CP&DR

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Controversy Grows Over Population Limits

Wilson Welfare Proposal and Demographer's Book Stimulate Discussion About Immigration

California's continuing population growth — along with Governor Pete Wilson's ballot initiative designed to discourage welfare recipients from moving to the state — may make the notion of population restrictions more acceptable in the 1990s.

Environmental groups and anti-immigration forces are fighting for population limits.

Already, an unlikely coalition of environmentalists and conservative anti-immigration groups is working on a legislative agenda to limit population growth. Further discussion of the population question has been sparked by a new monograph from prominent demographer Leon Bouvier, which calls for restrictions on immigration as a means of keeping California's *Continued on page 11*

Mello-Roos Bonds Begin to Fall

Default Occurs in Riverside County

As California's recession and real estate bust drag on, long-predicted problems with Mello-Roos bonds — used to finance infrastructure associated with new development — are beginning to emerge.

At least one Mello-Roos bond has already fallen into default. Officials of the Temecula Valley School District declared a default in their Margarita Village Mello-Roos district on December 11, the day after the Margarita Village Development Co. failed to make a $1.8 million tax payment. Some $23.5 million in bond proceeds on the Temecula Valley Mello had been invested in "guaranteed investment contracts" with Executive Life Insurance Co., whose assets are now under the control of California Insurance Commissioner John Garamendi.

The Temecula Valley situation is not the only sticky Mello-Roos in the state. For example:

- Oceanside officials say they have "solved" the financial problems of the Williams Ranch Mello-Roos district by taking over the bond payments. In fact, the city is trying to refinance the bonds, which currently carry an interest rate of more than 12%. *Continued on page 4*

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Feds Provide More Money for Transportation

But Court Case Threatens Local Sales Taxes

California received good news and bad news on the transportation front in December.

The good news was that President Bush signed the federal transportation bill, which contains a big boost for the state in both highway and transit spending. But the bad news was that the California Supreme Court ruled that many sales taxes in the state used for special purposes must pass by a two-thirds vote — a ruling that could affect up to 20 counties in California that have passed special sales taxes for transportation purposes.

If the courts determine that the Supreme Court's recent ruling applies to county transportation agencies, the financial underpinnings of the state's emerging system of rail transit could come crashing down.

For more on the federal transportation bill and its impact on California, please turn to page 9. For more on the court's sales-tax ruling, see the *CP&DR Legal Digest* on page 5. ❑

CALIFORNIA DIRT

William Fulton

Dirt Bonds Live Up to Their Name

So now we know — if there was ever any doubt — why Mello-Roos bonds and similar financial instruments are called "dirt bonds." It's because the financial security of these bonds rests not on a community's tax base, or even on its general prosperity, but on its dirt. When the dirt's going up in value — as it did throughout the 1980s — the bonds are in good shape. But when the dirt's bad, like now, the bonds are too — and so, in many ways, is the community itself.

Elsewhere on these pages you'll read about the financial problems emerging in Mello-Roos districts around the state, and no doubt you'll read much more next year, when California could see as many as a dozen defaults on Mello bonds. The business press is already picking up on the dire consequences for the world of finance; California tax-free mutual funds, which have invested heavily in Mellos because of high yields, are cutting dividends and may be stuck with the bonds if the bottom drops out of the market. But equally important — though often overlooked in the business-page coverage — will be the impact of the coming Mello-Roos disaster on California's communities themselves. And I don't just mean their bond ratings.

Mello-Roos bonds have been popular because they are the cleverest method yet devised to stick all the cost of new development on the newcomers. California taxpayers just aren't interested in increasing their own taxes to help a bunch of newcomers have roads or schools, and anyway Proposition 13's two-thirds vote requirement makes it virtually impossible to do so. But under a Mello-Roos scheme, the community and the developers can get together ahead of time and agree to impose a tax on all the property owners in the new development — meaning, in essence, all the new homebuyers — in order to finance needed infrastructure. The result is a tax-exempt bond that looks good on Wall Street and gets most of the cost off the developer's back, but for which the general taxpayers of the community aren't responsible.

In a lot of ways, the Mello-Roos bond is the best solution for the situation. But in a lot of other ways, it's a Faustian bargain. The political goal of uncoupling the financing needs of new development from the pockets of local taxpayers is achieved — at least if the real estate market holds up. Yet, as we are learning, in a Mello-Roos deal the community and its taxpayers are more closely tied to the financial success of new development than they were before — especially when the market collapses.

Whether they admit it or not, cities and counties in California have become development partners on virtually all large real estate projects in the state. They're partners in planning terms because the site planning — and the public "goodies" to be derived — are micro-negotiated by public-sector planners working alongside private-sector planners. And they're partners in financial terms because California developers rely far more than their counterparts in other states on all kinds of public financing — including Mello-Roos bonds — to make their projects fly. A survey by the Urban Land Institute a couple of years ago found that 62% of all developers in California depend on some form of public financing. Nationally the figure was only 8%.

The troubled Mello-Roos district in Oceanside provides the best current example of how public planning and finance are now inextricably intertwined with private development. In 1984, the city established a Mello-Roos district to provide infrastructure for the Williams Ranch development project. Some $6.4 million in bonds were floated on Wall Street — at a 12% interest rate. These bonds were secured only by the value of the Williams Ranch property, not by general tax revenue, but the district was put together by the City of Oceanside and Oceanside's name was associated with the bonds when they went to Wall Street.

The Williams Ranch project was undermined by a lot of different factors, but not the least important was the city's own planning policy. Subsequent to the bond issue, city voters passed a slow-growth initiative that restricted the number of homes per year that could be constructed in the city. Since the Williams Ranch developers had no vested right to build their houses, they were unable to get building permits as rapidly as they needed to; before long, the development project was in trouble and the developers were having a hard time paying any of their debts, much less the large Mello-Roos property tax bills they were stuck with. Fearful that a troubled Mello-Roos bond would make it difficult for Oceanside to operate on Wall Street with more conventional bonds, the city stepped in and committed $330,000 a year in general-fund money to paying off the bonds.

> "The Oceanside situation shows just how closely public finance and planning are intertwined with each other — and with private development"

Can you see the vicious spiral that the Mello-Roos scheme, the real estate bust, and slow-growth politics created in Oceanside? First the city helps put together and sponsors a special financing district designed to relieve general taxpayers of the burden of paying for new infrastructure. Then the city's own planning policies — albeit altered by initiative — placed that financing scheme at risk. And the only way Oceanside could extricate itself from the hole was to commit the money of general taxpayers — the very money the city wanted to keep out of the deal in the first place — in order to keep the bonds solvent.

The truth is that from the moment Oceanside agreed to assist the Williams Ranch developers by creating a city-sponsored tax-exempt bond scheme, the city was a financial partner in the Williams Ranch project. Any change in planning policy — or, indeed, in the real estate market — that adversely affected the Williams Ranch project held the potential for damaging the city's own financial situation as well.

To be fair, most later Mello-Roos schemes were created in combination with development agreements, so that they should not be threatened by subsequent slow-growth initiatives. But the underlying point is clear: It's impossible for a community to do a fair and objective job of planning its physical future when its financial well-being — and its image on Wall Street — is tied to the success of specific development projects. Proposition 13 has many legacies, but this "fiscalization of land use" is perhaps the most important for people involved in planning and development. And until a broad consensus is reached in this state on how infrastructure is paid for, planning and public finance will continue to be more intimately connected than they should be. ❑

Susanville Will Share Sales Taxes With Lassen County

City Wins Court Case. But Threat of Appeal Forces Compromise in Annexation Deal

In the latest battle over annexation and tax revenue, the City of Susanville has agreed to give Lassen County a percentage of all sales tax revenue within the city in exchange for permission to proceed on four annexations.

Lassen County Superior Court Judge Joseph Harvey had ordered the county to proceed with the annexations because Susanville had offered to give the county 100% of all property tax revenue in the newly annexed areas. When the county appealed the case, however, the two sides began negotiating, and the county will receive a small portion of the city's overall sales tax.

Ordinarily, sales-tax splits require approval of voters in both jurisdictions. However, according to Susanville City Attorney Kathleen Lazard, the city will simply choose to set its sales tax rate at less than 1% — a maneuver permitted by the Revenue & Taxation Code — and the remainder will flow to the county by default.

Disputes over annexation and taxes have spread throughout the state in the last few years as counties have become more strapped for tax revenue. In the most contentious case, Fresno County cut off all annexations for four years before settling with the City of Fresno and other local cities for a greater share of tax revenue in annexed and redevelopment areas. (*CP&DR*, April 1991; see also *CP&DR Special Report: Annexation and Development*, August 1989.) More recently, Stanislaus County sought to have the City of Modesto provide operating funds for county services in an annexed area. (*CP&DR*, October 1991.) Currently, Yolo County officials are negotiating with the City of Woodland over tax splits on a 470-acre area proposed for annexation and development. (See accompanying story.)

The dispute in Susanville, a city of 7,000 people located some 150 miles northeast of Sacramento, is typical of the issue. When the city sought annexation of four areas, including the site of a Wal-Mart, the county accused the city of "cherry picking" and terminated the master annexation agreement between the two jurisdictions. (The city also sought to annex the site of the California State Correctional Center at Litchfield. This annexation was approved by special state legislation; cities often want to annex nearby prisons because prison populations can be used to obtain per-capita aid.)

In an attempt to force the annexations forward, Susanville offered the county 100% of all property tax revenue in the annexed areas and argued that, as a matter of law, the county must accept the annexations. "The county has already obtained the 100% to which it would have been striving to gain by negotiations," city legal papers argued that the city. When Lassen County sought a portion of the city's sales-tax revenues, city officials said such a move would require approval of voters in both city and county.

Last April, in a lawsuit brought by Susanville, Judge Harvey agreed and ordered Lassen County to proceed with the annexations and accept the property-tax revenue. City officials said Harvey's ruling was obvious as a matter of law, as property tax revenue is the only type of tax revenue that may be negotiated without voter approval; county officials, by contrast, said Harvey was simply pandering to local political opinion. Whatever the merits of Harvey's ruling, Lassen County filed an appeal — an action that brought Susanville to the table. "It would have been politically stupid for us to continue," said Lazard.

Under the agreement, Susanville will give the county 1% of all sales tax revenues within the city immediately, with the figure rising to 5% over a three-year period. Lazard said each percentage point is worth $11,000 a year. As for the required sales-tax election, Lazard said that under Section 7202 of the Revenue and Taxation Code, a city may accept less than the full amount of its sales-tax revenue without an election. ❑

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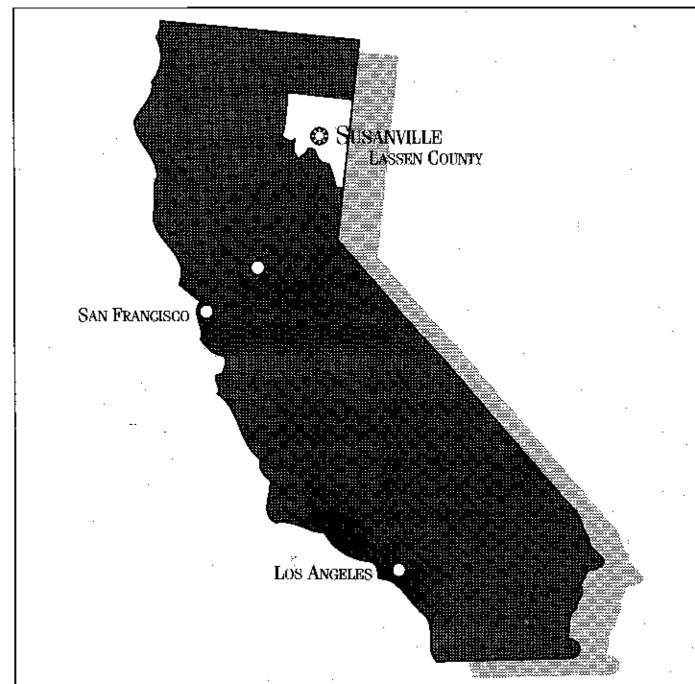

Yolo County, Woodland Bargaining Over Taxes

Annexation Agreement Will Set County Precedent

While Susanville and Lassen County have resolved their differences over annexation and tax revenue, Yolo County continues to negotiate with the City of Woodland — and the outcome of that negotiation may affect several future negotiations in the county.

Woodland is seeking to annex 470 acres of land for development that would add about 7,000 new residents to the city, which currently has a population of approximately 40,000. Noting that this annexation would increase the county's population by almost 5%, county officials are asking for more tax revenue from the city as the price of annexation.

Yolo County has always worked with its four cities in channeling development inside city boundaries, but this policy — combined with the incorporation several years ago of tax-rich West Sacramento — has eroded the county's tax base. Furthermore, Assistant County Administrative Officer Tom Gardner notes that Yolo receives approximately 25% of property-tax revenues within city boundaries, well below the statewide average of 33%.

As in other communities, Yolo began by asking for a portion of Woodland's sales-tax revenue — reportedly 10% of all sales tax or 50% of the sales tax within the annexed area. But, says Gardner, "we talked about sales tax for 1 1/2 years and finally took it off the table." Now the two sides are discussing a percentage of transient occupancy tax and a real estate transfer tax. "Yolo is not a poor county," Gardner said. "We are not Lassen County. The tax base is there; the cities have been unwilling to share."

The Woodland situation is likely to set a precedent in Yolo County for several proposed annexations to the City of Davis, as well as the annexation of land slated for golf-course development in West Sacramento. ❑

Cities, Counties Scramble to Deal With Mello-Roos Problems

Continued from page 1

But Wall Streeters say other cities may not be able — or willing — to use the general fund to "carry" bad Mello-Roos districts, and many experts are predicting defaults over the next year.

• Late payment of Mello-Roos taxes has become more common as the real estate market has slowed down. In Orange County, for example, the Baldwin Co. and J.M. Peters Co. fell nearly $400,000 behind in Mello taxes on the Portola Hills project, partly because federal regulators ordered Peters' parent company, San Jacinto Savings, to stop paying the debts of subsidiaries. According to a recent report in the Los Angeles Times, Baldwin and Peters have now paid the Mello taxes on Portola Hills.

With capital funds from other sources drying up, cities and counties used Mello-Roos districts extensively during the 1980s to finance roads, sewers, schools, and other infrastructure associated with development. More than $3 billion in Mello-Roos bonds have been floated since 1983, and they now comprise a major portion of the investment portfolio of many California tax-free mutual funds. But because Mello-Roos bonds are paid off by property owners — and secured only by the value of the property within the new development — they are highly dependent on a healthy real estate market for stability.

If the real estate market slows down, then land developers must make the tax payments at time when their cash-flow is poor. If land prices drop, then it becomes more difficult to bondholders to get all their money back even if they foreclose on the property. With projects going under and prices falling, public finance experts have been predicting defaults and other financial problems with Mello-Roos districts. (*CP&DR*, July 1991.)

Experts have been watching the Temecula Valley situation with interest and fear for several months. John Brown of Best Best & Krieger in Riverside, the school district's lawyer, said that the district instituted foreclosure proceedings against Margarita Village Development Co., but added that foreclosure had been held up by a series of other actions. First, Margarita Village Development Co. — owned by San Diego developer Robert Buie and Las Vegas-based PriMerit Bank — filed for Chapter 11 bankruptcy a few days after failing to make the Mello-Roos tax payment. Second, two mortgage holders on the Margarita Village property — including PriMerit Bank — have filed suit in Riverside County Superior Court, challenging the legal power of the district to levy the taxes. And third, the school district is continuing legal action to persuade Garamendi that it and other holder of municipal "GICs" should be included in the Executive Life creditors' payout — a move that would free up enough money to take the financial strain out of the situation.

Meanwhile, the Mello-Roos district in Oceanside is being saved from default only by the city's willingness to take on the payments. Created to finance infrastructure for the Williams Ranch development project, the district was one of the first established after the passage of the Mello-Roos law in 1982. The $6.4 million bond issue — floated at a 12% interest rate — paid for road improvements. The district came to public attention shortly after its inception when new homebuyers complained that they had not been told by real estate brokers about the additional Mello-Roos taxes; these complaints led to a change in the law requiring that Mello taxes be recorded against a property's deed. Later, the Williams Ranch project got caught in a slow-growth squeeze when Oceanside passed a growth control initiative. (Unlike many later Mello-Roos deals, the Williams Ranch project did not obtain vested rights to build via a development agreement.)

Only a third of the homes have been built. One of the three developers went bankrupt and another, Cadillac Fairview Homes West, stopped paying its portion of the tax assessment. In 1990, Oceanside agreed to rescue the bonds from likely default by paying Cadillac Fairview's portion of the Mello-Roos taxes, which total about $330,000 a year. The city took over the Mello payments not because Oceanside is liable for them — such bonds are not backed by general tax revenue — but because city finance officials feared bad publicity on Wall Street if tax-exempt bonds associated with their city defaulted.

Even though the city took over the bond payments, the bad publicity arrived anyway. In early November, The Wall Street Journal reported a Standard & Poor's analyst's remarks that the Oceanside bonds were "on the brink of default"; the analyst use the example to illustrate his contention that trouble was brewing in the Mello-Roos market. This led to an angry response from Sandra Schmidt, Oceanside's director of financial management, who contested the phrase "on the brink of default" and told the *California Public Finance* newsletter that Oceanside "has been highly responsible in this matter by proactively ensuring the payment (of) the bond through general fund sources." She also said the city is hoping to refinance the 12% loan so that its own payments will drop from $330,000 a year (for the 13 years remaining on the current loan) to somewhere in the neighborhood of $170,000 for a new 30-year loan, and that the bad publicity might make it more difficult to refinance the loan.

Subsequently, Standard & Poor's officials said the Oceanside example was used simply to illustrate the fact that Mello-Roos bonds are at risk because they are not backed by general tax revenue. "The point is that Oceanside is subsidizing it (the Mello payment)," S&P Executive Managing Director Victoria Tillman told *California Public Finance*. "But if other cities are not in the financial position Oceanside is in, they may be unable to help subsidize these projects."

The Wall Street Journal's discussion of the Oceanside bonds touched off a series of articles in the financial press questioning the health of the so-called "dirt bond" market, including Mello-Roos and Marks-Roos bonds. Most of the state's largest tax-free mutual funds own substantial amounts of Mello-Roos bonds. ❑

State Will Study Marks-Roos Bonds

Problems May Lead CDAC to Consider Guidelines

In the wake of media reports that Marks-Roos bonds have been abused, the California Debt Advisory Commission is planning to undertake an in-depth study of the financing mechanism. The investigation will begin with a hearing January 15 at the Orange County Hall of Administration.

The Marks-Roos financing scheme — which are similar to Mello-Roos schemes but permit bond pooling as well — has been the subject of increasing media scrutiny, especially by the San Francisco Examiner. The Examiner has been especially critical of First California Capital Markets Group and its chief, Michael Richardson, who put together many of the deals in question.

The most highly publicized deals have been the City of Folsom's use of Marks-Roos in financing a failed auto mall, and the City of Lake Elsinore's decision to authorize Marks-Roos bonds totalling $500 million in hopes of attracting development.

Folsom's bond payments were recently taken over by General Motors Acceptance Corp., which has between $12 million and $17 million at risk in the now-closed Folsom Auto Plaza; the Sacramento district attorney's office is investigating the deal. Lake Elsinore, whose Marks-Roos bond deals were also the subject of a recent investigation by the Orange County Edition of the Los Angeles Times, has floated only a small portion of the $500 million authorized.

CDAC Executive Director Steve Juarez said the Marks-Roos study will be similar in scope and format to the agency's recent Mello-Roos study, which recommended financial guidelines for local governments to follow in setting up Mello-Roos financing schemes. However, Juarez said that at the January 15 hearing in Orange County, the agency will discuss whether mandatory state guidelines are warranted.. ❑

CP&DR LEGAL DIGEST

State Supreme Court Ruling Casts Transportation Sales Taxes into Doubt

Justices Rule That San Diego Sales Tax Requires 2/3 Majority to Pass

In a decision that threatens the underpinnings of California's current system of transportation finance, the state Supreme Court has ruled that many local-option sales taxes must be approved by a two-thirds vote.

In *Rider v. County of San Diego*, the Supreme Court struck down San Diego County's half-cent sales tax for jail construction, which passed in 1988 with 50.8% of the vote. Writing for a five-justice majority, Chief Justice Malcolm Lucas concluded that, under Proposition 13, the jail tax required a two-thirds vote for passage. In a vitriolic dissent, Justice Stanley Mosk accused the majority of surreptitiously overturning the court's own ruling in *Los Angeles County Transportation Commission v. Richmond*, 31 Cal.3d 197 (1982), which upheld the passage of a half-cent sales tax for transit purposes in L.A. County against a similar legal challenge.

The big question is how the Rider ruling will affect several pending challenges to transportation sales taxes around the state, including lawsuits by the Libertarian Party against such taxes in both Los Angeles and Orange counties. Both cases are pending in the Court of Appeal, and lawyers in the two cases say the appellate justices may ask for new briefs based on the Rider decision.

Virtually all metropolitan counties in the state now have a half-cent sales tax for transportation purposes. These taxes are expected to raise $6 billion by 1995, and already more than $1.5 billion in bonds secured by these taxes have been floated. The funds are being used to finance all types of transportation projects, ranging from the enormous rail transit system in Los Angeles County to local road improvements around the state. The money is also often used to provide local matching funds required by the state and federal governments in order to obtain grants from them.

The impact of the *Rider* decision on these taxes apparently will hinge on the courts' determination of whether the transportation agencies were established, and the sales taxes passed, as a means of circumventing Proposition 13's limitation on property-tax rates.

When it was passed in 1978, Proposition 13 contained a clause — now contained in Article XIIIA, Section 4 of the California Constitution — imposing the two-thirds requirement on "special taxes" sought by "cities, counties, and special districts." The purpose of the clause is to restrict local governments from circumventing Proposition 13 by imposing other taxes designed to make up for the loss of funds caused by Prop. 13's mandated reduction in property taxes.

In the *Richmond* case, the state Supreme Court upheld Proposition A, a 1980 ballot measure that imposed a half-cent sales tax for transit purposes in Los Angeles County, by ruling that the L.A. County Transportation Commission was not a "special district" under the meaning of Proposition 13. Writing for the majority in that case, Mosk concluded that no public agency lacking power to impose property taxes could be considered a "special district" under Proposition 13. He also concluded that because the LACTC's sales-tax authority had been granted by the Legislature in 1976 — two years before Proposition 13 was passed — the tax could not possibly be construed as a circumvention of Proposition 13.

In addition, Mosk argued forcefully that the two-thirds majority requirement was "fundamentally undemocratic" and therefore legal interpretations must be strictly construed, giving great leeway to the agencies seeking to impose the taxes. Anti-tax forces complained at the time that the *Richmond* decision was one of several Supreme Court rulings that provided local governments with "loopholes" in Proposition 13.

The new Supreme Court ruling does not formally overturn the *Richmond* case, so Proposition A will not be struck down. But a challenge is pending to Proposition C, a second half-cent sales tax passed by a bare majority of L.A. County voters in 1990. Prop. C funds are currently being held in escrow pending the outcome of the case.

In the *Rider* case, a five-justice majority of the Supreme Court concluded that the San Diego situation was substantially different from L.A. County transit tax case. In 1986, the county asked voters for a sales-tax increase, payable to the county, to support new jail construction. The county concluded that such a tax required a two-thirds majority vote, and the measure failed, winning 51% of the vote. Subsequently, the county established the San Diego Regional Justice Facility Financing Agency, a "limited purpose special district" with the power to impose a half-cent sales tax increase upon the approval of a simple majority of voters. At first, members of the Board of Supervisors appointed themselves as the agency's governing body, but on the advice of their lawyers they subsequently reconstituted the agency's board so that supervisors occupied only two of seven seats. In 1988, the half-cent sales tax passed with 50.8% of the vote.

In striking the sales tax down, the Supreme Court majority concluded the entire financing scheme was designed to circumvent the two-thirds requirement of Proposition 13. Furthermore, the court laid down the rule that if an agency with sales-tax power is "essentially controlled" by cities or counties with property-tax power, the courts may infer that the purpose of the agency is to circumvent Proposition 13.

In reaching this conclusion, Chief Justice Lucas wrote: "It seems evident that Richmond's limitation of the term 'special district' to those districts possessing property tax power is unworkable as applied to districts formed after the adoption of Proposition 13, because to our knowledge no such agencies possess that power." Thus, he said, "we hold that 'special district' would include any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restrictions of Proposition 13." Lucas said a determination would have to be made on a case-by-case basis as to whether other taxes, such as transportation sales taxes, require a two-thirds vote, and did not say whether or not he intended to apply the new rules only "prospectively" — that is, only for taxing agencies created in the future.

In a dissent seething with bitterness, Mosk said that Lucas's opinion "ignores stare decisis and effectively overrules our decisions," both in Richmond and in another case, *City and County of San Francisco v. Farrell*, 32 Cal.3d 47 (1982), which concluded that a payroll tax in San Francisco was not a special tax under Proposition 13 and therefore was not subject to a two-thirds majority. He accused Lucas of patching together an opinion based "entirely on rejected contentions from two dissenting opinions filed almost 10 years ago" and argued that California voters rejected this reasoning when they voted down Proposition 36 in 1984. That measure would have required a two-thirds vote for all tax increases.

In addition, Mosk called the "essential control" test unworkable, and predicted that "without a forthright determination that this opinion should apply prospectively only, the effect of the majority holding is likely to be devastating to

local government entities and those with whom they contract." He noted that courts may choose not to apply rulings retroactively "when considerations of fairness or public policy justify prospective operation."

Because Lucas's majority opinion called for a case-by-case examination all agencies imposing sales taxes, it is hard to say whether any of the transportation sales taxes will be struck down. Mark Rosen, lawyer for the Libertarian Party and others in their challenges to the transportation sales taxes in both L.A. and Orange counties, said his cases will be helped by this ruling. "If one takes *Rider* literally, one will have to analogize LACTC to the San Diego district," he said. "At least that's my reading of it."

Al Kaufer, LACTC's lawyer in the case, said the fact that LACTC and its taxing power were established by the Legislature prior to the passage of Proposition 13 may help to shield Proposition C from legal attack, just as it did with Proposition A.

The Libertarian Party's challenge to Proposition C is currently based on the provisions of Proposition 62, a 1986 initiative designed to close some of the "loopholes" created in Richmond, Farrell, and other cases. Among other things, Proposition 62 states that no special tax may be approved without a two-thirds vote. In the majority opinion, Lucas did not reach the question of Proposition 62 because he based his decision on Proposition 13. In a concurring opinion, Justice Ronald George, joined by Justice Edward Panelli, said he would have preferred to strike down the San Diego tax on Proposition 62 grounds, rather than Proposition 13 grounds.

Rosen acknowledged that the Courts of Appeal hearing both the L.A. challenge, *Vernon v. Board of Equalization*, and the Orange County challenge, *Ward v. Board of Equalization*, may ask all sides to file new briefs in light of the Rider decision. ❑

- **The Case:** Rider v. County of San Diego, No. S017917, 91 Daily Journal D.A.R. 15689 (December 23, 1991).
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Schools

School Districts Win Flexibility In Selling Naylor Act Land

In its first decision ever on the Naylor Act, the California Supreme Court has ruled that Moorpark Unified School District does not have to accept the City of Moorpark's offer to buy a school site at 25% of appraised value.

In overturning the Second District Court of Appeal, the Supreme Court established that a city does not have the automatic right to claim school land at a discounted price under the Naylor Act. Rather, the high court concluded, the school district's offer to sell the land "was a mere invitation, sent to 13 public agencies with the hope that one or more of them would express interest in the property."

In effect, the Supreme Court ruled that common law of contracts is not completely overridden by the strict provisions of the Naylor Act. The ruling is expected to give school districts more flexibility under the law, which many school officials claim ties their hands when they try to sell surplus property.

The high court ruling is the culmination — so far — of a long-running dispute between the school district and the city in Moorpark. Lawyers in the case say that the decision means that both sides must sit down and negotiate a price — the course of action which the school district wanted to pursue almost three years ago when the lawsuit was filed.

The Naylor Act was designed to make give cities, park districts, and other public agencies the ability to claim ownership of surplus school land — and use it for playground or open space — that might otherwise be sold for development. Contained in the Education Code (§39390-39404), the law lays out a very specific set of procedures that school districts must follow in selling surplus property. In particular, other public agencies have a right of first refusal to buy the land and at least a portion of the land may be purchased for 25% of fair market value. (For further details, see *CP&DR Special Report: Schools and Land*, May 1987.)

The Moorpark case began in 1988, when the Moorpark Unified School District first notified the City of Moorpark of its intention to sell at least part of a former high school site as surplus land. Seeking funds for a new elementary or middle school, the district decided to seek the city's approval for high-density residential development on most of the 26-acre high school site. However, the school district also decided to offer one seven-acre portion of the site for sale under the Naylor Act. A school district may designate two surplus school sites as exempt from the Naylor Act, but the Moorpark school district did not do so in this case — at least not at first.

The city and the school district then began to negotiate over both the seven-acre parcel and the development proposal for the rest of the site. However, the school district refused to consider selling the seven-acre parcel to the city under the Naylor Act unless the city agreed to consider a development proposal for the rest of the site.

After lengthy and acrimonious discussion, the city then announced its intention to take title of the seven-acre parcel under the Naylor Act for a price of $319,000 — 25% of the fair market value of the parcel, according to the city's appraisal. When the district made a counterproposal, the city sued, seeking a ruling that the district was obligated to make the sale. After the lawsuit was filed, the school district voted to designate the entire 26-acre site as one of its surplus sites exempt from the Naylor Act.

Last January, the Second District Court of Appeal panel in Ventura ruled in favor of the city. The court rejected the school district's contention that it had merely invited offers rather than actually offered the property for sale. Therefore, the appellate court concluded, the district was obligated to sell the seven-acre parcel of land to the city for $319,000, and its post-hoc designation of the land as exempt from the Naylor Act was not binding. "The use of the word 'proposes' (in the offer of sale) does not mean that it is a mere invitation to treat, as it might be under common law," the appellate court wrote.

But the school district appealed the case to the California Supreme Court and won. On behalf of a unanimous court, Chief Justice Malcolm Lucas wrote that the Naylor Act "is not ... as mechanistic and all encompassing as the Court of Appeal believed. It does not contemplate, as the Court of Appeal seemed to hold, that once a district makes a broad proposal to offer to sell, lease, or exchange all or a portion of a site for fair market value, a responding public agency may then decide that there shall be a transaction in the form of a sale of a certain portion of the property for less than fair market value."

Unlike the Court of Appeal, the Supreme Court concluded that the common law of contracts should play a role in the case of Naylor Act transactions. In an extended discussion, Lucas concluded that the Naylor Act intends for school districts to have flexibility in tailoring transactions to meet their own needs. "The flexibility accorded to school districts in the Act ... is incompatible with a mechanistic approach to determining whether an offer is present and is best served by, and most reasonably requires the application of, common law principles. We therefore conclude that the Act was not intended to supplant the common law of contracts as it pertains to offers." ❑

- **The Case:** City of Moorpark v. Moorpark Unified School District, No. S019591, 91 Daily Journal D.A.R. 14920 (December 9, 1991).
- **The Lawyers:**
  For the city: Cheryl Kane, Burke, Williams & Sorenson, (213) 236-0600.
  For the school district: Richard Godino, Bergman & Wedner, (310) 470-6110.

Partial Refund Ordered On Milpitas School Fee

An appellate court in San Jose has ordered a partial refund of school fees imposed by the Milpitas Unified School District, saying the school district did not provide a sufficient basis of evidence to impose the fees. However, the court overturned a trial judge's ruling that the entire school fee scheme is unconstitutional.

Finding fault with the school district's analysis, the Sixth District Court of Appeal ordered the school district to refund 10% of the $1.50-

per-square-foot fee on residential development imposed on Shapell Industries, which is developing a mixed-use project within the school district's boundaries. However, the appellate court found no problem with the school district's rationale for imposing a 25-cent-per-square-foot fee on commercial and industrial development and declined to order a refund in that case.

This case, the latest in a long line of challenges to local school fees, revolved around the adequacy of the "nexus" studies prepared by the school district to justify imposition of the school fees. Under the 1986 School Facilities Act, school districts are permitted to impose such fees, but case law requires that these fees be rationally related to the project in question. In the Milpitas case, the school district passed two resolutions, one in 1987 and one in 1988, imposing fees on new development. The 1987 resolution dealt with both residential and non-residential development, while the 1988 resolution dealt only with non-residential development. Subsequently, Shapell paid almost $600,000 in fees for residential development and another sum — unspecified in court documents — for commercial and industrial development.

In 1989, Santa Clara County Superior Court Judge Charles Gordon found both of the school district's resolutions unconstitutional, saying they violated the due process and equal protection clauses of both the U.S. and the California constitutions. He also concluded that the development fees exceeded the cost of facilities for which they were imposed, meaning they were "special taxes" under Proposition 13 and therefore subject to a two-thirds vote. Gordon ordered the school district to refund all of Shapell's school fees plus interest.

The Court of Appeal reversed some parts of Gordon's decision while affirming others. Regarding the 1987 resolution (Resolution 87.12), the court generally concluded that the school district acted with the powers granted to it under state law. "As a practical matter it will not always be possible to fashion a precise accounting allocating the costs, and consequent benefits, of particular building projects to particular portions of the population," wrote Justice Patricia Bamattre-Manoukian for a unanimous three-judge panel of the court. "All that is required of the District is that it demonstrate that development contributes to the need for the facilities, and that its choices as to what will adequately accommodate the influx of students are reasonably based."

However, the court concluded that the school district's studies did not support a fee of $1.50 per square foot for residential development. The consultant simply divided the total projected cost of new facilities by the total expected number of new housing units and came up with a figure of well over $1.50. But the court faulted the consultant and the school district for not taking into account another district estimate — the estimate that 54.9% of the projected enrollment increase would come from new housing developments. In estimating how much money should be refunded, the court did some financial calculations of its own. The estimated cost of new facilities was about $17.5 million, while the expected new development was abut 7.1 million square feet — figures which yielded a per-square-foot cost of $2.46. However, when the 54.9% figure is added to the equation — meaning that new development should be required to account for only 54.9% of the cost of new facilities — the per-square-foot cost drops to $1.35, or 15 cents per square foot less than the $1.50 rate imposed by the school district. Thus, the appellate court ordered a refund of 10% of the fees imposed on residential development under Resolution 87.12, plus interest.

The court invalidated fees on commercial and industrial development imposed under Resolution 87.12 because the consultant did not conduct an analysis determining the relationship between the two. However, the court upheld the school district's course of action in passing another resolution the following year (Resolution 88.7) reimposing the fee on commercial and industrial development. Unlike the other study, the court found, this study "focussed upon the particular contribution from commercial and industrial development to the overall increase in student population. ... As we have observed in our discussion herein, courts reviewing legislative enactments will not concern themselves with an agency's choices of methods for compiling and evaluating data, so long as it appears the agency has reasonably related the fee to the identified need."

The court found that the fee imposed by Resolution 88.7 did not violate the state and federal constitutions, and also determined that the Milpitas fees were not special taxes because they did not exceed the cost of facilities for which they are imposed. ❑

- **The Case:** Shapell Industries v. Governing Board of the Milpitas Unified School District, No. H006752, 91 Daily Journal D.A.R. 14417 (November 22, 1991).
- **The Lawyers:**
  For Shapell: Steven M. Barnard, Bernard & Wood, (310) 655-7150.
  For School District: Harvey Levine, Hallgrison McNichols McCann & Inderbitzen, (510) 460-3700.

Water

Court of Appeal Rejects Challenges To Marin Moratorium on Hook-Ups

Two challenges to Marin County's moratorium on new water hook-ups have been rejected by the First District Court of Appeal in San Francisco. In both cases, the justices said the building industry's cases amounted to policy disagreements rather than legal challenges.

In the more interesting of the two cases, *Building Industry Association of Northern California v. Marin Municipal Water District*, 91 Daily Journal D.A.R. 14329, the appellate court ruled that the Marin water district did not violate the state Water Code — or the state's housing policies — in deciding to impose a moratorium rather than setting aside some water for future residential development. The BIA has said it will appeal this case to the state Supreme Court.

In the other case, *Marin Municipal Water District v. KG Land California Corp.*, 91 Daily Journal D.A.R. 14332, the appellate court overturned a trial judge's ruling that the environmental impact report prepared for the moratorium on hook-ups was inadequate. Building industry lawyers say they will not appeal the second decision.

Both cases were brought by the building industry and individual developers, including Perini Land and Development Co., and sought to force the water district to provide hook-ups to new houses planned for Marin County. The cases were brought in response to the moratorium on new hook-ups, which was passed on a temporary basis in July of 1988 and then implemented on an "indefinite" basis in December of 1989. Perini Land is trying to build a 151-unit housing project in Corte Madera.

In the Water Code case, the BIA and Perini Land argued that under a Court of Appeal ruling from the 1970s — ironically, one which grew out of a Marin County water moratorium during the last drought — the water district was obligated to "augment" its available water supply, which the district did not do.

During the drought of 1976-77, the building industry challenged the constitutionality of a previous moratorium, also imposed under Section 350 of the state Water Code. In the resulting case, *Swanson v. Marin Municipal Water District*, 56 Cal.App.3d 512 (1976), the Court of Appeal upheld the constitutionality of the moratorium, but added: "Nevertheless, we do foresee a continuing obligation on the part of the district to exert every reasonable effort to augment its available water supply in order to meet increasing demands. Clearly, the Legislature anticipated the need for such a requirement when it limited the duration (in the Water Code) of such restriction to the period of the emergency and 'until the supply of water available for distribution within such area has been replenished or augmented' (Section 355 of the Water Code)."

It was this "continuing obligation" that the builders sought to use in attacking the current moratorium. However, Marin County Superior Court Judge Richard H. Breiner rejected the argument, and so did the Court of Appeal. "As the District points out," the court wrote, "its determination of how the existing water system can and should be augmented can only be accomplished by an exercise of discretion." The court pointed out that even the builders acknowledged that the water district has "commenced study of water supply option," and stated that the builders' allegation that this action wasn't sufficient "is in reality no more than a

disagreement with the District's approach to a difficult problem."

The builders also sought to have the moratorium struck down on the grounds that it violated the state's housing policy, which calls for special districts to participate in addressing regional housing needs. (Government Code Section 65580.) In essence, the builders were questioning whether the water district should place the needs of all existing non-residential customers ahead of the needs of new housing development. But the court found that the Government Code section in question "is a general statement of public policy, not a directive to any agency, let alone a water and sewer district, on how to implement that policy."

In the EIR case, Marin County Superior Court Judge Gary Thomas had found the water district's EIR inadequate, saying, among other things, that secondary environmental effects had not been adequately explored. But the appellate court reversed on all grounds.

Judge Thomas had ruled that the moratorium could have social and economic effects, such as restricting the supply of housing, that could, in turn, have secondary environmental effects—such as a regional jobs/housing imbalance. But the appellate court wrote: "(T)he EIR addressed the possible economic and social impact of the moratorium and concluded that any such impact would not be felt for several years (because of projects already in the pipeline); obviously, then, there would be no secondary environmental consequences for at least that period. The EIR then reasonably refused to speculate about possible secondary environmental consequences which might result from any long-term economic and social changes. Given the unique nature of the project under consideration, this analysis was legally adequate."

The court also found that the water district did not err when it chose not to recirculate the final EIR. Judge Thomas had ruled that the final EIR contained significant new information — in, particular, that the moratorium would be of extremely long duration —and therefore recirculation should have taken place. But the appellate court overturned his ruling.

John Collette, the builders' lawyer, said the EIR case was so fact-specific that his clients would not appeal. However, he said the issues raised in the Water Code case — including the interplay with the Government Code — were substantial enough to warrant an appeal of that case. ❑

■ The Cases: Building Industry Association of Northern California v. Marin Municipal Water District, No. A052930, 91 Daily Journal D.A.R. 14329 (November 20, 1991), and Marin Municipal Water District v. KG Land Development Corp., No A050793, 91 Daily Journal D.A.R. 14332 (November 20, 1991).

■ The Lawyers:
For Water District: George Yuhas, Orrick, Herrington & Sutcliff, (415) 392-1122.
For builders: John Collette, Collette & Erickson, (415) 788-4646.

Zoning

Denial of Rezoning Struck Down As Example of 'Spot' Zoning

The Court of Appeal in Orange County has struck down a residential rezoning in Yorba Linda as an unconstitutional example of "spot zoning."

The case involved a 1.1-acre parcel of land in Yorba Linda owned by the family of Mike Ross, which is currently zoned for one unit per acre. The Rosses, however, sought permission to build a second house on the property by rezoning it to 1.8 units per acre — the same zoning as most the surrounding property.

The Yorba Linda Planning Commission approved the zone change, but after neighborhood opposition surfaced the City Council rejected it. Subsequently, the City Council amended the city's general plan so that the Rosses and several similar properties on the same street were effectively downzoned from 1.8 to 1 houses to acre.

Affirming the ruling of Orange County Superior Court Judge Robert Polis, the Court of Appeal found the city's action to be discriminatory "spot" zoning and ordered that the general plan amendment not apply to the Ross property.

In reaching its decision, the appellate court relied heavily on the California Supreme Court's ruling in *Hamer v. Town of Ross*, 59 Ca.2d 776 (1963). In that case, a rezoning was denied to a property owner whose property was also zoned for much lower density than surrounding parcels. Justice Matthew Tobriner wrote that "zoning ordinances which impose a one-acre lot restriction cannot properly apply to property which is virtually surrounded by parcels of lesser size." In the Ross case, Yorba Linda tried to argue that the situation was distinguishable from Hamer, but the Court of Appeal found "more bravado than substance in this assertion."

In the course of rejecting the city's various arguments, the Court of Appeal made several important points, including the following:

• The court rejected the argument that denial of the Rosses' rezoning was justified as a means of "drawing the line" against the rezoning of many one-unit-per-acre "islands" within the city. "(A)rbitrary line-drawing is antithetical to the individual right to equal protection of the law," the court wrote.

• The court also rejected the city's argument that neighborhood opposition, in and of itself, constitutes a rational basis for denying the zone change. "This argument, carried to its logical conclusion, would be fundamentally destructive of the basic rights guaranteed by our state and federal constitutions."

• The city also argued that the case was moot because of the general plan amendment, which changed the land-use designation not only for the Ross property but for four similar properties. "The plan amendment is nothing more than the city's attempt to tie its own hands so it supposedly cannot be ordered to do now what it should have done in the first place," the court wrote. "We untie the city's hands by holding the plan amendment inapplicable to the Rosses' zoning request." ❑

■ The Case: Ross v. City of Yorba Linda, No. G010204, 91 Daily Journal D.A.R. 15556 (December 19, 1991).

■ The Lawyers:
For the City: Leonard Hampel, Rutan & Tucker, (714) 641-5100.
For the Property Owner: James A. Stearman, (714) 996-7760.

FYI

The Court of Appeal in Fresno upholds the Fresno city planning director's power, under the city zoning ordinance, to deny a sign permit to an auto dealership along the Highway 41 freeway. *Antonio Rodriguez v. Director of Development*, No. F014133, 91 Daily Journal D.A.R. 14770 (December 2, 1991)....

A Superior Court judge in San Diego County upholds the City of Oceanside's growth control ordinance against a challenge by the Building Industry Association and the Del Oro Hills development company. *BIA v. City of Oceanside*, San Diego County Superior Court No. N37638...

An Attorney General's Opinion concludes that if a city redevelopment agency owns property outside all redevelopment project areas, that property is still exempt from taxation. *Attorney General's Opinion No. 91-713*, 91 Daily Journal D.A.R. 14457 (November 21, 1991)....

California Attorney General Dan Lungren decides not to file a brief in the appeal of *Florida Rock Industries v. United States*, 266-82L, now pending before the U.S. Circuit Court of Appeals for the D.C. Circuit. Former AG John Van de Kamp said he would file a brief in the case, in which the U.S. Claims Court awarded a landowner more than $1 million in a takings claim involving wetlands. Assistant AGs said Lungren's decision was not made based on ideology....

In an unpublished opinion, the Fourth District Court of Appeal in Santa Ana has ruled Santa Ana's housing element invalid, thereby invalidating the city's approval of a 329-home subdivision proposed by Mola Development Corp. The housing element lawsuit was filed by the Wetlands Restoration Society. *Wetlands Restoration Society v. City of Seal Beach*, No. G009822....

The U.S. Supreme Court may reshape the bounds of governmental condemnation power in hearing the appeal of *Boston & Main Corp. v. ICC*, 911 F.2d 743 (D.C. Cir, 1990). The high court issued an expansive definition of "public use" in condemnation in *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984), but this case could rein that precedent in. ❑

Bush Signs Transportation Bill

Cities, States Will Have More Flexibility to Divert Highway Funds for Local Transit Systems

Its supporters are calling the new federal transportation bill a "revolution" in U.S. transportation policy. Officially known as the "Intermodal Surface Transportation Efficiency Act of 1991," the new law appears to be the federal government's most important step so far away from highway-oriented policies.

The bill, signed into law by President Bush shortly before Christmas, gives states and cities more flexibility in spending federal transportation dollars; accords mass transit a much higher priority than ever before in the federal transportation hierarchy; and provides $6 billion for "non-attainment" areas — including most California metropolitan areas — to meet air quality standards through the use of transportation policies.

The numbers contained in the transportation bill are big. The law provides $151 billion in federal spending over a six-year period, including $119.5 billion for highways (a 40% increase in federal spending) and at least $31.5 billion for mass transit (a 100% increase). California could receive up to $15 billion under the bill. The state is expected to receive at least $10.5 billion in highway funds, the most of any state, and $1.3 billion for the Bay Area Rapid Transit system and Metro Rail in Los Angeles. Because of the increased flexibility given to states, much of California's highway money could be spent on mass transit.

Though President Bush initially supported the transportation bill as a way of improving the nation's mass transit, as the economy deteriorated during 1991 he began calling it a "jobs bill." White House estimates suggest that the bill could create as many as 600,000 direct and indirect jobs nationwide.

Just as important as the numbers, however, are the policy statements contained in the new transportation bill, which reflect a dramatic shift away from highways. The law specifically calls for a national transportation system that is environmentally sound and energy efficient. Its states that the "National Intermodal Transportation System" should be made up of "all forms of transportation in a unified, interconnected manner ... to reduce energy consumption and air pollution while promoting economic development and supporting the nation's preeminent position in international commerce."

The shift of power back to state and local governments is equally important. "We have finished the interstate highway system, and now we must turn the initiative in transportation matters back to the states and cities," said Sen. Daniel Patrick Moynihan, D-New York, chairman of the House Transportation Subcommittee, when the bill was sent to the White House.

The bill provides $7.2 billion to complete the interstate highway system, and designates 155,000 miles — including many "feeder" roads to interstates — as the "National Highway System," which will receive $38 billion in federal funds over the six-year duration of the bill.

Most of the debate in Congress revolved around allocation of the funds by state. Sen. John W. Warner, R-Va., led a revolt among states, like California, that pay out more in federal transportation funds than they receive. As a result, the formula for distributing the funds among the states was changed. California will receive 92% of the money it pays into federal transportation funds, according to state Business, Housing & Transportation Secretary Carl Covitz.

At the same time, however, states and localities will have a great deal more flexibility in deciding whether to use their funds on highway or transit projects. Nationally, up to half of the money contained in the highway portions of the bill could be diverted to transit projects. In air-quality "non-attainment" areas — a category that includes virtually all metropolitan areas in California — all the funds could be diverted to transit projects.

The transportation bill also includes $16 billion for repair and replacement of bridges, $725 million for a mag-lev rail system, and $660 million for an intelligent vehicle highway system. ❑

L.A. Transit Merger Close

RTD, LACTC Would Combine Efforts To Create Powerful Single Agency

The two agencies have had a long history of in-fighting

Los Angeles's two major transportation agencies finally appear on the verge of a merger.

The new entity will probably be called the Los Angeles County Metropolitan Transportation Authority. It would engulf the current Southern California Regional Transit District, which operates the huge RTD bus system and is building the Metro Rail subway, and the L.A. County Transportation Commission, which manages hundreds of millions of dollars in sales tax funds dedicated to transit and oversees construction of the the county's massive light-rail transit system.

The new agency will apparently have a larger board of directors than the current L.A. County Transportation Commission. City officials will have more seats on the board, diluting the power of the county Board of Supervisors, which currently wields considerable control of the LACTC. (The two agencies currently share six of 11 board members.)

However, it is not clear how the "corporate cultures" of the two agencies will mesh. LACTC, created in 1976 to manage and allocate transit money, operates with a staff of 400 people. RTD, which was created in 1964 out of the ruins of several local bus companies, has staff of 8,000 people who concentrate on operating the nation's largest all-bus transit system. The two agencies have had a long history of in-fighting, and both sides agree that much time and money has been wasted by their rivalry. The two sides have even fought over what the new agency would be called, with RTD wanting to call it "TA" and the LACTC wanting to call it "Metro."

Whenever both sides reach a final agreement, they will have to go to the Legislature for enabling legislation, since both agencies were created by the state in the first place. ❑

Sacramento Considers Merger

City and county officials in Sacramento have agreed in concept to create a combined transportation planning agency.

The action came after the chief executive officers of both the city and the county prepared a report saying that Sacramento's current system of allocating transportation funds compares poorly to other metropolitan areas and does not serve Sacramento well. County Executive Bob Smith said that without a joint city-county transportation agency, the jurisdictions are abdicating their role in transportation planning to the Sacramento Area Council of Governments, the state, and the federal government.

The new entity would include a "cabinet" of top officials from the city and the county, the Regional Transit District, Sacramento County's three small cites, and the local Air Quality Management District. City and county officials have already approved creation of the cabinet, which is charged with coming up with a specific proposal for the agency.

Though both the city council and the board of supervisors approved the cabinet idea without much debate, not everyone in Sacramento agreed that it was the right course of action. Supervisor Jim Streng pointed out that the Sacramento Transportation Authority already administers the county's transportation sales-tax revenue and the local congestion management plan, and could easily be adapted to serve additional functions. ❑

Disney Chooses Anaheim

Regulatory Hurdles Persuade Entertainment Firm To Scrap 'Port Disney' Theme Park in Long Beach

Leaving Long Beach at the altar, the Walt Disney Co. has decided to forsake the proposed "Port Disney" project in favor of a large EPCOT-style development adjacent to Disneyland in Anaheim.

The $3 billion Disneyland Resort will include the so-called "Westcot Center" to be constructed in the current Disneyland parking lot, as well as a series of new hotels across the street near the Disneyland Hotel. The area will also include a pedestrian district and a "people-mover" transit system. Anaheim officials called the decision to build the 470-acre project "a monumental achievement in the history of the city."

Disney officials said they chose Anaheim over Long Beach because the Port Disney project, located in the Long Beach Harbor, would include a much more complicated process of regulatory review. Disney Development Co.'s David Malmuth said the company would have had to spend $70 million and four to five years in order to obtain 27 different permits. The company promised to return to Long Beach in the future with a different project proposal.

However, Disney critics suggested all along that the company was simply playing the two cities — both known for their aggressive pro-development policies — off against each other in trying to find the best deal. (*CP&DR Deals*, September 1990.) Anaheim city officials say that they are still negotiating with Disney, but that the company is asking the city to contribute close to $1 billion for the project. Two massive parking structures would cost $500 million just by themselves. ❑

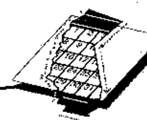
Sacramento Pays $13 Million To Exit Hyatt Hotel Deal

The City of Sacramento has paid $13 million to buy out all its long-term obligations in the struggling Sacramento Hyatt Regency Hotel. The deal also removes local developers Gregg Lukenbill and Joseph Benvenuti from operating power over the Hyatt, placing the power in the hands of Mutual Life Insurance Co. on New York (MONY), the developers' financial partner in the project.

Even though the hotel is performing well, the Lukenbill/Benvenuti partnership has struggled

The city originally invested more than $13 million in the project by providing land for the hotel and partially paying for the adjoining parking structure. Even though the hotel is performing well — it has an occupancy rate of 73% — the Lukenbill/Benvenuti partnership has struggled and currently owes the county $2 million in back taxes. The city had committed to a $1.5 million subsidy per year for 75 years, but used the $13 million payment to buy its way out of that commitment.

The city will finance the deal by taking the $1.5-million-a-year subsidy and using that money to back a $19 million bond issue. Of those proceeds, $13 million will go to MONY — which will use the funds to pay down the Lukenbill/Benvenuti mortgage — and $6 million will go to finance other redevelopment projects in the city. ❑



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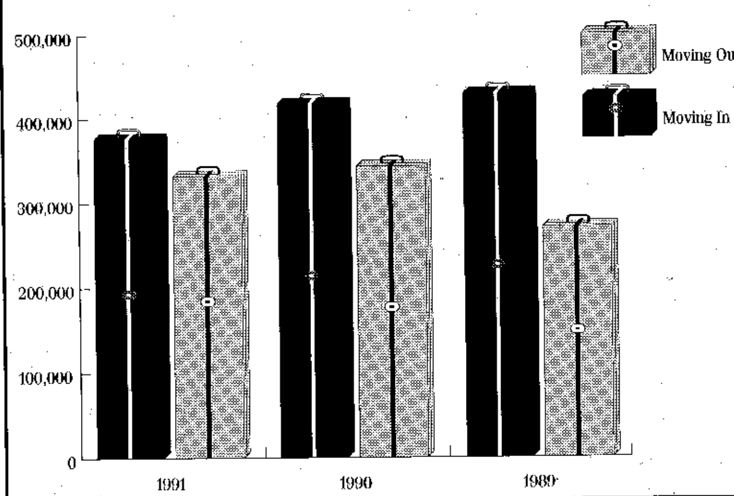
Controversy Swirls Over Proposals to Limit Population

Continued from page 1

population down to manageable levels.

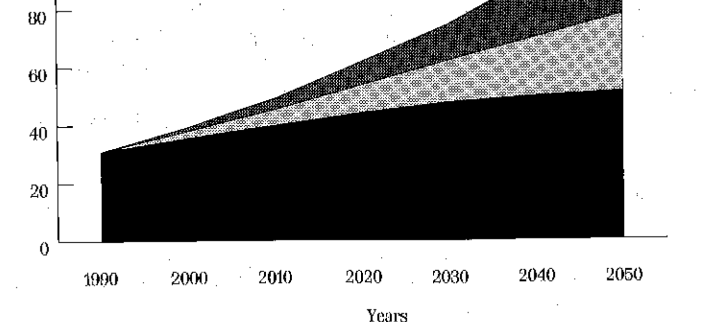
Ironically, the population question emerges at a time when California's growth may be slowing down due to the recession. State figures on domestic migration, drawn from changes in driver's license registrations, show a dramatic slide in the last three years. Net in-migration of U.S. drivers dropped from 160,000 in 1989 to only 36,000 in 1991. However, state demographers predict that immigration and birth levels will remain high, meaning overall population growth will continue.



Population limits have been anathema to fast-growing California since statehood 140 years ago. But Wilson's welfare proposal seems to have given the idea a political legitimacy it previously lacked. The Wilson initiative, scheduled for the ballot in November of 1992, would make it more difficult for newcomers to qualify for welfare benefits and would also cut the amount of money available to welfare recipients.

In his public statements on growth management, Wilson has always said he has no intention of restricting the overall amount of growth in the state, which he says should be a function of private markets. But the welfare proposal seemed to suggest a new policy direction, designed to attract some types of immigrants while restricting others. In an interview with the San Jose Mercury News in December, Richard Sybert, director of Wilson's Office of Planning and Research, said the welfare proposal is designed to attract "producers, not consumers."

Sybert was quick to add that California should welcome "folks of any color who are willing to work hard and make a productive contribution." Nevertheless, in making the welfare proposal, Wilson stepped into the middle of a simmering debate over population limits and racism — a debate that has heated up considerably in the last few months, largely because of the publication of Bouvier's monograph.



In *Fifty Million Californians*, published by the Center for Immigration Studies, Bouvier estimates that California will probably reach a population of 50 million sometime between 2010 and 2020. Using figures provided by state demographers, he also reveals an alarming increase in fertility rates on the part of all racial groups in California during the 1980s. Between 1982 and 1989, the figure rose from 1.9 to 2.5 children per woman of child-bearing age. For Hispanics, the figure rose from 3.1 to 3.9 — an increase Bouvier attributes to the influx of Latin American immigrants who prefer large families.

Calling on Californians "to leave behind petty name-calling" a reference to the fact that anti-immigration statements are inevitably branded as racist — Bouvier says that the question of reducing immigration levels should become politically acceptable. "It makes no sense to be able to discuss birth control and not immigration," he writes. "They are both components of population growth and must be addressed without fear of emotional attacks. If population growth is a problem, then all sources of population growth must be examined. ... Just as many Californians are 'pro-children' but value quality over quantity so too are they 'pro-immigrant' but again prefer quality over quantity. This does not make them racists."

Shortly after the monograph was published, Santa Ana Mayor Dan Young and Lilia Powell of the Orange County Coalition for Immigration Rights and Responsibilities called Bouvier a racist. Saying he is a "card-carrying liberal," Bouvier responded by saying: "My bottom line is, something big is happening here, so let's talk about it. What kind of a nation do you want?"

This battle of words over population limits and immigration is likely to intensify on February 3, when the California Coalition to Stabilize Population holds its first press conference in Sacramento. This coalition will represent an oddly diverse constituency ranging from the liberal Sierra Club to the conservative Federation for American Immigration Reform, which advocates the use of national identity cards. The coalition was organized under the auspices of Californians for Population Stabilization (CAPS), which convened a series of forums on the issue over the last two years.

"We've got liberal types, people into the environment who are pro-choice but don't see immigration as a big problem, and conservatives who are the reverse," said CAPS spokeswoman Dana Michaels.

She said the group will be working on a legislative agenda but did not indicate what areas might be covered by proposed bills. She also indicated that the coalition may have some sympathy toward redevelopment projects and other re-use of vacant buildings for housing. ❑

■ For Further Information:

Leon Bouvier's monograph, Fifty Million Californians, is available for $9.95 from the Center for Immigration Studies in Washington, D.C. Telephone: (202) 466-8185.

The California Coalition to Stabilize Population is coordinated by Californians for Population Stabilization in Sacramento. Telephone: (916) 446-1033.

DEALS

Morris Newman

Lancaster's Movie Connection: Mel Gibson Meets the RTC

Here's a multiple choice test for California city officials. Let's say your city has a partially constructed housing project which you view as a threat to public health and safety. Although the usual plan of attack would be to hire a wrecking crew to demolish the structures, your hands are tied: the owner in this case is the Resolution Trust Corporation, an arm of the federal government, so condemnation is out of the question. What do you do?

(1) Reason patiently with the RTC to tear down the houses.

(2) Pray for a great storm to sweep away the offending buildings.

(3) Wait for Mel Gibson and Danny Glover to blow the houses up for you.

If you chose No. 3, you've probably been reading the local newspapers in Lancaster, until recently a boom town in the Antelope Valley region of Los Angeles County. This comic denouement to a failed housing project may serve as a telling example of the Keystone Kops style of asset management practiced by the RTC. It's also an instructive story about the loss of control over land-use issues that can occur to California cities when the feds come to town.

Lancaster has shown some laudable ingenuity in its attempt to transform failed projects into affordable housing to comply with both California's (official but non-binding) "fair share" housing standards and the requirement to spend 20% of tax increment monies for low-to-mod housing.

Not surprisingly for a city that had been one of the fastest growing home markets in the 1980s, a number of local subdivisions fell victim to both the S&L fiasco and the slumping home-sales market. Two unfinished housing tracts in Lancaster — The Legends and Silverado — have attracted the city's attention, and Silverado in particular represents a bargain-basement opportunity to convert abandoned properties into affordable housing, possibly for less cost than new construction. Begun by a Burbank developer, U.S. Housing Corp., the projects halted work in 1989 after regulators seized the lender, Hill Financial Savings Assn. of Pennsylvania.

In December, the city council voted to make bids for both projects, using both redevelopment housing set-aside money and federal block grant funds. The city planned to target the housing for moderate-income residents, which means for buyers who earn up to 120% of the region's median income. A bid to buy The Legends failed in December, while at last report the city was still in the running for Silverado. The problem of how to remove The Legends wreckage remained.

Enter the movie industry. A few months ago, members of a local location-filming booster, Antelope Valley Film Committee, noticed that Warner Bros. had been scouting for a stunt location for Lethal Weapon III, the latest installment of the good-cop/bad-cop vehicle for Gibson and Glover. The script apparently calls for houses to be blown up, though in reality, the studio plans to use propane flames, for the purpose of retakes. The film boosters alerted Warner of the Legends site, already a well-known eyesore in the community.

Warner seemed game about sitting down with the RTC, perhaps because the film studio was unfamiliar with the agency's molasses-in-January pace of decision making. Last fall, the studio entered negotiations with the agency's Northeast office and its property manager, Graimark Realty of Philadelphia. (One of the weirder aspects of the RTC is its practice of hiring property managers from the same region as the lender no matter where the property is located.) "They (Graimark) don't appreciate the kind of blight it causes," says Lancaster City Councilman Arnie Rodio. "I've got developers with houses across the street calling me up twice a day." (The local RTC official responsible for the Lancaster area, meanwhile, said he had never heard of the Legends site, although he promised to "look into it.") After haggling with RTC for two months without reaching an agreement, Warner was ready to walk away in disgust.

> *"After haggling with RTC for two months without reaching an agreement, Warner was ready to walk away in disgust."*

At this point, the panicked film boosters called U.S. Sen. John Seymour. Aware of the trend of film production leaving California —as well as his own need for re-election —Seymour lent a sympathetic ear. Writing to the RTC, he claimed that the filming "is sure to substantially increase the value of the property."

The RTC may have a hard time figuring out which end of the country its real estate is on, but it knows darn well which side its bread is buttered on; the agency finally agreed to the filming, which was to begin in December. As a sop to the city, the RTC asked the studio to demolish all buildings, including foundations, used in the filming, or about half the houses on the Legends site.

So, much like a happy Hollywood ending, the city finally sees the fulfillment of its dream: the demolition of potentially dangerous structures, and the clearing of land to make room for affordable housing. And if the city manages to buy at least the Silverado tract from the RTC, it will be one of the few cases in the country in which communities have turned the sow's ear of problem real estate into the silk purse of affordable housing.

A postscript: California Planning & Development Report has been able to obtain what we have been told is the shooting script for the scene of Lethal Weapon III to take place in Lancaster:

(Scene: nightfall in Lancaster. Sound of police helicopters. Sirens. Pandemonium.)

Mel Gibson (hoisting a flame thrower):

"Come 'on! Let's blow this housing to Kingdom Come!"

Danny Glover:

"Hey, you can't do that! Man, you're crazy!"

Mel Gibson:

"You bet I'm crazy! The RTC has pushed me too far." (Fires the flame thrower at a house. Whoosh! It goes up in flames.) "They won't let the developers keep their projects. They make it next to impossible for investors to buy the houses. And they won't even let anybody tear them down without two months of negotiations and a letter from a Senator in Washington! When the RTC does that, it messes with me!"

Danny Glover (nervously):

"Hey, cool it, man! You've done enough."

Mel Gibson (bitterly):

"No way, man! I don't want my grandkids to have to pay for this garbage. Arrrgh !" (He torches the rest of the houses.)

(Well, that's how we think the scene should go.) ❑