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INSIDE

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Torf Fulton Associates
1275 Sunnycrest Avenue
Ventura, CA 93003-1212
805/642-7838

William Fulton,
Editor & Publisher

Morris Newman,
Senior Editor

Stephen Svete,
Elizabeth Schilling,
Larry Sokoloff,
Contributing Editors

Allison Singer,
Circulation Manager

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Republicans Target Changes in Takings, Species

Pombo to Head Species Task Force in Congress

By William Fulton

The Republican takeover of Congress — and growing Republican influence in the state Legislature — could lead to significant changes in both state and federal environmental laws this year.

High on the Republican agenda is legislation that would compensate landowners if federal regulatory action — such as listing of an endangered species or denial of a wetlands fill permit — reduces the value of their land by a certain amount. Such a provision was contained in the Republicans' highly publicized "Contract With America." And one bill introduced by a key Republican committee chairman would extend the requirement to state and local actions taken as a result of federal mandates.

Another prime Republican target is the federal Endangered Species Act. Rep. Richard Pombo, R-Tracy, a former Tracy city council member and an avowed foe of the law, has been selected to head a task force that will examine how to revise the law. Pombo's highest priorities include peer review for listing decisions and a policy of not listing a species as endangered until a recovery plan for that species has been drawn up. "The real purpose of the Endangered Species Act is not to recover species," said Pombo's press secretary, Mike Hardiman. "It has become federal land-use control."

Reauthorization of the Clean Water Act is also on the agenda in Washington, meaning a revision of the federal wetlands regulations is possible. Rep. Don Young, R-Alaska, the new chairman of the House Natural Resources Committee, singled wetlands regulation out for particular criticism in a recent hard-hitting interview with the Bureau of National Affairs, a newsletter publishing company.

In Sacramento, where both houses of the legislature are still slimly controlled by the Democrats, similar Republican attacks can be expected. *Continued on page 10*

Transportation And Housing Will Undergo Major Policy Changes

Clinton Plans Will Streamline Federal Programs

By Morris Newman

Federal support for both housing and transportation appear to be in the throes of a sea change as a result of the November election and the ascendancy of the Republican majority.

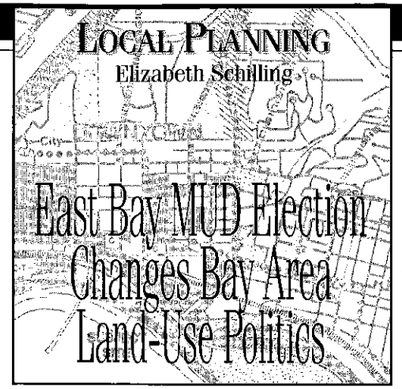
Anticipating the budget-cutting mood of the new majority party, the Clinton Administration has proposed to "reinvent" both the Department of Housing and Urban Development and the Department of Transportation. The plan calls for streamlining their many, complex programs into a handful of big funds, while responding to the popular idea of local control by giving cities and states more discretion on how they spend federal money.

In Sacramento, the Wilson Administration is responding warmly to the idea of simplifying the federal bureaucracy and giving states greater flexibility. But affordable housing advocates say the proposed changes at HUD could create more bureaucracy and more competition on the local level, and pose new difficulties for developers and landlords who need HUD subsidies. In the transportation arena, at least one transit lobbyist said changes could put highway and transit projects into competition. Even more pressing is how deeply the new Republican-led Congress will cut the budgets of HUD and DOT, or even whether those agencies will survive.

There is no question that short-term political ends are part of the Clinton team's motivation. "Clearly, what is driving this effort is not public policy, but a need to pay for a middle-class tax cut," said Chip Bishop, executive director for communications of the American Public Transit Association, a Washington-based group that represents nearly all the country's transit systems. The proposed restructuring of DOT is intended to save $6.67 billion in the next five years, while HUD is expected to save $800 million over the next five years. *Continued on page 8*

Local Planning

Elizabeth Schilling



East Bay MUD Election Changes Bay Area Land-Use Politics

A new majority on the East Bay Municipal Utility District Board, elected with the support of the building industry, is pursuing major changes in water policy which are sure to change land-use politics in the fastest-growing region of the San Francisco Bay Area.

The new board has already announced plans to pursue water from the American River, to which the agency has rights, and to expand a reservoir. The agency is now likely to re-examine its previous opposition to an 11,000-unit project in Dougherty Valley in eastern Contra Costa County.

Furthermore, the impact of the new East Bay MUD board goes far beyond the region. Previously controlled by environmentalists, the agency has been a major advocate for state legislation linking land use and water supply. While the new board says it will still lobby for such laws, environmentalists say momentum for such a bill has weakened.

November's election brought defeat to two environmentalists and changed the 4-3 majority on the board. Past board president Stuart Flashman, an environmental lawyer, was narrowly defeated by Katy Foulkes, a past mayor of Piedmont. Environmentalist Katherine McKenny was defeated by Frank Mellon, a corporate relations manager. Environmentalist Mary Selkirk won re-election.

Flashman attributed the defeat to more than $147,000 spent in three last-minute mailings by the Building Industry Association of Northern California and Shapell Industries, one of the developers of Dougherty Valley. But Gary Hambly, chief executive officer of the Northern California BIA, attributed the outcome not only to the mailings but also to the old board's "elitism, arrogance, and mismanagement."

"All we hope for is open-mindedness," said Hambly. "We hope to see the new board act like a service provider rather than a planning agency."

But Dave Nesmith, conservation director for the San Francisco chapter of the Sierra Club, said the election "explodes the myth they (the building industry) argue in favor of — that water agencies should have nothing to do with land use. They know water directors determine land use and that's why they wanted those positions."

New board members took only minutes to declare their intentions after being installed on January 10. One of the first agenda items was to renew and accelerate acquisition of the agency's American River allocation of 134 million gallons a day. Other projects declared as priorities, which go against past board action, include use of grey water and re-examination of a $160 million enlargement of the district's Pardee Dam Reservoir in the Sierra foothills.

Achieving these goals, however, may not be possible because of the recent Bay-Delta accord, Flashman said. Gov. Pete Wilson recently agreed with federal officials to allocate more Bay-Delta water to environmental purposes — which may limit American River allocations. Similarly, tightening federal water regulations over the Mokelumne River could affect diversions to the Pardee Reservoir.

An East Bay MUD spokesman acknowledged that the Bay-Delta agreement could have an impact on the American River. "Since the studies on the use of the river will take at least three years," the spokesman said, "the agency plans to proceed while waiting to see the specifics of the accord."

Although the agency might change its position on the Dougherty Valley project, political obstacles apparently still remain. Most of the area requires annexation to East Bay MUD, though the Contra Costa County Board of Supervisors recently gave final development approval for a 1,200-unit project on a 618-acre portion of the valley already in the district.

Countersuits are still pending between East Bay MUD and Contra Costa County, which has approved the whole development in concept. The county has appealed a Superior Court ruling in favor of East Bay MUD's environmental challenge to the county's approval of the project. The county's suit, which seeks to overturn the water board's allegedly anti-growth Water Supply Management Plan, is awaiting its first hearing.

And a third suit from environmentalists and some surrounding cities is still pending. "Even if the new board agrees to settle and allows Dougherty Valley to roll on through, the county would still have to get all the cities to settle," said Flashman.

Val Alexeeff, director of the Contra Costa County Growth Management Agency, said the new board is already pursuing settlement negotiations. But he said the East Bay MUD election does not end the slow-growth debate in the region. "The changes will not be like a light switch going on," Alexeeff said. "There won't be a complete reversal....Other slow-growth influences are still very much intact." He noted that slow-growth advocates gained seats on the Contra Costa County Board of Supervisors during the elections in November. "There is no way you can get a traditional, pro-growth body elected in the East Bay."

Regarding the agency's influence on state water policy, East Bay MUD Sacramento lobbyist Randy Kanouse said his organization is still a player. He's already met with the board and will continue efforts to support legislation like last year's AB 2673, which would have required jurisdictions to include water availability in general plans and their amendments.

"This year's bill may be more modest and in line with the administration," he said. "But the new board still wants to be on the forefront of solving the state's water problems."

■ Contacts:
Charles Hardy, spokesman, East Bay MUD, (510) 287-0141.
Stuart Flashman, ex-board member, (510) 652-5373.
Dave Nesmith, Sierra Club, (510) 658-5858.
Val Alexeeff, Contra Costa County, (510) 646-1620.
Gary Hambly, Building Industry Association of Northern California, (510) 826-7626.

State Oversight of Redevelopment Recommended

The state should create a special authority to oversee enforcement of the redevelopment law, the Legislative Analyst's Office has recommended.

The recommendation is contained in the LAO's new report, "Redevelopment After Reform: A Preliminary Look." The report found:

• That passage of the AB 1290 reform legislation in 1993 led to a dramatic increase in the creation of new project areas before the law took effect on January 1, 1994.

• That new project areas, established under AB 1290, are not smaller in size or more focused on blight than previous project areas.

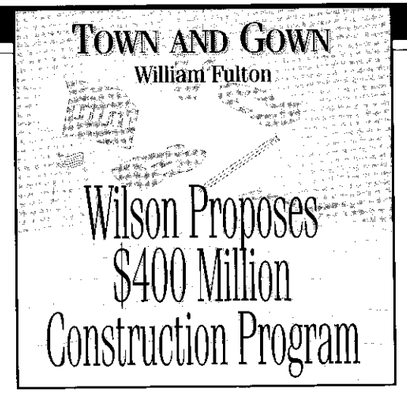
• That more localities may use the Disaster Project Law in the future as a means of circumventing AB 1290's reforms.

Mountain House Approved

The Board of Supervisors in San Joaquin County has given final approval to the Mountain House new town project, to be located east of Tracy on the San Joaquin-Alameda-Contra Costa County line. The 4,800-acre project is expected eventually to become a community of 44,000 residents and 22,000 jobs. ❑

Town and Gown

William Fulton



Wilson Proposes $400 Million Construction Program

With the state school construction program just about flat broke, Gov. Pete Wilson has floated a $400 million proposal to keep it alive. But Wilson's idea involves bonding against state revenues covered under Proposition 98, meaning it is almost sure to meet opposition from other education groups.

The state school bond program has provided almost $8 billion in state money for local school construction since 1982. However, a June bond issue failed and the state chose not to place another school bond measure on the November ballot. Strapped for construction funds, many school districts have turned up the heat on local governments and developers to provide school mitigation through Mello-Roos bonds or fees on new construction.

The school facilities lobby seems torn about Wilson's proposal. James Murdoch of the Coalition for Adequate School Housing interpreted the proposal as a sign that Wilson is willing to discuss more state funding for school construction. But he added that many of his members are concerned that the funds would come out of Proposition 98, which guarantees state money for the operating funds of local school districts.

"We would have liked to see him come out in favor of a bond bill" on the March 1996 ballot, Murdoch said. (The state primary election has been changed from June to March next year in an attempt to give the state's presidential primary a higher priority.)

The Wilson proposal would make a minor dent at best in the school facilities problem. The state would float $400 million in revenue bonds and then make the money available to local school districts as loans. (The state school bond program has traditionally provided grant money, though a local match was required.) Most school districts would have to repay the loans out of their own funds. But some school districts meeting hardship criteria could have their loans repaid out of state money allocated for school operating funds under Proposition 98.

The Wilson proposal would provide a low level of construction funding, based on the cost of providing portable classrooms. (Under state law, portable classrooms may be paid for out of operating funds.) However, school districts could use the money to provide any type of facilities, not just portable classrooms.

According to Julie Saylor of the state Department of Finance, the revenue bonds would provide both an interim financing option and a long-term option for some school districts. She said it would probably be of most assistance to school districts experiencing "marginal growth" — that is, minor growth on their existing campuses.

Priority would be given to school districts that already have a high level of local bonded indebtedness, underscoring Wilson's view that local school districts must carry more of the financial burden on school construction. This requirement might make it more difficult for urban school districts with fast-growing enrollment to take advantage of the program. Mike Vail of the Santa Ana Unified School District said the proposal would not help his district; passage of a local school bond is virtually impossible, he said, because most voters are homeowners with no children in school, while most parents are renters who do not vote.

This proposal is the first Wilson initiative in school construction in several years. Shortly after he took office, his Department of Finance issued a report suggesting that the state abandon the task of financing school construction. To give local districts more options, Wilson has supported a constitutional change permitting the passage of local school bonds by a simple majority vote rather than a two-thirds vote. Wilson reiterated his support for this idea in announcing his recent proposal. However, given the overwhelming defeat of such a proposal in 1993's Proposition 170, it is unlikely to be proposed to the voters again in the near future.

Meanwhile, a $2 billion school bond proposal has been introduced by Sen. Leroy Greene, D-Carmichael, chairman of the Senate Education Committee and the long-time legislative leader in the area of state support for school construction. But it is far from clear whether the school bond proposal, contained in SB 96, will actually appear on the ballot next March.

No bond measures appeared on the November 1994 ballot because legislative leaders and Wilson could not agree on which ones should be placed on the ballot. Murdoch acknowledged that "we have our work cut out for us" in getting a bond issue onto the March 1996 ballot, primarily because Senate Republicans have vowed to oppose all bond measures for that ballot.

Saylor of the Department of Finance said that Wilson has taken no position on any particular but issue and would consider the Legislature's package of bond measures on its own merits if and when it arrives on his desk. But Murdoch said: "My sense is that if the Legislature gives him a bond bill, he'll go for it."

Greene has also introduced a revenue bond that would not use Proposition 98 revenue (SB 95) and a state tax credit for developers who build state-approved new schools (SB 94).

■ Contacts:
Julie Saylor, Department of Finance, (916) 445-0328.
James Murdoch, Coalition for Adequate School Housing, (916) 448-8577.
Mike Vail, Santa Ana Unified School District, (714) 558-5538.

Union City Sued By School District

The New Haven Unified School District has sued the City of Union City in a dispute over renegotiating their agreement to on passing redevelopment funds through from the city to the school district.

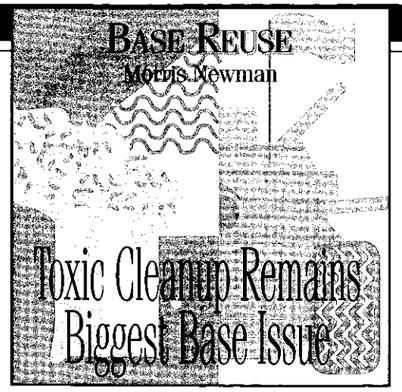
Union City, a working-class community south of Fremont in Alameda County, created a redevelopment project area in 1988 in the Decoto Road area, including the former site of Pacific States Steel. The project area includes plans for 2,000 houses and industrial development. At the time, the city agreed to provide a 10-acre site and $7.5 million to construct an elementary school.

According to Union City Community Development Director Mark Leonard, however, circumstances have changed since 1988. New development in the project area has moved more slowly than anticipated, and toxic cleanup costs from the Pacific States site are much higher than expected — in the range of $30 million. In addition, the city and the school district cannot agree on a student generation rate for the subdivisions, with estimates ranging from 0.3 to 0.9 students per dwelling unit, according to Leonard and Pat Gibbons of the school district. ❑

■ Contacts:
Mark Leonard, City of Union City, (510) 471-3232.
Pat Gibbons, New Haven Unified School District, (510) 471-1100.

Base Reuse

Morris Newman



The recent shift in political power in Washington is not expected to have any immediate effect on the Pentagon's efforts to clean up hazardous substances on California military bases, according to Ron Baker, a spokesman for the state Department of Toxic Substances and Control. The Air Force Times, however, reported in January that some Congressional Republicans want to shift the Pentagon's Superfund money to the U.S. Environmental Protection Agency, thereby freeing part of the military budget for other purposes, presumably weapons.

Environmental cleanup is arguably the costliest and most time-consuming obstacle in base reuse. Communities that have been eager to recycle former military posts as vehicles for economic development have found their efforts frustrated by large tracts of land contaminated by asbestos-laden buildings, unexploded ordnance, toxic groundwater, and other hazards.

Among the former bases currently listed among the EPA Superfund National Priority Sites are Castle Air Force Base, El Toro Marine Corps Air Station, Fort Ord, George Air Force Base, March Air Force Base, Mather Air Force Base, Moffett Naval Air Station, Norton Air Force Base, Sacramento Army Depot, and Treasure Island Naval Station.

Official military policy is to not convey or transfer ownership of land until remediation efforts are complete, which is one likely reason why the military has opted to lease portions of former bases rather than convey ownership.

The cost of remediating former bases is high; one estimate says the price could run between $3 billion and $6 billion. On some military bases, remediation runs $100,000 an acre, according to David Nawi, solicitor for the U.S. Department of the Interior's Pacific Southwest region, who testified before a congressional committee last spring. By itself, remediation at Fort Ord is expected to cost $200 million, although David Wang, a California Environmental Protection Agency official who monitors base remediation efforts, testified at the same hearing that removing unexploded ordnance from the base could cost $800 million, if the work went 10 feet deep.

A quick glance at some toxic problems at bases reveals the following:

- Alameda Naval Air Station has two old dumps that may be oozing toxics into the San Francisco Base.
- Mare Island has unacceptably high levels of heavy metals, including chromium and lead.
- Treasure Island is contaminated with TCE, a suspected carcinogen.
- Fort Ord has 8,000 acres of toxics, primarily unexploded ordnance. Possibly live ammunition is also an issue at Mare Island, the Sacramento Army Depot, Treasure Island and the Presidio in San Francisco.
- Norton Air Force Base is the possible source of two toxic plumes that are currently contaminating drinking water wells located in San Bernardino but owned by the City of Riverside. In December, the Air Force started operating pumps on the former base to pull the water into purification plants, although Riverside officials complain that Norton is too far from the city to clean up the water effectively. Water under Norton contains 550 parts per billion of TCE; concentrations of more than 5 per billion are considered hazardous to health. In 1994, Congress appropriated funds for a year-long study to determine whether Riverside residents have a higher-than-average incidence of cancer or birth defects. Progress in cleaning up the Norton plume is likely to be slow, judging from a toxic plume at Fort Ord that has been under remediation since 1988.

El Toro Fight Moves to Washington

An attempt by the Orange County supervisors to take over the base conversion process at El Toro Marine Corps Air station is encountering resistance, both at home and in Washington D.C. As reported, the Orange County Board of Supervisors voted 3-2 on December 20 to assume oversight of the reuse process, ousting the El Toro Reuse Planning Authority, a group made up of representatives of Orange County cities that had been recognized as the local lead agency for base conversion by the Pentagon. The action came shortly after voters in November approved Measure A, which amended the county's general plan to allow an international airfield on the 4,700-acre base, which is scheduled to close in 1999.

Recent developments include the following:

- In December, a group that had campaigned against Measure A, Taxpayers for Responsible Planning, urged county supervisors to abandon the airport proposal, in view of the county's weak financial condition following its filing for bankruptcy.
- Newly elected Orange County Supervisor Marian Bergeson, who represents the El Toro area, announced her qualified support for the airport in January, despite earlier promises to defer to the wishes of surrounding cities, most of which have been opposed to the proposal.
- In an effort to strengthen the hand of county supervisors, Assemblyman Curt Pringle, R-Garden Grove, introduced a bill in December that would accord state recognition to Orange County as the official base reuse agency. The move was protested by officials of El Toro-area cities, including Lake Forest and Irvine, who claimed the proposed legislation was an attempt to end run the efforts of south Orange County cities to participate in the planning process.
- The Pentagon's manager of the El Toro conversion, Paul Reyff, said in January that the Pentagon will withhold recognition from Orange County as the base conversion agency, and will take over the conversion process itself, if South County cities are not included on the base reuse panel.
- In January, a delegation of officials from Irvine, Lake Forest, Laguna Hills and Laguna Niguel went to Washington to lobby against the county takeover of El Toro.

Army to Retreat From Presidio

The Sixth Army said in December it would leave its historic post at the Presidio in San Francisco, only a few months after the army surprised city officials by announcing it had planned to stay five years longer than originally expected. The announcement followed a decision by the Pentagon to abolish the army unit. Officials of the U.S. Department of the Interior had welcomed the continued presence of the military outfit, which contributed $12 million annually to the Presidio's upkeep.

That possible shortfall means that officials may be forced to lobby Congress for additional funds to maintain the Presidio, after having endured attacks by fiscal conservatives in Congress about the high cost of the Presidio, which is said to be the most costly of all military bases to conserve and maintain. In addition, UC San Francisco said it would not be a tenant in the former Letterman medical complex, as previously announced.

Fort Ord Reuse Chief Named

The former city manager of San Jose has been named executive officer of Fort Ord Reuse Authority. Les White, who served less than six months at San Jose, started his new $115,000-a-year post on February 1. ❑

CP&DR
LEGAL DIGEST

Localities Win Two Victories Over Pre-Emption

Courts Reject State Supremacy On Groundwater, Timber Regulations

By Larry Sokoloff

Two appellate court decisions have given counties more power in regulating groundwater pumping and timber harvests near residential neighborhoods. In both cases, separate appellate panels found that state laws had not pre-empted local governments from addressing the issues. Attorneys for both plaintiffs are planning to appeal.

The cases involved timber harvesting in San Mateo County and groundwater transfers by farmers in Tehama County. Both cases had a common thread, said San Francisco attorney Antonio Rossmann, who wrote an amicus brief for Tehama County in the groundwater case. "The courts are not going to lightly imply pre-emption of natural resources, even though there's legislation on the subject," he said.

In the groundwater case, *Baldwin v. County of Tehama*, plaintiffs sued over a 1992 local ordinance that required permits be obtained to extract groundwater and then transfer it to other land. The plaintiffs included farmers who wanted to move the water out of the county. Tehama County Superior Court Judge Stanley J. Young ruled for the farmers, finding that the ordinance was pre-empted by state law.

The plaintiffs claimed that the ordinance was pre-empted by Water Code §§104 and 105, and pre-empted by implication from other uncodified enactments in the appendix to the Water Code, such as the Sacramento County Water Agency Act, which grant limited powers of groundwater regulation to specific local special districts. Water Code §104 says that "the State shall determine what water of the state, surface and underground, can be converted to public use or controlled for public protection." Water Code §105 says the state will determine how water "shall be developed for the greatest benefit." Janet Goldsmith, the attorney for the plaintiff, argued there is a "real discernible pattern of legislative action" in the Water Code and in the uncodified enactments.

But the Third District Court of Appeal in Sacramento disagreed. A unanimous three-judge panel, in an opinion by Justice Coleman Blease, said that the plaintiffs had not shown that state law either expressly or impliedly had occupied the entire field of groundwater regulation. The court called the plaintiffs' pre-emption claims "thin reeds," which "do not individually or collectively support the weighty implication which plaintiffs would make from them."

The appellate panel said, "No implication can be drawn that the Legislature intended to impair the constitutional exercise of the police power over groundwater because it has granted limited authority over groundwater to local agencies which draw their police power solely from state legislation."

The opinion said the plaintiffs do not meet the test from *Fisher v. City of Berkeley* 37 Cal. 3d 644, 708 (1984), a case involving rent control. "They do not show that the 'subject matter [of groundwater regulation] has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern [or that] the subject matter [of groundwater regulation] has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action...'"

The court also dismissed Baldwin's argument that the lower court ruling should be upheld because the county was hoarding water in violation of California constitution Article X, section 2, which requires that all water be put to its maximum beneficial use.

While several other superior courts have struck down similar groundwater ordinances, this was the first time the matter had been taken to the appellate level, Rossmann said. The state of California and six counties — Imperial, Sutter, Tuolomne, Nevada, Fresno and Santa Cruz — all filed *amici curiae* for Tehama County. Attorney Richard Archbold, who represented Tehama County, said he expects the decision to lead other counties to undertake additional groundwater regulation.

Goldsmith said she expected the ruling would lead to more confusion for water agencies and individual pumpers who would be forced to contend with "possibly conflicting" regulations. Goldsmith said her clients plan to file a petition for review with the California Supreme Court.

Under the Court of Appeal ruling, the case will be returned to Superior Court for a determination of several other matters, including the ordinance's constitutionality and a takings claim by the plaintiffs.

In the timber case, *Big Creek Lumber Inc. v. San Mateo County*, the First District Court of Appeal in San Francisco ruled that the Forest Practices Act and the Timberland Productivity Act do not pre-empt a county from enacting zoning laws to control the location of commercial timber harvesting.

A unanimous panel from Division Three made its ruling after examining amendments to San Mateo County's zoning ordinance which were enacted in 1992. The amendments created buffer zones by prohibiting timber harvesting in certain areas that were located within 1,000 feet of a residence.

The San Mateo County ordinance grew out of a proposed timber harvest in the Skylonda area, a small residential community nestled among the redwood trees in the Santa Cruz Mountains.

After Big Creek Lumber sought declaratory relief, San Mateo County Superior Court Judge Thomas McGinn Smith ruled in its favor. The court ruled that the ordinance was pre-empted by the FPA, was enacted in an arbitrary and capricious manner, and was unenforceable. The court also ruled that the county had insufficient evidence to justify a 1,000-foot buffer zone, and issued a peremptory writ of mandamus to set aside the ordinance.

The appellate court, in an opinion by Justice Carol Corrigan, first looked at Public Resources Code §4516.5 (of the FPA) which expressly pre-empts local attempts to regulate the conduct of timber operations. If the county's ordinance "were a clear attempt to regulate the conduct of timber operations, our analysis would stop there," the court noted. But the court said that the zoning ordinance "speaks not at how timber operations may be conducted, but rather addresses where they may take place."

Under the TPA, cities and counties are required to zone certain qualifying timberlands as timberland production zones, or TPZs. The designation of TPZs and non-TPZs is left to local action, the court noted. San Mateo County designated some areas as TPZs, and other districts as areas where

timber harvesting was a permitted use of the land. *The Big Creek* case arose in one of the non-TPZ areas where timber harvesting was permitted.

"Nowhere in the statutory scheme has the Legislature expressly prohibited the use of zoning ordinances such as the one at issue here," the court said

"Reading the TPA and the FPA together, we are persuaded the Legislature did not intend to preclude counties from using their zoning authority to prohibit timber cutting on lands outside the TPZs," the court said.

The court also said it found no implied pre-emption, as was discussed in *People ex rel. Deukmejian v. County of Mendocino* 36 Cal.3d 476,485 (1984).

The appellate panel said it found that the county had given the matter adequate study and review, and that the zoning amendment was not arbitrarily or capriciously adopted.

An attorney for the Pacific Legal Foundation, which represented Big Creek Lumber, said she planned to ask the court for a rehearing, and if denied, would appeal to the California Supreme Court. "It's a significant decision," said attorney Jennifer Deming. "Taken to its logical extreme, it suggests that legislation can never preempt local land use decisions."

Deming said that under the FPA, the county should have petitioned the State Board of Forestry if it wanted to enact local rules and regulations.

Deming predicted that if the decision stands, "there will be a domino effect," and other counties will follow San Mateo's lead.

But Michael Murphy, deputy county counsel for San Mateo, said the impact on other counties will depend on how much of a county's land is in a TPZ.

The buffer zone's creation made about 13 percent of the timber areas outside the TPZs unavailable for harvesting, and potentially affected about four percent of the county's total timberlands, the court noted. "It doesn't mean the end to timber harvesting by any means," Murphy said. ❑

■ The Case:
Peter Baldwin et al., v. County of Tehama, Nos. CO17285 and 17301, 94 Daily Journal D.A.R. 18228 (December 30, 1994).

■ The Lawyers:
For Baldwin et al.: Janet K. Goldsmith and Thomas Birmingham, Kronick, Moskovitz, Tiedemann & Girard, (916) 321-4500.
For Tehama County: Richard M. Archbold, Neumiller & Beardslee, (209) 948-8200.
For amicus counties: Antonio Rossmann, (415) 861-1401.

■ The Case:
Big Creek Lumber Company Inc., v. County of San Mateo, No. A062643, 95 Daily Journal D.A.R. 450 (January 11, 1995).

■ The Lawyers:
For Big Creek Lumber: Jennifer M. Deming, Pacific Legal Foundation, (916) 641-8888.
For San Mateo County: Michael P. Murphy, Deputy County Counsel, (415)363-4762.

TAKINGS

Oceanside Housing Cap Not Facially Unconstitutional, Appellate Court Rules

In a companion case to the important Oceanside ruling a few months ago, the Fourth District Court of Appeal has ruled that Oceanside's housing cap was not unconstitutional on its face, nor in its application to a 1,200-unit development project.

The Fourth District Court of Appeal's ruling in *Del Oro Hills v. City of Oceanside*, issued on January 25, follows the court's decision last fall to strike down Oceanside's housing cap as invalid because it is inconsistent with the state's housing and planning laws. (*Building Industry Association v. City of Oceanside*, 27 Cal.App.4th (1994); see *CP&DR Legal Digest*, September 1994.) The cases were consolidated through oral argument at the Court of Appeal but severed for supplemental briefing and judgment.

The *Del Oro Hills* case was a companion case to the *BIA* case, and the two cases were tried together. Del Oro Hills was a land developer which had obtained a master tentative subdivision map for 1,200 houses on a 300-acre parcel in Oceanside. Building permits had been issued for 371 units when Oceanside's Proposition A, which limited building permits, was passed. Although the Del Oro Hills project was eventually built out and sold under the city's allocation system, Del Oro Hills sued, claiming that Proposition A was unconstitutional on its face and also as applied to the Del Oro Hills situation.

In its ruling, Division One of the Fourth District Court of Appeal indicated that growth control is due a considerable amount of legal respect. "In general, growth control ordinances are routinely upheld by federal and state courts as valid exercises of a municipality's police power," the court wrote. "Moreover, because Proposition A was a growth control regulation, it is entitled to some deference, in constitutional analysis, regardless of its statutory or general plan infirmities."

In determining the validity of the as-applied challenge, the court noted that Del Oro's status as a land developer — rather than a builder — created an unusual situation. The developer did not seek any type of specific development permit, as is typically required in takings cases. "We are reluctant to create a net category of wholesaler of land or intermediary who is exempt from the requirement of exhaustion of administrative and judicial remedies, based solely on Del Oro's timing argument that it lost profits due to the growth control restrictions which allegedly impeded a timely sale of its property."

The court acknowledged that *Del Oro* could make a facial challenge to the constitutionality of Proposition A. After passage in 1987, the developer's lawyers argued, the measure robbed Del Oro of its property rights; the firm could not sell its land because the building permits would be allocated to the project. However, the entire project was built out within five years. Thus, the facial challenge was entirely based on timing.

The Court of Appeal rejected this argument, quoting language from *Agins v. City of Tiburon*, 447 U.D. 355 (1980), that a taking does not result from "mere diminutions of value during the government decision-making process."

"This record shows that Del Oro was essentially engaged in speculation in land development," the court wrote. "Although it complains Proposition A was solely responsible for its inability to sell some of its 13 villages for as much as it sought, or exactly when it sought, market forces cannot be ignored in analyzing causation of loss or damages here. ...[T]he undisputed facts show that this property was eventually sold and used for the same purpose which had been planned all along, i.e., residential development." Thus, the court said, "Del Oro cannot show any facial invalidity of the ordinance due to deprivation of all economically beneficial use of the property." ❑

■ The Case:
Del Oro Hills v. City of Oceanside, No. D017139, 95 Daily Journal D.A.R. 1125 (January 26, 1995)

■ The Lawyers
For Del Oro Hills: Donald R. Worley, Worley Schwartz Garfield & Rice, (619) 239-0815.
For City of Oceanside: Katherine E. Stone, Myers Widders & Gibson, (805) 644-7188.

ENVIRONMENTAL LAW

Ninth Circuit Clears Way For Toll Road Construction

The Ninth U.S. Circuit Court of Appeals has lifted what is apparently the last legal barrier to the construction of the San Joaquin Hills Transportation Corridor through Laguna Canyon in Orange County.

Ruling on January 25, a three-judge panel of the Ninth Circuit affirmed District Court Judge Linda McLaughlin's earlier denial of a preliminary injunction to stop further grading on the road.

In so doing, the Ninth Circuit ruled that the U.S. Fish & Wildlife Service had a rational basis for issuing a special opinion permitting the road to proceed in spite of the listing of the California gnatcatcher as a threatened species under the Endangered Species Act. The panel also ruled that the Service had not violated the law by not designating critical habitat for the gnatcatcher under the law.

"[W]e may issue an injunction only if presented with 'a definitive threat of future harm to protected species, not mere speculation'," the panel ruled. "Because plaintiffs have failed to carry their burden of showing that the FHA's [Federal Highway Administration] approval of the Tollroad is likely to violate Section 7(a)(2) [of the Endangered Species Act], we conclude that the district court did not abuse its discretion in refusing to issue a preliminary injunction."

The San Joaquin Hills project is an 18-mile toll road in south Orange County being built by a joint powers authority including the county and several cities. Most of the project is under construction but a four-mile stretch through Laguna Canyon was halted last year when McLaughlin issued a stay in a case challenging the federal environmental impact statement on the project. ❑

■ The Case:
NRDC v. U.S. Department of the Interior, No. 93-999.

■ The Lawyers:
Joel Reynolds, lawyer, Natural Resources Defense Council, (213) 934-6900.
Robert Thornton, lawyer, Transportation Corridor Agencies, (714) 833-7800.

TAKINGS

City Is Liable for Takings In Groundwater Pumping

The City of San Luis Obispo is liable for inverse condemnation damages because its groundwater pumping during the recent drought caused buildings in a shopping center to settle, the Second District Court of Appeal has ruled.

The city began pumping extra groundwater in 1989 as an alternative to requiring a higher level of water conservation (50% conservation instead of 20%). The city also received an exemption under the California Environmental Quality Act for the groundwater pumping but did not declare an emergency under state law. The groundwater pumping move also permitted the city to postpone for one year a decision to develop a desalination plant.

However, the groundwater pumping caused land subsidence underneath the Bear Valley Center shopping mall, which in turn resulted in structural damage to the center's buildings. Los Osos Valley Associates sued the city, claiming its property had been taken by the city's action. San Luis Obispo Superior Court Judge Kenneth Andreen ruled in favor of Los Osos Valley Associates and the city appealed to Division Six of the Second District.

Before the appellate court, the city argued that the property owner "unreasonably used" the water under its buildings to support them. But the court rejected this argument, saying that a balance must be struck between the use of groundwater to pump and the use of groundwater to prevent subsidence.

In writing the unanimous opinion, Justice Arthur Gilbert relied on *Smith v. County of Los Angeles*, 214 Cal.App.3d 266 (1989), in which hillside homes were destroyed due to a landslide caused by L.A. County's removal of debris along the road and by a water district's discharge of water into the hillside — activities which removed later and subjacent support from the homes.

"Here, the City similarly damaged LOVA's [Los Osos Valley Associates] buildings by removing subjacent support," Gilbert wrote. "That it did so by appropriating underground water is immaterial. City's action constitutes a physical taking of property for which compensation is required." Gilbert then quoted Restatement of Torts, 2, section 818, which states that owners of underground mineral and water rights may not cause such a subsidence.

The city argued that its actions were protected by the exception to inverse condemnation claims permitted in emergency situations. But Gilbert noted that the city "was well aware of the need to conserve water for years. It chose a combination of mild conservation measures and the damaging groundwater pumping. This choice of action over the years does not constitute an emergency. It constituted a choice among many that the city made over a considerable period of time."

Gilbert noted that the city never declared an emergency under the state Emergency Services Act and did not require the most stringent conservation measures included in its own conservation ordinance. He also said the CEQA exemption did not fall within CEQA's own definition of an emergency, which involves "a clear and imminent danger, demanding immediate action...." ❑

■ The Case:
Los Osos Valley Associates v. City of San Luis Obispo, No. B077802, 94 Daily Journal D.A.R. 17857 (December 22, 1994)

■ The Lawyers:
For Los Osos Valley Associates: Dennis D. Law, (408) 624-1116.
For City of San Luis Obispo: Thomas D. Wise, Hatch & Parent, (805) 963-9231.

ENVIRONMENTAL LAW

FmHA Should Have Imposed Conservation Easement on Ranch

The Farmers Home Administration should have attached a wetland conservation easement to the deed of an Idaho ranch when the property was returned to the bank that held the mortgage, the Ninth U.S. Circuit Court of Appeals has ruled.

Overturning the decision of a federal judge in Idaho, the Ninth Circuit concluded that the FmHA's actions on the Lazy C-H Ranch were covered by the wetlands provisions of the 1990 farm bill, which requires the creation of wetlands easements on property being disposed of by the U.S. Department of Agriculture.

Under Section 1813(h)(1) of the Agriculture, Conservation and Trade Act of 1990, USDA must "establish perpetual wetlands conservation easements to protect and restore wetlands or converted wetlands that exist on inventoried property" when that property is disposed of.

The Idaho case began when FmHA took title to 2,100 acres on the 4,700-acre Lazy C-H Ranch in Bear Lake County, Idaho, from a delinquent borrower. The property contains 730 acres of wetlands. FmHA eventually quitclaimed the property back to the Farm Credit Bank of Spokane, which had originally made the loan on the property. The bank sold the property to new owners who graze cattle on the ranch, including the wetlands. However, the FmHA did not attach a wetlands conservation easement .

The Ninth Circuit ruled that the transfer of the property from the FmHA to the bank did, indeed, fall within the farm bill's wetlands requirements. "FmHA simply bypassed the third party (the eventual property owner) and exchanged the Ranch directly with the bank for forgiveness of the debt. Under any rational definition of 'sale,' FmHA sold the Ranch to the Bank." ❑

■ The Case:
National Wildlife Federation v. Espy, No. 92-35568, 95 Daily Journal D.A.R. 929.

■ The Lawyers:
For National Wildlife Federation: Thomas M. France, Missoula, Montana.
For Department of Agriculture: Andrea Nervi Ward, U.S. Department of Justice.

Transportation, Housing Will Undergo Major Policy Changes

Continued from page 1

In January, HUD Secretary Henry Cisneros proposed another $13 billion in cuts over five years, to be achieved by demolishing poorly maintained housing and giving greater preference on Section 8 subsidies to working families. HUD's $30 billion annual budget represents 12% of the federal government's discretionary budget.

Housing

For California cities and state government the most important changes proposed at HUD would simplify housing finance and community development programs by creating two major programs for each of those categories. For local governments, the good news is that the money has fewer strings attached; the bad news, in the case of housing, is that local governments may face increasing competition on the state level for housing construction funds.

According to a HUD document released on December 19 entitled the "Reinvention Blueprint," the plans call for the consolidation of 59 programs into three "performance-based funds" by fiscal year 1998:

(1) A reformulation of the Section 8 program called Housing Certificates for Families.

(2) An Affordable Housing Fund to support development, which would consolidate HOME, HOPE, National Homeownership Fund, Section 202/811 and other programs.

(3) A Community Opportunity Fund "to stimulate community economic revitalization," which will incorporate the Community Development Block Grant program (CDBG), Youthbuild, and the Economic Development Initiative. The reinvention plan also calls for a reorganization of the Federal Housing Administration (FHA) into a government-run corporation.

At the local level, the treatment of Section 8 housing subsidies is likely to be one of the most controversial changes at HUD, at least among housing non-profits, which may be highly resistant to the changing political culture in Washington. Currently, Section 8 subsidies go to both affordable-housing landlords and individual tenants. Under reinvention, the subsidies would go to tenants only, while buildings would be "deregulated" (i.e.,deprived of all subsidies) theoretically giving landlords the incentive to upgrade their buildings and "compete" for Section 8 tenants.

Timothy Coyle, director of the state Department of Housing and Community Affairs, who was a HUD official during the Reagan era, praised the concept as "market driven" because building owners, rather than being entitled to receive subsidies, would have to compete in the housing market, "and do whatever every other building owner does who operates market-rate housing: provide a quality location."

But housing activists are skeptical. "In an ideal world, it would be desirable to allow for more mobility for tenants. Unfortunately, we don't live in an ideal world," said Jan Breidenbach, executive director of Southern California Association of Non-Profit Housing, which represents about 450 home builders and community activists. She said market-driven developers often fail to build the kinds of units that low-income families need most.

The HUD blueprint proposes giving 40% of the Affordable Housing Fund directly to state officials, and the remaining 60% to cities. Currently, most of the HUD funds go directly to cities with a population of more than 50,000 people. (The state already receives 40% of HOME program monies.)

The HUD Blueprint explicitly sets up a competition among different housing providers, in the name of local flexibility. By 1998, "no housing authority would receive funds directly from HUD; they would compete for capital and service funds through a locality or state," which would "have the option of replacing non-performing housing authorities with community-based organizations or others," according to the Blueprint.

But local officials seem dismayed by the idea of both lumping all the funds together, and creating a competitive process among jurisdictions that formerly received money directly from Washington. Simplifying HUD on the national level may lead to new bureaucracy on the local and state levels.

"The crazy quilt of HUD programs could be replaced by a crazy quilt of state and local programs, which doesn't particularly appeal to anybody," said Michael Bodaken, president of the National Housing Trust, a Washington, D.C.-based group that advises non-profit developers. Bodaken is a former Los Angeles housing activist and housing adviser to former L.A. Mayor Tom Bradley.

The distribution of Community Development Block Grants would remain little changed under HUD's new Community Opportunity Fund, with the state continuing to receive 30% and local governments the rest. Coyle said he endorses a less restrictive grant program, in which money could be used to assist community-based organizations, provide loans for the construction of supermarkets and shopping centers in distressed areas, and the like.

"Now HUD is acknowledging that the best decision of how to spend these critical funds will more than likely be made at the state and local level," said Coyle, who served at HUD during the Reagan Administration.

The block grant money program could be attractive to local governments, which will have fewer programmatic restrictions and more discretion to spend the money.

Even with new efficiencies and spending cuts, however, HUD appears vulnerable to heavy blows from the Congressional budget-cutting ax. New House Speaker Newt Gingrich, R-Georgia, said in December that he would like to eliminate HUD, while the new chairman of the powerful House Appropriations Committee, Christopher Bond, R-Missouri, has described the department as a "budgetary Titanic."

Transportation

Like the HUD proposal, the Transportation Department proposal would consolidate about 30 different grant, loan and subsidy programs into three big pots of money. These are:

(1) Formula Grants, which states and local governments would choose how to spend.

(2) Federal Discretionary Grants for projects of "regional or national significance that states may not be able to complete without national support or coordination," according to a DOT statement.

(3) State Infrastructure Banks, as a means to leverage federal "seed capital" with local funding.

And like the HUD proposal again, the DOT proposal pushes flexibility, giving states and local governments the choice of projects to fund. The Air Traffic Control functions of the Federal Aviation Administration will be converted into a government-owned corporation. DOT had already planned an unspecified funding cut, but promised that the reductions would be "more than offset by new funding programs which will allow states and localities greater flexibility, authority and leverage to access private capital."

Caltrans spokesman Jim Drago said the plan was "too general" to evaluate, but supported the idea of giving more discretion to states on where to spend transportation money, which has traditionally been earmarked for specific projects. "We believe flexibility has to be the cornerstone of everything....If you are able to remove some of the unnecessary or duplicative (federal) oversight which is of no use to anybody, that would be helpful."

Bishop of the American Public Transit Association seemed far less positive about the reinvention of DOT, although he acknowledged that the "proposal does not have a lot of meat to it, and we are in a wait-and-see attitude." His primary concern was whether the proposal would reduce funding, "which is the most critical issue right now facing transit officials." Another worry is whether the proposal for a single block-grant program for both highway and transit projects will create "unfair competition at the state level, at a time when both modes are not adequately funded right now."

Bishop added he was concerned about Congressional attitudes towards transit. While no specific cuts are on the table at the moment, "there have been lots of unofficial threats that this or that program will be cut." Operating grants (i.e., fare subsidies), rather than capital funding, appears most vulnerable to the long knives of budget cutting, he said.

On Capital Hill, DOT may fare better than HUD. The House Committee of Transportation and Infrastructure is chaired by Bud Shuster, R-Pennsylvania, who has been described by the Washington Post as "a devoted supporter of public works programs" which he views as an investment; he has brought at least four highway projects to his home state.

The Washington-based transit lobby Surface Transportation Policy Project is expressing concern over reauthorization of the Intermodal Surface Transportation Efficiency Act, the 1991 law that expanded and reformed federal transportation funding. In particular, the ISTEA's Enhancements program, which is used for a variety of urban design amenities like bike trails and historic preservation and represents about 10% of ISTEA spending, is under fire in Congress. ❑

> *"And like the HUD proposal, the DOT proposal pushes flexibility, giving states and local governments the choice of projects to fund."*

■ Contacts:
Timothy Coyle, director, Department of Housing & Community Development , (916) 445-4782.
Jim Drago, Caltrans Spokesman, (916) 654-4020.
Michael Bodaken, president, National Housing Trust, (202) 333-8931.
Hank Ditmar, Surface Transportation Policy Project, (202) 939- 3470.
Jan Breidenbach, Southern California Association of Non-Profit Builders, (213) 480-1249.
Chip Bishop, executive director of communications, American Public Transit Association, (202) 898-4000.
Bruce Katz, HUD spokesman, (703) 486-0484.

Campbell to Head Senate Housing Committee

Housing and transportation appear to be in for some changes in Sacramento as well as Washington this year.

In the state Legislature, housing issues may be driven by the priorities of Sen. Tom Campbell, R-Palo Alto, who was recently appointed chair of the new Senate Housing and Land Use Committee. In an interview shortly after his appointment, Campbell said his three highest priorities would be housing element reform, the homeless, and impact fees.

Last year, Campbell carried a tough bill (SB 1691) that would have required the homeless to be housed in National Guard armories, but the bill was vetoed by Gov. Pete Wilson. A Campbell aide said this particular proposal probably would not return this year, though she said Campbell hoped to carry a homeless bill of some sort.

Although Campbell is considered a moderate, his vice chair is newly elected conservative Sen. Richard Monteith, R-Merced. The committee membership also includes Sen. Jim Costa, D-Fresno, a former chair of the Assembly Housing Committee. To staff the committee, Campbell has hired Peter Detwiler, longtime staffer to the Senate Local Government Committee, and Howard Yee, who has worked for both the old Senate Housing Committee and the Senate Local Government Committee.

The transportation debate in Sacramento will be driven by the funding crisis in the State Transportation Improvement Program and perhaps by a policy agenda put forth in January by Californians for Better Transportation, a transportation coalition. Noting the erosion in gas tax revenue, the organization called for a reorganization of transportation taxes, including an odometer tax, toll roads, and congestion pricing. The group said it believes voters will support new transportation taxes under some circumstances.

Senate Transportation Committee Chair Quentin Kopp, I-San Francisco, carried an unsuccessful gas-tax increase proposal last year. Longtime Assembly Transportation Chair Richard Katz, D-Sylmar, has expressed support for new approaches. ❑

Transportation, Housing Will Undergo Major Policy Changes

Takings Policy, Species Law Targeted By Congressional Republicans

Continued from page 1

Sen. Ray Haynes, R-Temecula, plans to introduce a package of property rights bills similar to a group of bills he introduced last year in the Assembly. Another run is expected on the California Endangered Species Act; reform on that law fell just short of passage last year. And both the building industry and Gov. Pete Wilson have targeted the California Environmental Quality Act for further amendments.

The fate of bills in Sacramento will depend to a great extent on how effectively Democrats can organize the Assembly after the bitter fight over the speakership. Under a new power-sharing arrangement, the Democrats retained chairmanships of most key environmental committees, including Natural Resources and Water, Parks and Wildlife.

However, Assemblyman Richard Rainey, R-Walnut Creek, will take over as chairman of the Assembly Local Government Committee, and Assemblyman Trice Harvey, R-Bakersfield, will chair the Assembly Agriculture Committee.

Property Rights

The growing property rights movement clearly views the new Republican Congress as the vehicle to pass legislation to compensate landowners for loss of property values based on federal regulations. Already, several bills have been introduced.

HR 9, one of the 10 bills introduced as part of the Contract With America, would require compensation if any federal regulation reduces property values by 10% or more. HR 130 by Rep. Gerald Solomon, R-N.Y., would codify President Reagan's Executive Order 12630, which required a "takings impact analysis" on all federal actions. And S 135, introduced by Senate Judiciary Committee Chairman Orrin Hatch, R-Utah, would require compensation when value is reduced by 20% or $10,000, whichever is less.

However, Hatch's bill includes a potentially significant impact for local planning: It would extend the bill's provisions to all state and local actions taken as a result of federal mandates.

Planning and environmental lobbyists are already lining up against the property rights bills, arguing that many property owners will actually be harmed by the legislation, and that regulators will not have the flexibility required to implement federal laws. The American Planning Association called HR 9 "more extreme than any other takings legislation previously offered in Congress." The Natural Resources Defense Council said the bill "won't reduce the cost of government, unless federal agencies simply cease implementing environmental and pollution regulations as well as health and safety measures."

Yet momentum appears to be moving rapidly in the direction of a compensation bill. At a House Appropriations Subcommittee hearing in late January, Interior Secretary Bruce Babbitt acknowledged that compensation for a diminution in value is appropriate at some point. He rejected the 10% figure contained in HR 9 but did not provide an alternative.

In Sacramento, a spokesman said Sen. Haynes would be introducing a similar package as last year. Last year, he carried AB 2328, which would have established guidelines for local governments to follow in determining when a taking occurs; AB 2329, which would have stated that local governments could not use regulation to accomplish environmental goals if property values declined as a result; and AB 2330, which would have stated that any regulatory program that denies or conditions a permitted use would have been deemed a taking. All three bills failed in the Assembly Local Government Committee.

Endangered Species Act

Congress could become a leading battleground for Endangered Species Act reform because of the different views of Senate and House leaders.

More aggressive action to change the law is likely to come in the House, where endangered species legislation will fall under the jurisdiction of Natural Resources Committee Chair Don Young, R-Alaska, a native of California's Central Valley. (House Speaker Newt Gingrich abolished the Merchant Marine and Fisheries Committee, which long had jurisdiction over the law.)

In a recent interview with the Bureau of National Affairs, Young criticized the leaders of established environmental groups as "the self-centered bunch, the waffle-stomping, Harvard-graduating, intellectual bunch of idiots." Saying he voted for the Endangered Species Act in 1973, Young told BNA: "We had envisioned trying to protect, you know, pigeons and things like that. We never thought about mussels and ferns and flowers and all these ... subspecies of squirrels and birds." He did, however, say he felt he could work with Interior Secretary Babbitt, whom he described as "pragmatic."

To reform the Endangered Species Act, Young has turned to a fellow Central Valley native, Rep. Richard Pombo, a San Joaquin County rancher and co-founder of the San Joaquin County Citizens Land Alliance who has been an outspoken opponent of the law. Pombo will chair a special task force on Endangered Species Act reform, whose other members have not yet been publicly announced.

Pombo spokesman Mike Hardiman said Pombo has three priorities in reforming the Endangered Species Act:

1. Compensating landowners for lost property value — an issue he said might be dealt with in the Endangered Species Act even if it is also included in other legislation.
2. Introducing what Hardiman called "peer review" into the listing process, meaning that the Fish & Wildlife Service would be held more accountable for its actions.
3. Delaying any listing until a recovery plan for the species is worked out.

The task force will hold several hearings around the country between March and May, including one in Sacramento and possibly one in Southern California.

The defense of the federal Endangered Species Act as currently written will apparently fall to Senate Environment Chairman John Chafee, a moderate Republican from Rhode Island. California Resources Secretary Douglas Wheeler said in late January that the Resources Agency, which has championed multi-species planning processes, will work with Chaffee in crafting an alternative to the Pombo approach. However, given the current political climate, it is hard to say how forcefully such an approach will be supported either by Babbitt or by Gov. Pete Wilson himself. ❑

■ Contacts:
Nancy Marzulla, Defenders of Property Rights, (202) 887-4001.
Mike Hardiman, press secretary to Congressman Richard Pombo, (202) 225-1947.
Douglas Wheeler, California Resources Secretary, (916) 653-5656.
Johanna Wald, Natural Resources Defense Council, (202) 783-7800.
John Echeverria, Audubon Society, (202) 547-9009.
Craig Fiels, American Planning Association, (202) 872-0611.
State Sen. Ray Haynes, (916) 445-9781.

NUMBERS

Stephen Svete

Don't Worry — California Is Still Growing

After four years of stubborn recession, the news from the state Department of Finance was no surprise: California's growth rate has hit its lowest point in 22 years. The 1993-94 growth rate dropped to 1.2%, a rate not seen — reminds the DOF — since the recession of 1969-71. But contrary to many of the state's dailies, we find it difficult to get too alarmed.

After all, this is California — the land where even busts leave big tread marks. Consider that in this 1.2% year, we have been joined by 394,000 new Californians. That's equivalent to another Oakland, with a Fillmore or Ukiah thrown in for good measure. And even at a 1.2% average annual growth rate, our current 32 million would double in a mere 58 years. Are you really concerned that the population won't double until 2052, instead of 2030 (as would be the case with a 2% growth rate)?

Meanwhile, while some of the media moans about our slowdown, many of the state's subregions are in fact experiencing explosive growth. So slowdowns in the metropolitan areas — which are expected as expansion gives way to infill — skew the statewide rate, but mask an important spatial dynamic to population growth. The high-growth areas seem to be capturing exurbanites — either by choice or otherwise. For example, the highest growth county was Imperial, the rich agricultural domain in the blistering deserts of the Colorado River valley at the border of Arizona and Mexico. Imperial grew by 6.4% (8,400) — and 3,800 of these residents live in the newly-opened Centincla State Prison near El Centro. (Even taking the prisoners out, Imperial's growth rate was still almost 3%.)

Next in the growth ranking is Eastern Sierra's Mono County. With only one incorporated city (the ski haven of Mammoth Lakes) and more sheep than people, Mono shares more in common with Idaho than with its sister counties to the west. But its 4.6% growth rate tells us something about the choices of locationally unfettered exurbanites. Both the cyberspace-literate urban refugee telecommuting into business centers and the retiree who makes the final move to the family cabin are creating their own...mmm... boutique population boomlets.

In fact, 22 of California's 58 counties met or exceeded the boom-boom growth rates of the late 1980s. And each of them feature growing retirement communities (Butte, Mariposa, San Luis Obispo), offer exurban commuting potential to larger job centers (Sutter, Madera, Nevada), or have new prisons (Imperial and Riverside). Only four are classified as urban: Riverside (2.7%), Sonoma, Kern, and Fresno (all at 2.1%). And these counties share at least one of the characteristics of the new boom counties.

On the other end of the ranking, the Bay Area counties and Los Angeles exhibited weak growth trends. San Francisco, Napa (both at 0.8%), Alameda, Solano (both at 0.9%), and Marin (1.0%) all fell below the state average. And Los Angeles, at 0.5% growth rate, brought the rate down even further. But just as a reality check, remember that Los Angeles experienced the largest numerical growth of any of the state's counties, adding nearly 43,000 people. That's as much as another Culver City or San Bruno.

So yes. Growth has slowed — depending on which part of California we're talking about. But don't be surprised if folks in Arroyo Grande or Healdsburg refuse to believe it. And don't expect the schools to empty or hospitals to close either. ❑

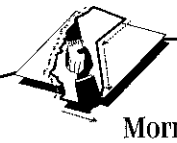
10 Fastest Growing Counties: 1993-1994

1	Imperial	6.4%
2	Mono	4.6%
3	Placer	3.8%
4	Calaveras	3.5%
5	Butte	3.2%
6	Sutter	3.1%
7	Madera	2.9%
8	San Benito	2.9%
9	Riverside	2.7%
10	El Dorado	2.5%

10 Slowest Growing Counties: 1993-1994

1	Monterey	-2.0%
2	Glenn	-0.4%
3	Sierra	0.0%
4	Plumas	0.0%
5	Alpine	0.0%
6	Los Angeles	0.5%
7	Lassen	0.7%
8	Humboldt	0.7%
9	San Francisco	0.8%
10	Napa	0.8%

Source: Department of Finance



DEALS

Morris Newman

The Rams and St. Louis: A Donkey's Tale

The budding romance between St. Louis and the Los Angeles Rams brings to mind a famous scene in Shakespeare's "Midsummer's Night's Dream." Titania, the queen of the forest, has fallen madly, hopelessly in love with Bottom, a common oaf whose head has been transformed into that of a donkey's. The comedy lies in watching the loving blindness of Titania, as she coos amorously to this repulsive creature. Bottom, for his part, seems to take such adoration as his due.

In this analogy, St. Louis is playing the role of the besotted Titania, while the Rams are typecast as the beloved donkey man. The Rams are a lousy football team that have been offered what may be the highest inducement package ever for a professional sports franchise. In Anaheim, the Ram's home town for the past 15 years, local residents are distraught that this venerable team, which has played in the Los Angeles area for nearly 50 years (after having been stolen from Cleveland) is packing up and leaving town.

> *"It's hard to tell which is the bigger sport: pro football or the frantic competition between cities for second-rate franchises."*

It's hard to tell which is the bigger sport: pro football or the frantic competition between cities for second-rate franchises. Sports franchises are not like other businesses. All the conventional rules of business and real estate are turned on their head. Here is the spectacle of cities competing for a tenant who pays little or no rent by offering those tenants the use of facilities that cost hundreds of millions of dollars, without ever dreaming that the tenant will defray the costs. And the beautiful part of it is, for cutting this deal that defies all the basic principles of prudent fiscal management, the mayor is happy with you, the city council is waving banners, and the local citizenry think you're a hero! "You gave away the stadium? We think that's *great*!"

It's not as if Anaheim didn't try. The city has been negotiating with the Rams about upgrading the aging Anaheim Stadium, and, until very recently was studying a proposal to build the Rams an entirely new stadium. But the Rams are not prospering in the shadow of the Disneyland Matterhorn. Sportswriters are in agreement that the name has lost much of its quality since 1978, when former owner Carroll Rosenbloom drowned while swimming in California. His wife Georgia Frontiere inherited the team and has made a mark for eccentricity, slack management, and poor draft choices. Now, Frontiere is eager to move the Rams, although it is unclear whether the motive was Frontiere's dissatisfaction with gate receipts in Anaheim, where the team claims to have lost $6 million this past season, or whether it was the crisp rustling of Missouri moolah that turned her head toward the Mississippi.

The St. Louis proposal, put together by a group headed by former U.S. Senator Thomas Eagleton, has offered a remarkable package. The Rams get to play in St. Louis in a new $258 million, 70,000-seat stadium, which has 101 luxury suites, and 6,556 club seats. The football team can keep about 85% of the proceeds from the sale of luxury suites and club seats, which could equal $20 million a year, (and must be the biggest tenant concession of all time.) The catch, for Eagleton and his Missouri cohorts, is to make good on its promise to sell 40,000 "guarantees" of ticket sales, which are not tickets but something like vouchers to buy tickets. These vouchers alone cost $250 to $4,500 *apiece*. Season tickets are expected to cost a hefty $25 to $45 a game. In addition, St. Louis said it will pay off the Ram's $30 million lease on the Big A stadium. In return, Frontiere has agreed to sell a 40% stake to St. Louis businessman Stan Kroenke for $60 million, and pay all of $250,000 a year for the privilege of playing in the new stadium. In addition, the Rams are being offered a $15 million practice facility. (A Rams accountant testily refused to confirm the financial details.)

Save the Rams, a local group led by Newport Beach lawyer and sports agent Leigh Steinberg, is trying to head off the move to Missouri. The locals are countering with an offer of $50 million in the form of new minority ownership, as well as guarantee the sale of 45,000 season tickets. They also propose to retrofit Anaheim Stadium with 100 luxury suites and build a new practice field and a rest home for retired football players. Steinberg reportedly claims that he has support from other sources, including major entertainment figures, but refuses to name them.

The big hitch, of course, is whether Georgia Frontiere can convince her fellow NFL team owners to approve the Miracle of St. Louis. Team owners are reportedly not enthusiastic to approve the move, because it would leave the league with only one franchise in the Los Angeles area — the almost equally mediocre Raiders. (New York, the nation's biggest sports market, has two NFL franchises.) Also, the NFL has already showed itself to be reluctant to bring a team to St. Louis, when it denied such a request a year ago. But team owners may be nervous about denying the request for fear that Frontiere will bring an antitrust suit against them, following the precedent set by Raiders owner Al Davis in 1982, when the NFL attempted to block his decision to move his franchise from Oakland to Los Angeles. Davis won in court and was paid a reported $20 million settlement. The team owners are expected to decide in March when they convene in Phoenix.

In short, the Rams deal is high comedy, and perhaps a wonderful diversion for people who labor on ordinary public-works projects, like redevelopment projects or school construction and struggle to find enough money to help projects happen, without the heroic assistance of people like Leigh Steinberg. My guess, at this point, is that St. Louis will fail in its attempt to sell enough ticket vouchers, that Save the Rams will also fail, that the NFL will deny Frontiere's request to transfer the team, and that the Rams will sheepishly creep back to Anaheim, having lost what limited support they still enjoy in the community — and feeling much more like the tail end of the donkey than its head. ❑