CP&DR
CALIFORNIA PLANNING & DEVELOPMENT REPORT
Vol. 7, No 9 — September 1992

INSIDE

CP&DR

is published monthly by

Torf Fulton Associates
1275 Sunnycrest Avenue
Ventura, CA 93003-1212
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Subscription Price:
$179 per year

ISSN No. 0891-382X

We can also be accessed electronically on
NEWSNET
For online access information call 800/345-1301

Localities Rethink Policy On Fees

Economic Realities Hit Hard; Some Go Up, Some Go Down

By Morris Newman

Development fees, which rose consistently in the fast-growth 1980s, are now in flux throughout the state, with some localities raising fees while others lower them. Though contradictory on the surface, both trends can be traced to the recession and the dramatic drop in construction levels in the last two years. Faced with less development activities, local governments around the state appear faced with the same hard choice: raising fees in hopes of maintaining revenue levels that will support the planning bureaucracy, or lowering them in order to encourage home construction and expand the property tax base.

Responses to the fee crisis do not fit any fixed pattern; fast-growing communities all over the state are taking different approaches to the issue. In Oxnard, the only city in Ventura County without formal growth controls, the city council has increased fees on single-family homes from $20,000 to $25,000 in the last year. By contrast, Stanislaus County, which has received alot of "spillover" home construction from the Bay Area in recent years, recently slashed fees *Continued on page 9*

Emissions Factors May Force Changes In Transportation

New ARB Statistics Suggest Speed Doesn't Help Air Quality

The state Air Resources Board has issued a new set of test results indicating that vehicle emissions don't always decline when vehicles travel faster, as air-pollution experts have long believed. Transportation planners around the state fear that these new "emissions factors" might make it harder for important transportation projects — even for public transit — to pass muster under the federal Clean Air Act.

Already, the South Coast Air Quality Management District has revised a pending regional carbon monoxide plan based on the new emissions factors. The new AQMD plan calls for the use of many transportation control measures that were listed only as contingency measures previously, including beefed-up ridesharing requirements, trip reduction programs for schools, and tougher growth management programs on the part of local governments.

Continued on page 10

L.A Redevelopment Bill Killed

A bill to allow streamlined creation of new redevelopment areas in South-Central Los Angeles has been shot down by a combination of anti-redevelopment activists and neighborhood leaders in the area.

There is some discussion about introducing a similar bill in the Legislature next year. And, of course, the Los Angeles Community Redevelopment Agency could proceed to create or expand redevelopment areas in South-Central under existing law. But the failure of AB 394 would seem to call into question the CRA's ability to play a role in rebuilding the riot-torn district. Even the bill's author, Assemblyman Curtis Tucker, D-Inglewood, told the Los Angeles Times that a different agency may need to be used to coordinate the redevelopment effort.

Tucker introduced AB 394 shortly after the Los Angeles riots in early May. (A similar bill for Long Beach, AB 598, was introduced by Assemblyman Dave Elder, D-Long Beach.) It was patterned *Continued on page 10*

In Brief

The City of Burbank **has dramatically curtailed the city council's discretionary review** over development projects. City officials said they hoped that an expedited review process would encourage new development and contribute to a hoped-for economic recovery.

The new ordinance eliminates discretionary review of projects in compliance with zoning laws. Large projects of regional significance would still receive scrutiny; these include residents developments with more than 500 units, hotels with more than 500 rooms, and commercial projects that will employ more than 1,000 people. Planning officials said expect the streamlined review process will apply to about half the projects in the city....

Open space holdings in the Bay Area have increased 13% in the last four years, according to a new survey by Greenbelt Alliance.

The survey found a total of 858,000 acres of public open space in the Bay Area, an increase of 93,000 acres since 1988. That's almost 20% of the total acreage of the nine-county region.

On a per capital basis, Napa has the most open space — almost 1 acre per person — while Alameda has the least, only .07 acres per person...

Spectacor Management **has given up its effort to renovate the Los Angeles Memorial Coliseum**, saying private financing could not be secured for the project.

Spectacor took over management of the Coliseum in 1990 and agreed to undertake the sputtering renovation effort. Subsequently, the company hired Los Angeles developer Wayne Ratkovich to rework the renovation plan, scaling it down from $240 million to $116 million. (*CP&DR Deals*, August 1992.) But in a recent letter to the Coliseum Commission, Spectacor said that it could not obtain financing without at least a loan guarantee from a public agency.

Mello-Roos bonding dropped dramatically throughout the state during the first half of 1992, according to the California Debt Advisory Commission.

CDAC reported that limited tax obligations, used primarily to finance Mello-Roos improvements and transportation projects, dropped from $1.3 billion during the first six months of 1991 to $279 million during the equivalent period this year.

Riverside County has adopted *a* **new school impact mitigation program** that requires school districts to submit mitigation plans to the county and seeks to address school facility issues during the environmental review process.

The county has been at the center of a firestorm over school construction finance since Fourth District Court of Appeal ruling in Murrieta Valley Unified School District v. County of Riverside, (*CP&DR*, May 1991). ❑

CALENDAR

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.
- **23: Role of the Planning Commissioner.** Davis. Sponsor: UC Davis Extension. Call (916) 757-8887.

October

- **1: Introduction to CEQA: A Step-by-Step Approach.** Los Angeles. Sponsor: UCLA Extension. Call: (310) 825-7885.
- **5: "Demystifying the Bond Underwriting Process and New Approaches to M/WBE Participation."** San Francisco. Sponsors: California Debt Advisory Commission and ABAG. Call: (510) 464-7932.
- **8-9: "Airing Out the Inland Empire"**: Statewide Air Quality Conference. Palm Springs. Sponsor: City of Fontana and others. Call: (714) 350-6710.
- **9: Grading Workshop for Land Use Planners.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **10-13: 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.
- **16: Easements and Related Land Use Law.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **22-25: Urban Land Institute Meeting**. Los Angeles. Sponsor: ULI. Call: (202) 624-7000.
- **28: Wetlands Impacts and Mitigations.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **29-30: Financing Public Infrastructure and Services in California.** Los Angeles. Sponsor: UCLA Extension. Call: (310) 825-7885.
- **30: Subdivision Map Act.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.

November

- **5: Wetlands and Endangered Species: A Primer for Planners.** Goleta. Sponsor: UC Santa Barbara Extension. Call: (805) 893-4200.
- **6: Zoning and Planning: A How-To Course.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **6: Hearing: "Resolving Land Use Disputes: Mediation, Arbitration, and Litigation."** Sacramento. Sponsor: Senate Local Government Committee. Call: (916) 445-9748.
- **7-10: American Planning Association, California Chapter, Conference.** Pasadena. Sponsor: CC/APA. Call: (213) 848-2039.
- **12: Katz Hollis Annual Redevelopment Legislative Conference.** Los Angeles. Sponsor: Katz Hollis Coren & Associates. Call: (213) 629-3065.
- **13: Katz Hollis Annual Redevelopment Legislative Conference.** Napa. Sponsor: Katz Hollis Coren & Associates. Call: (213) 629-3065.
- **13: Transportation Impacts of Land Use Planning.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **18: EIR/EIS Preparation and Review.** Davis. Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **20: Exactions, Dedications, and Vested Rights.** Ventura. Sponsor: UC Santa Barbara Extension. Call: (805) 893-4200.
- **20: Subdivision Map Act: An Advanced Seminar.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.

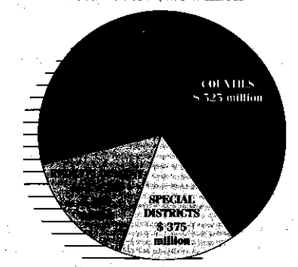
Localities Lose $1.3 Billion in Budget Cuts

Local governments lost more than $1 billion. of the state's total property tax in the financial reshuffling that led to the long-delayed budget deal on September 2.

Under the new state budget, local governments will lose $1.3 billion in property tax funds to school districts, thus lessening the school district burden on the state general fund. School districts have been more dependent on the general fund since the passage of AB 8, a local government bailout measure, in the wake of Proposition 13. (*CP&DR*, August 1992).

Of the $1.3 billion, $200 million is a one-time proportional hit on redevelopment agencies. The remaining $1.1 billion is a permanent shift. The state's 58 counties negotiated with each other on how to allocate $525 million in cuts. Cities will receive a 9% cut from last year's property tax revenues, which totals $200 million. Special districts are taking a 35% cut in property tax revenues, so long as that figure does not exceed 10% of their total revenues, for a total of $375 million.

Cuts in Local Property Tax Revenue
Total Cuts: $1.3 Billion



Source: Senate Local Government Committee

San Joaquin County Approves Two New Towns

But Project Which Began Debate Fails to Win Passage Before Board

San Joaquin County's Board of Supervisors have decided to include two large "new towns" in its 2010 General Plan. But the project that began all the new-town discussion in the county — Mountain House near Tracy — failed to win the board's approval. Hoping for a better outcome next time, Mountain House's developer — Trimark Communities — has filed a new application.

Meanwhile, a citizen group, the Coalition for Urban Management Excellence, is expected to suc the county over approval of the other two new towns. The group's lawsuit will challenge the county's findings as to why some mitigation measures were deleted.

By a 3-2 vote, the supervisors approved New Jerusalem, a 3,000-acre new town near Tracy proposed by developers Don and Paul Cose, and Riverbrook, a 900-acre project near Riverbank proposed by Escalon developer Ed Brown. The two approved projects are all that remain of nine new town proposals that had been in the works in San Joaquin County. In addition to the failed Mountain House project, four other projects were withdrawn early in the process, while two were shot down by the planning commission.

According to Kitty Walker, a senior planner for San Joaquin County, the approvals came in spite of the fact that both projects do not meet the new town guidelines laid out in the county's new general plan. New Jerusalem will be built on prime agricultural land, while Riverbrook does not provide a strong jobs/housing balance.

Even more of a surprise, however, was the fate of the Mountain House proposal, which even opponents agreed was the best of the lot. To be built on a 4,600-acre parcel west of Tracy, Mountain House calls for 16,000 new houses and 8,500 new jobs by 2010. The San Joaquin County Planning Commission recommended approval of the project.

However, Supervisor Evelyn Costa, who represents the Tracy area, had a conflict of interest on the Mountain House project because she and her husband own adjoining property. When Supervisor George Barber moved to approve the project, his motion did not receive a second, and the project never came to a vote. Even opponents were surprised. "We were ready to shrug our shoulders and say, we understand how they had to approve Mountain House," said citizen activist Glenda Hesseltine.

Mountain House may get a second chance. Costa, who did not run for re-election, will step down in January, to be replaced by Bob Cabral. Cabral has informally expressed support for the Mountain House project. Mountain House immediately reapplied for consideration before the Planning Commission. Trimark Project Manager Duane Grimsman said that because Mountain House has a certified environmental impact report, the project will need only a supplemental EIR. It could return to the Board of Supervisors for consideration within six months.

The Mountain House proposal was the project that originally prompted the county to deal with the question of "new towns" in its general plan update. Knowing the 2010 general plan was being prepared, Trimark Communities asked that Mountain House be included in the revised general plan, rather than being processed as an amendment ahead of the general plan itself.

Once Mountain House made the request, the county prepared guidelines for new towns to be included in the general plan, and eight other developers asked for consideration in the general plan as county-approved new towns. The general plan's new town policies call for them to minimize the impact on prime agricultural land, maintain a close jobs-housing balance, and maintain a distinguishable separation from surrounding communities.

Of the nine projects originally proposed, the planning commission approved only two — Mountain House and New Jerusalem. The commission rejected Riverbrook, a move that was appealed to the Board of Supervisors, as well as two other new towns proposed in the northern portion of the county, adjacent to Sacramento County. A sixth project, Tracy Hills, is continuing as part of the City of Tracy's general plan update.

Despite the failure to secure passage at the board, Grimsman said he thought moving the project forward as part of the 2010 general plan had been the right course of action because it helped secure public support for the project. "We thought it was the right thing to do," he said. "I wouldn't have done it any other way."

Of the two projects approved by the board, Riverbrook would appear to be more vulnerable to legal attack. By far the smallest of the three proposed new towns, Riverbrook proposed construction of 2,500 housing units, but only creation of only 400 jobs within 20 years. Riverbrook's developers said the project is really an extension of the existing community of Riverbank, located across the Stanislaus River in Stanislaus County. Hesseltine called the Riverbrook approval "pretty blatant" as an example of bad planning and said "that will be our focal point." ❑

- Contacts:
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  Duane Grimsman, Trimark Communities, (209) 836-1560.
  Mark Connolly, lawyer for citizens, (209) 836-1237.

New Stormwater Rules Will Affect Local Governments, Developers

EPA Regulations Go Into Effect October 1, But Cost And Impact Are Hard to Predict

By Michael O'Malley

Local governments and developers are being forced to come to grips with problems created by urban stormwater runoff, thanks to a new set of federal regulations scheduled to go into effect October 1.

The regulations could prove especially important in Southern California, where the semi-arid climate and existing stormwater runoff systems conspire to make it easy for contaminated material to reach the Pacific Ocean. Environmentalists fear that the new regulations won't impose strong enough requirements on local governments to solve the problem, while developers fear the permitting process will give local governments a new "regulatory handle" with which to hit developers for more fees. The American Public Works Association has estimated that the new regulations will cost local governments and developers in the southwestern United States at least $293 million.

Using the legal authority of the Clean Water Act, the EPA created the new National Pollutant Discharge Elimination System (NPDES) to control the waste that flows untreated through storm drains and into rivers, lakes, and oceans. Throughout the country, gutters and pavements loaded with trash, leaves, pesticides, dog droppings, oil, fertilizers, paint, and other waste products wash into storm drains and out to the ocean or to coastal wetlands. Many of these waste products, such as petroleum derivatives, are toxic.

Land development patterns in California — especially in the southern part of the state — have intensified the runoff problem there. The semi-arid climate means Southern California does not have vegetation that would trap and filter the rainwater, and the region's stormwater systems are heavily "channelized" for quick runoff during storms. "Basically, Los Angeles and Orange counties are paved deserts that have been developed to route water into large drainage systems that serve as chutes out to the ocean," says Melvin D. Hinson Jr., a Texas engineering consultant who formerly worked at Santa Ana-based Michael Brandman Associates.

Under the law, all municipalities of more than 100,000 population must obtain NPDES permits for separate stormwater systems and for discharge from industrial activities and construction sites into the stormwater system. In California, the EPA has turned over the stormwater runoff permitting process to the state Water Resources Control Board. Under the board's administration, counties throughout the state may apply for a joint permit for all cities within that county.

In order to obtain a stormwater runoff permit, local governments must take a two-step approach to deal with the problem. First, they must develop an inventory and topography of their storm drain system. Second, the local governments must draw up a plan to reduce stormwater contaminants "to the maximum extent possible."

The ultimate cost of the new federal regulations will depend on how this last phrase is interpreted. Experts in the field are currently interpreting the phrase as permitting the use of low-cost "best management practices" (often called BMPs) to reduce stormwater contaminants. These practices include source-targeted educational techniques such as vacant lot clean-up, recycling programs, storm drain cleaning, public education programs, "pooper scoopers," and no-littering ordinances.

But a wide range of more expensive options will be available to local governments as well. "Medium-range structure adjustments" include such actions as diversion channels, recharge areas, porous pavement, and vegetation planting." Finally, local governments could call for systemic changes such as wetlands, detention basins, microorganism and metal removal basins, and water treatment plants.

Environmental groups have called on the EPA to require these more expensive approaches when they are needed. Some environmental groups, such as Santa Monica's Heal the Bay, have called for the use of high-level practices designed to meet rigid, health-based standards for water quality in stormwater runoff, similar to the health-based standards for air quality used by air-pollution regulators. "We want health-based standards to remove the ambiguity about whether it is safe to swim," said Roger Gorke, a scientist with Heal the Bay. "But no such standard currently exists, and it's still a few years off." Environmentalists also want to extend the regulatory system to agricultural stormwater runoff.

But the development industry is fighting for the less expensive approaches. "I do not think there is any objection (in the building community) to standards," said John Hunter, senior staff vice president of the Building Industry Association of Southern California. "We just want to make sure that the measures mandated will be effective, and that they are not creating a great financial hardship for a minor gain."

A report for the American Public Works Association estimated that the cost of low-level best management practices in the Southwest would be at least $293.5 million, while high-level efforts could cost as much as $140 billion.

In practice, local governments are likely to use the cheaper, low-level practices whenever they can. For example, the City of Los Angeles has elected to initiate a multi-faceted education program of advertising, message posting, stenciling warning messages on storm drains, and other such measures.

Opinions vary about how effective such low-cost measures might be. Hinson, who has been conducting seminars on the regulations for the American Society of Civil Engineers, said public education campaigns and voluntary compliance programs might fall short in a region where the public has been flooded with drought warnings for several years. But Xavier Swamikannu, who has been working on the regulations for the Water Resources Control Board, said California's climate might actually help to make simple cleaning programs work. "Since there are basically two months when we get rain, if we do a good cleaning job in November and December, we can have a major impact with a minor effort," Swamikannu said. He added that drought-related water conservation efforts will also help reduce the runoff problem by reducing the amount of runoff.

The new regulations will have a particularly significant impact on developers, who will be required to obtain a permit for all construction activity involving five acres or more, or feed into city drainage systems that require permits. The practical effect of these requirements will be that local governments will require more construction-site mitigation from developers.

Though the BIA has been working with the Water Resources Control Board on the implementing regulations, said he fears that the new permitting process will give localities a "regulatory handle" to impose fees on new development to pay for existing stormwater programs. ❑

■ Contacts:
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Roger Gorke, Heal the Bay, (310) 394-4552.

CP&DR LEGAL DIGEST

11th Circuit Suggests Post-*Lucas* Rules

In Case From Florida, Court Orders Judge to Post Eight Questions

By Kenneth Jost

A federal appeals court in Atlanta has become the first court to set out guidelines for deciding property owners' claims for compensation due to government land-use restrictions since the Supreme Court gave new support for such "takings" cases in late June.

The August 14 ruling by the 11th U.S. Circuit Court of Appeals requires a lower court judge to make more detailed findings in a suit brought by a Fort Myers, Fla., couple seeking compensation because of a local wetlands protection plan that blocked development of a 40-acre tract they own.

A jury awarded Richard and Ann Reahard $700,000 plus interest since 1984 after the judge had found that the land-use restriction amounted to a taking requiring compensation. But the appeals court found the judge's five-paragraph ruling inadequate and set out a series of eight questions to be covered in a new decision.

The appeals court decision is the most detailed ruling on the takings issue since the Supreme Court's June 29 decision in the closely watched case, *Lucas v. South Carolina Coastal Council*. The high court held that property owners may be entitled to compensation when government regulations deprive an owner of all economically viable use of land, but left open the question of compensation when some development was still permitted.

In the Reahards' case, the Lee County "Resource Protection Plan" allowed them to build one house on the remaining 40 acres of what was originally a 540-acre tract bought by Richard Reahard's parents in 1944. The appeal drew friend of the court briefs from half a dozen property rights groups, including the Pacific Legal Foundation in Sacramento.

PLF attorney James Burling said he was not surprised that the appeals court had overturned what he called a "rather perfunctory" ruling by the lower court judge. But he said he was glad that the decision "didn't shut the door" to compensation if regulations permit some use of property.

But John Delaney, a property rights lawyer in Silver Spring, Md., outside Washington, said the decision "suggests a rather stringent interpretation of Lucas for property owners." He said some of the questions listed by the appeal court "are suggestive of a preordained result in favor of the government."

The appeals court followed the Supreme Court's decision by stressing one factor to be considered in the Reahards' case: "diminution in the investment-backed expectations of the landowner, if any, after passage of the regulation." But the other seven factors suggest a broader examination of both the legal issues and the specific circumstance. They are:

- History of the property, including such question as when it was purchased, how much land was purchased, and how it was originally used.
- History of development in question.
- History of zoning on property.
- Change in development when title passed.
- Present nature and extent of property.
- Reasonable expectations of landowner under state common law.
- Reasonable expectations of neighboring landowners.

"Those are questions I think will be answered favorably for Lee County's position," said John J. Renner, the assistant county attorney defending the case. Renner stressed that Reahard's family had developed all of the original tract except the remaining wetlands, located along the Imperial River a mile or so from the Gulf of Mexico.

"Where do you want to start the history of investment-backed expectations?" Renner said. "Reahard inherited it in 1984. There was too much sloppy thinking about what his expectations were and what his predecessors' expectations were."

Lawyers for the Reahards could not be reached for comment.

In their suit, the Reahards said they planned to continue development of the tract as a single-family subdivision. The county's classification of the land as a resource protection area limited development to a single residence or for uses of a "recreational, open space, or conservation nature." ❑

■ The Case:
Reahard v. Lee County, 91-3593, 1992 U.S. App. LEXIS 18629

■ The Lawyers:
For Richard and Ann Reahard: Jeffrey Garvin, Theodore Tripp, Fort Myers, Fla., (813) 334-1824.
For Lee County: John J. Renner, Asst. County Atty., Fort Myers, Fla., (813) 335-2236.

ENDANGERED SPECIES

Fish & Game Commission Ordered To Re-Examine Gnatcatcher Issue

The state Fish & Game Commission has been ordered to re-examine last year's decision not to consider the California gnatcatcher for listing as an endangered species.

Sacramento County Superior Court Judge William R. Ridgeway ruled on August 28 that the Fish & Game Commission's findings were inadequate. In addition, Ridgeway provided the first judicial articulation of the standard required under the California Endangered Species Act for considering a species for listing. State officials downplayed the impact of the ruling, while environmentalists said it provided them with more firepower in their attempts to get the small songbird listed.

The Fish & Game Commission decided not to consider the gnatcatcher for listing at a highly charged hearing in Long Beach in August 1991. Under the state Endangered Species Act (Fish & Game Code §2050 *et seq*), a decision to consider listing would have virtually prohibited development in the gnatcatcher habitat. Instead, the commission agreed to support a multi-species negotiating process, initiated by the Wilson Administration, designed to protect the gnatcatcher and other rare species that live in the coastal sage scrub commonly found in coastal Southern California. (*CP&DR*, September 1991.) The negotiations are still under way.

In the meantime, however, the Fish & Game Commission was sued by the Natural Resources Defense Council, which brought the original petition for listing. In the lawsuit, NRDC asked the courts to find that the

Fish & Game Commission wrongly rejected the petition to consider listing.

The state species law states that the Fish & Game Commission must accept a petition for further consideration if the petition provides "sufficient information to indicate that the petitioned action may be warranted." Before Judge Ridgeway, the NRDC argued that the Fish & Game Commission's action should be held to a strict standard similar to the "fair argument" standard contained in the California Environmental Quality Act, which is used to determine whether an environmental impact report must be prepared.

Ridgeway rejected the CEQA analogy and, instead, articulated his own standard to be followed in state endangered species cases. "The commission," he said, "could not permissibly reject a petition which presented substantial evidence indicating a need for listing, i.e., such relevant and credible evidence which, considered with other evidence before the commission, a reasonable mind might accept as adequate to support a conclusion that listing was necessary."

In sterner terms, Ridgeway took the Fish & Game Commission to task for the legal findings that accompanied the decision not to consider listing the gnatcatcher. Relying on *Topanga Assn. for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506 (1974), Ridgeway said that the findings must be sufficient "to apprise a reviewing court of the basis for the decision and enable the court to determine whether the decision is supported by the findings and the findings are supported by the evidence in the record."

In the gnatcatcher record, Ridgeway said, the findings were "actually the comments of individual commissioners during debate" and therefore "do not properly qualify as the findings of the commission in support of its rejection of the petition." He ordered the commission to rewrite the findings.

Listing opponents minimized the impact of the ruling, noting that Ridgeway shot down the CEQA analogy. "It's a ruling on a procedural and not a substantive issue," said Assistant Resources Secretary Carol Whiteside.

But NRDC lawyers disagreed, saying that a strict application of Ridgeway's standard might force a change in the commission's action. "Ridgeway's decision makes clear that it's a much lower threshhold for acceptance of an application," said NRDC lawyer Joel Reynolds. Reynolds said he believes that his firm's petition clearly meets the standard Ridgeway laid down. ❑

■ The Case:
NRDC v. California Fish & Game Commission, Sacramento County Superior Court No. 368042.

■ The Lawyers:
For the Fish & Game Commission: William Cunningham, Deputy Attorney General, (916) 324-4913.
For NRDC: Joel Reynolds, (213) 892-1500.

State Endangered Species Law Not Limited to Hunting, Fishing

The Third District Court of Appeal has ruled that the state Endangered Species Act's proscription against "taking" an endangered species includes killing fish during a lawful irrigation activity.

The case arises from the pumping activities of the Anderson-Cottonwood Irrigation District in the Shasta County which has threatened the habitat of the winter-run chinook salmon, a species listed as endangered under the state law. According to court documents, some 1-2% of all winter-run chinook salmon fry in the Sacramento River are drawn into the pumps of the Bonneyview Pump Diversion Facility, operated by the irrigation district, and killed in the process.

Last year, the Fish & Game Department sued the irrigation district, seeking to enjoin the district from operating the pump until it implemented other measures to avoid killing the salmon. Fish & Game claims that in 1990 it obtained funds for a fish screen on the pump but the irrigation district has refused to permit its installation. Although Shasta County Superior Court Judge Steven Jahr initially issued a temporary restraining order, after a hearing he dissolved the TRO and decided not to issue a preliminary injunction. Judge Jahr concluded that the state Endangered Species Act's prohibition against "taking" and "possessing" an endangered species (Fish & Game Code §2080) pertained only to hunting and fishing activities. But the Court of Appeal overturned Judge Jahr's ruling and ordered him to issue a preliminary injunction.

Although the law's definition of the word "take" includes "hunt, pursue, catch, capture, or kill" — or attempt to do any of the above — the court concluded that "nothing in that definition suggests that the proscribed killing must be the result of hunting or fishing." Writing for a unanimous three-judge panel, Justice Richard M. Sims went on to note that term "take" also applies to endangered native plants. "We agree that since people do not hunt or fish for plants, 'take' cannot be limited to hunting- and fishing-related activities." He went on to state that "the law makes clear that its intent is to protect fish, not punish fishermen."

The irrigation district also argued that Fish & Game should not be permitted injunctive relief because there is an adequate remedy available at law: Other sections of the Fish & Game Code (specifically, §6021 and §6023) allow the department to install fish screens even in the absence of owner cooperation. But the appellate court said this option was discretionary, not mandatory, and therefore the court could properly seek an injunction to force the irrigation district to install the screen. ❑

■ The Case:
Department of Fish & Game v. Anderson-Cottonwood Irrigation District, No. C012197, 92 Daily Journal D.A.R. 11723 (August 26, 1992)

■ The Lawyers:
For the Department of Fish & Game: Roderick E. Walston, Chief Assistant Attorney General, (916) 324-5433.
For the Anderson-Cottonwood Irrigation District: William E. Barber III, (916) 533-2885.

SALES TAX

Monterey Sales Tax Overturned Due to Lack of Two-Thirds Vote

In a ruling with wide-ranging ramifications, Monterey County's half-cent sales tax for transportation and other public improvements has been struck down by the Court of Appeal because it did not receive a two-thirds majority.

In so doing, the Sixth District Court of Appeal in San Jose concluded that the state Supreme Court's recent ruling in *Rider v. County of San Diego*, 1 Cal.4th 1, should be applied retrospectively to taxes that were enacted prior to the *Rider* ruling. In *Rider*, the Supreme Court struck down a San Diego sales tax for jails, also because the measure failed to receive two-thirds of the vote. The court ruled that the two-thirds requirement — required of all property-tax increases — should have applied because the sales-tax scheme was an attempt by San Diego County to replace property-tax funds lost under Proposition 13. (*CP&DR Legal Digest*, February 1992.)

But the Supreme Court also made it clear that future applications of *Rider* would be made by individual courts on a case-by-case basis. Earlier this year, appellate courts in Los Angeles and Orange counties upheld simple majority votes for transportation sales taxes in those counties, saying that *Rider* did not apply because the entities involved had been created prior to the passage of Proposition 13. (*CP&DR Legal Digest*, April 1992.)

In the Monterey County case, the Sixth District went the other way. In a unanimous ruling, a three-judge panel ruled that the Monterey County Public Repair and Improvement Projects Authority, which collects the sales tax, is controlled by the county Board of Supervisors, a standard laid down in the *Rider* case. They went on to rule that *Rider* should apply to the case even though the public improvements authority does not have the power to levy property taxes, and also concluded that the county should not be granted a hardship exemption because some of the sales-tax money has already been spent on the transportation and public-improvement projects laid out in the ballot measure.

Measure B, the Monterey County sales tax measure, passed by only 11 votes (out of 40,000 cast) in the November 1989 election. The sales-tax proceeds were earmarked to pay for $355 million in public improvements, including $233 million for transportation improvements, $90 million for medical center, $16 million for libraries, $10 million for mental health projects, and $5 million for assorted community projects. The county, Caltrans, and other agencies have already spent millions of dollars of the sales-tax money, especially for the highway projects.

The Sixth District ruled that the public improvements authority is a creature of the county Board of Supervisors. This is an important finding, because under the *Rider* ruling, a tax may be subject to a two-thirds vote if the agency that administers it is "essentially controlled" by a governmental entity, like the county, that also has the power to levy property tax. The court also concluded that the tax in question is a "special tax" under Proposition 13. Such taxes are subject to the two-thirds vote requirement.

Most important, the Sixth District concluded that the *Rider* case applies to the Monterey County tax. The county had argued that state law and the state constitution encourage the collection of taxes to promote fiscal responsibility. But the Sixth District concluded that the issue of fiscal stability "does not clearly outweigh the purpose of Proposition 13 and the goal achieved by applying *Rider*: effective property tax relief, the assurance of continued relief via a supermajority voter approval requirement, and the immediate elimination of taxes that circumvented Proposition 13 and thwarted its purposes."

The county also argued that application of *Rider* will cause a hardship on the library system and transportation projects, and will cause government agencies to waste the money already spent on these projects. The court rejected this argument out of hand as well. "We disagree that invalidating the sales tax will automatically render the money spent on preliminary design and environmental reports on a few of the projects wasted, for it does not mean the projects for which the reports were prepared cannot and never will be completed," the court wrote. "...(N)othing except the will of the electorate can prevent the county from imposing a new and constitutional sales tax to fund the county's projects. Moreover, the application of *Rider* will not affect the informational value and validity of the reports. It merely postpones their usefulness." ❑

■ The Case:
Monterey Peninsula Taxpayers Association v. County of Monterey, No. H008155, 92 Daily Journal D.A.R. 11800 (August 26, 1992).

■ The Lawyers:
For Monterey Peninsula Taxpayers Association: Timothy J. Morgan, (408) 429-9841.
For Monterey County: Ralph R. Kuchler, (408) 372-1555.

COASTAL ACCESS

Landowners Must Bear Burden Of Proof In Seawall Dispute

In a dispute between the Coastal Commission and landowners in Carpinteria, the Second District Court of Appeal has ruled that the landowners must bear the burden of proving the commission's factual analysis is wrong.

The Second District's Ventura panel also concluded that the strict standard of review laid down in the U.S. Supreme Court's *Nollan v. Coastal Commission* decision does not apply in the seawall case, even though both cases deal with public access conditions imposed by the coastal commission on permit applicants.

With Santa Barbara County's approval, homeowners in Sandyland Cove constructed a new seawall after the damaging winter storms of 1982-83. But the Coastal Commission found that the new seawall encroached improperly into state tidelands. Though the Coastal Commission did not require that the seawall be moved back onto private property, the commission did require the homeowners to provide public access along the top of the seawall, including provision of a stairway.

Santa Barbara Superior Court Judge William L. Gordon ordered the Coastal Commission set aside its ruling, concluding that there was no "substantial evidence" that the seawall was, in fact, constructed below the mean high tide line. While upholding Gordon's use of the substantial evidence test, the appellate court overturned his conclusion, saying that the judge had improperly placed the burden of proof on the Coastal Commission.

"Although the Coastal Act does not expressly place the burden of proof on any party, the general rule applicable to land use permits is that the burden is on the applicant," wrote Justice Arthur Gilbert for the unanimous three-judge panel. "Moreover, the Coastal Act provides that where there is a conflict in carrying out the provisions of the act, the conflict should be resolved in a manner which on balance is most protective of significant coastal resources. Placing the burden of proof on the applicant for a development permit is one way of striking the balance in favor of protecting coastal resources." He further noted that Sandyland is "the primary, if not the exclusive, beneficiary of the seawall project." Gilbert went on to conclude that Sandyland had not met the burden of proof in this particular case.

Sandyland had also argued that Gordon should have applied the stricter "independent judgment" test to decide the case, rather than the substantial evidence. The independent judgment test would be applied if the Coastal Commission's decision involves a "fundamental vested right." In *Nollan v. Coastal Commission*, 483 U.S. 825 (1987), the U.S. Supreme Court ruled that a coastal access condition imposed by the Coastal Commission, similar to the one in Sandyland, could be designed as a means of restricting a property's use without compensation. Thus, the *Nollan* court indicated, such a condition could involve a fundamental vested right.

But the Second District did not buy Sandyland's argument. Noting that even the U.S. Supreme Court acknowledged that some public access provisions would have been constitutional in the *Nollan* case, Justice Gilbert wrote: "As we read *Nollan*, there is no fundamental right to build a structure that detrimentally affects public access free of conditions designed to ameliorate the detrimental effect of the structure. thus we can find nothing in *Nollan* that would require the trial court to apply its independent judgment." ❑

■ The Case:
Antoine v. Coastal Commission, No. B051709, 92 Daily Journal D.A.R. 10730 (August 4, 1992)

■ The Lawyers:
For the Sandyland homeowners: David C. Fainer, Schramm & Raddue, (805) 963-2044.
For the Coastal Commission: Richard M. Frank, Acting Assistant Attorney General, (916) 445-8178.

VEHICLE CODE

Del Mar Traffic Improvements Do Not Violate Vehicle Code

A San Diego judge should not have enjoined the City of Del Mar from installing a series of traffic islands and curbs, the Fourth District Court of Appeal has ruled.

Two local citizens had sued Del Mar, arguing that the traffic improvements violated the state Vehicle Code. San Diego Superior Court Judge Kevin Midlam issued a preliminary injunction against the city, but the appellate court reversed, saying the citizens had not proved that they were likely to win the case at trial. In addition, the court said, "the record suggests this lawsuit is the result of a local political controversy and as such is particularly ill-suited to judicial intervention by preliminary injunction."

At issue in the case is Del Mar's $200,000 plan to slow traffic on residential streets by installing traffic islands and curbs. Although the city council approved the plan in 1990, Alfred Carstens and his wife, Arlene, a former mayor of Del Mar, have opposed the project ever since. Alfred Carstens has called traffic scheme, which requires drivers to weave around islands and berms, "something from Merry Melodies and Looney Tunes."

The Carstens first claimed that the proposal had not received adequate public review, although city officials say it is the most widely reviewed public action in the city's history. Then the Carstens sought to place an initiative on the ballot freezing the city's action, but the city council rejected the petition, declared the initiative illegal, and declined to place it on the ballot. Finally, when the city began construction, the Carstens sued and asked for a preliminary injunction.

The Carstens claimed that the traffic islands and barriers did not provide sufficient handicapped access, created safety hazards, and were not approved traffic control devices under of the state Vehicle Code. The Vehicle Code requires local governments to use approved traffic control devices when regulating traffic. This provision has been subject to several appellate cases in recent years — most notably *Uhler v. City of Encinitas*, 227 Cal.App.3d 795 (1991). In that case, the Fourth District ruled that Encinitas had violated the Vehicle Code in closing a street by using a traffic barrier with curbs, a device not approved under the Vehicle Code. (*CP&DR*, April 1991.)

In the Del Mar case, Judge Midlam granted the preliminary injunction, saying he was bound to do so by the *Uhler* ruling.

On appeal, the Fourth District found that Midlam had not made a specific finding that Carsten was likely to prevail on the merits, and further concluded that there was not enough evidence to make such a finding.

As for the traffic barrier question, the Fourth District wrote: "Unlike the barriers in ... *Uhler*, Del Mar's proposed improvements — essentially permanent physical changes in the width and alignment of roadways effected by islands, shoulders, and curbs — were not traffic control devices but instead constituted basic structural modifications of the roadways themselves....(A)lthough Del Mar's proposed improvements were intended to and might well alter traffic patterns, such improvements were clearly authorized under the city's construction and maintenance powers."

The court also rejected the handicapped access argument, saying Carsten "did not present competent evidence any proposed improvements under the plan would violate handicapped access requirements." ❑

■ The Case:
Carsten v. City of Del Mar, No. D015809, 92 Daily Journal D.A.R. 11854 (August 27, 1992)

■ The Lawyers:
For the City: D. Dwight Worden, (619) 755-6604.
For the Carstens: Burton W. Guetz, Brown & Guetz, (619) 231-9886.

OUTDOOR ADVERTISING

Relocated Billboard Requires New State Permit

An appellate court has upheld a summary judgment ruling ordering a billboard company to remove a billboard near the San Mateo Bridge as a public nuisance.

Caltrans had obtained the summary judgment in Alameda County Superior Court under the state's Outdoor Advertising Act, Business & Professional Code §5200 et. seq. Although the billboard company, Ad Way Inc., had a permit for the billboard for more than 20 years, the company had moved the billboard in 1981 because of damage to its foundation and also changed its height. As a result, Ad Way's permit for the billboard was cancelled and the state began efforts to force the company to remove it. Under the Outdoor Advertising Act, any billboard standing in violation of the law is considered a public nuisance and must be removed.

In Alameda County Superior Court, Ad Way argued that the billboard's permit should not have been cancelled simply because the billboard was moved for safety reasons. But Caltrans argued that cancellation of the permit was not a triable issue, since a new permit would have been required in any event to change the billboard's location and dimensions. Alameda County Superior Court Judge James R. Lambden granted summary judgment for Caltrans, ordering Ad Way to remove the billboard without a trial. Ad Way appealed to the First District Court of Appeal.

On appeal, Ad Way argued that the question of whether its movement of the billboard constituted a new "placing" under the meaning of the Outdoor Advertising Act was a trial issue and therefore summary judgment should be overturned. In particular, Ad Way argued that moving the billboard for safety reasons might be considered "customary maintenance," which is permitted under the law.

But the First District panel disagreed. The unanimous three-judge panel wrote that the "plain meaning" of the Outdoor Advertising Act "is that any relocation of a billboard, regardless of the reasons therefore, is not considered customary maintenance and is a placing. Equally clear," the court added, "is the language of section 5350 (of the Outdoor Advertising Act) which provides that before such placing of a billboard occurs, a permit from (Caltrans) must be obtained." ❑

■ The Case:
People v. Ad Way Inc., A054360, 92 Daily Journal D.A.R. 10625 (August 3, 1992).

■ The Lawyers:
For the state: Charles E. Spencer Jr., Caltrans, (916) 654-2630.
For Ad Way: Scott S. Furstman, (310) 399-3259.

FYI

The California Supreme Court has denied review of *Emery v. City of Palos Verdes Estates* and has ordered the case de-published. The Court of Appeal upheld a takings judgment by a property owner who sued the city after a landslide was caused by city's water system. (*CP&DR Legal Digest*, June 1992.....

The Alameda County LAFCO's decision to place a tract of land in Pleasanton's sphere of influence has been overturned by a Superior Court Judge. Judge Joanne Parrilli said that because the Pleasanton Ridge property is already inside the city limits of Hayward, and Hayward opposed the sphere change, then by definition the property cannot be within "the probable ultimate physical boundaries" of Pleasanton, as state law requires. The land was annexed to Hayward 25 years ago. The case is *Greenbelt Alliance et al v. Alameda County Local Agency Formation Commission*, No. H-155586-8....

A judge has upheld the City of Lancaster's right to use redevelopment housing setaside money to pay for two highway overpasses. Local taxpayers, represented by the Los Angeles law firm of Kane, Ballmer & Berkman, challenged the plan, saying that under state law the money must be used directly for housing. But L.A. County Superior Court Judge David Schacter disagreed, saying the overpasses are needed because they will permit access to the area where the housing will be built.

Recession Forces Localities to Rethink Policy on Fees

Continued from page 1

on new homes from $4,400 to $2,900; officials there say the new federal transportation bill will provide important new revenues for roads.

In Riverside County, the state's hottest growth center in the '80s, supervisors recently froze development fees at about $7,500 per home, despite the pleas of the county staff, which argued that the fee would result in layoffs. The staff had recommended a 40% increase in existing building fees and a 70% hike in planning department fees.

Whether the fees are going up or down, however, the current economic crisis has led many public agencies to examine the impact of their fees on the market for the first time. Though fees are still on the rise in many areas, building industry officials seem cheered by the general trend. Rod Hanway, executive director of the Building Industry Association of Riverside County, says local governments " are beginning to make the connection between the dependability of revenue streams (to local government) and the level of building activity." He added: "In the past, they felt development was a source to be milked and that there was no downside."

A good example of this trend is San Diego, where construction costs escalated throughout the '80s. "We are taking a hard look about how much you can lay on (homebuilding) and what it does to the cost of housing," says City Architect Michael Stepner. "We have come to rely on the impact fee and it has a negative effect when it becomes your sole source of revenue."

Indeed, development fees have, improbably enough, become an issue in the San Diego's mayoral race. County Supervisor Susan Golding has identified herself as an advocate of a "fair" fee structure, while slow-growth leader Peter Navarro is advocating high fees on developers. Political winds in San Diego have been turning against fees in recent years; after imposing strict slow-growth policies in the 1980s, the city council two years ago voted down a proposed "city-wide" development fee of $4,300.

Local officials elsewhere are also expressing concern about fees — and that concern is having an impact on policy decisions. For example, planning commissioners in Los Angeles have been debating about a proposed vehicle-trip fee for new development in Warner Center, a business center in the San Fernando Valley. Last year, the city staff cut the proposed fee from $15,000 per trip to $10,000, but even that level prompted Planning Commissioner Suzanne Neiman to quip that, with such high fees, "the city might as well not write a plan" for Warner Center because no development would occur.

Meanwhile, in the City of Riverside, the city's staff decided against recommending a $10,000 water hookup fee, also fearing that new development would be stifled. "In the current real estate recession, we need to be very careful how we apply fee increases, since they can lead to reduced permitting and construction activity," said Ralph Megna, the city's development director. "You can talk about levying all kinds of fees, but in effect if people choose not to do development in consequence, you've got phantom income. It' s never going to materialize."

In Stanislaus County, planners say that without the federal Intermodal Surface Transportation Efficiency Act — or ISTEA, as it is commonly known — the county would have been hard-pressed to cut development fees by more than 30%. "Our biggest fee component to our public facilities have been roads," said Associate Planner James Duval. "Based on the new method by which the county can receive road dollars from the feds, we could eliminate the collection of fees for projects now to be funded by ISTEA. The road component of the county's development fee has dropped by two-thirds, from $1,457 to $577.

ISTEA will take up the slack, however, only where major highway projects are concerned. In Oxnard, road fees alone were raised 36% (from $2,800 to $3,800) in July largely because of "necessary roadway improvements" that don't qualify for federal aid, according to Planning Director Matthew Winegar. But some politicians in traditionally pro-growth Oxnard are skeptical. "I believe our staff — the bureaucracy — gets overambitious at times and they try to use current development to pay for past planning mistakes," said Councilman Mike Plisky. "We are driving away business, rather than bringing it to us."

Not all cities have taken action yet, but those that haven't are aware of the issues. While Stanislaus County has cut fees, county seat Modesto has held the line at about $5,100 for a single-family home since last year. Now a city council subcommittee is studying fee structures in surrounding communities. Senior Planner Brian Smith said concern over commercial real estate, rather than homebuilding, motivated the fee review. "A big part of the subcommittee's job is to look at our neighbors and make sure we are competitive," he said. "We felt we were losing some opportunities." Smith predicted that some fees will be reduced when the council takes action later this month.

The final irony, however, is that given the state's long-running real estate bust, even big reductions in fees are not likely to stimulate a bumper crop of development in California. "It doesn't really make much difference whether you raise or lower fees at this point," said one city official. "There's no activity." ❑

Scaled-Down Ball Ranch Project Approved in Fresno County

Fresno County has finally approved a much-reduced version of the Ball Ranch development project, located in San Joaquin River bottomlands north of Fresno.

The county Board of Supervisors approved a plan for 65 luxury ousing units and a golf course and required the developer, Minneapolis-based Sienna Corp., to work with nearby developers in building a tertiary sewage treatment plant. Sienna had originally proposed 501 single-family homes and 220 condominiums, along with a golf course, on 364 acres.

The Ball Ranch project is controversial because it is the first development on the San Joaquin River bottom, which has been the focus of major preservation efforts in recent years. Some of the Ball Ranch land was sold to the state Wildlife Conservation Board, and environmental groups tried to put together a deal to buy the Ball Ranch land. The Ball family and Sienna did not accept a $9.3 million offer from the San Joaquin River Parkway and Conservation Trust and the Trust for Public Land.

Environmentalists opposed development of the Ball Ranch site as a precedent that would harm preservation efforts. But Sienna Corp. argued that Ball Ranch unsuitable for agriculture. ❑

New Emission Factors May Cause Change in Transportation Policies

Continued from page 1

The new ARB emissions factors have been included in the agency's computer models, and the Environmental Protection Agency has ordered transportation planning agencies to use the numbers in conducting air-quality analyses of transportation projects. But the emissions factors are rapidly moving from the realm of the technical to the realm of the political. The Southern California Association of Governments (SCAG) is balking at using the new factors. And Orange County Supervisor Harriett Weider — a board member of both ARB and the South Coast Air Quality Management District — has called for a board-level review of the factors at both agencies.

In a letter to her colleagues, Weider said that policy decisions based on the new emissions factors could expose both agencies "to criticism for making major policy decisions before we fully understand the impacts of the new emissions factors." Orange County is considered especially vulnerable to a new analysis because the county has the most so-called "mixed flow" transportation projects in the works — that is, projects which are not devoted exclusively to transit or high-occupancy vehicles. Other agencies, such as SCAG and the L.A. County Transportation Commission, are also calling for more review of the emissions factors.

Computer models and their inputs — including emissions factors — have become far more important in transportation planning since the passage of the 1990 Clean Air Act amendments. The law requires metropolitan planning organizations, such as SCAG and the Bay Area's Metropolitan Transportation Commission, to do a computer analysis of the air-quality impacts of transportation projects in order to make sure the projects "conform" with federal air-quality standards. Conformity analyses are conducted not only on individual projects, but also on the region's "TIP" — the transportation improvement plan, which includes projects funded and ready for construction.

"Essentially, what you're getting is the air-quality tail wagging the transportation dog," says James Ortner, an air-quality specialist with the Los Angeles County Transportation Commission. "There's new pressure being put on the models to produce the answers. The level of sophistication is really rather low. The methodology hasn't changed in 30 years."

Transportation planners say the new emissions factors could force California's metropolitan agencies to radically alter their approach to transportation issues. "It's important to remember the last 20 years," said Steve Borroum, a Caltrans environmental engineer. "We have been told by EPA and ARB that as vehicle speed increases, emissions per mile traveled decreases. This has led people to conclude that fixes to solve congestion will bring about benefits from an air-quality standpoint. Now they are telling us that this isn't necessarily so. If this is accepted by ARB in final form, there will be a rethinking of strategies."

ARB updates emissions factors frequently, based on new test results. ARB spokesman Bill Sessa said the new emissions factors were released by the agency's technical staff in the normal fashion. And because the Clean Air Act requires the metropolitan planning organizations to use the most recent available emissions data, EPA has ordered SCAG, MTC, and others to use the new factors.

But some transportation planners say they should not have to plug in a new set of emissions factors in the middle of their analytical cycle for regional TIPs. "My feeling is, you shouldn't change in mid-stream," said Arnold Sherwood, director of community and economic development at SCAG. "It's bad policy, plus it might cause us to fail (the conformity analysis)." So far, he said, SCAG has not conducted a new emissions analysis on Southern California's regional TIP.

But ARB spokesman Sessa said the policy implications of the new emissions factors should not affect whether or when they are released. "It is an emissions factor, not a policy decision," he said. "Obviously, the situation is more politically charged, but that's all the more reason to be technically right. I think there are some people who have made some broad assumptions of what these factors mean. We don't yet know the impact on individual projects."❑

■ Contacts:
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Arnold Sherwood, SCAG, (213) 236-1800.
Bill Heim, Metropolitan Transportation Commission, (510) 464-7700.
James Ortner, L.A. County Transportation Commission, (213) 623-1194.
Harriett Weider, Orange County Board of Supervisors, (714) 834-3220.
Steve Borroum, Caltrans, (916) 920-7752.
Julia Lester, South Coast AQMD, (714) 396-3162.

Opposition From South-Central Torpedoes Post-Riot Redevelopment Bill

Continued from page 1

after similar legislation that has passed in recent years following natural disasters such as the Loma Prieta Earthquake in 1989. But the streamlined procedures contained in the bill — including truncated environmental review and citizen participation — quickly created opposition among some community activists.

Tucker and lobbyists for the City of Los Angeles agreed to amendments that would beef up both environmental procedures and the involvement of citizen committees. But these efforts were countered by intense lobbying by the Paul Gann Citizens Committee, working with community leaders within Tucker's district who distrust the Los Angeles Community Redevelopment Agency.

After receiving heavy criticism at a meeting in his district on August 27, Tucker returned to Sacramento the next morning and asked a Senate-Assembly conference committee to reject the bill. "We were unable to persuade the community that the CRA could and would be a positive tool for rebuilding the community," he said.

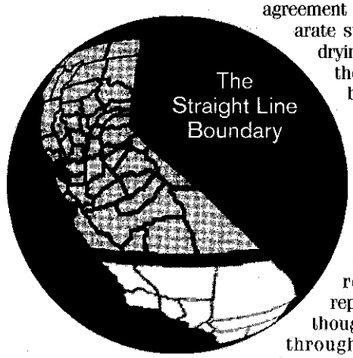
As originally written, the bill called for these redevelopment plans in South-Central Los Angeles to be exempt from the California Environmental Quality Act and also would dilute the power of "project area committees" — the citizen committees that serve as a watchdog on redevelopment projects. But the bill quickly ran into opposition from the Gann group, a taxpayer watchdog organization that has recently taken an active role in lobbying against redevelopment bills. Gann staffer Sherry Curtis, a longtime redevelopment activist from Southern California, contacted community leaders in South-Central L.A., who began drumming up opposition to the bill.

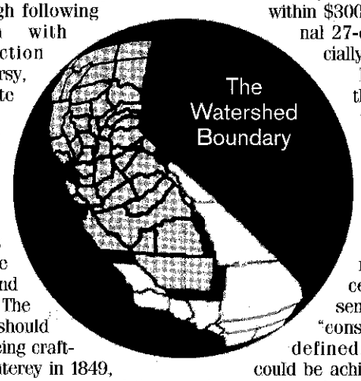
South-Central community groups have a long and rocky history of opposition to redevelopment efforts. Most recently, L.A. Mayor Tom Bradley was forced to back off from a 2,000-acre redevelopment proposal in Watts because residents feared eminent domain. ❑

NUMBERS
Stephen Svete

The Balkanization of California

The current international trend of redefining borders and creating new states has come home to California. At the same time that Czechs and Slovaks are finalizing the details of an agreement to split into two separate states, the ink is also drying on a resolution in the California Assembly to look into the same thing here. Is the two-state proposal serious? Absolutely, according to Clyde McDonald of the Assembly Office of Research, which recently issued a report on the topic. And though following through with such an action would engender volumes of legal controversy, the procedure could be accomplished quite simply.





The two-state idea has appeared most recently as a proposal from Assemblyman Stan Statham, a Republican whose Redding-based district covers most of far northern California. But the idea has been around as long as California itself. It first appeared when the Franciscans and the Dominicans divided the state into "alta" and "baja" Californias during the Spanish era. The Franciscans argued that the dividing line should be the Tehachapis. When statehood was being crafted at the constitutional convention in Monterey in 1849, Sr. Jose Carrillo, a delegate from Santa Barbara, proposed that the new state of California include only areas north of San Luis Obispo, with the southern region remaining a territory. Proposals for a north-south split have been forwarded ever since, with the support for the split shifting from the south to the north in about 1920, when — not coincidentally — the south's population (and political clout) began to exceed the north's.

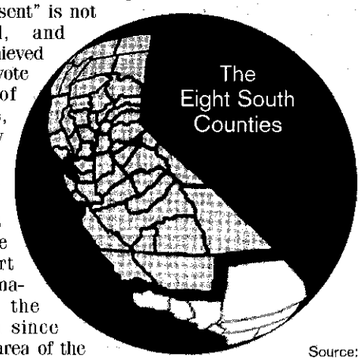
So far, Statham's proposal has been getting a favorable response — especially at the polls, where, in June, voters in most northern counties indicated they wanted to split the state. Though no exit polls were conducted, it is thought that the Bay Area counties that turned out "no" votes feared they would end up in a southern state, since Statham had already publicized a 27-county map that drew a boundary north of San Francisco and Sacramento. Since then, Statham has introduced a three-state proposal, with the Bay Area dominating a Central California state, and the Assembly recently appointed a select committee to study how the state-splitting proposal should be pursued and what boundary — or boundaries — would be most desirable. The select committee's activities were placed on the back burner during the budget crisis.

In a recent report, the Assembly Office of Research examined several two- and three-state options in detail by grouping current state revenue and expenditures from existing counties. The office found that three options were fiscally feasible, and that one option known as the "Straight Line Division" — with the boundary running straight across the state, along the top of San Luis Obispo, Kern, and San Bernardino counties — would come closest to equalizing finances in two new states.

Under the Straight Line proposal, the north would have tax revenues of approximately $18 million and the south $28 million, and the state budgets would be almost perfectly balanced — the south would gain a $15 million surplus and the north a $15 million deficit. A second option, the so-called Eight South Counties split, which places San Luis Obispo and Kern in the northern state, brings the north's budget within $270 million of being balanced. And a third option, the Watershed Boundary option, which places Kern in the north but puts San Luis Obispo, Mono, and Inyo in the south, the north's budget would come within $300 million of being balanced. Statham's original 27-county northern state would also be financially viable.

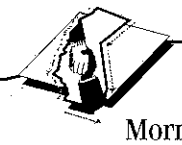
In short, the report laid to rest the notion that the south is subsidizing the north — or vice versa. With the dollars-and-cents issues out of the way, the discussion now faces the much stickier area of politics and public discussion. And ultimately, the Legislature must decide how to proceed.

The legal steps are simple, though open to interpretation. First, the Legislature must grant "consent" to a split-state concept. Then Congress must also grant "consent." The meaning of "consent" is not defined, and could be achieved by a simple voice vote in both houses of the Legislature, though it's likely that any proposal would be placed before the voters.



Source: Assembly Office of Research

So why split up, anyway? The Assembly report found that the primary argument is the same one given since 1849 — that the area of the state advocating division (then the south, currently the north) believes its political destiny is being determined somewhere else. Other advocates argue that California is simply too large to be governed as one state. After all, California's population and economy is larger than that of most countries. Wait a minute...what about that Bear Flag Republic idea? ❑



DEALS

Morris Newman

Farewell, Giants, And Don't Look Back

The expected departure of the San Francisco Giants was a newsworthy event, regardless of any consideration of how the event reflects on California economically or politically. Yet the departure of the Giants, formerly known as the New York Giants and soon to be known as the St. Petersburg Giants, has a profound resonance in a year when many other companies have left California or are seriously considering a change of scene. The Giants organization, in fact, is the best-known company yet to leave California, and the reasons for their discontent may have some interesting similarities with other companies that have fled the state.

A lack of enthusiasm, an unwillingness to spend public funds for local boosterism, and environmental problems all seem to have contributed to this traumatic leave-taking. What is most shocking for longtime Californians is the realization that the state is no longer a destination. Until very recently, after all, California was the place you left Detroit or Iowa or New York to go to. Now California is a place you leave behind for hot centers of entrepreneurship such as Atlanta or Florida or Seattle.

> *"What is most shocking for longtime Californians is the realization that the state is no longer a destination."*

After losing a fourth election on financing a new stadium, Giants owner Bob Lurie might have been forced to leave just to save his pride. And both California and major-league baseball have changed a lot since the Eisenhower days. Yet some interesting parallels exist between up-and-coming St. Petersburg and not-so-young-anymore San Francisco.

Flashback to 1958. The Cha Cha is the newest dance vogue, the European Common Market is formed, and the Giants accept an offer to play in the Bay Area. The clincher is the city's promise to build a publicly funded stadium, the 62,000-seat Candlestick Park, which was completed in 1960 for $24.6 million. (In 1986, the city expanded the stadium for football and installed another 4,000 luxury seats, although that move had only a marginal benefit for the baseball club.)

The Giants, of course, weren't alone in coming to California in 1958. In moves that portended a "new world order," Krushchev came to power, Pope John XXIII was elected, and the former Brooklyn Dodgers played their first season in Los Angeles. The Dodgers, too, were lured west by a promise of a new stadium. The city bulldozed a low-income neighborhood north of downtown, Chavez Ravine and gave the land to the Dodgers. Significantly, Dodger owner Walter O'Malley built the stadium with private funds. The team still owns the ballpark, rooting it irrevocably in its adopted home.

Now let's beam forward to 1987. Candlestick Park, the stadium that first brought the Giants west, has turned out to be windy and unpopular with the fans. The surrounding neighborhood has declined, and Giants owner Bob Lurie asks the voters of San Francisco to approve a bond measure for a new publicly financed stadium. Despite the support of then-Mayor Dianne Feinstein, who has secured hard-to-get tax-free municipal bonds for the stadium, the measure fails at the ballot box.

Two years later, Mayor Art Agnos proposes a new stadium in the Mission Bay redevelopment area, but the election — coming only a few days after the disastrous Loma Prieta earthquake — fails by 1%.

In 1990, several upstart cities in the Silicon Valley propose to bring the Giants a few miles south, but their plan to fund the stadium with a utility tax on business is enough to kill enthusiasm for the project among the lockstep corporate leaders in the San Jose area. The location near the 237 Freeway is controversial, because it requires a costly freeway widening and threatens to worsen traffic on an already slow artery.

And last June, San Jose voters deal the final insult to the Giants by refusing a fourth stadium bid.

By contrast, consider the experience of St. Petersburg in its effort to secure the Giants. Trying to shake off the image of a sleepy retirement village — and wanting to challenge Tampa for supremacy on Florida's Gulf Coast — the city rolled the dice on a stadium without a team. In 1990, St. Pete completed construction of the Florida Suncoast Dome, a 42,000-seat stadium designed for baseball. The stadium was financed by two bond issues, including an $85 million deal, secured by excise taxes, that predated the 1986 tax-reform crackdown on tax-free bonds. And there's a little-publicized sweetener to the deal: In order to improve the stadium's cash-flow, the local sports authority receives a rebate on the first $2 million in sales tax over the next 30 years. In other words, sports boosterism is built into the Florida tax code.

The Suncoast Dome may be the largest speculative real estate project ever developed by local government, and the financial figures are typical of the '90s. The stadium requires $33 million in annual gross revenues to break even, but without a baseball team the dome generated just $3.5 million last year. St. Petersburg officials predict that the Giants will bring $24 million a year to the stadium in ticket sales alone.

Of course, no one figured that the Suncoast Dome would remain without a major-league club for long. The area has a long tradition of supporting spring-training baseball, and the demographics in the Tampa-St. Pete metropolis are great: a population of 2 million people, comprising the 13th-largest media market in the country.

It is tempting to see St. Petersburg in 1992 as a replay of California in the late '50s: starry-eyed about sports, dreaming of "big city" status, and eager to spend foolishly to promote itself. In today's California, it's hard to be enthusiastic. The seemingly indestructible economic engine has stalled. Residents are tired of both the initiative process and new taxes. If California is not exactly a Rust Belt junkyard, it is no longer a Sun Belt utopia, either. The state has matured and discovered its limitations; it's at that awkward age when it is no longer a "hot" economic destination, but not yet desperate enough to liquidate its regulatory structure to bring in outsiders. So, go with grace, Giants. California has grown too old, too cautious, and too worried to dream about baseball anymore. ❑