free and uniform education." The Florida Supreme Court has agreed to take the case.

Seven Florida counties already have school impact fees and another 12 are awaiting the outcome of the St. John's County case before they put their schemes in place. But if the Florida Supreme Court rules against the county, impact fee systems throughout the country could be challenged on similar grounds.

Chicago land-use lawyer Charles Siemon, who is representing St. John's County, said 33 other states, including California, have similar provisions in their state constitutions. "To my way of thinking, not only are educational impact fees at risk in states which have similar provisions, the case also calls into question school site dedications and more traditional exactions," Siemon said.

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## BRIEFS

**Contra Costa Sets Urban Limit Line**

By a 3-2 vote, the Contra Costa County Board of Supervisors has established a so-called "urban limit line." According to supporters, the policy will ensure that at least half of the East Bay county's 750 square miles will remain in open space.

Even though it has a population of 775,000 people, less than a third of Contra Costa's land area is currently developed. Current forecasts suggest that the county will need close to 100,000 new housing units in the next 15 years, meaning that developed areas will have to increase densities in order to accommodate all the growth.

The urban growth policy, championed by Supervisor Sunne McPeak, requires the county staff to draw an urban limit line and also increase minimum lot size on prime agricultural land from 10 to 20 or 40 acres. The policy will return to the supervisors as part of a county general plan revision in October.

**City Rejects Developer's Land Offer**

The City of Mission Viejo has rejected the Mission Viejo Co.'s offer of free land for a civic center, choosing instead to purchase the company's onetime office building for \$3.1 million.

The decision was opposed by City Council Member Robert Curtis, a slow-growth advocate who dropped opposition to a Mission Viejo Co. project when the company made the land offer.

In mid-May, Curtis and company officials buried the hatchet when he agreed to support a controversial development project along the city's last remaining undeveloped ridge. In return, the company agreed to build fewer homes and make a 7.2-acre site available for a civic center.

The agreement was remarkable considering the fact that last year Curtis was the subject of a recall effort funded largely by developers, including Mission Viejo Co. However, the council chose not to pursue the Curtis plan.

## NATIONAL BRIEFS

**State Threatens New York City Sewer Ban**

New York State is threatening to prohibit new construction in lower Manhattan and downtown Brooklyn because of sewer problems.

State officials claim that a key sewage treatment plant in Brooklyn is overloaded and passing poorly treated waste into New York's waterways. The state can halt new construction in the plant's service area on July 31 if daily use exceeds the design capacity of 310 gallons per day. The average flow for the last year has been estimated at 320 gallons per day.

The moratorium could halt construction in Battery Park City, downtown Brooklyn, and the East Side of Manhattan.

**Virginia Overturns Local Zoning Decision**

Virginia's General Assembly has overturned Fairfax County's downzoning of commercial development in a special transportation district established by the state.

The Fairfax action was part of downzoning of more than 14,000 acres of land in the county, a fast-growing suburb of Washington, D.C. However, some of the property was located inside a special taxing district near Dulles Airport. Under the state's plan for the district, a crucial access road will be improved at a cost of \$400 million, with 80% of the cost to be borne by local landowners — including many who were counting on new development to help them pay the new taxes.

**S.F. Port Chief Proposes Hotel Limits**

Hoping to forestall a proposed ballot measure to ban all hotels from the waterfront, the San Francisco Port Commission's president has proposed a policy that would permit only two hotels ever to be built on port property.

The controversy over waterfront hotels is wrapped up with the future of the cruise ship industry in San Francisco. Mayor Art Agnos supports a plan to permit Scandinavian investors to rebuild Piers 30-32 as a cruise-ship terminal and hotel. And last December, the port commission agreed to approve the first-ever waterfront hotel as part of a sailing center at Piers 24-26, beneath the Bay Bridge.

However, Telegraph Hill residents oppose these developments and asked that the port delay more approvals while they are awaiting the results of a study on yet another waterfront proposal — the proposed remodeling of the passenger terminal at Pier 35. The report is expected to say that San Francisco is unlikely to attract any additional cruise-ship business. The Telegraph Hill residents' action is seen as a prelude to a possible ballot initiative in November, which would ask voters to ban all hotels from the waterfront.

**Sacramento Agrees to Tighter Parking Limits**

Environmentalists and downtown business leaders have agreed to a Sacramento city plan that will reduce parking requirements. However, the plan will only apply to outlying areas of the city, not the downtown core, which already has low parking requirements.

The Sacramento plan would reduce required parking ratios from 4 spaces per 1,000 square feet of commercial space down to 3.3 spaces per 1,000 square feet. Requirements in downtown Sacramento have already been lowered to about half that figure.

**Roundup**

The Irvine City Council gives final approval to **Orange County's first monorail** — a half-mile track to be built by McDonnell Douglas Realty...Sacramento city officials **threaten to foreclose on Gregg Lukenbill** and other North Natomas landowners who are late on assessment-district payments...**UCLA scales back growth plans** for the second time to accommodate Westwood slow-growthers...Not discouraged by potential competition, Kagan Management is proposing **a sports complex in Fontana** with a football stadium and a basketball arena.

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## SPECIAL REPORT: ELECTION RESULTS

**No Clear-Cut Victors in June's Local Election Results**

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In fact, most state ballot measures passed, including a total of \$8.4 billion in bond issues. An additional \$3 billion in bonds have already qualified for the November ballot.

On local issues, however, voters were more circumspect. Many local tax proposals failed, including a \$5-per-parcel tax in Santa Clara County to establish a loan fund to repair damage from future earthquakes.

Furthermore, many local voters expressed interest in having their cities and counties provide public amenities, but balked at the cost. Typical of this trend were the election results from Redondo Beach, where residents voted on three advisory ballot measures dealing with the reconstruction of the municipal pier. Voters told the city they want the pier reconstructed, they want more open-space amenities in the pier area — and they don't want local tax money to be used for the project.

According to a survey by *California Planning & Development Report*, slow-growthers prevailed in 11 of 19 jurisdictions where a clear-cut pro-growth/slow-growth issue appeared on the ballot. Four of seven slow-growth proposals passed, while seven of 12 pro-growth measures were defeated. But many of the ballot measures dealt with small or peripheral issues: a cleanup amendment to a slow-growth initiative in Pasadena, rezoning for a single-family house in Pacifica, amendments to a slow-growth initiative in Simi Valley to facilitate affordable housing.

Altogether, CP&DR counted 31 ballot measures in 22 different

jurisdictions on the June ballot. But if ballot-box planning fervor is running at a slightly less fevered pitch than it was two or three years ago, the same is not true for local city council and supervisor elections. More than ever, these elections turn on local development issues — and slow-growthers still appear to be winning most of those elections.

Here are some highlights from the June ballot:

- Running on a slow-growth platform, Maria Vanderkolk, an unknown 25-year-old political newcomer, knocked off incumbent Ventura County Supervisor Madge Schaefer.
- Veteran Mayor Lionel Wilson of Oakland finished a poor third in his attempt to gain a fourth term — jettisoned, apparently, because he advocated an expensive subsidy package to lure the Raiders football team back to Oakland.
- Slow-growthers lost an important election in San Luis Obispo County. Both a citizen initiative and a Board of Supervisors-sponsored alternative were soundly defeated. Historically, slow-growth efforts have been far more successful on the municipal level than on the county level, where it is much more difficult to mount a volunteer campaign.
- In Albany, Santa Fe Pacific Realty Co.'s plan for a huge waterfront development has been cast into doubt by a citizen initiative. Citizens voted to require that all future waterfront plan changes be placed on the ballot — and rejected an alternative that would have permitted the city council to retain more power.

**County-by-County Roundup of Local Ballot Results**

*Here's a roundup of significant ballot measures from around the state in the June election:*

**Alameda County****Albany**

Residents of this city near Berkeley decided to require that all "material" changes in waterfront plans be brought back to the voters. However, the city's voters rejected another proposal that would have rescinded the voter-approval requirement in 12 years.

The waterfront property, owned by Santa Fe Pacific Realty Co., is mostly undeveloped except for the Golden Gate Fields race track, which is a major source of revenue for the city. However, Santa Fe has proposed construction of 3.8 million square feet of new development, including two hotels, an office park, and 400 housing units. The company has also said it will not renew the lease on Golden Gate Fields when it expires in 2002.

Albany voters approved Measure C, a citizen initiative that would require all major changes in the current waterfront plan to go on the ballot. The residents rejected Measures B and D, which were city council-sponsored proposals to deal with the waterfront. Under the two measures, most changes in waterfront plans would still be presented to the residents for a vote. But the measures would have removed this requirement in 2002 — or before then if Santa Fe Pacific had closed the race track or if tax revenues fell below a certain level.

Measure B (council measure): No, 76%.  
Measure C (citizen initiative): Yes, 73%.  
Measure D (council measure): No, 60%.

**Contra Costa County**

Voters in this East Bay County approved one landfill site in the eastern part of the county and rejected another.

The Keller Canyon dump site south of Pittsburg was approved by about 55% of the county's voters, despite opposition from the city of Pittsburg, which said it is too close to the city's neighborhoods. The Garaventa dump site south of Antioch lost by a 2-to-1 ratio, even though Waste Management Inc., the nation's largest waste company, spent \$200,000 promoting the site. The City of Antioch and the East Bay Municipal Utility District opposed the site.

Another proposed location — Marsh Canyon — may appear on the November ballot. Marsh Canyon is opposed by environmentalists, although it would have the largest capacity.

In November of 1988, voters rejected four landfill sites placed before them.

Measure B (Antioch site): No, 67%.  
Measure C (Keller Canyon): Yes, 55%.

**Antioch**

In a referendum, voters in the city of Antioch upheld the city council's decision to approve a 185-unit apartment complex for low-income senior citizens and handicapped persons.

Measure F: Yes, 71%.

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## SPECIAL REPORT: ELECTION RESULTS

### County-by-County Roundup of Local Ballot Results

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#### Los Angeles County

##### City of Los Angeles

In an advisory vote, residents of the San Fernando Valley said they would prefer the planned cross-valley rail transit system to be a monorail, rather than an underground subway or a light-rail transit system.

The monorail plan is supported by L.A. County Supervisor Michael Antonovich, who represents the area. But it hasn't been seriously considered by transportation planners so far. The Los Angeles County Transportation Commission originally proposed an at-grade light-rail line across the valley. The light-rail proposal received so much opposition, however, that LACTC agreed in March to propose an underground Metro Rail subway from Universal City to Van Nuys, even though such a proposal was far more costly.

After the election, Antonovich, who is also a member of the LACTC, said he would use the election results as a lever to reopen the debate about the Valley's rail system. But LACTC's leadership resisted the suggestion, saying the technology is untested. LACTC member Jacki Bacharach, a leading rail advocate, said she interpreted the results to mean that a large majority of Valley residents (79%) favor construction of a rail system.

*Measure A: Monorail, 48%*

*Light Rail, 21%*

*No Rail, 21%*

*Metro Rail (underground), 10%*

##### Pasadena

In a follow-up measure to the growth-control initiative that passed last year, Pasadena voters exempted one project near downtown, the Center City West project, from the city's growth limits; the project was already under way when the initiative passed. Last year's initiative places severe restrictions on the amount of commercial construction permitted each year.

*Proposition K: Yes, 62%*

##### South Gate

Voters in this South Los Angeles County city rejected two proposals to assist private businesses in redevelopment projects. By an overwhelming margin, the voters turned down a proposal to spend \$1.5 million in order to develop a seven-acre parcel of land owned by the city as an auto mall. A smaller majority also rejected a proposal to use city funds to assist Schultz Steel Co., a metal fabricating company with close ties to the aerospace industry.

The auto mall proposal was an "orphaned" ballot measure, as all three council members who originally supported it had previously been defeated for re-election.

*Proposition U (auto mall): No, 65%*

*Proposition V (Schultz Steel): No, 59%*

##### Redondo Beach

In three advisory measures, Redondo Beach residents voted to rebuild their municipal pier and create more public open space on the pier, but not if it costs city tax money to do it.

The pier suffered damage from storms and a fire in 1988. Many citizens who lived nearby did not want the pier rebuilt, but the city obtained a court order forcing reconstruction to proceed. Since the voters rejected the city's plan to use tax revenue to rebuild the pier, the city will have to finance the reconstruction with ground-lease revenues from land the city owns near the pier. City officials say, however, that the ground-lease revenues aren't large enough to

pay for the pier.

*Measure R (rebuild pier): Yes, 58%*

*Measure S (more open space): Yes, 76%*

*Measure T (no public funds): Yes, 67%*

#### Orange County

Voters in Orange County overwhelmingly rejected an initiative proposing that all future jails in the county be located in the City of Santa Ana, the county seat.

The initiative was placed on the ballot by residents of the Gypsum Canyon area, where the county is proposing to construct a large jail. The proposal generated a heated debate over how public projects should be sited, with Santa Ana officials complaining that their city would become the dumping ground for the county. Apparently most county residents agreed with the criticism.

*Measure A: No, 65%*

##### Irvine

Irvine residents voted narrowly to expand two bridges on Yale Street to carry vehicular traffic.

Currently the two bridges — one over Interstate 5 and the other over the Santa Fe railroad tracks — carry only pedestrians, bicycles, and emergency vehicles.

A citizen group called Yale Action wrote Measure B, which would require that the bridges be expanded to include two lanes of traffic. The City Council then placed the competing Measure C on the ballot, which would prohibit the bridges from being expanded. Measure B passed and Measure C was defeated, both by relatively slim margins.

*Measure B (expand bridges): Yes, 52%*

*Measure C (prohibit expansion): No, 53%*

#### Riverside County

##### Moreno Valley

Residents of this fast-growing city just east of Riverside solidly rejected a strict growth-control measure. Measure J would have restricted population growth to approximately the statewide average, and also would have imposed standards for park space and other public services. The measure was similar to a countywide growth-control initiative which failed in 1988.

Moreno Valley, which incorporated in 1984, is one of the fastest-growing cities in the state. Because of its reputation as a bastion of inexpensive housing, the city has drawn many first-time homebuyers, especially from Orange County, and grown from a population of 20,000 a decade ago to more than 100,000 today. Last year the city processed more than 3,000 building permits.

Even if it had passed, Measure J might not have had an immediate impact on Moreno Valley's growth. Developers in the city have vested rights to build more than 10,000 units because of development agreements with the city.

*Measure J: No, 59%*

#### San Diego County

##### Imperial Beach

Voters in Imperial Beach threw a monkey wrench into the city's revised beachfront development plan by passing a 40-foot height limit on all buildings in the city.

Imperial Beach, which has suffered a series of financial setbacks,

## SPECIAL REPORT: ELECTION RESULTS

had revised its beachfront plan to permit three tall (120-200 foot) buildings. But in response, a citizen group placed the height-limit initiative on the ballot. Now the city must try to proceed with the beachfront plan with smaller buildings.

This was not the first time a citizen initiative interfered with the city's beachfront plans, nor, apparently, will it be the last. Originally, the beachfront plan was a redevelopment project, but in 1986 Imperial Beach voters disbanded the redevelopment agency. And the same citizen group that wrote the June initiative is planning a November ballot measure to throw out the beachfront plan altogether.

*Measure F: Yes, 65%*

##### Poway

Poway voters rejected a proposal to permit churches to be located on hilly sites in rural residential areas.

Finding sites for new churches has been a problem in emerging areas throughout Southern California. Poway city officials had already decided to permit churches on hilly sites in most residential areas. But under a previous city initiative, all density increases in rural residential areas must go on the ballot.

*Measure J: Yes, 40%*

#### San Luis Obispo County

Voters rejected two growth-control plans, one proposed by a low-growth citizen group and the other proposed by the county Board of Supervisors.

Measure B, the citizen initiative, would have mandated a 3% cap on the rate of growth in the county. Because the initiative would have regulated only unincorporated areas, county policies would have depended on growth in the county's cities; thus, if city growth exceeded 3%, the unincorporated areas would have had to reduce their growth. The initiative also would have mandated policies on traffic, affordable housing, air quality, and agricultural protection.

Measure A was a growth-management proposal placed on the ballot by the Board of Supervisors. Called the "fair share" plan, the measure would have imposed a cap on residential building permits, established an agricultural protection policy, restricted approval of new subdivisions, and required that 15% of all new residential development be set aside as affordable housing.

The City of San Luis Obispo passed a growth-control ordinance several years ago restricting growth to 2% per year until 1990 and 1% per year thereafter. By restricting growth in the city, the measure is widely believed to have encouraged more growth in unincorporated areas.

*Measure A (county board proposal): No, 52%*

*Measure B (citizen initiative): No, 62%*

#### San Mateo County

##### City of Pacifica

Voters in Pacifica rejected a proposal to rezone a 3.5-acre parcel of land to permit construction of one home. Under a measure passed by Pacifica voters in 1982, all rezoning of agricultural land to residential use must go before the voters.

*Measure B: No, 58%*

#### Santa Barbara County

##### Carpinteria

Voters in Carpinteria overwhelmingly rejected the idea of activating

a redevelopment agency. City officials sought to create the agency in order to implement the city's downtown revitalization plan, but slow-growth groups opposed it, saying it would encourage growth in the city.

*Measure M: No, 79%*

##### Solvang

In the quaint Santa Barbara County tourist city of Solvang, voters rejected a proposal to extend a road that would have relieved local traffic congestion.

The extension of Elverhoy Pass would have passed through agricultural land and a creek. Local slow-growthers feared that it would have encouraged development of the agricultural area even though that area is currently zoned for ag use only.

*Measure Q: No, 75%*

#### Santa Clara County

##### Morgan Hill

Voters in Morgan Hill approved an advisory measure suggesting that the city begin planning for a greenbelt around its borders. Greenbelt proponents say they aren't yet sure whether the greenbelt would be created by land acquisition or by zoning ordinances. The issue of actually creating the greenbelt will probably go on the ballot in 1992.

*Measure B: Yes, 63%*

#### Sutter County

Voters overwhelmingly rejected a general plan amendment and zone change that would have permitted a large development in the Sierra foothills some 45 miles north of Sacramento. Measure A would have cleared the way for construction of the Southridge project, which would have included two golf courses, a resort hotel, and 625 homes. However, voters chose to retain the zoning designation — recreational open space, which permits only golf courses — adopted via a ballot measure in 1982.

*Measure A: No, 69%*

#### Ventura County

##### Simi Valley

Voters in Simi Valley amended their growth-control ordinance to give preference to housing projects for senior citizens. Under the 1986 growth-control ordinance, the city permits fewer than 200 residential building permits per year, with 20% of the permits set aside for low-income housing. Measure B will permit the city to "borrow" from future years' building permits to allow construction of projects that provide affordable housing.

*Measure B: Yes, 69%*

#### Yolo County

##### City of Davis

Voters in Davis, which has long pursued slow-growth policies, approved advisory measures to create a greenbelt around the city and also to protect wildlife habitat, agricultural areas, and flood plains. However, the voters rejected a proposal that would have required changes in the city's population growth cap to be approved at the ballot box.

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## SPECIAL REPORT: ELECTION RESULTS

### Roundup of City Council, County Supervisor Elections

Here's a roundup of significant local electoral races around the state that may affect planning and development issues:

#### Alameda County

##### Oakland

Longtime Mayor Lionel Wilson lost badly in his bid for a fourth term, largely because of his involvement in the failed \$600-million deal to bring the Raiders football team back to Oakland. A November runoff will occur between Assemblyman Elihu Harris, a political ally of Assembly Speaker Willie Brown who received 46% of the vote, and City Councilman Wilson Riles Jr., son of the former state school superintendent, who received 24% of the vote. Incumbent Wilson received only 17% of the vote.

#### Orange County

##### Irvine

Controversial Mayor Larry Agran lost a close race to City Councilwoman Sally Anne Sheridan. Agran, who had championed mass transit and compact urban development in Irvine, alienated many voters with his strong stands on national and international issues. During the campaign, he and Sheridan traded charges over which one was accepting more developer contributions. Sheridan won by fewer than 700 votes out of more than 27,000 cast.

#### Riverside County

##### City of Riverside

In the race to succeed new Mayor Terry Frizzel on the Riverside City Council, slow-growth candidate Laura Pearson fell just 42 votes of winning outright. Now she must face Nancy Hart, a local school board member, in a runoff later this summer.

### County-by-County Roundup of Local Ballot Results

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Davis already has created some "buffer" zones between the city and agricultural areas around it. Measure D encourages the city to link those zones together in a continuous strip that will be between 50 and 1,500 feet wide. Measure E encourages the city to pursue policies that will preserve and restore wildlife habitat, flood plains, and agricultural land. Both passed by overwhelming margins.

Measure C would have required voter approval for any change in the city growth cap, currently 1.81% per year. It was linked to Measure F, an affordable housing proposal. Both failed.

Measure C (voter approval): No, 63.9%.  
Measure D (greenbelt): Yes, 64.6%.  
Measure E (land preservation): Yes, 76.2%.  
Measure F (affordable housing): No, 63.5%.

#### Incorporations, Etc.

**Folsom, Sacramento County:** Folsom residents approved a conversion from a general-law city to a charter city. The move would give Folsom more independence from state laws. About 20% of the state's cities are charter cities, mostly large cities and smaller communities incorporated in the 19th Century.

**Malibu, Los Angeles County:** Malibu residents voted overwhelmingly to incorporate the high-profile beach community. But the vote is not the end of Malibu's long fight to free itself of L.A.

If Pearson wins the runoff, it will solidify the council's slow-growth majority that was secured last January with Frizzel's victory over longtime mayor Ab Brown. Pearson and Frizzel are longtime political allies.

#### Santa Clara County

In a supervisorial race that could be crucial to county land-use policies, local school trustee Michael Honda (45%) and former sheriff Robert Winter (25%) will square off in a November runoff. They are seeking to succeed District 1 Supervisor Susanne Wilson, who has served as a swing vote on development issues. The district includes mostly undeveloped land in the southern part of the county.

#### Ventura County

In a stunning upset, political unknown Maria Vanderkolk, campaigning on slow-growth issues, defeated incumbent Madge Schaefer by about 100 votes. Vanderkolk's campaign revolved mostly around her opposition to the Jordan Ranch project, a housing development near Thousand Oaks that would be built on land owned by entertainer Bob Hope. The 25-year-old Vanderkolk has lived in Ventura County for less than two years, while Schaefer had held local office continuously for 12 years.

#### Yolo County

Incumbent Supervisor Helen Thomson trounced slow-growth advocate Bruce Meada, the leading organizer of a November initiative aimed at confining the county's growth to existing urban areas. New development in unincorporated areas was an issue in the election, but Thomson received more than 70% of the vote.

County rule. Hoping to install a sewer system in Malibu, the county Board of Supervisors has tried to delay the cityhood election and permitted it to proceed only under court order. Now the county is seeking to postpone the actual effective date of cityhood until next March.

**Oceanside, San Diego County:** Unlike Folsom residents, voters in Oceanside overwhelmingly rejected charter-city status. City voters also rejected charter-city status in 1986.

#### Bonds for Seismic Repairs

Voters around the state approved about \$1 billion in bond issues for seismic safety efforts, but Santa Clara County voters rejected a plan to set up a seismic loan program for the future.

Statewide, Proposition 121, a \$300-million bond issue to provide funds for seismic repair of public buildings, received 55% of the vote. In the City of Los Angeles, voters overwhelmingly approved Proposition G, which will increase property taxes to provide \$376 million for seismic upgrade of city buildings. In the City of San Francisco, voters approved a \$332 million bond issue for the same purpose.

However, voters in Santa Clara County rejected a \$5-per-parcel tax that would have created a loan fund for seismic repairs after future earthquakes. Measure A lost by 6,000 votes out of 234,000 cast.

## COURT CASES

### Appellate Court Invalidates Moratorium Initiative in Tiburon

An appellate court has struck down a 1986 initiative in Tiburon that extended a lengthy moratorium. The ruling opens the way for the plaintiff, Bank of the Orient, to seek damages from the city at the trial court level.

In a split decision, the court said that the Tiburon initiative violated a state law (Govt. Code Section 65858), which says that "interim" moratoria may not be more than two years in length and may not be extended more than twice. The court rejected Tiburon's arguments that the law should not be applied to initiatives.

The dispute began in October of 1985, when the Tiburon Town Council imposed a "pause for planning" moratorium permitted under state law. In November, the council extended the moratorium until January of 1986, and in January the moratorium was extended another year, until January 1987. The purpose of the moratorium was to review the general plan and zoning ordinance to examine the traffic impacts of new projects.

In April of 1986, however, Tiburon voters approved Measure C, an initiative that imposed a broader moratorium on development in the city. Measure C called for a two-year moratorium, scheduled to expire in April of 1988, and called on the town council to undertake a traffic study. The initiative also authorized the town council to extend the moratorium if necessary.

A half-dozen lawsuits were filed challenging the moratorium; all were coordinated into, essentially, a single action. In 1987, Marin County Judge Joseph Wilson, hired privately to expedite the case,

ruled that the moratorium violated the state law restricting moratoria to two years in length.

While the case was pending on appeal, four of the six cases — including a challenge from the Agins family, whose earlier suit against the city made legal history — were settled pending the outcome of the appeal. Subsequently a fifth case, by Taldan Investment Co. Inc., was also settled pending the appeal's outcome.

In the appellate ruling, the two-judge majority concluded that Govt. Code Section 65858 applies to initiatives, despite Tiburon's arguments to the contrary. The court acknowledged that "the section does contain several requirements that do not easily lend themselves to application in the initiative context." But the judges concluded that the legislature did, in fact, intend that the law apply to initiatives.

In dissent, Justice William Newsom said that because the law is limited to actions by a "legislative body," he believed it was not meant to apply to initiatives.

The full text of *Bank of the Orient v. Town of Tiburon, No. A040027*, appeared in the *Los Angeles Daily Journal Daily Appellate Report* on May 30, beginning on page 5771.

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### Florida Court Strikes Down School Impact Fees as Tuition

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"Impact fees," often called development fees, are charges on new development designed to raise money for new facilities (roads, utilities, libraries, parks, schools) that become necessary as communities grow. In general, school impact fees have been upheld by state courts in Florida and elsewhere so long as new developments pay only their proportionate share of new schools. In California, school districts were specifically authorized to impose impact fees as part of a school finance package in 1986, and all local governments were specifically authorized to impose impact fees with the passage of AB 1600 in 1987.

In California and elsewhere, impact fees have been often been challenged on the legal argument that local governments have not proven the connection between new development and the need for new facilities. But Orlando attorney Michael McMahon, who is representing the Northeast Florida Home Builders Association, said he specifically rejected such a narrow technical challenge in filing a suit against the school impact fees in St. John's County. "We accepted the methodology as it is and challenged the broader issue," he said.

McMahon acknowledged that the "free schools" legal argument would apply to impact fees for schools, but not impact fees for any other purpose. In fact, St. John's County adopted five separate impact fee ordinances at the same time, covering schools, roads, parks, police, emergency services, and governmental buildings.

The St. John's County system imposes a fee of \$381 on each new single-family home and \$286 on each new duplex. Commercial and industrial developments are not subject to the fees. County officials have also carved out an exemption for new home buyers who can prove that they have no children and, therefore, will not have an impact on the school system.

McMahon said the exemption is necessary to permit the St. John's County ordinance to meet the requirements of Florida case law, since impact fees cannot be levied on those who create no impact.

At the same time, he said, this exemption simply bolsters his constitutional argument; if only those with children must pay, then an impact fee begins to look more and more like tuition.

"The position we are taking is that schools should be free," McMahon said. "The impact fee system is simply at odds with the overall question of uniformity."

McMahon said that he believes the impact fee system would be unconstitutional even if it did not contain the exemption for childless homeowners. But others are not so sure. "If that exemption weren't in there, there's a good chance the court never would have ruled the way it did," said Bill Ethier, litigation counsel for the National Association of Home Builders in Washington. "I don't think most school impact fees are going to be subject to this kind of challenge."

Siemon said that, before the Florida Supreme Court, St. John's County would put forth not only legal arguments but policy arguments as well. "We're going to argue that even if the free and uniform provision adopted in 1898 could have been reasonably construed at that time in this fashion, that in a rapidly growing state, the cost of capital facilities doesn't support that interpretation today," he said. "There is clearly some sympathy in Florida case law about the difficulties of dealing with a growing state."

Briefs are being filed this summer, with oral argument before the Florida Supreme Court likely to be scheduled for sometime this fall.

*St. John's County v. Northeast Florida Home Builders Association* has been docketed by the Florida Supreme Court as Case No. 75,986.

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## San Francisco's Beauty Contest: The City as Museum

The so-called Beauty Contest in San Francisco is the advance guard of what could be called the "democratization" of development — or at least the increased role of public officials in the making of American cities. Whether those officials help make better buildings, however, is debatable.

Planning ideology, rather than architectural personality, is at the center of the debate. What criteria are used to evaluate buildings? Do these criteria encourage good architecture? Planning officials say their choices reflect up-to-date planning theory; they also say they hold no brief for design fads. Critics, however, say the architectural review process discourages originality and rewards cautious conformity.

The background of the Beauty Contest is Proposition M, the initiative which restricts new office development in downtown San Francisco to a net 475,000 square feet annually. That tight-corseted zoning allows only one or two buildings to be built annually, and the city — not the market — decides which projects shall be built and which shall not.

Architecture remains the wild card. San Francisco Planning Director Dean Macris says the review board does not favor any given style: "We try not to monkey around with architecture. It's not a matter of architecture. It's a matter of city building." Macris says the decisions were guided by the doctrine of "contextualism," a doctrine which represents the confluence of recent planning theory with the new thinking in architecture.

In the 1960s, seminal planning theorists, such as Kevin Lynch, Jane Jacobs, and William Whyte, popularized the concept of planning as a reflection of urban life: landmarks, pedestrian activity, historic preservation, the combination of new and old styles of building. During the same period, architects repented for the International Style and genuflected before the History of Architecture. The existing fabric of the city became the point of departure of design. Architect Robert Venturi created the concept — previously an architectural oxymoron — of "background buildings."

Those strands of thought were woven together to create contextualism. Unlike the towering office plazas of the 1960s and '70s, new buildings would fit their surroundings agreeably. When possible, new buildings would echo the style and even the proportion schemes of surrounding buildings. In this way, cities would not be swallowed whole by developers and land speculators. They would retain their historical character.

In the 1980s, the new urban thinking, including contextualism, entered public life. Planners, who had bulldozed inner cities in the 1950s, now jealously sought to protect historic areas. And in San Francisco of the 1990s, contextualism has been elevated to public policy.

Contextualism, however, is just a sub-plot in the melodrama of approval for a major project in present-day San Francisco. The demands of the beauty contest are nothing more than an "overlay on the giant checklist that we work with," says San Francisco developer Ron Kaufman, the winner in the most recent competition.

This contest, which occurred in May, offered a glimpse of the politicking in and out of City Hall in an ostensibly public process. The prize was the right to use some of this year's development quota of 308,436 square feet.

In March 1990, two projects were approaching the contest runway: 299 Second St., a 16-story, 60,000-square-foot project by Kaufman; and 545 Sansome St., a 10-story, 135,775-square-foot building planned by Transamerica Corp. near the insurer's landmark "pyramid."

Staff negotiations with both developers lasted about a year. To sweeten the deal, both projects offered extra social-agenda goodies to the city. Transamerica said it would relocate a number of

redwoods from the construction site to Golden Gate Park — a gesture that would not displease the city's powerful environmental lobby. Transamerica also offered to pay for a clinic for sick infants in an existing child-care facility in Chinatown. Rival developer Kaufman, for his part, offered to build a child-care facility in his building — a gesture that also entitled him to build extra parking spaces. In the final weeks before the decision, Kaufman also agreed to hire minority firms for up to 40% of the contracting work.

Design was the apparent tie-breaker. In March, Macris and the planning staff made a preliminary recommendation, aided by two architectural experts: critic Robert Campbell of the *Boston Globe* and architect Claude Stoller, a professor at UC Berkeley. The design of 299 Second St. by San Francisco's Heller & Leake received an "excellent" rating from the planning department's review panel. The project is a thick-set building in a Classic style that recalls the 1920s-era Telephone Building on adjacent New Montgomery St.

But the city denied a recommendation for Transamerica building, designed by the San Francisco office of Skidmore, Owings & Merrill, which rated only "fair to good." Architect Stoller said he thought the building was "handsome," although he had criticized the landscaping and entrance to the underground parking in an earlier scheme presented in February. A later scheme presented in March was an improvement, but apparently not enough to win the beauty contest.

Transamerica withdrew the project before the Planning Commission made the final recommendation in May. The last version of the project would have thrown some shadow on a public park, in violation of the city's shadow policy.

In May, the Planning Commission approved the Kaufman project, as expected.

Predictably, winner Kaufman says he supports the beauty contest despite the hassles. "We will have lower vacancies, higher property values, a more stable real estate market, and a better-looking city."

But not everybody agrees. Allan Temko, the architectural critic of the *San Francisco Chronicle*, had some disparaging comments about the beauty contest.

Despite Macris's claim that the city has no favorite style, Temko claims that officials lean toward "cautious, under-resolved, superficial post-Mod architecture," adding, "You see those buildings, with those funny little caps on their heads, like yarmulkes or dunce caps."

The problem with contextualism as a planning doctrine is not that the concept has no inherent value, but that it has become oversimplified. Buildings are divided into "landmarks" and "background buildings." The value system favors the historic, not the innovative. Those values can save some threatened historic districts and promote sensitive development in places; at the same time, however, they can also promote the idea of the city as museum, in which the important architecture was something that was done in the past.

Ultimately, the problem with architectural review is that it discourages the kind of originality that leads to new landmarks, new acts of self-definition. In donning the straitjacket of good taste, we prevent both appallingly bad buildings and stunningly good ones. For many San Franciscans, that may be an acceptable compromise. But playing it safe means the city loses a measure of what architect Robert Venturi called "messy vitality." And that vitality is the difference between a city and a museum.