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INSIDE

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Court Rules In Favor of Property Owner

Lawyers Debate Reach of Seemingly Narrow Opinion

Land-use lawyers and practicing planners are scrambling to short out the significance of the U.S. Supreme Court's ruling June in *Lucas v. South Carolina Coastal Council*, the court's newest ruling on the "takings" question.

The court's ruling in favor of landowner David Lucas was widely described as narrow, but it opened the door to new takings cases just enough for property owners to cheer, and regulators to fear, the likely impact. Experts on all sides predict more lawsuits, more critical scrutiny of government regulations, and more negotiations between landowners and government agencies.

This month, *CP&DR Legal Digest* offers comprehensive coverage of the Lucas case, including a summary and analysis of the case by Kenneth Jost, *CP&DR*'s special legal affairs correspondent, and excerpts from the majority and dissenting opinions. Our coverage begins on page 5.

Democrats Push Own Growth Package

Tired of Waiting for Wilson, They Move Forward With Alternative

By Morris Newman and William Fulton

Taking advantage of Gov. Pete Wilson's unwillingness to move forward on growth management, Democratic legislators have advanced their own growth package, wrapped it in the cloak of economic development, and hope to place it on the November ballot.

Despite a cool reception from the Wilson Administration, the Assembly Local Government Committee voted July 1 to approve the package — which consists of radically revised versions of SB 929, by Sen. Robert Presley, D-Riverside, and ACA 44, by Assembly Local Government Chair Sam Farr, D-Monterey. The package, now called the "Environmental and Economic Recovery Act," would require a statewide tiering system for land uses; create a state infrastructure bank to stimulate local economies; and also give local governments the ability to pass infrastructure bonds with a simple majority vote, rather than the two *Continued on page 10*

Enterprise Zones Top Urban Agenda

By Morris Newman

The Los Angeles riots have reawakened interest in enterprise zones, and reignited the debate over whether such zones offer incentives strong enough to bring jobs to the inner city.

Enterprise zones have always been popular among conservatives such as Housing & Urban Development Secretary Jack Kemp. Since the riots in early May, however, they have emerged as a central focus of the Bush Administration's urban policy. With the support of L.A. Mayor Tom Bradley and Gov. Pete Wilson, Bush has proposed the creation of 50 enterprise zones around the country at a cost of $2.5 billion.

Though 36 states, including California, currently have enterprise zones in operation, evidence of their success is murky. And because most of them offer up little more than the thin broth of state tax incentives, it is hard to predict how successful enterprise zones would be if hefty federal tax incentives were also available. Nevertheless, California officials remain upbeat about enterprise zones. And many say that combining enterprise zones with redevelopment areas — thus offering businesses hefty tax breaks and direct subsidies to locate in the inner city — might become a powerful incentive to stimulate business in *Continued on page 4*

In Brief

Adelanto and Victorville are fighting over which city will annex the soon-to-be-closed George Air Force Base in San Bernardino County. Victorville is among the sponsors of the Victor Valley Economic Development Authority's proposed redevelopment plan for the 5,400-acre base, while Adelanto has its own plans for the site. The decision is now in the hands of the county's Local Agency Formation Commission....

Meanwhile, on another base closure issue, **a joint venture of Elliott Homes Inc. and Lewis Homes has been selected** to remodel and sell 1,270 homes at Mather Air Force Base in Sacramento, which is scheduled for closure in 1993. The two firms were selected by the Sacramento Housing and Redevelopment Agency, and now must go about upgrading both housing and infrastructure for the tract, which includes 500 wood-frame homes built by the Air Force in the '60s and more than 700 concrete-block houses build in the '50s....

Yet another base-closure story is emerging in Santa Clara County, where **Sunnyvale and Mountain View citizens are seeking to block San Jose's attempt** to control Moffett Field once the Navy vacates the facility in 1994. The citizens claim that San Jose's record at handling general-aviation facilities is not good, and say they favor turning Moffett Field over to the National Aeronautics and Space Administration. The citizen group has dubbed itself "Friends of NASA at Moffett"....

Santa Rosa has approved a slow-growth plan to limit housing construction to 1,000 units per year. The Sonoma County seat averaged about 1,350 homes per year during the boom years of the 1980s; that number dropped to 1,200 in 1990 and 750 in 1991....

A proposed sports arena in Burbank has gotten a boost from Warner Bros., which has joined forces with developers Lewis Wolff and Wayne Rogers on the project. Warner Bros. would use the arena for entertainment events, and Warner Bros. officials say their involvement may help persuade L.A. Clippers owner Donald Sterling to locate the team there. Wolff and Rogers have a three-year exclusive negotiating agreement with the City of Burbank on the arena deal; the location is undetermined but may be at the Lockheed site adjacent to Burbank Airport....

Meanwhile, Hollywood Park, the often-troubled horse-racing and development company based in Inglewood, **has unveiled plans for a $100 million expansion** that will include a 14,000-seat Music Center. The plan also calls for a card club, which would require the approval of Inglewood voters. Hollywood Park was forced to sell the Los Alamitos Race Course in 1989 after failing to obtain voter approval for an expansion there. (*CP&DR*, March 1989, November 1989)....

A consultant report has recommended that *L.A. County place stricter controls on development in seven so-called "significant ecological areas"* around the county, including Malibu. The report by Michael Brandman Associates said that many of the areas have been significantly damaged since they were last studied in 1976. In response, a technical advisory committee has suggested that the developers in significant ecological areas "mitigate" their development by buying and preserving other sensitive land. The Sierra Club sued the county last year in order to obtain stricter review of projects in sensitive ecological areas in Malibu. (CP&DR, December, 1991)....

The final environmental impact report for the proposed Eagle Mountain landfill in Riverside County has been released, indicating that **the landfill would not create lasting environmental damage to the area or violate state and federal air-quality standards.** Mining Reclamation Corp. is seeking to convert Kaiser Steel's open-pit iron-ore mine in the Coachella Valley into a large landfill that would handle solid waste from throughout Southern California...

The San Diego City Council has approved the initial phase of the "zoning code update project," **a streamlined development-review process**. The process expedites appeal procedures and requires earlier notification of neighboring residents and property owners on permit applications. ❑

CALENDAR

July

- **23: Action Summit II for Affordable Housing.** San Francisco. Sponsor: Affordable Housing Partnership Project. Call: (916) 327-7507.

August

- **6-8: Driving In and Moving Out: Auto Mobility in Postwar America.** Los Angeles. Sponsor: Society for Commercial Archaeology. Call: (818) 788-3533.
- **14: Advanced CEQA Seminar.** Goleta. Sponsor: UC Santa Barbara Extension. Call: (805) 893-4200.
- **21: Planning For Ethnically Diverse Communities.** Los Angeles. Sponsor: Los Angeles Section, American Planning Association. Call: (818) 405-3099.

September

- **17-18: California Public Finance Conference**. San Francisco. Sponsor: The Bond Buyer. Call: (212) 943-2221.
- **20-22. National Association of Housing & Redevelopment Officials National Conference**. San Francisco. Sponsor: NAHRO. Call: (202) 429-2960.

October

- **9-11. League of California Cities Annual Conference.** Los Angeles. Sponsor: League of California Cities. Call: (916) 444-5790.
- **14: General Plan: Preparation and Revision.** Davis. Sponsor: UC Davis. Call: (916) 757-8887.
- **19-24: Urban Land Institute Meeting**. Los Angeles. Sponsor: ULI. Call: (202) 624-7000.

S.F. Planning Commission Backs Airport Expansion

The San Francisco Planning Commission has signed off on a significant expansion of San Francisco International Airport, certifying an environmental impact report for the project over the objections of 19 San Mateo County cities and environmental groups. Quick approval is expected from the San Francisco Airports Commission, though the Sierra Club has threatened to sue to stop the project.

The $2.2 billion airport expansion would permit a 30% increase in daily takeoffs and landings (from 1100 to 1400) and a 60% increase in passenger capacity (from 31 million a year currently to 51 million a year in 2006). The expansion plans calls for expanded terminals and boarding areas, an automated light-rail shuttle, and more than 7,000 parking spaces. The EIR acknowledged that the project would add 60,000 cars a day to the traffic on U.S. 101, but concluded that the airport itself had little power to force mitigation measures on the highway. Among other things, the EIR suggested that Caltrans convert two lanes on 101 into high-occupancy vehicle lanes.

The San Mateo County Association of Governments, representing 19 cities near the airport on the Peninsula, was critical of the plan and demanded, among other things, a ban on middle-of-the-night flights and construction of on-site housing for 10,000 new airport employees. (The project is expected to create more than 40,000 new jobs, directly and indirectly.) Brisbane Mayor Brian Kerwin, head of the San Mateo COG, said the airport's plan should be revised to stress a more even distribution of flights and passengers among the Bay Area's three airports and also called for an airport-funded mass transit on the Peninsula. Though owned by San Francisco, the airport is located in San Mateo County, 12 miles south of the city itself.

The Port of Oakland has proposed a $300 million expansion of the Oakland airport, including a 10,000-foot runway, but announced earlier this year that it would postpone its expansion plans. The runway has been under attack by environmentalists and Port officials said the volatility in the airline industry made long-term planning difficult. (*CP&DR*, February 1992.)

San Francisco's environmental review department first submitted the airport EIR to the Planning Commission in August 1991, but after two lengthy hearings the commissioners concluded that it was inadequate and sent it back for revisions. In the meantime, Frank Jordan replaced Art Agnos as mayor and selected a new, more development-oriented planning commission. The new Planning Commission approved the airport EIR unanimously and without comment. ❑

Riverside's Mission Inn Sold to New Investor — Cheap

Riverside's historic Mission Inn will reopen this fall under the ownership of a Philadelphia investor who has picked the hotel up for a song.

John Desmond will pay $14 million to Chemical Bank of New York for the 117-year-old hotel, which has been closed since 1985. But he won't put any money down. He'll borrow a $2.5 million down-payment from a local bank, guaranteed by the City of Riverside. The city will forgive other loans and expenses totaling $3.7 million, and Chemical Bank will carry the remainder of the debt.

The price and the terms reflect the desperation of the local real estate market — and the desire of Riverside city officials to see their crown jewel reopened. A previous developer, Carley Capital Group of Madison, Wisconsin, went belly-up in the middle of a $40 million renovation, leaving Chemical Bank stuck with an unpaid $27 million mortgage. Chemical then invested at least $9 million more to make the hotel sellable — and as recently as 1990, insisted that it would not accept a price of less than $28 million. (*CP&DR Deals*, June 1990.)

Immediately after the City Council approved the sale of the Mission Inn to Desmond, Riverside's development director, Margueretta Gulati, announced her resignation. Gulati said her departure had nothing to do with the Inn deal — she said she was exhausted after five years on the job — but she kept her decision to herself until after the council action so that the Inn deal would not be jeopardized.

To city officials, the Mission Inn is an irreplaceable asset. It has been called "one of the great California fantasy buildings," and compared in architectural style and diversity to Hearst Castle. It is certainly Riverside's best-known building and one of its greatest architectural treasures. Deputy Development-Director Ralph Megna said recently that "no one in this town ... believes downtown will ever be able to have a renaissance" unless the Mission Inn is re-opened.

However, support for the deal with Desmond was not unanimous. City Councilman Alex Clifford voted against it, claiming it was a "giveaway" to Desmond, who is not bringing any cash to the table. "The deal can be worked out without giveaways," he told the *Riverside Press-Enterprise*.

Much of Desmond's reputation as a hotelier is based on his restoration of the former Americana in Albany, N.Y. The colonial-style hotel, now renamed The Desmond, is regarded as among the classiest in the region. In Riverside, Desmond said he plans to open 80 of the Mission Inn's 240 rooms on Labor Day, with the rest of the hotel opening later in the fall.

The Mission Inn was built in eclectic architectural styles over a 40-year period by its original owner, Frank Augustus Miller. In the 1970s, the city took over the hotel and tried to run it, a move that city officials now say was a mistake. The city sold the hotel in the mid-1980s to Carley, but the firm was unable to complete the massive restoration before Chemical Bank foreclosed on the mortgage. The city itself helped win an urban development action grant for the project and spent $10 million on a parking structure adjacent to the Inn.

Chemical Bank apparently took a financial bath on the sale to Desmond. As Carley's lender, the bank took over the shuttered hotel in 1988. In the summer of 1989, however, Chemical decided to finish the restoration project — and even honored $4.7 million in city loans to the project. Two years ago, insisting that they wanted at least $28 million for the property, Chemical Bank officials said the Mission Inn was "a unique asset in a high-growth market with no real competition." However, the intervening two years have not been kind to real estate markets anywhere in California.

The Inn is seen as a catalyst for other economic activity downtown. For example, the city is seeking to double the size of its downtown convention center, located near the Inn, and the Inn's hotel rooms are seen as vital assets in making the convention center a success. ❑

L.A. Riots Put Enterprise Zones at the Top of the Urban Agenda

Continued from page 1

inner-city neighborhoods.

Under the enterprise zone idea, businesses are given tax credits — and some times lighter regulatory burdens — in exchange for locating in designated inner-city areas. The idea has been promoted by new-wave conservatives such as Kemp since the early Reagan years. Enterprise-zone enthusiasts point to the large numbers of jobs created under state programs throughout the country, but critics say they have not been effective. In a recent survey of the enterprise zone scene, David Bergman, editor of the American Planning Association's public investment newsletter, concluded that enterprise zones often help existing businesses rather than foster new ones, and also found that many states undermine their programs by providing too many zones. At the state level, Bergman says, "the tax breaks aren't really strong enough to really attract business. Just making a tax holiday is not enough to make them successful."

> *"It is hard to predict how successful enterprise zones would be if hefty federal tax incentives were also available."*

Statistics on California enterprise zones appear positive, though data gaps exist and the results do not appear promising for many of the state's most seriously depressed neighborhoods. The state currently has two kinds of enterprise zones, the result of the legislature's inability to agree on one bill in 1986. The Republican version, sponsored by Assemblyman Pat Nolan, R-Glendale, automatically makes all businesses located in enterprise zones eligible for state income tax credits; in addition, employees who work in zones can also claim a tax credit. The Democratic version, sponsored by then-Assemblywoman Maxine Waters (she now represents South-Central L.A. in the U.S. Congress), requires businesses to hire at least 50% of their work force from within the zone to qualify for the tax credits. Both offer up to $19,000 per employee in state tax credits, as well as sales-tax credits on purchases of manufacturing equipment of up to $20 million a year. Lenders can also escape state taxes on interest earned on loans to enterprise-zone businesses.

Currently, the state has designated 20 Nolan zones (including two in L.A. County) and nine Waters zones (including five in L.A. County). According to the state Department of Commerce, which administers the program, between 1987 and 1990, some 500 businesses created 10 or more jobs in enterprise zones, for a total of approximately 27,000 jobs. In 1990, 5,300 building permits were issued in enterprise zones, with a value of more than $1 billion.

Performance of the zones varies greatly, however. West Sacramento, for example, reported 21 new business locations, 302 new business licenses, and more than 4,800 new jobs under the enterprise zone program. By contrast, however, the enormous Watts enterprise zone — a combined city/county zone that covers 36 square miles — reported only four new businesses, 474 new business licenses, and 116 jobs created.

Reynold Blight, administrator of the City of L.A.'s enterprise zone program, says that in urban areas Nolan zones are doing better than Waters zones. "Our experience is that the certification process (required under Waters) is a barrier," he said. (The Watts zone is a Waters zone.) By contrast, the Waters zones — created at the insistence of inner-city legislators — are faring best in rural areas, according to Sam Paredes, manager of the enterprise zone program at the Commerce Department. Unlike their counterparts in urban areas, businesses in rural zones have comparatively few competitors for the labor force that lives within the zone.

The Bush Administration's most recent proposal calls for hefty federal tax credits to enterprise zone businesses — a move that might help make the zones more effective. The Bush package calls for up to $250,000 in tax credits for individual enterprise-zone businesses; the elimination of capital-gains taxes on the sale of property or equipment held for at least two years; and a refundable income-tax credit for unemployed people who take jobs in the zones, to ensure that workers receive more money working than they would receive on welfare. Participating businesses would be required to draw at least 30% of their workforce from zone residents. Although it is unclear whether any business could "zero out" its total tax obligation through enterprise-zone tax breaks, businesses with assets of less than $5 million, and a high number of employees, would benefit most under the Bush plan, according to John Flynn, a spokesman for the federal Department of Housing & Urban Development.

A Democrat-sponsored enterprise zone package is also working its way through Congress. The Democratic version would authorize tax breaks for 15 years, rather than the Republican 12. As in the Republican version, the Democrats would permit businesses to defer capital-gains taxes, but the businesses would be required to reinvest the sale proceeds back into zone projects.

Assemblyman Nolan said he is enthusiastic about the federal proposals. "A federal designation with federal tax breaks would be a immense help because states are only dealing with a small percentage of taxes paid by the company," he said. Rep. Waters, author of the other California bill, could not be reached for comment, but she has campaigned actively for her version of enterprise zones in Congress, again emphasizing the hiring of local residents and job training. Blight, the L.A. enterprise zone administrator, said he prefers Congress's version to the Bush version because he disagrees with the emphasis on capital-gains incentives. "It's the wrong kind of incentive," he said. "We are not trying to encourage businesses to sell out. We want to give businesses the incentive to locate (in enterprise zones) in the first place."

In California, the federal enterprise zone program is likely to be coupled with state redevelopment efforts. In designating enterprise zones, the state has always given priority to areas that overlap with redevelopment project areas, as both the Watts and Wilmington enterprise zones do in Los Angeles.

Marilyn Zorn, assistant administrator of the Los Angeles Community Redevelopment Agency, said that redevelopment deals can assist businesses in the areas of "fixed assets," such as land write-downs and low-interest-rate construction loans. Redevelopment agencies are also a conduct of federal community development money, particularly block grants.

Though redevelopment agencies can provide real estate subsidies, and federal enterprise zones can help with operating expenses, neither can provide businesses with working capital, which remains, arguably, the biggest need of small, minority-owned businesses. However, given high deficits and anti-tax sentiment in this presidential election year, further government subsidies may not be forthcoming — meaning that federal enterprise zones, used in combination with local incentives such as redevelopment may be the best deal that inner-city businesses will get in the near future. "Nobody has all the resources they wish they had," said CRA's Zorn. "It's important to coordinate all these types of resources, and build on what is available." ❑

CP&DR LEGAL DIGEST

Lucas Ruling Opens Door for More Takings Cases

Despite Opinion's Narrow Focus, Case Could Reshape Land-Use Law

By Kenneth Jost

The U.S. Supreme Court's pro-landowner ruling in the closely watched Lucas case was widely described as narrow. But the decision opened the door to new "takings" cases just enough for property owners to cheer, and regulators to fear, the likely impact.

In a 6-3 opinion issued on June 29, the last day of the current term, the Supreme Court ruled that a landowner who is denied "all economically beneficial or productive use of his land" by restrictive land-use regulations is entitled to compensation, unless a basis for restricting use of the property can be found in "common law" — law derived from ancient customs and tradition — rather than legislative action.

Writing for the majority in *Lucas v. South Carolina Coastal Council*, No. 91-453, 92 Daily Journal D.A.R. 9030, Justice Antonin Scalia said: "Any limitation so severe [as to prohibit all economic use of land] cannot be newly legislated or decreed (without compensation) but must inhere in the title itself, in the restrictions that background principles of the State's law of property and nuisance already place upon land ownership."

The court's ruling left many questions unanswered, including the immediate issue of whether South Carolina authorities will have to pay developer David Lucas because of a 1988 beach management law that has prevented him from building on two beachfront lots on the Isle of Palms, near Charleston. The justices stopped short of reinstating the $1.2 million award that Lucas won at the trial level and that the state's supreme court reversed. Instead, the justices remanded the case to the South Carolina high court, with an admonition that the Coastal Council had to come up with new evidence or legal arguments to avoid paying Lucas.

Experts and advocates on all sides of the issue predicted more lawsuits by property owners demanding compensation, more critical scrutiny of government regulations, more negotiations between landowners and government agencies, and more uncertainty at least for a while.

"There are enough signals in the opinion that it will have wide-ranging effects on all sorts of government regulations," said Richard Samp of the Washington Legal Foundation, a conservative public interest group that has been active in the property rights movement. "There are enough unanswered questions that it remains to be seen exactly how it will be implemented by the lower courts."

Katherine E. Stone of Freilich, Stone, Leitner & Carlisle in Los Angeles, who filed a brief in the case on behalf of 75 cities and counties in California, said the ruling will make land-use regulation more difficult. "I think local governments are going to have to look more closely at their ordinances and their effects in site-specific ways and provide some relief valves in the form of variances," Stone said. "And I think there will be lots more lawsuits, which is just what local governments don't need right now."

The ruling can be expected to show up in new litigation involving coastal conservation, wetlands protection, endangered species, and possibly some growth-management plans.

For property owners, the immediate task will be to try to fit within what the court described as the rare situation where regulations deny "all economically beneficial or productive use" of their land. Meanwhile, government lawyers will then have to try to use the common-law legal defense that the court preserved.

"Environmentalists should be scrambling to look for cases that say building on coastlines or in environmentally sensitive areas can be prohibited as a nuisance," said Jerold Kayden, a senior fellow at the Lincoln Institute for Land Policy in Cambridge, Massachusetts. Kayden helped prepare a brief for the National Trust for Historic Preservation in support of the defendant in the case, the South Carolina Coastal Council.

The ruling in *Lucas* was the latest in the Supreme Court's sometimes confusing interpretations of the Fifth Amendment's requirement that the government cannot "take" private property without paying "just compensation." In a series of decisions beginning with *Pennsylvania Coal Co. v. Mahon* in 1922, the court has recognized that government regulations may sometimes amount to a taking. In a recent case from California — *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 485 U.S. 825 (1987) — the court made clear that property owners must be compensated when regulations deprive them of all economic use of their land.

However, as far back as the case of *Mugler v. Kansas* in 1887, the court also ruled that the government may shut down noxious land uses without compensation when the action is taken to prevent serious harm to the public.

In general, the court has used a sort of balancing test between the restrictions on the property owner and the harm that the government was seeking to prevent. In Lucas, however, Scalia said previous cases had made clear that the government could not rely on that type of balancing test to avoid compensation if the regulations prevented "all economically viable use" of property.

For this reason, property-rights advocates were quick to seize on the ruling as a victory despite its narrow basis, while environmentalists, historic preservationists, and others generally played down its importance.

"The court has clearly struck a blow for property rights," said the Washington Legal Foundation's Samp.

But Paul Edmondson, acting general counsel of the National Trust for Historic Preservation, called the ruling "a significant defeat" for property rights advocates. "This limited ruling should not discourage communities from adopting and applying land use, environmental, and preservation controls," Edmondson said.

The immediate effect in California was similarly uncertain and disputed. Richard Frank, the deputy state attorney general responsible for Coastal Commission matters, noted that unlike South Carolina's beachfront management law, California's coastal act generally relies on a case-by-case approach rather than broad, absolute construction bans.

But Andrew Hartzell, an attorney with Pettis, Tester, Kruse & Krinsky in Irvine, which has been representing Southern California property owners in Endangered Species Act disputes, said the ruling may bear directly on those cases. "The problem is that a lot of species and their biology lend themselves to the situation that if the government tells the owner they have that

species on the property and they have to preserve the habitat, the owner's going to have no other use of the land," Hartzell said.

However, Tim Searchinger, a Vermont lawyer with the Environmental Defense Fund said that it is rare for federal enforcement of the Endangered Species Act or wetlands regulations to leave a property owner with no use of the land. "A good deal of wetlands in California are in the San Francisco Bay area, and a lot of them are preserved as private duck hunting areas," he said.

The biggest question mark in the court's ruling is how much discretion lower courts have to broaden common-law nuisance theories to cover newly discovered environmental harms. The two dissenting justices — Harry Blackmun and John Paul Stevens — said the decision would have the effect of freezing the development of nuisance law and barring consideration of new legislative enactments to justify land use restrictions. "There is nothing magical in the reasoning of judges long dead," Blackmun wrote. (Justice David Souter did not vote to dissent, but, rather, stated that he believed the case should not have been heard.)

In addition, Justice Anthony Kennedy, while concurring with the result in the case, wrote separately to say that nuisance law should not be "the sole source of state authority to impose severe restrictions.

"Coastal property may present such unique concerns for a fragile land system that the state can go further in regulating its development and use than the common law of nuisance might otherwise permit," Kennedy wrote.

In one passage, however, Scalia wrote that a property owner "necessarily expects the uses of his property to be restricted, from time to time, by various measures newly enacted by the State in legitimate exercise of its police powers." Kayden of the Lincoln Institute called that language a "helpful" indication that "nuisance law and property law evolve over time."

At the same time, Scalia indicated judges should give less deference to legislative findings as a basis for justifying what it termed "confiscatory regulations." Michael Berger of the Santa Monica firm of Berger & Norton, the winning lawyer in the First English case, said he was pleased with that part of the ruling.

"The Supreme Court said, 'Baloney, those findings aren't worth anything," Berger said, referring to the findings that South Carolina lawmakers included in the Beachfront Management Act. "I think that's a substantial step forward."

But Searchinger of the Environment Defense Fund called shifting responsibility from the legislature to the courts "inappropriate." "The court has taken the decision away from legislatures, working with scientists, and transferred it to judges," he said. "It's going to make for a lot of litigation, and occasionally taxpayers are going to get hit."

Property rights advocates themselves, however, were not ready to predict any quick increase in compensation awards under the new ruling. John Delaney, a Washington, D.C., area lawyer for developers, said more than 90% of the takings cases are decided in favor of the government. He said the effect of the new ruling was far from certain.

In South Carolina, C.C. Harness, general counsel for the Coastal Council, told a news conference that the ruling allowed the state to offer new evidence on the harm created by beachfront construction, on whether Lucas had actually lost all use of his property, and on Lucas's right to apply for a special permit under an amendment to the beach management law enacted in 1990 while the case was pending. "It appears to be far from over," said Donna Gross, a spokeswoman for the South Carolina Coastal Council.

But Lucas's attorney, A. Camden Lewis, of Columbia, S.C., predicted an early end to the litigation. "I would think that the Supreme Court of South Carolina would end it as soon as they get back from summer vacation," Lewis said. He noted that the U.S. Supreme Court's ruling had indicated doubts about the state's ability to uphold the restriction on construction under a common-law nuisance theory.

"The Supreme Court said that it was highly unlikely that building a house could be prohibited," Lewis said. "Mr. Lucas bought his property. There were houses all around it. I can't imagine them letting all those houses stand and not let Mr. Lucas build."

Lucas had previously refused to seek a special permit to build on the two lots, which he bought for $975,000 in 1986. The Coastal Council's Gross indicated Lucas may be entitled to the permit if he applies for one. "People in Mr. Lucas's neighborhood have already received these permits," she said.

Lewis said that even if Lucas is granted a permit, he will still seek damages for the "temporary taking" of his property — based on an estimated rental value of $100,000 per year for the four years of the litigation. In a footnote, the high court appeared to indicate Lucas would be entitled to compensation for the interim period, but the Coastal Council's Gross disputed that implication. "I didn't read it that way," she said. "I don't think the court made a decision on that." ❑

■ The Case:
Lucas v. South Carolina Coastal Council, 91-453, 92 Daily Journal D.A.R. 9030

■ The Lawyers:
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LUCAS EXCERPTS

Excepts From Majority Opinion

Following are excerpts from the U.S. Supreme Court's ruling in Lucas v. South Carolina Coastal Council, *written by Justice Antonin Scalia:*

It is correct that many of our prior opinions have suggested that "harmful or noxious use" of property may be proscribed by government regulation without the requirement of compensation. For a number of reasons, however, we think the South Carolina Supreme Court was too quick to conclude that principle decides the present case....

When it is understood that "prevention of harmful use" was merely our early formulation of the police power justification necessary to sustain (without compensation) *any* diminution in value; and that the distinction between regulation that "prevents harmful use" and that which "confers benefits" is difficult, if not impossible, to discern on an objective, value-free basis; it becomes self-evident that the noxious-use logic cannot serve as a touchstone to distinguish regulatory "takings" — which require compensation — from regulatory privations that do not require compensation. *A fortiori* the legislature's recitation of a noxious-use justification cannot be the basis for departing from our categorical rule that total regulatory takings must be compensated. If it were, departure would virtually always be allowed....

Where the state seeks to sustain regulation that deprives land of all economically beneficial use, we think it may resist compensation only if the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests were not part of his title to begin with....In the case of land ... we think the notion pressed by the [Coastal] Council that title is somehow held subject to the "implied limitation" that the State may subsequently eliminate all economically valuable use is inconsistent with the historical compact recorded in the Takings Clause that has become part of our constitutional culture.

Where "permanent physical occupation" of land is concerned, we have refused to allow the government to decree it anew (without compensation, no matter how weighty the asserted "public interests" involved....We believe similar treatment must be accorded confiscatory regulations, i.e., regulations that prohibited all economically beneficial use of land: Any limitation so severe cannot be newly legislated or decreed (without compensation) but must inhere in the title itself, in the restrictions that background principles of the state's law of property and nuisance already place upon land ownership. A law or decree with such an effect must, in other words, do no more than duplicate the result that could have been achieved in the courts — by adjacent landowners (or other uniquely affected persons) under the state's law of private nuisance, or by the state under its complementary power to abate nuisances that affect the public generally or otherwise....

The "total taking" inquiry we require today will ordinarily entail ... analysis of, among other things, the degree of harm to public lands and resources, or adjacent private property, posed by the claimant's proposed activities....The fact that a particular use has long been engaged in by similarly situated owners ordinarily imports a lack of any common-law prohibition (though changed circumstances or new knowledge may make what was previously permissible no longer so....).

...South Carolina must identify background principles of nuisance and property law that prohibit the uses (Lucas) now intends in the circumstances in which the property is presently found. Only on this showing can the state fairly claim that, in proscribing all beneficial uses, the Beachfront Management Act is taking nothing."

Excerpts From Concurring Opinion Of Justice Anthony Kennedy:

The common law of nuisance is too narrow a confine for the exercise of regulatory power in a complex and interdependent society....The state should not be prevented from enacting new regulatory initiatives in response to changing conditions, and courts must consider all reasonable expectations whatever their source....I agree with the Court that nuisance prevention accords with the most common expectations of property owners who face regulations, but I do not believe this can be the sole source of state authority to impose severe restrictions. Coastal property may present such unique concerns for a fragile land system that the state can go further in regulating its development and use than the common law of nuisance might otherwise permit.

The Supreme Court of South Carolina erred, in my view, by reciting the general purposes for which the state regulations were enacted without a determination that they were in afford with the owner's reasonable expectations and therefore sufficient to support a severe restriction on specific parcels of property....

Excerpts From Dissenting Opinion Of Justice Harry Blackmun:

Today the Court launches a missile to kill a mouse....

[I] question the court's wisdom in issuing sweeping new rules to decide such a narrow case. Surely, as Justice Kennedy demonstrates, the court could have reached the result it wanted without inflicting this damage upon our Taking Clause jurisprudence....

The decision [of the South Carolina Supreme Court] rested on two premises that until today were unassailable — that the state has the power to prevent any use of property it finds to be harmful to its citizens, and that a state statute is entitled to a presumption of constitutionality....

The Court creates its new taking jurisprudence based on the trial court's finding that the property has lost all economic value. This finding is almost certainly erroneous....Petitioner can picnic, swim, camp in a tent, or live on the property in a moveable trailer. State courts frequently have recognized that land has economic value where the only residual economic uses are recreation or camping....

When the government regulation prevents the owner from any economically valuable use of his property, the private interest is unquestionably substantial, but we have never before held that no public interest can outweigh it....

Common-law public and private nuisance law is simply a determination whether a particular use causes harm....There is nothing magical in the reasoning of judges long dead. They determined a harm in the same way as state judges and legislatures do today. If judges in the 18th and 19th centuries can distinguish a harm from a benefit, why not judges in the 20th century, and if judges can, why not legislators? There simply is no reason to believe that new interpretations of the hoary common law nuisance doctrine will be particularly "objective" or "value-free."...

Excerpts from Dissenting Opinion Of Justice John Paul Stevens:

...The categorical rule the court establishes in an unsound and unwise addition to the law and the court's formulation of the exception to that rule is too rigid and too narrow....

The Court's holding today effectively freezes the state's common law, denying the legislature most of its traditional power to revise the law governing the rights and uses of property. Until today, I had thought that we had long abandoned this approach to constitutional law....

Arresting the development of the common law is not only a departure from our prior decisions; it is also profoundly unwise. The human condition is one of constant learning and evolution — both moral and practical. Legislatures implement that new learning; in doing so they must often revise the definition of property and the rights of property owners. Thus, when the Nation came to understand that slavery was morally wrong and mandated the emancipation of all slaves, it, in effect, redefined "property." On a lesser scale, our ongoing self-education produces similar changes in the rights of property owners: New appreciation of the significant of endangered species,...the importance of wetlands,...and the vulnerability of coastal lands...shapes our evolving understanding of property rights....❑

TAXATION

High Court Rejects Challenge To Proposition 13

Invoking the principles of the landmark zoning case *Euclid v. Ambler*, the U.S. Supreme Court has upheld the constitutionality of Proposition 13.

By an 8-1 vote, the high court rejected taxpayer Stephanie Nordlinger's argument that Proposition 13 violated the U.S. Constitution's equal protection provisions, though the majority acknowledged that the 1978 ballot initiative has created vast inequities in property-tax burdens among homeowners.

Nordlinger's attack on Proposition 13 centered on the "reassessment-on-sale" provisions of the initiative, which permit a reassessment of property only when the property is sold or when new buildings are constructed. Nordlinger produced evidence showing that recent home buyers in Los Angeles sometimes pay up to 10 times as much property tax as the longtime owners of equivalent, adjacent properties.

"In general, the Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification," Justice Harry Blackmun wrote for the majority in *Nordlinger v. Hahn*, 90-1912.. In the case of Proposition 13, Blackmun said, at least two justifiable policy reasons exist. First, Blackmun referred to the landmark zoning case *Euclid v. Ambler*, 272 U.S. 365 (1926), in concluding that California "has a legitimate interest in local neighborhood preservation, continuity, and stability" and "therefore can

legitimately decide to structure its tax system to discourage rapid turnover." And second, the reassessment-on-sale provisions of Proposition 13 also further the state's goal of meeting longtime property owners' "vested expectations" of a predictable level of property taxes.

Passed by initiative in 1978, Proposition 13 essentially restructured local government finance, and, to a certain extent, land-use planning as well. The measure amended the state constitution to restrict property-tax rates to 1% of assessed valuation, and prohibited reassessment on all property except when the land is sold or new structures are erected. Another provision permits transfer of up to $1 million worth of property to a property owner's children without reassessment. The measure was designed to protect home owners on fixed incomes.

Proposition 13 cut property tax revenues by two-thirds. The measure increased local governments' financial dependence on the state and increased the competition among cities and counties for fiscally attractive land uses — especially retail developments, which are prized for the sales taxes they produce. The result has been a much more volatile financial situation; in the recession of the last two years, cities and counties have found themselves hostage to declining sales-tax revenues and dwindling state support, and many civil servants — including planners — have been laid off in the last few months.

The Supreme Court invited a legal challenge to Proposition 13 in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, 488 U.S. 336 (1989). In that case, the court struck down the practice of West Virginia local assessors who reassessed property only upon a sale of that property, even though the state tax code did not call for such a practice. (*CP&DR*, March 1989).

The Supreme Court distinguished the *Nordlinger* case from the *Allegheny Pittsburgh* case by saying the West Virginia assessment practices were not rationally related to any stated public purpose.

The only dissenter on the court was Justice John Paul Stevens, a former city attorney, who said Proposition 13 "sweeps too broadly and operates too indiscriminately." He added: "A state-wide across-the-board tax windfall for all property owners and their descendants is no more a 'rational' means for protecting (homeowners on fixed incomes) than a blanket tax exemption for all taxpayers named Smith would be a rational means to protect a particular taxpayer named Smith who demonstrated difficulty paying her tax bill."

Stevens did not distinguish between the *Allegheny Pittsburgh* case and the *Nordlinger* case, saying, "That the discrimination in *Allegheny Pittsburgh* was de facto and the discrimination in this case de jure makes little difference." ❑

■ The Case:
Nordlinger v. Hahn, 90-1912, 92 Daily Journal D.A.R. 8196.

■ The Lawyers:
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ENVIRONMENTAL LAW

High Court Narrows Standing In Endangered Species Lawsuits

By Kenneth Jost

Environmental litigation experts are predicting more critical scrutiny of plaintiffs' legal standing to bring environmental suits as a result of the U.S. Supreme Court's June 12 decision in a closely watched Endangered Species Act (FSA) case.

The court's ruling dismissed a challenge by the environmental group Defenders of Wildlife against an Interior Department regulation that the agency consultation requirements of the Endangered Species Act do not apply to U.S.-funded projects overseas. Without reaching the substantive issue, six of the justices joined in holding that Defenders had failed to show sufficient evidence of direct injury from the policy to bring the suit.

"The decision could be read to drastically reduce environmental plaintiffs' ability to get into court," said Bill Snape, associate counsel in Defenders' Washington, D.C., office. Snape said the ruling "makes it clear that even in domestic cases we have to watch our step and prove that we're really going to be injured if a certain action occurs."

The wildlife group challenged the 1986 Interior Department regulation in connection with two projects being funded by U.S. foreign aid in Egypt and Sri Lanka. Group members sought to show their legal standing to bring the suit by describing general plans to visit the areas in question and their general interest in wildlife.

In an opinion written by Justice Antonin Scalia, the court found those claims too tenuous to meet the legal standing requirements for environmental suits first set out in a 1972 case, *Sierra Club v. Morton*. That case held aesthetic and environmental interests can be used to show legal standing, but it still required plaintiffs to claim a direct injury rather than a general policy disagreement to bring suit.

Rob Thornton, an attorney with Nossaman, Guthner, Knox & Elliott in Irvine who represents developers in land use cases, said the decision is "a step back" from the Sierra Club case. "It's pretty clear that trees don't have standing," Thornton said. "Now, even people don't have standing."

The court also rejected the wildlife group's second argument that it had sustained what it called a "procedural injury" because of the Interior Department's failure to consult with the Agency for International Department (AID) about complying with the Endangered Species Act. Scalia said that injury also was not concrete enough and, in addition, would not be "redressable" in a suit against the Interior Department but in litigation against the foreign aid agency.

Snape called the redressability section "the most scary" part of Scalia's opinion. "He seems to say that consultation is basically not that important," Snape said. In practice, though, the Endangered Species Act's consultation process is the key part of the law for environmental groups. "I can't tell you how big that process is," Snape said.

The issues in the case split the justices several different ways. Chief Justice William Rehnquist and Justices Byron White and Clarence Thomas joined all of Scalia's opinion. Justices Anthony Kennedy and David Souter joined most of Scalia's opinion, but declined to join the "redressability" section — thus weakening the value of that passage as a precedent in future cases.

Three justices dissented on the standing issue: Harry Blackmun, Sandra Day O'Connor, and John Paul Stevens. Blackmun, joined by O'Connor, harshly characterized the majority's decision as "a slash-and-burn expedition through the law of environmental standing." Stevens also disagreed with the majority on standing, but he joined in voting to dismiss the suit by concluding that the Endangered Species Act in fact does not apply to U.S.-funded projects overseas. ❑

■ The Case:
Lujan v. Defenders of Wildlife, 90-1424.

■ The Lawyers:
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EDITOR'S NOTE

Because of the extensive *CP&DR Legal Digest* coverage of *Lucas v. Coastal Council* and other U.S. Supreme Court decisions this month, we were unable to include coverage of all important state Court of Appeal and Ninth Circuit rulings handed down in the last few weeks. Complete coverage of all these rulings will appear in the August *CP&DR Legal Digest*. ❑

Slow-Growth Measures Continue to Win at Polls

Slow-growth sentiment appeared to predominate during the June local elections around California, but it was tempered by some concern for the economy and higher taxes — especially in races for city council and county supervisor.

As usual, slow-growth forces prevailed on most land-use issues placed on the ballot in June, winning on 7 of 10 issues around the state. But in selecting office-holders, voters sent a more mixed message.

In the San Diego mayor's race, slow-growth dark-horse Peter Navarro forced the favorite, County Supervisor Susan Golding, into a runoff. But in the traditionally slow-growth North County suburbs of San Diego, several slow-growth incumbents lost to more business-oriented candidates.

In Santa Barbara County, the slow-growth majority on the Board of Supervisors was threatened by strong showings in the primary by business-oriented candidates. And in counties as diverse as Sonoma and Riverside, growth issues played a major role in supervisorial races headed for a November runoff.

On ballot measures, voters took the no-growth position on 7 of 10 issues on the ballot throughout the state. The 70% success rate is consistent with election results dating back to 1986, when *CP&DR* first started tabulating them. Seven of the 10 issues involved proposals for growth-inducing policies — and voters shot down six of the seven. The other three ballot measures involved slow-growth policy issues. One of the three emerged victorious — but the two defeated measures would have tied slow-growth policies to tax increases. ❑

Roundup of Local Ballot Measures

Kings County

City of Hanford

Hanford voters defeated the city's proposed downtown redevelopment plan. The plan ran into citizen opposition despite the city's promise not to use eminent domain inside the project area.

Measure A: No, 60.1%

Marin County

More than 60% of Marin voters favored levying a $25 parcel tax for the next four years, which would be used to raise $8 million to purchase open space and agricultural land. However, the measure required a two-thirds vote for passage.

Measure A: Yes, 61.9% (two-thirds required)

Orange County

City of Dana Point

Dana Point voters overwhelmingly approved a requirement that voter approval be secured all future zone changes that would permit on-shore support facilities for off-shore oil drilling. Many other coastal communities approved similar measures in 1986-88.

Measure V: Yes, 88.6%.

City of Los Alamitos

Voters in Los Alamitos rejected the city's proposed redevelopment plan, and prohibited the use of residential property and/or eminent domain in future redevelopment projects.

Measure W (redevelopment plan): No, 52.8%
Measure X (prohibiting eminent domain): Yes, 75.4%.

City of Orange

A majority of Orange voters approved a proposal to float a $25 million bond issue to buy the land around Santiago Creek and turn it into a park. However, a two-thirds vote was required; now, the William Lyon Co. will develop the parcel, as approved by the City Council in May.

Measure Y: Yes, 54.3% (two-thirds required)

City of Mission Viejo

Voters in Mission Viejo rejected the City Council's decision to build a Civic Center on land donated by the Mission Viejo Co.. In return, the company was to received additional development rights.

Measure A: No, 75.3%

Sacramento County

City of Sacramento

By a margin of only 227 votes out of almost 90,000 cast, voters in Sacramento decided to overturn a 1987 City Council decision to overhaul the Memorial Auditorium. Measure H called on the city to restore the auditorium as a multi-purpose arena, rather than reconstructing it as a smaller performing arts center.

Measure H: Yes, 50.1%.

Santa Clara County

City of Morgan Hill

Morgan Hill voters rejected a time extension of the city's redevelopment project. City officials had wanted to extend the program to the year 2036. Now the program will cease to exist within two years, when a $100 million revenue limit is reached.

Measure E: No, 58.8%.

City of Palo Alto

Voters in Palo Alto approved two measures affirming the City Council's decision to approve a 45,000-square-foot expansion of the Palo Alto Medical Foundation. Residential neighbors had objected to the project.

Measure C: Yes, 58.5%.
Measure D: Yes, 57.3%.

City of San Jose

San Jose voters dealt a serious blow to the city's attempts to lure the San Francisco Giants baseball team. Voters rejected a ballot measures designed to affirm the city's decision to build a $265 million stadium for the tam and finance the stadium with a utility tax increase. The measure was opposed by important business interests. (*CP&DR Deals*, March 1992.)

Measure G: No, 54.1%

Incorporations:

Hacienda Heights: No, 53.1%.

Mira Loma: No, 63%

Jurupa: No, 76% ❑

Democrats Push Growth Management Package in Legislature

Continued from page 1

-thirds vote now required under Proposition 13.

Despite the bill's passage in committee, however, it faces opposition from Republicans on the Assembly floor, and Wilson aides say the governor's earlier threat to veto any growth-management bill that does not have his imprint should still be taken seriously.

The committee also approved SB 797, by Sen. Rebecca Morgan, R-Los Altos Hills, which would permit the Bay Area to combine three regional agencies into one, even though Wilson Administration officials appear to oppose the bill. And Farr refused to permit passage of SB 434, the growth-management proposal by his Senate counterpart Marian Bergeson, R-Newport Beach, which now contains many of the land-use proposals from the Ueberroth Commission report. (*CP&DR*, May 1992). Bergeson is now pressuring Farr to bring the bill up for a vote soon.

The new Presley-Farr package emerged in late June, when various interest groups got tired of waiting for the Wilson Administration to bring forth its long-delayed growth management package. The Legislature has been waiting since January 1991, when Wilson asked for — and got — a one-year postponement of all growth management bills while he came up with his own proposals. In recent months he has said that budget and economic issues have pushed growth management onto the back burner.

By all accounts the Presley-Farr package was stitched together mostly by David Booher, a lobbyist who represents the California Council for Environmental and Economic Balance, a business group, and John White, a lobbyist who represents the Sierra Club and several air-pollution districts around the state. Key components are:

(1) A state-required "tiering" system that would require local governments to designate some land for development and some land for resource conservation. The tiering concept would have to be included in the local government's capital improvement plan.

(2) A state infrastructure bank, the California Public Improvement Authority, which would be funded by a proposed state bond issue and would allocate funds to local governments that follow the state's growth policies as articulated in the Presley-Farr package.

(3) A constitutional amendment that would permit local governments to issue bonds for housing, infrastructure, and land conservation with a simple majority vote. Again, local governments could not take advantage of this option unless the capital improvement plan incorporates the tiering concept.

The bill's supporters say they hope to place the entire issue on the November ballot. "We're hoping the governor would allow it on the ballot," said White. "We are comfortable that there's nothing in this package that would trigger a negative reaction from the governor." And by emphasizing the economic recovery aspects of the bill — especially the state and local bond issues for infrastructure, which could create jobs — the Democrats are clearly trying to outflank Wilson on the economic question.

But the Presley-Farr package has received a decidedly cool reaction from the governor's people, who continue to insist that the budget crisis and continuing recession mean that growth management must wait. "The governor, as the leader with a statewide mandate to address these issues, needs to be not only the key participant but to exercise a leadership role in this area, and (the Democrats) basically blindsided him," said Richard Sybert, director of the Governor's Office of Planning & Research and Wilson's top adviser on growth management. He accused the Democratic legislators of "politicizing" growth management by "nakedly presenting this as a Democrats' growth-management bill" and giving considerable credit to the Wilson's political enemy, Assembly Speaker Willie Brown.

Though the Presley-Farr package does contain policy proposals that Wilson himself has endorsed — including the simple-majority approval for local bonds — Sybert was critical of the land-tiering system. "If you want to preserve open space, preserve open space," he said, adding that "freezing development patterns doesn't make any more sense in 1992 than it did in 1849 or 1906."

At the June 30 Assembly committee hearing, the Presley-Farr package received broad-ranging support ranging from CCEEB and housing lobbyists to the Sierra Club and the Planning & Conservation League. The California Building Industry Association hasn't taken a position on the package; lobbyist Richard Lyon said he supports the infrastructure bank but "strongly objected" to the land tiering system. Under the proposal, local governments would have to designate four tiers: Tier 1 as "priority for economic investment," tier 2 as "planned development areas," Tier 3 as "urban reserve areas," and Tier 4 for "resource conservation and environmental protection."

Left out in the cold, for the time being at least, is Bergeson's SB 434, which until June was seen as a complementary bill to Presley's. Bergeson apparently did not like the treatment Farr gave to her bill, because in a curt letter dated July 7 she asked him to bring SB 434 up for a vote at the next meeting. "Instead of more hearings," she said, "I want to focus our colleagues' attention on action."

The Bergeson bill originally gave regions the option of creating infrastructure funding authorities with taxing authority — so long as the region's plans complied with state growth policies. Now, the bill requires the governor to prepare a "growth management strategy" every two years, and imposes new consistency requirements on local plans. The Bergeson bill also incorporates many recommendations of Gov. Wilson's Ueberroth Commission, including streamlining of the California Environmental Quality Act, a pilot program for consolidating industrial permits, and a state land-use appeals court.

Significantly, however, Bergeson has dropped "development boundary" language from her bill, which was similar in concept to the "tiering" requirements in the Presley bill. Originally, the Bergeson bill required regions that created fiscal authorities to also determine local development boundaries. Bergeson said she dropped the development boundary concept because it was controversial and she feared it would harm her ability to get the bill passed.

At the July 1 hearing, a variety of interest groups opposed the Bergeson bill, ranging from the County Supervisors Association of California to housing lobbyists to the Sierra Club. Saying "it's important to focus on one piece of legislation," Farr decided to keep Bergeson's bill bottled up in his committee while letting the Presley-Farr package out. The Presley-Farr package also faces a formidable hurdle on the Assembly floor, where the powerful and conservative Assembly Republicans are likely to try to shoot it down.

The Morgan bill, SB 797, emerged from the BayVision 20/20 task force, which was charged with finding ways to improve regional governance in the Bay Area. The bill would permit the merger of the Metropolitan Transportation Commission, the Association of Bay Area Governments, and the Bay Area Air Quality Management District. Although this move is very much in keeping with Wilson's philosophy of encouraging local governments to work together to solve regional problems, the Wilson Administration has been cool to this bill as well. Sybert called it "premature." ❑

■ Contacts:

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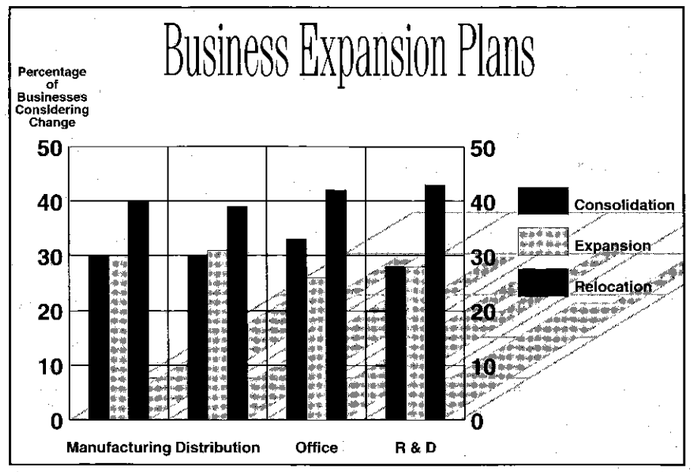
NUMBERS

Stephen Svete

California v. Utah? How About San Francisco v. San Ramon?

Rhetoric about California's anti-business environment has been hot in recent months, especially since the appearance last April of "California's Jobs and Future," the report of the Council on California's Competitiveness the so-called "Ueberroth Commission." Yet a just-release analysis of business location trends, published by a national real-estate think tank, seems to temper and, in many ways, contradict the Ueberroth Commission's findings.



The Ueberroth Commission painted a gloomy picture of businesses fleeing the state because of high costs and burdensome regulation. By contrast, the new real-estate report, "Reshaping America: The Migration of Corporate Jobs and Facilities," found that California — with roughly 12% of the nation's population — still accounts for 19% of the top 26 preferred locations in the country for both relocations and start-ups. And in the office-space marketplace, California bagged three of the top five slots.

There are important distinctions between the two reports. The location survey — published by Ernst & Young's Real estate Advisory Services Group and the National Real Estate Index — has a simple role: It identifies contemporary location factors for businesses moving or starting up. The Ernst & Young report incorporates a national perspective and is policy-neutral, whereas the Ueberroth Commission report's perspective is Sacramento's and its posture is both reactive and prescriptive.

The Ernst & Young report surveyed corporate real estate executives nationwide, and divided the business real estate market into three sectors: manufacturing, distribution, and office. There was a marked difference in the rankings depending on the real-estate sector involved — though the markets that ranked high in all three sectors were located in the Sunbelt or the West. The survey also found that the common links in all of the most preferred markets was a favorable cost structure for both business and personal living, a non-adversarial business-government relationship, and an educated work force. Among locations that ranked high in all three categories, the strongest markets were located in the Southeast, along the Interstate 85 corridor between Raleigh-Durham and Atlanta.

But California was not forgotten. Of 26 business-preferred markets that made the final Ernst & Young list, five were in California. And Orange County South, Sacramento, and the East Bay all made the top five list in the office sector. In manufacturing and distribution, California did not fare as well; only Fresno and the East Bay made the manufacturing list (though Fresno was among the top five nationally), and only Fresno made the distribution list.

The national rankings — and the California locations that made the list — also highlighted another ongoing trend of relevance to planners and developers: the suburbs continue to outstrip the central cities in all three categories. Only 12% of the respondents said they would likely choose a central business district location, while 43% would choose a suburban midrise or campus location. Among office-oriented companies, the CBD preference rose to 17% — but the suburban location was preferred by 80% of the respondents. These statistics suggest a different problematic for California's economy. Rather than California versus Nevada or Mexico, as the Ueberroth Commission suggests, perhaps the battle is more like San Francisco versus San Ramon, or downtown San Diego versus Carlsbad.

The Ueberroth Commission report delivered its strongest criticism to government regulation and bureaucratic entanglement. And while the Ernst & Young report agrees that "taxes/regulatory environment" is an important factor in locational decisions (more than 50% listed "local government attitude toward business" as "very important"), the biggest factor is something that shouldn't surprise anybody: straight dollars and cents. Eighty percent of the real estate decision-makers said low lease rates was "very important". The second most-important factor in the survey was proximity to an educated work force.

Fortunately, the Ueberroth Commission report identified "education and training" programs as one of the 12 "urgent actions" that the state needs to address. But in order to increase California's attractiveness to corporate decision-makers, the state's real estate may simply need to get cheaper. Lease rates and other cost factors are all but ignored in the Ueberroth report, so perhaps we'll have to wait, like good students of Adam Smith, for the silent hand of the free market to correct this cost discrepancy. Of course, such market correction has ominous implications for California's stubbornly sluggish real estate economy. Come to think of it, is 19% of the nation's markets all that bad? ❑

DEALS

Morris Newman

Indio Chooses Sales Tax Over Tradition

The City of Indio faced an agonizing choice in the late 1980s: either lose the town's largest retail center or gut an African-American neighborhood that dated from the 1920s. The city's solution, still pending the resolution of a lawsuit, may result in some of the more interesting residential relocation strategies of recent years. Yet the question of what is more important — preserving an historic neighborhood or generating retail revenues at a time when cities are on the edge of insolvency — remains a wrenching issue.

Located about 25 miles east of Palm Springs, Indio is a desert agricultural and railroad town of 40,000 people. In contrast to such well-heeled neighbors as Indian Wells and Rancho Mirage, the city is one of the poor relations of the Coachella Valley, with a large working-class population. Also unlike some of its neighbors, Indio also has a minority population, including the longstanding African-American neighborhood of Noble's Ranch.

> *"The story of Noble's Ranch is part of the tradition of utopian communities in Southern California."*

This same neighborhood is home of the Indio Fashion Mall, a 250,000-square-foot center anchored by Sears and Harris's. But retail development in surrounding communities has grown increasingly competitive, and both Sears and Harris's have reportedly threatened to leave the city if the mall is not expanded and more anchor stores are not brought in to boost foot traffic.

In 1987, the mall's owner, David E. Miller of Los Angeles, made a deal with the city to use redevelopment in order to expand the mall. Under the deal, the city would assemble a 23-acre site for the expansion of the mall, while Miller was to serve as a "bank" for the city — financing the land acquisition up front, with repayment coming later out of future tax increment. Meanwhile, the developer was to obtain construction financing for the mall expansion. To date, J.C. Penney's and Gottshalk's have signed commitments to serve as additional anchors, while the city has spent more than $2 million to acquire a little more than half the acreage — much of it from the adjacent Noble's Ranch residential neighborhood — and expects to spend at least that much to acquire the remaining land. Financing for the replacement housing is to come from the 20% tax-increment setaside for housing required by the state's redevelopment law.

The city has big expectations from the mall expansion. According to the most recent numbers, which city officials say may be out of date, sales at the mall will grow from the current $33 million to $96 million annually. The job base will increase from 500 jobs to 1,150. Property tax will double from $185,000 to about $360,000 (although that number does not figure in the lost property taxes from Noble's Ranch housing to be demolished), and Indio's share of sales tax would increase from $330,000 a year to almost $1 million a year. In post-Proposition 13 California, those numbers seemed too good to pass up.

Of course, there is the matter of relocating the town's black neighborhood. The story of Noble's Ranch is part of the tradition of utopian communities in Southern California. John Noble, a prosperous black man from Oklahoma, purchased some acreage outside Indio city limits from a Native American tribe and created a home for his extended family and friends; several of their descendants still live in the area. According to Kevin Reed, a lawyer with the NAACP Legal Defense Fund, the city's decision in 1987 to condemn 23 acres of Noble's Ranch is only the latest in a series of indignities which Indio has inflicted on the neighborhood since it was annexed in the 1940s. Residents of Noble's Ranch, he says, "were always the last to get city services, such as street lights and sewers. They always had to sue. In fact, they never received city water."

In 1990, the NAACP Legal Defense Fund filed a class action on behalf of all of Noble's Ranch residents, protesting condemnation and relocation. The challenge cites Title 8 of the federal Fair Housing Act. "In essence, our challenge is based on two grounds: the act of redeveloping the neighborhood was a racially discriminatory act, and, intentionally or not, it has had a grossly disproportionate impact on a racially or ethnically distinct neighborhood," says NAACP's Reed.

To date, the city has relocated about half of the neighborhood's 200 households. Seventy-four houses remain, along with 20 residential units in a county-owned multi-family building. As part of an expected settlement — one that could come within a month — city officials say they plan to keep the Noble's Ranch residents together by buying groups of adjoining homes in a new subdivision. One group of five homes and another of seven are intended for specific extended families and/or social groups. If implemented, this solution would represent a unique effort to preserve social groups after displacement.

Meanwhile, not all is well at the mall. Earlier this year, Miller told the city he could not obtain financing and he was canceling the development agreement unilaterally. Arguing that Miller doesn't have the option to pull out of the agreement, the city sued. Miller is reportedly looking for a buyer, and the city is hoping he finds one, although it seems unlikely that any buyer will be interested in the mall until all lawsuits are settled and the expansion site is cleared. But with a settlement expected soon, that day appears close at hand.

As a postscript, it is worth examining the city's relocation proposal. The relocation of intact parts of a neighborhood is a humane and innovative way of softening this blow. But it does not prevent the larger injury to social institutions and collective memory of the neighborhood, which is made up of both people and physical landmarks. As ingenious as this solution is, group relocation should not become a rationale to make displacement politically acceptable. Indio might convince us, by arguing long and hard, that it had no other choice than to destroy Noble's Ranch. We would argue that California cities should not be put in this position of having to choose between its tax base and its neighborhoods. A tax code that gives incentives to cities to destroy its neighborhoods in pursuit of big retailers should be rethought. And a redevelopment law that creates hardships for working-class people also needs intense re-examination. ❑