CALIFORNIA PLANNING & DEVELOPMENT REPORT

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Judge Halts Construction of Bay Area Highways

In a case that could make "growth-inducing impact" analysis far more important, a federal judge has halted all major highway construction in the Bay Area because of violations under the federal Clean Air Act.

U.S. District Court Judge Thelton Henderson in San Francisco blocked further highway approvals until the Metropolitan Transportation Commission improves its methods of reviewing the impact of new highway projects on air pollution in the region. The action represents the first time that the Clean Air Act has ever been used to block the construction of new highways.

Henderson imposed the injunction as a follow-up to a ruling last May requiring the MTC to change its air-pollution analysis methods. At the request of environmental groups which brought the lawsuit, Henderson concluded that the MTC should not have approved new highway projects until the agency had complied with his earlier ruling.

The Sierra Club and Citizens for a Better Environment filed the lawsuits, *Citizens for a Better Environment v. Deukmejian*, No. C89-2044, and *Sierra Club v. MTC*, No. C89-2064, in 1989. The environmental groups claimed the MTC and other public agencies, such as the state Air Resources Board, had not implemented pollution reduction measures contained in the Bay Area's 1982 air-quality plan.

At bottom, these lawsuits represent the *Continued on page 3*

Bradley Agrees to Share Control of L.A. CRA

The departure under fire of John Tuite, administrator of the Los Angeles Community Redevelopment Agency, has forced L.A. Mayor Tom Bradley to agree to share authority over the powerful agency with the city council.

Less than a month after Tuite's $1.7-million severance package became the subject of public debate, Bradley and a key city council committee agreed on a plan under which the council would gain more oversight authority over the CRA, the largest agency in the state.

Tuite has served as CRA administrator since 1986. In early January, the agency announced that he would not seek renewal of his contract — though the announcement was accompanied by intense speculation that Bradley's office had forced Tuite out. The autonomous CRA board then agreed to buy Tuite out of the remaining 18 months of his current contract, give him a bonus, and authorize substantial pension benefits for the rest of his life. Though both the council and the mayor's office were reportedly furious about the deal, neither could nullify it, since the CRA has the authority to negotiate and approve its own salaries and benefits.

On January 28, the council's Community Redevelopment and Housing Committee approved a plan plan to share more power with the council, and the full council was expected to approve this arrangement a short time later. Under the plan, the council would have the right to confirm the CRA's administration and approve his contract; approve all CRA board decisions; and remove CRA board members *Continued on page 6*

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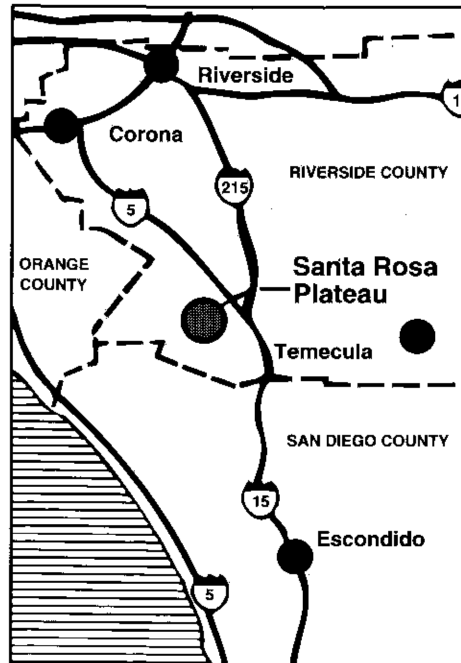
Nature Conservancy Will Buy Ranpac's Santa Rosa Plateau Property

A major portion of Riverside County's scenic Santa Rosa Plateau — the subject of intense controversy for the last two years — will be sold to a conservation group rather than developed.

Ranpac Communities, which had planned 2,300 houses and other community facilities on a 3,855-acre portion of the plateau, has agreed in principal to sell the property to the California Nature Conservancy — an arm of the national non-profit group — with Riverside County, the state, and the Metropolitan Water District assisting in raising the $35.4 million purchase price. Ranpac's owner, Won Yoo, will also receive tax writeoffs of $13.6 million. Ranpac bought the property two years ago for $15 million.



If the Ranpac deal is completed, almost half of the 15,000-acre plateau will be in the hands of preservationists, as the Nature Conservancy already owns and manages a 3,100-acre tract nearby.

The Ranpac deal still could fall through. The MWD, which seeks to use the land as an environmental "mitigation bank" to offset other projects in Riverside County, is still negotiating with the U.S. Fish & Wildlife service over the plateau's environmental value. Greg Taylor of the MWD said the deal must be struck by March 28, when the Nature Conservancy's option on the property expires.

Located in the Santa Ana Mountains west of Murrieta, the 15,000-acre Santa Rosa Plateau is considered one of the most unique and diverse undeveloped areas in Southern California. In particular, it contains the region's last significant areas of Engelmann oaks and native grasslands. The Nature Conservancy purchased 3,100 acres in 1984, while Johnson & Johnson owns another 2,000 acres, though the company has not yet put forth development plans for its acreage.

Ranpac's development proposal included a golf-course-oriented housing tract that the developers said was environmentally sensitive, saving virtually all of the 2,000-plus oak trees on the site. The company originally sought to construct 3,855 homes but later reduced the figure in hopes of winning approval. When the development proposal was unveiled, Ranpac officials said they would provide an unusual opportunity for people to live in a mostly undisturbed natural setting. However, a local group called Preserve Our Plateau emerged to oppose the project, supported by environmentalists across the country who testified to the plateau's significance.

In late 1989, Ranpac offered to donate half the land to conservationists if the other half of the property could be developed. When that offer was rejected, negotiations began on the sale of the entire property to the Nature Conservancy. Ranpac's first appraisal placed the value of the land at between $100 million and $200 million. Subsequently, the property was appraised for $49 million, and a combination sale/donation was agreed upon.

Of the $35.4 million in actual purchase price, Riverside County will provide $15 million, the state Wildlife Conservation Board will provide $5 million, and the Metropolitan Water District will provide $15.4 million. MWD apparently was the critical player in the deal, offering enough money to bridge the gap between what Ranpac wanted and what public agencies were willing to provide.

But MWD's involvement in the deal at all is an important illustration of how the rules of the development game have changed in Riverside County since the environmental issues such as wetlands and endangered species have arisen there. MWD, Southern California's largest supplier of water, is planning to build a new reservoir in Riverside County, as well as new pipelines and other facilities. But the agency will probably have to destroy the habitat of the rare Stephens' kangaroo rat and other species in order to build these facilities. Under pressure from the U.S. Fish & Wildlife Service, the MWD plans to use the Santa Rosa Plateau property to "offset" the destruction of these sensitive lands elsewhere.

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Judge Uses Clean Air Act to Halt Highway Projects in Bay Area

Continued from page 1

environmental movement's attempt to force transportation planners to assess the "growth-inducing impact" of new highways. "The primary issue is the dogma that providing additional highway capacity relieves congestion and benefits air quality," said William Curtiss, a lawyer with the Sierra Club Legal Defense Fund.

Until Henderson's ruling last May, MTC engaged in no quantitative analysis regarding the air-pollution impact of new projects, but merely accepted Caltrans's environmental assessment.

And according to Curtiss, the Caltrans environmental assessments were based on the assumption that additional freeway capacity would improve air quality by improving traffic flow. Now, the Sierra Club and Citizens for a Better Environment will try to persuade Henderson that additional freeway capacity provides only a temporary respite from traffic congestion and may, in fact, induce the creation of more traffic — and more air pollution — in the long run. For this reason, the case is likely to move to a more arcane plane, with each side debating the validity of different computer models.

The case may also provide an important test of certain provisions in the Clean Air Act's new amendments, which were signed into law last year. Curtiss claims that the amendments bolster the environmentalists' case by requiring that agencies such as the MTC engage in quantitative analysis and also take into account likely future traffic growth.

Bill Hein, the MTC's deputy director, said the agency's new computer modeling method, which has been submitted to Henderson for review, conforms with the new requirements of the Clean Air Act. But Curtiss said the environmentalists would oppose the MTC's new model, thus setting up a the likelihood of "dueling models" in court.

In his December injunction, Henderson stopped the expansion of Interstate 880 in Alameda County and two projects along the Interstate 680 corridor in Contra Costa County. He permitted the expansion of Highway 237 in Santa Clara County to continue because work on the project had begun, but forbade the MTC to act on more highway expansion projects until he acts on their new method of analysis.

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BRIEFS

Funds OK'd to Raze Embarcadero Freeway

The California Transportation Commission has agreed to set aside $11 million to demolish the Embarcadero Freeway in San Francisco, a move which means demolition could begin by March.

But Chinatown activists have not given up on their attempts to stop the demolition. Fearing that the economic viability of Chinatown will be damaged by the absence of the freeway, activists say they will gather signatures for a citywide referendum on the issue.

The freeway was damaged in the 1989 Loma Prieta earthquake and a wide variety of groups in San Francisco have urged that the freeway be razed. Mayor Art Agnos has proposed a $135 million at-grade replacement to the 1.2-mile stretch of freeway. But the commission decided to wait for more information on the Agnos proposal before deciding whether to turn the right-of-way over to the city.

Ventura Boulevard Specific Plan Approved

Despite criticism from both builders and homeowners, the Los Angeles City Council has approved a specific plan for Ventura Boulevard that contains significant restrictions on building in the area.

The specific plan will limit additional vehicle trips along the boulevard, the leading thoroughfare in the San Fernando Valley section of L.A. Under the plan, only 30,000 peak-hour auto trips may be added to the current load of 70,000 trips. Planners estimate that this translates into approximately 8 million square feet of commercial development along the 17-mile corridor. Currently about 17 million square feet of space exists in the area. In addition, new developments will be assessed fees ranging from $2,400 to $4,200 per trip.

Developer Jacky Gamliel plans to sue the city over the specific plan, which threatens a project he plans in Sherman Oaks. At the same time, however, neighborhood leaders questioned the city's decision to exempt several large projects from the plan, including three office buildings of 10 stories of more.

OC Requires 35% 'Affordable' in New Project

Orange County has required that 35% of all houses in a new planned community be sold at "affordable" prices — which, in Orange County, means no more than $250,000.

If the ticket price seems high for affordable units, the set- aside percentage is unprecedented. The Santa Margarita Co. agreed to the condition as part of the county's approval of the Las Flores Planned Community, a 2,500-home project in the southern part of the county.

The only vote against the project came from Supervisor Roger Stanton, who called the 35% figure arbitrary and questioned whether lower-income buyers would truly benefit from the set-aside because the buyers of the houses would not be subject to income restrictions.

Waterfront Hotels May Move Forward in S.F.

Despite the passage of Proposition H, San Francisco developers and port officials are moving forward with plans to construct waterfront hotels — by moving them just a little further inland.

Proposition H, which banned waterfront hotels in San Francisco, passed by one percentage point in the November election. The initiative was drawn up in response to two redevelopment proposals on Port of San Francisco property, each of which called for a waterfront hotel to be constructed. However, even Prop. H's supporters acknowledge that hotels can still be constructed if they are set back at least 100 feet from the water.

In response to Prop. H, developers of the Scandinavian Center, a cruise ship terminal on Piers 30-32, have rearranged the components of their project so that a 360-room hotel will be constructed on the inland side of the Embarcadero, rather than on the pier itself. Meanwhile, Koll Development co. is studying alternatives to its proposal for a sailing center at Piers 24-26, which also proposes a hotel along the pier.

Audit Sought for Sacramento Planning

A Sacramento city councilwoman has called for an external audit of the city's planning department.

Developers have complained that the planning department is using the environmental review process as a way of conducting broad land-use studies at developers' expense. City Councilwoman Kim Mueller called for an audit to examine the question of whether environmental review procedures could be streamlined without losing quality.

Planning Director Michael Davis and other city officials agreed that the environmental review process is cumbersome but added that they are making progress in streamlining it.

Fallon Appointed Acting L.A. Planning Chief

Melanie Fallon has been appointed acting planning director for the City of Los Angeles. Fallon will run the 300-person department until a replacement for Kenneth Topping is found.

Topping left the department last fall, saying he was burned out after five years on the job. Fallon, former planning director in Santa Ana, served as Topping's chief deputy.

Roundup

Pro-growth **Mayor Jack Kipp of Folsom wins reappointment** in Folsom, thanks to support from slow-growth councilman Robert Holderness....**Encino homeowners make headlines** by asking developers to build a neighborhood market, but the ploy is designed to ward off apartment development....**Orange County will sell a ranch** seized in a drug raid despite the local sheriff's desire to turn it into a narcotics training facility....Santa Monica Mountains Conservancy director **Joseph Edmiston comes under fire** for supporting certain development projects....Saying the name should belong to the entire region, the Nevada Board of Geographic Names **rejects a proposal to change the name of Stateline** to Lake Tahoe, Nev....Sure proof that neo-traditional planning is in: **Peter Calthorpe has been hired by Joan Baez** to work on a tract of land she owns in Contra Costa County.

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COURT CASES

Appellate Court Orders Trial in Monterey Dunes Controversy

Reversing a lower court ruling, the Ninth U.S. Circuit Court of Appeals has ordered a trial over the City of Monterey's controversial decision to deny a beachfront residential development.

The Ninth Circuit found that the takings, due process, and equal protection claims of Monterey-Del Monte Dunes Corp. are ripe for trial, reversing District Court Judge Charles A. Legge, who had dismissed the case.

The Monterey-Del Monte Dunes case involves 37.6 beachfront acres in Monterey which landowners have been seeking to develop for the last 10 years. The developers contend that the city council rejected a proposal for 190 residential units even after the company agreed to meet 15 conditions that city officials had laid out as pre-conditions of approval.

After three years of debate, the city council initially approved the 190-unit plan in 1984, subject to 15 conditions, including architectural review, an endangered species habitat, and approval by a variety of other entities including the city fire and public works departments.

Monterey-Del Monte Dunes then revised the project, and in late 1985 the planning department recommended approval of the project. However, in 1986 both the planning commission and the city council denied the project, and the developer sued, claiming its property had been taken without compensation.

In filing the lawsuit, the developers claimed that the city council's findings in denying the project in 1986 contradicted the findings the council made in 1984. For example, the 1984 approval included the condition that state and federal officials approve a habitat for the endangered Smith's blue butterfly. But the 1986 denial included generalized statements about the project's failure to protect the butterfly, making no mention of state and federal agency attitudes toward the project. (The developers claimed that the federal Fish & Wildlife Service did not object to the project.)

In response, Monterey city officials argued that the city's denial did not constitute the "final determination" required under case law for a takings claim to go to trial. However, the Ninth Circuit disagreed.

"The appellants spent over 18 months preparing a plan to meet the conditions specified," wrote Judge Procter Hug Jr. for a unanimous three-judge panel of the Ninth Circuit. "The plan was approved in the architectural review, was recommended by the city's professional planning staff, and then the same three members of the city council that had approved the development with certain conditions abruptly changed course and disapproved the plan even though the conditions specified had been substantially met. ... The city, after extended processes, set forth the development it would permit, with express conditions. Appellants have provided evidence that they substantially fulfilled these conditions. We therefore conclude that further reapplication is not required and that the taking component of the appellants' claim is sufficiently ripe for review."

The court also ruled that due process and equal protection claims are also ripe for trial.

The full text of Del Monte Dunes at Monterey, Ltd., v. City of Monterey, No. 88-1593, appeared in the Los Angeles Daily Journal Daily Appellate Report on December 13, beginning on page 14059.

Developer Won't Receive Fee Refund Retroactively, Court Rules

A developer should not receive a refund of school fees simply because the state legislature changed the laws relating to such fees after they were paid, the Fourth District Court of Appeal in San Bernardino has ruled.

The Victoria Groves Five had sued the Chaffey Joint Union High School District to recover some $37,000 out of a total of $147,000 in school fees paid in connection with a new residential development. As a result of 1986 legislation permitting school districts to impose fees, the school district had begun to require fees from developers for "all covered or enclosed space." In 1988, however, an amendment to the state law permitted school districts to impose fees only on "habitable area."

According to the developer, the difference between fees paid for "all covered and enclosed space" and fees paid for "habitable area" totalled $37,368. The developer made a variety of arguments claiming that the school district should refund this amount of money, but the Court of Appeal rejected all the arguments. Most important, the court rejected Victoria's argument that the "habitable space" provision should be applied retroactively. Victoria claimed that the 1988 amendments to the school fee law were merely clarifications of existing law, but the court said that documents from the Legislative Counsel indicated "unequivocally" that the legislature intended to change the law.

The court also rejected the Victoria's argument that the 1986 law could not have been intended to cover "covered and enclosed areas," since only habitable portions of residential development lead to the need of more school facilities. "The court may not speculate that the legislature meant something other than it actually said," the Court of Appeals wrote.

The full text of Victoria Groves Five v. Chaffey Joint Union High School District, E007134, appeared in the Los Angeles Daily Journal Daily Appellate Report on December 12, beginning on page 13958.

San Francisco Condo Conversion Law Upheld by Court of Appeal

The Ninth U.S. Circuit Court of Appeals has rejected a claim by real estate investor Richard W. Traweek that a San Francisco condominium conversion ordinance was directed specifically at one of his condominium projects.

The case arose out of a 1982 San Francisco ordinance prohibiting condominium conversions involving apartment buildings of more than 25 units. At the time, one of Traweek's investment funds had purchased the 187-unit John Muir apartment building and was on the priority list for condominium conversions. Traweek sued, claiming that the ordinance violated antitrust laws and also constituted a taking of Traweek's property without compensation.

District Judge Thelton E. Henderson dismissed the case, saying the antitrust claim failed to state a valid constitutional claim and the takings claim was not ripe for review.

The Ninth Circuit affirmed Henderson's decision on the antitrust claim, saying that the city's action fell under a legal doctrine that immunizes government agencies from antitrust liability if state law permit anticompetitive regulation. The court rejected Traweek's argument that "because the legislature could not possibly have intended the city's alleged intentionally anticompetitive conduct, state action immunity does not protect the city's conduct."

Regarding the takings claim, the Ninth Circuit overturned Henderson's reasoning but affirmed his dismissal of the claim. The court said the dismissal should be based on a lack of jurisdiction rather than the ripeness issue.

The full text of Traweek v. City and County of San Francisco, No. 88-15465, appeared in the Los Angeles Daily Journal Daily Appellate Report on December 10, beginning on page 13858.

COURT CASES

Lesher Ruling May Signal Shift in Court Attitude Toward Initiatives

The California Supreme Court's ruling in *Lesher Communications v. City of Walnut Creek* may signal the beginning a change in legal attitudes toward land-use initiatives, according to several land-use law experts around the state.

These experts say the Lesher ruling is more important for the questions it raised than the questions it answered. In a ruling handed down on New Year's Eve, the court ruled a Walnut Creek growth-control measure invalid because, the court concluded, the measure was a zoning ordinance inconsistent with the general plan (*CP&DR*, January 1991). However, the court also seemed to raise the possibility of revisiting an issue most land-use law experts thought was settled — the question of whether general plan amendments are subject to the initiative process at all.

Furthermore, a recent Court of Appeal ruling striking down a growth-control initiative in San Clemente may cast further doubt over many other measures. In an opinion issued after the *Lesher* ruling was handed down, the appellate court in Orange County said a land-use initiative is invalid if it merely directs the local city council to change the general plan.

Under California case law, both general plan amendments and zoning ordinances are considered legislative acts, and in general legislative acts are subject to initiative and referendum. Based on the Supreme Court's rulings in two important cases (*Arnel Development Co. v. City of Costa Mesa*, 28 Cal.3d. 511 (1980) and *Yost v. Thomas*, 36 Cal.3d 561 (1984)), California land-use lawyers have generally believed that both zoning ordinances and general plan amendments are subject to initiative and referendum. Indeed, in the Arnel case, the Supreme Court stated that general plan amendments are subject to initiative and referendum. But because that case dealt with a zoning ordinance, the court's language on general plan amendments is considered "dicta" — not central to the court's decision in the case and therefore not binding as precedent.

However, in *Lesher*, the Supreme Court backed off the Arnel dicta. The court recognized that Arnel made zoning ordinances subject to initiative and referendum, and Yost held that general plan amendments are subject to referendum. Relying on arguments made by the building industry as amicus curiae in the case, the court stated bluntly, "This court has never considered whether a general plan may be adopted or amended by initiative." Although the court did not reach this question in the Lesher case, lawyers for both sides in the case said the Supreme Court's ruling represents a surprising change of attitude. The language also seemed to suggest that the court is looking for a case where the general plan-initiative question can be resolved definitively.

Underlying the Lesher case and many other lawsuits involving land-use initiative is the legal conflict between state planning law and local initiative powers. Lawyers for both the building industry and cities have argued that land-use initiatives should be invalidated if they conflict with the local general plan because state planning law requires a comprehensive planning process with extensive notice and hearing requirements — requirements which cannot be met by a ballot initiative. Initiative advocates, on the other hand, have argued that local initiatives represent the will of the people and should not be constrained by procedural requirements.

The Supreme Court's ruling in the *Lesher* case was expected to resolve this question because the Walnut Creek initiative was in clear conflict with the general plan in place at the time the initiative was passed. However, the court decided the *Lesher* case on narrower grounds. The Walnut Creek initiative was not labelled as either a general plan amendment or a zoning ordinance. The Supreme Court concluded that the initiative was a zoning ordinance. Following on past Court of Appeal opinions, the Supreme Court ruled that zoning ordinances must be consistent with existing general plans, even if they are enacted by initiative.

Thus, the Lesher case did not resolve the conflict between state planning law and local initiative powers — and, in fact, muddied this conflict further by raising questions about the Arnel dicta. Several land-use lawyers have found other indications in the *Lesher* decision that the Supreme Court wants to back off from the language in Arnel. For example, David Callies, a land-use law professor at the University of Hawaii, notes that the Lesher opinion places considerable emphasis on the notion of the general plan as the "constitution" for all future development in the city. "If the court is emphasizing the `constitution' angle, the argument may be that it should be more difficult to get to the ballot," Callies said at a recent land-use law conference sponsored by the UCLA Extension Public Policy Program.

In the case from San Clemente, the Fourth District Court of Appeal ruled that a 1988 growth-control initiative, Measure E, was not valid because it merely directed the City Council to amend the general plan, rather than actually changing general plan directly.

Ironically, many initiatives like the one in San Clemente were written in this manner partly in response to the perceived legal defects of the Walnut Creek initiative. Fearing that their initiatives would be found inconsistent with existing general plans, many community groups tried to solve the problem by including provisions ordering changes in local general plans to conform to the policies contained in the initiatives.

In the San Clemente case, however, the Court of Appeal in Orange County ruled that such "directive" measures are beyond the scope of the initiative power. "While it might be argued the electorate could amend a general plan and direct the city council to revise the city's zoning ordinances to comply with it, Measure E goes beyond that," the court wrote. "It directs the city council to amend both the general plan and the zoning ordinances. This type of measure is not within the electorate's initiative power."

The full text of Lesher Communications v. City of Walnut Creek, No. S012604, appeared in the Los Angeles Daily Journal Daily Appellate Report on January 4, beginning on page 135.

The full text of Marblehead v. City of San Clemente, No. G007605, appeared in the Los Angeles Daily Journal Daily Appellate Report on January 25 beginning on page 1005.

U.S. Supreme Court Declines to Hear Challenge to Oil Initiatives

The U.S. Supreme Court has declined to accept a challenge from Western States Petroleum Association, formerly the Western Oil & Gas Association, to local ordinances restricting construction of on-shore facilities that support offshore oil drilling.

The court let stand a ruling by the Ninth U.S. Circuit Court of Appeals that ruled that the lawsuit was premature because new offshore leases have not been offered for sale, and therefore no new on-shore facilities have been proposed by the oil and gas industry. (*Western Oil and Gas Association v. Sonoma County*, 905 F.2d 1287 (1990).)

Industry representatives said they may pursue their legal challenge to the ordinance in San Luis Obispo County because, in that case, a specific proposal was made but was rejected by the voters.

Close to 20 coastal cities and counties have bans on on-shore support facilities for offshore drilling activities. In many cases, the ordinance is not a ban strictly speaking but, rather, a requirement that such facilities be approved at the ballot box.

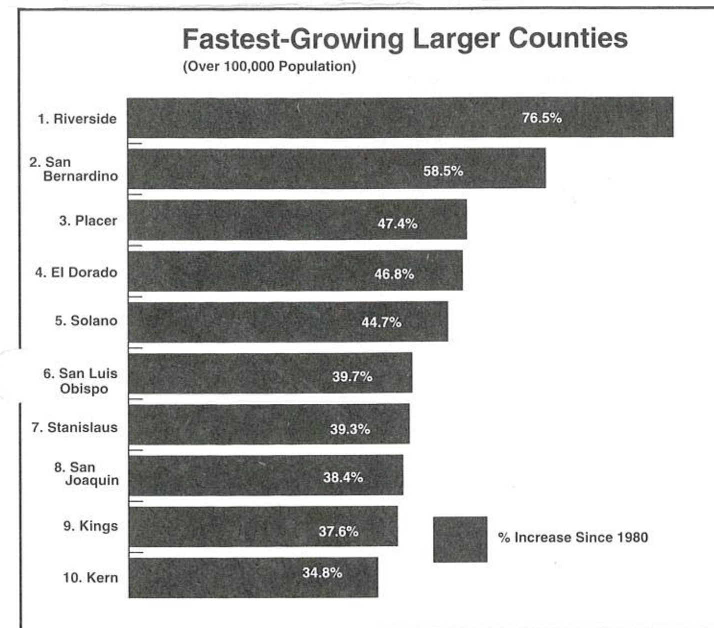
BY THE NUMBERS

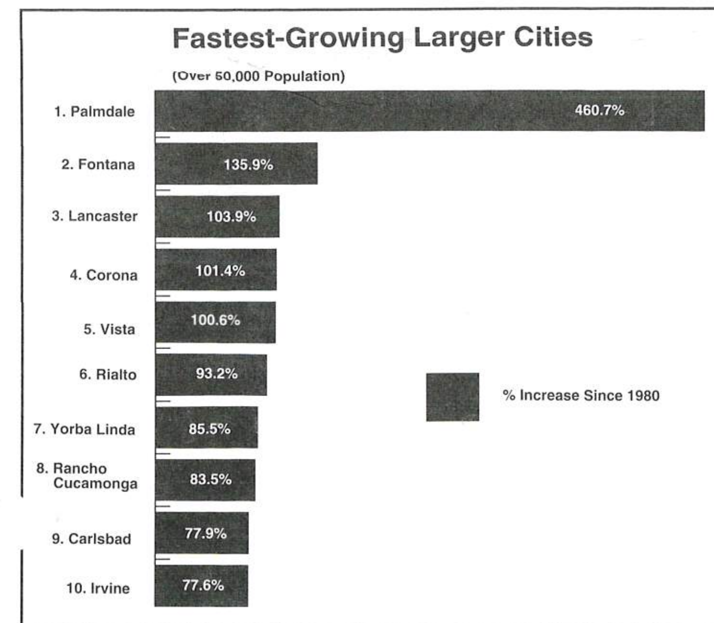
Population Numbers Increase Slightly in Final Census Figures

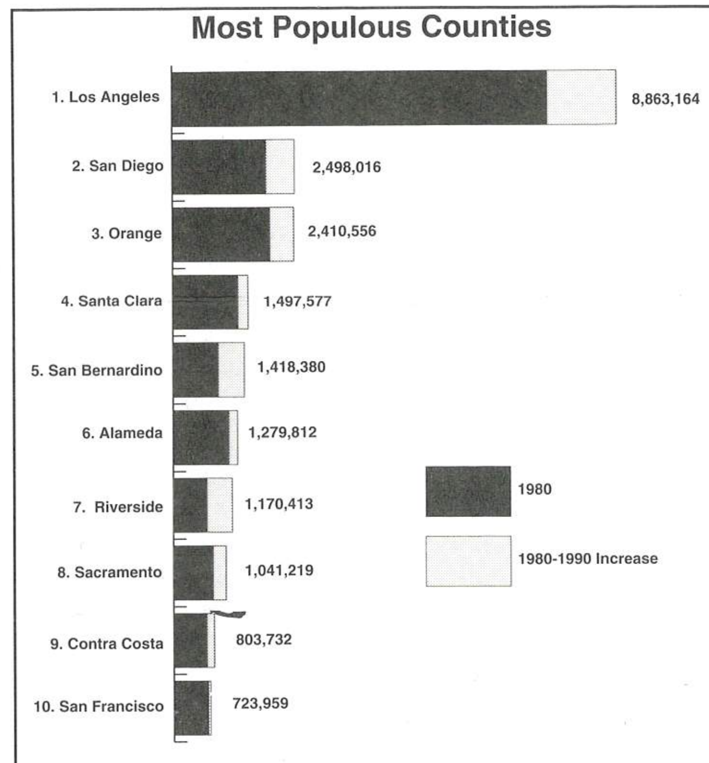
Final U.S. Census Figures pegged California's population at about 29.7 million in 1990, or about 400,000 higher than the preliminary census estimates last summer.

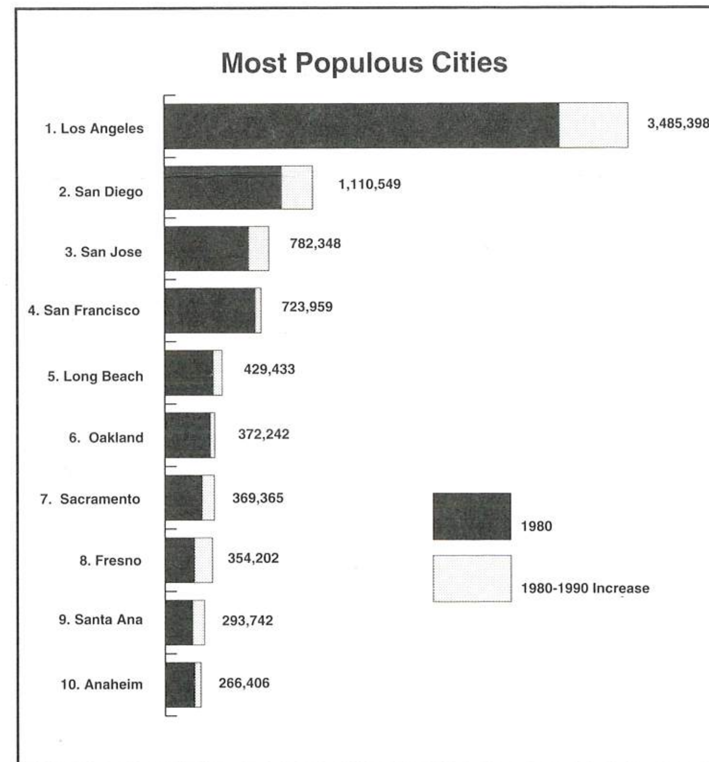
Many of the biggest changes in the final figures seemed to come from seaside communities. For example, the Census Bureau counted only 12 residents of Avalon initially, then changed the figure to 2,918. Coronado's figure rose almost 50%, from 18,086 to 26,540. Seaside (+19.9%) and Carmel (+12.3%) were also among the big winners.

Meanwhile, the biggest losers in the revised figures were Industry (a drop from 812 to 631) and San Anselmo (a drop from 16,250 to 11,743.)









Bradley Agrees to Share Control of CRA With City Council

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with a two-thirds vote. Bradley would continue to appoint all CRA board members.

Councilman Zev Yaroslavsky also proposed that Bradley fire all current CRA board members and start over again. But Gloria Molina and Richard Alatorre, the other two members of the committee, voted against it, saying that they did not have enough votes on the full council to override a potential mayoral veto. Even so, Bradley's willingness to give up some power is extraordinary — especially considering the widespread speculation that Deputy Mayor Mark Fabiani, a frequent critic of the CRA, engineered Tuite's departure.

However, both Molina and Yaroslavsky called for the ouster of CRA Board Chairman Jim Wood, who put together the Tuite buyout, and CRA General Counsel Murray Kane, who reviewed the deal.

Unlike other California cities, where the redevelopment agency is an alter ego of the city council, the LA/CRA is governed by a seven-member board of mayoral appointees. City Council oversight has been largely limited to approving specific projects after deals have been packaged. Policy-making — and control of the CRA's potential multi-billion-dollar purse — are largely beyond councilmanic reach.

Even before the Tuite affair, however, redevelopment critics on the council, especially Yaroslavsky and Molina, have pushed for reforms. These critics often claim that CRA — and especially Wood — favor large developers and do not do enough to help poor and homeless people, though, in fact, CRA's efforts in this area have been considerable.

In 1989 Yaroslavsky, a latter-day convert to the slow-growth movement, staged an abortive attempt to institute direct control by the Council over the agency. As a compromise, the council created the Molina committee, which has held frequent oversight hearings on the agency's activities. Then, last fall, a report from Chief Legislative Analyst William R. McCarley expressed frustration with CRA's lack of cooperativeness with the council committee, citing "outright refusal in presenting information requested by the Committee Chair" and "at least two cases where CRA staff recommended that the Agency Board not comply with Council-adopted instructions." He further reported that the CRA had not developed "guiding policies" for redevelopment.

Last year the tension between the council and the CRA Board stepped up when Yaroslavsky challenged the reappointment of CRA Board President Jim Wood. (The Westside councilman accused Wood making downtown into a "high-density" area, while Wood observed adroitly that the councilman had voted for all the projects he now found so objectionable.) After heavy-handed politicking on the part of Bradley's office and the labor movement (Wood is an AFL-CIO official), he won an overwhelming vote of confidence from the full council. Recognizing Wood's political vulnerability, however, Bradley appointed public-interest lawyer Carlyle Hall to a seat on the CRA board in hopes of balancing off Wood's pro-business attitude.

The Tuite severance package astonished CRA staffers and observers; few claim to understand why an astute political operator such as Wood would have approved such a bombshell, which embarrassed both the agency and the mayor's office. What makes the flap doubly mysterious is that agency has been in a courtship mode with the City Council in an attempt to raise its total funding cap for the Central Business District redevelopment project from $750 million to $5 billion.

Few people at the CRA were wringing their hands over the loss of Tuite, however. The ex-Jesuit priest and HUD official reportedly has a short fuse and a willingness to joust with anybody; indeed, he had clashed with the Molina committee on several occasions. With the exception of some low-cost housing advocates, he seems to have alienated every constituency. Developers in downtown Los Angeles, who have benefitted enormously from the agency's role in the financial district, have turned against the agency for endlessly tinkering with projects and imposing a high fee on the transfer of air rights. The City Council is increasingly mindful of slow-growth sentiment and homeowner opposition to CRA projects in Hollywood and Watts. Affordable housing advocates have criticized the agency for an alleged reluctance to share housing funds with small non-profits, although Tuite actually increased the number of SRO housing developers in the downtown area.

Despite his shortcomings, however, Tuite had some achievements. During his tenure, the agency built or rehabbed more than 8,411 housing units, including 7,037 "low-mod" units, and has another 1,395 in the pipeline, include 817 low-mods. (The agency has built or re-habbed about 21,000 housing units in its entire history.) "The CRA has the best housing record in the city," says a former CRA staffer.

Morris Newman

COURT CASES

Swap Meet Barred by Santa Ana Zoning Ordinance, Court Says

Santa Ana's zoning laws may legally bar a community college from permitting swap meetings in its parking lot, the Fourth District Court of Appeal has ruled.

The parking lots are zoned for open space under the city zoning ordinance. Rancho Santiago College had claimed that the swap meet was exempt from local zoning ordinances because it was part of the college's operations. But the Court of Appeal ruled that the college's exemption does not extend to commercial activities that are unrelated to educational activities.

The city's lawsuit against the college claimed that the swap meet was an activity subject to environmental review under the California Environmental Quality Act. The college responded by claiming that its activities were exempt from local zoning ordinances. In August of 1989, Orange County Superior Court Judge William F. Rylaarsdam ordered the college to prepare an initial study under CEQA, but permitted the swap meet to continue operating.

Under state law (Government Code Section 53094), a school district may declare that a city zoning ordinance does not apply to its activities unless the use in question is for "nonclassroom facilities." Over the years, the exemption has been expanded considerably. Most recently, in City of Santa Cruz v. Santa Cruz Schools Board of Education, 210 Cal.App.3d 1 (CP&DR, June 1989), the First District Court of Appeal ruled that high-school football stadium lights were exempt from local zoning rules because interscholastic athletes "are an integral and educational part of our educational program."

In the case from Santa Ana, the college's lawyers had argued that the swap meet was part of the educational process because 20% of its proceeds (approximately $5,700 per month) were turned over to the college for instructional programs. "We are unpersuaded by this financial argument," wrote Justice Henry T. Moore Jr. for a unanimous three-judge panel. "Taken to its logical extension, if a school district could exempt itself from a city's zoning controls simply by receiving some remunerative return for use of its property, section 53094 would become meaningless. There is no justification for exempting this commercial enterprise from the city's zoning ordinance."

The full text of People v. Rancho Santiago College, 008731, appeared in the Los Angeles Daily Journal Daily Appellate Report on December 31, beginning on page 14694.

DEALS

Paseo Nuevo: At Last, An Urban Mall That Works

Santa Barbara is not the first name that springs to mind when planners are asked for examples of progressive or inventive urbanism. The city is famed for rigid control over development, and maintains some of most stringent design standards in California. Political and social conservatism seem as thick in this coastal town as avocados in late summer.

Yet this very conservatism has served the city well in dealing with one of the most vexing problems in urban design: how to bring the regional mall into the center city. The newly completed Paseo Nuevo project offers a model of how to bring back shopping — and the revenue that rains from sales tax and participation agreements — into the center city without disrupting the urban context much.

Suburban-style malls, of course, have been uniquely difficult to integrate into existing downtown areas. They require an immense amount of land, much of which is given over to parking lots. Malls pull pedestrians off the street, depriving merchants on those streets of foot traffic. And they can roil both traffic and pedestrian movement by disrupting the street grid.

Despite its conservatism, Santa Barbara resolved several years ago to bolster the downtown area for a very simple financial reason. The city lacked major department stores, and in the early 1980s consultants said Santa Barbara was losing up to $44 million annually in retail sales.

At first the city decided to forego a mall and try to integrate department stores into its strong downtown corridor along State Street. But city voters rejected the heavy financial incentives required to bring the big retailers in. Rethinking their premise, city officials decided to permit a mall on lower State Street, several blocks from the "hot" part of downtown. Picking a two-block site, the city agreed to commit $43 million in funds to the project. In return they asked for a lot — and got it.

The city's 1985 request for proposals was dauntingly specific. The agency had decided the mall was to have at least two "majors" but to be no larger than 400,000 square feet — a small size for a regional mall and a big limitation to developers, who typically must make their money on non-anchor stores. At least two buildings on the site were deemed historical and could not be touched. Existing merchants on the street were to be incorporated into finished project, and would be given first choice to occupy newly built space. And, of course, any new mall would have to conform to architectural standards and would ideally employ Santa Barbara's "paseo" system of pedestrian-orient thoroughfares.

Notwithstanding those many demands, 16 developers responded to the RFP, a "phenomenal response," according to Bob Tague, former community development director and currently director of operations for Los Angeles Community Redevelopment Agency. Three finalists emerge from the pack: Ernest Hahn of San Diego, Melvin Simon & Associates Inc. of Indianapolis, and Reininga Corp. of San Francisco. The first two are among the largest and best qualified mall builders in the country. The third was a comparatively small firm trying to break into the big time.

As in all such competitions, both economics and design came into play. Planning consultant Allen Kotin said all three schemes were roughly similar in proposed revenue participation with the city. Reininga, however, had a couple of extra arrows in its quiver: The company promised to bring the vaunted Nordstrom chain to Santa Barbara, and also offered to pre-pay $7.8 million in ground leases and contribute another $2 million to cover any city shortfall.

In revenue participation, Reininga offered 20% of the revenues flowing from the project, starting three years after full occupancy, with expected revenues starting at $500,000 and rising to $1 million annually by the year 2007. Another $1 million annually in sales tax is expected.

Even more than attractive economics, however, design seems to have pushed Reininga over the top. In an effort to involve the public (in remembrance of the poor reception given to the previous attempt to bring major retailers to Santa Barbara), the city invited the public to comment on on the three competing designs at street fairs and design charettes.

While the three schemes were all well received in public, the design by Field Paoli seemed to carry the day for Reininga. Jon Jerde's scheme for Hahn was characteristically contemporary, while ELS's design for Simon did not offer paseos within. By contrast, Field Paoli's was arguably the most nostalgic and Santa Barbara- like. "We realized the city wanted something that looked as if it had been built in Santa Barbara in 1926," said architect John Field. The Field Paoli design conformed to existing rooflines on State Street, while creating an intimate quality inside with unusually narrow paseos, which measure 30 feet across. "You can see into shop windows on either side," Field says proudly.

The city went with Reininga, but not without a sense of risk. "It was a tough decision from our standpoint, since we knew that the other two (developers) could definitely deliver what they were proposing," recalled redevelopment director John Bridely.

The act of shoe-horning a regional mall onto two small city blocks required flexibility of the developer, the architect and major tenants. The developer, who would commit $89 million to the mall, had to be content with a mere 100,000 square feet of leasable retail area; the two "majors" had consumed the rest of the square footage. The architects had to conceal parking on the roof and in the basement (while leaving space for tree roots, since the city decided against planters!). Owners of surviving buildings on the mall blocks had to allow the developers to cut 20 to 30 feet off the rear portion of their buildings to make room for new construction. And even the doughty Nordstrom chain, which usually demands a fee for honoring a mall with its presence, agreed to pay $500,000 in site preparation.

(In return, however, Nordstrom did manage to negotiate a total payment of only $1 for its 75-year ground lease — a gambit that cost the city dearly, since The Broadway, the mall's other anchor, was contractually entitled to the same deal.)

After opening last fall, the mall is now 75% leased. Santa Barbara's Bridely says he has already noticed a significant increase in foot traffic and expects the mall to be fully leased by next summer.

Such indications bode well for the city financially, of course. But more important is the fact that Santa Barbara has succeeded in creating a new prototype for the mall in the center city. Paseo Nuevo could be described as the most recent step in an evolution of regional malls in downtown areas.

The progression starts with projects like Glendale's Galleria or Beverly Center in Los Angeles: self-contained megastructures plopped down on a major thoroughfares, contributing little to the life of the city — except traffic. The second phase are malls that conform to the scale of the street, but still plug up the street grid, inhibiting pedestrian and vehicular movement; Plaza Pasadena is an example. The third phase are open-air malls that conform more closely to the street grid, such as Horton Plaza in San Diego. (Although Field rightly criticizes this project as inward-looking: all the activity occurs within fortress walls.)

And the fourth stage in this paradigm is Paseo Nuevo, which integrates the mall into the existing street grid and opens the mall to sunlight. The open-air strategy fosters good urbanism, since neighboring, non-mall merchants benefit from increased foot traffic. The narrow paseos seems friendly and more "human scale" than conventional mall aisles. And to think that it happened in a conservative squiredom like Santa Barbara! Perhaps the moral is that good things can happen in unexpected places. Maybe the next idea in affordable housing will come from Indian Wells or Beverly Hills.

Morris Newman