A
NG & DEVELOPMENT
REPORT

William Fulton, Editor & Publisher Vol. 2, No. 4

After almost a decade of playing second banana to Proposition 13, the so-called Gann expenditure limit is about to become a leading player in local government financing schemes and development policies throughout California.

Because of good economic times and low inflation, both the state government and its local counterparts are beginning collect more tax money than they can spend under the the expenditure limit, which was imposed on California's state and local governments by the voters in 1979.

Gann limit problems could lead to a series of important consequences, including these:

- *The state may turn to local governments as a means of getting rid of the extra funds.*
- *Local governments may reconsider the commercial- and industrial-oriented development policies they developed in response to Proposition 13.*
- *Local voters—already using incorporations, annexations, and ballot initiatives as methods of controlling growth—may use Gann limit override elections as referenda on local development policies.*

The spending cap is called the "Gann limit" because it was sponsored by Proposition 13 co-author Paul Gann as a follow-up to Proposition 13. *Continued on page 6*

In the wake of Proposition U, the citizen initiative that dramatically reduced commercial development throughout Los Angeles, planners, public officials, and legal experts are turning their attention to a more subtle—yet extremely important—wrinkle in local land-use regulations: discretionary review of large building projects.

Traditionally, even the largest development proposals in L.A. were given over-the-counter "ministerial" approval if they conformed with zoning laws. This meant they would not be brought before the Planning Commission or City Council, and no environmental review would be done.

However, all that appears to be changing. A proposal will soon come before the city council to require planning commission review of all large building projects, and a recent court decision cast doubt on the city's "ministerial" approval of a 26-story development proposal in Westwood.

Proposition U, passed by the voters last November, cut allowable densities in half on most of the commercially zoned property around the city. Following its passage, L.A. Councilmen Zev Yaroslavsky and Marvin Braude, who sponsored the measure, proposed a series of additional land-use reforms. Some had been kicking around City Hall for several years and others were new—but the most controversial was a proposal to require discretionary review by the city planning commission (and the *Continued on page 5*

Development agreements are coming into widespread use throughout California, with urban and rural jurisdictions using them for all sorts of purposes—even some that the drafters of the development agreement law didn't foresee.

LETTER FROM THE EDITOR

When we first unveiled *California Planning & Development Report* at the American Planning Association's annual California Chapter meeting six months ago, I had no idea whether it would succeed.

It wasn't that I lacked confidence in the quality of our product; I felt certain that we could produce a well-researched and well-written publication every month. Rather, I was worried that people wouldn't catch on to what we were trying to do.

In simplest terms, our goal was to put out a monthly newsletter that would keep local governments and developers up to date on the latest land-use news. Underneath that, however was a more ambitious plan. We wanted to document an emerging field—a field so new I still wouldn't know what to call it if somebody asked me.

Once, the fields of public administration, land-use planning, and public finance were separate, and stood at arm's length from private developers and business entrepreneurs. City managers concerned themselves with providing services and balancing the budget. Land-use planners dealt with sites and buildings. Public financiers lived in an arcane world of bonds. Developers and entrepreneurs worked on building the business base of a community.

But in the course of my work in writing about local government and real estate development in the past few years, I had come to see that, particularly in California, they had merged. The events of the last decade—federal cutbacks, Proposition 13, the bond collapse—had transformed local governments from service providers into public entrepreneurs. To ensure the financial stability of their community and their city or county, city managers and community development directors had to actively shape their locality's destiny.

To complicate matters even more, all these events occurred at the same time that we've seen a surge of grassroots interest in growth and development—or, rather, the limiting of growth and development—throughout California.

Thus, to operate in this brave new world, boundaries had to be crossed. Every land-use decision suddenly had ramifications for the economic future of both city government and community. Cooperation among land-use planners, public financiers, economic development specialists—and ordinary citizens—was needed at every turn. The new world required local governments to be very demanding on the developers and entrepreneurs who were both their partners in community-building and their adversaries in land-use regulation.

To me as a journalist, this whole process, as it was unfolding in California, was the most interesting story in the whole country. And in launching *California Planning & Development Report*, it was our goal to cover it like a blanket.

But I wasn't sure if we could find a market. Despite all this merging and boundary-crossing, city managers, planners, investment bankers, developers, and entrepreneurs still live mostly in their own narrow worlds. Could we get them interested in the larger picture?

After six months, I'm pleased (and a little relieved) to report that we seem to be doing the job. Circulation has grown steadily, and though *California Planning & Development Report* isn't yet profitable, we're well ahead of our projections.

Even the press has picked up on the world we've been trying to report on. Dan Walters, the respected *Sacramento Bee* political reporter, built a whole column around our special report on ballot measures last December, and last month we even rated a mention in *The Wall Street Journal*.

More gratifying than the circulation or the attention, however, is the range of people who subscribe to *California Planning & Development Report*. Though most are local planners and developers, we can boast an impressive assortment of financial and real estate consultants, as well as more than a few lawyers.

But I'm most proud of the fact that about five percent of our subscribers are investment bankers. A decade ago, what self-respecting Wall Street type would have invested time and money in reading about zoning news? Today it's a necessity: You can't tell where zoning leaves off and public finance begins.

So we're over the first hurdle at *California Planning & Development Report*: We've found an audience—and not just any audience, but a diverse group of people from vastly different fields who need to keep up with each other. Let me take this opportunity to promise that we're planning to stick around and keep you all posted.

William Fulton

BRIEFS

Land-use right-winger Bernard Siegan, a law professor at the University of San Diego, may become the latest point of contention in the long-running dispute between liberal Democrats and the Reagan Administration over federal court appointees.

Siegan, who has been nominated for a seat on the Ninth U.S. Circuit Court of Appeals in San Francisco, is best-known in the world of land-use law for arguing that market forces can regulate land uses more efficiently than government regulations. His study of land use in Houston was published under the title *Land Use Without Zoning*.

Challenges to his nomination, however, are likely to center on his views on school desegregation, which have been the subject of considerable attention in the legal press.

The Los Angeles Raiders' legal dispute with the city of Oakland isn't over yet. Now the team has filed suit in Monterey County Superior Court demanding $26 million in inverse-condemnation damages.

The Raiders, you may recall, beat the city's effort to acquire the team by eminent domain, shortly after winning their celebrated antitrust suit against the National Football League. In the new suit, however, the Raiders are arguing that because the eminent domain proceeding dragged over for several years, the team was forced to incur considerable cost. Among these costs were maintaining a training camp in Northern California and renting the Oakland Coliseum for three years after the team moved to Los Angeles in 1982.

Two more coastal cities have banned onshore oil facilities except when approved by a vote of the people, according to the Santa Cruz-based Oil Information Program.

City councils in Redondo Beach, in southern Los Angeles County, and Point Arena, in Mendocino County, unanimously approved the action early this year. In addition, votes on similar measures are reportedly scheduled in the coastal Bay Area cities of Pacifica and Half Moon Bay in the near future. *Continued on page 7*

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COURT CASES

Supreme Court May Issue Narrow Ruling on Coastal Case

If oral arguments before the U.S. Supreme Court are any indication, the controversial and well-publicized legal dispute between the California Coastal Commission and a Ventura beachfront homeowner isn't likely to be resolved with sweeping statements about the constitutionality of land-use regulations in California.

Rather, according to lawyers who attended the session on March 30, the pivotal question appears to be whether the the Coastal Commission's demand that Patrick Nollan and his family yield one-third of their property to allow public access to the beach was closely related to the problems the commission said were created by the family's construction of a two-story home.

"They wanted that nexus to be a lot tighter," admitted Andrea Ordin, the state's chief assistant attorney general, who argued the case for the Coastal Commission.

Nollan v. California Coastal Commission is the second important California land-use case to be heard by the high court this year. *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, which dealt with the stick question of inverse condemnation, was heard in January. (*CP&DR*, February 1987.) The court is expected to decide both cases by July.

Oral arguments in the Nollan case came only one week after the Coastal Commission scored a significant victory in the high court. On March 24, the court ruled in *California Coastal Commission v. Granite Rock Company* that a mining company seeking to operate a limestone quarry near Big Sur had to obtain a permit from the Coastal Commission, even though the quarry was located on land owned by the federal government.

Traditionally, states and local governments have little power over land use on federal lands.

The Nollan case began when the Nollans sought permission to raze an old beach house and replace it with a two-story year-round home. The Coastal Commission approved the permit only on the condition that the Nollans grant an easement on one-third of their 3,800-square-foot lot to allow public access to the beach. The Nollans refused and built their home anyway while the case went to court.

The condition is not an unusual one for the Coastal Commission to impose. Since its creation 15 years ago, the commission has often imposed severe conditions on landowners and developers hoping to build along the coast. The access question, in particular, is one that has come up again and again in the commission's deliberations.

Robert Best of the Pacific Legal Foundation, who argued the case for the Nollans, contended that the condition amounted to an invasion of the Nollans' privacy.

"It's clear that the commission is taking the Nollan's property for a purpose not related to the development," Best told the Supreme Court.

But Ordin argued that the state was entitled to impose the access condition because, taken as a whole, homes such as the Nollans' created a "visual wall" along the beach.

According to lawyers in attendance, the justices asked relatively few questions about sweeping legal questions, and many specific questions about the characteristics of the Nollans' property.

"They were not talking broad legal principals," said Ordin.

Lawyers for both sides said the oral arguments also seemed to spur the interest of Justice Thurgood Marshall, who is not always active in questioning. Marshall, once a renowned civil rights lawyer, apparently was concerned that the condition might violate the Nollans' individual rights.

Nollan v. California Coastal Commission, No. 86-133.
California Coastal Commission v. Granite Rock Co., No. 85-1200.

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UPDATE

More on Cities, LAFCOs, and Drawing Boundaries

As might be expected, last month's Special Report on city-county disputes over boundaries and taxes was far from comprehensive. The weeks since publication of the issue have seen several developments in the area that are worth reporting as a supplement to the Special Report.

Drawing Boundaries in Sacramento

The possible incorporation of Citrus Heights, a Sacramento suburb with 70,000 people and a good sales tax base, has been getting a lot of publicity—all of which seems to confirm a *CP&DR* Special Report's conclusion last month that cities and counties are badly split on the incorporation issue.

The hearings on Citrus Heights in front of the county's Local Area Formation Commission, which must determine the feasibility of new cities, rated big headlines in the *Sacramento Bee*. County Executive Brian Richter told LAFCO that incorporation of Citrus Heights would mean a $7-million-a-year loss in sales tax revenues to the county and added, "There are no benefits for the country from a financial perspective for Citrus Heights incorporating." A vote in November seems likely

Right now LAFCO is trying to determine whether the new city actually ought to be incorporated quickly after the vote, which would benefit the city financially, or several months after the vote, which would favor the county.

Meanwhile, in neighboring West Sacramento, officials at the city and Yolo County were somewhat surprised to discover that a miscalculation in the city's revenue projections may wind up costing city coffers $1 million a year. For reference: West Sacramento, whose incorporation cost Yolo County up to $3 million a year in next revenues, *waited* several months until the city was actually set up.

Putting Teeth in LAFCOs

Meanwhile, Assembly Majority Leader Tom Hannigan has introduced a bill that would beef up the powers and independence of the Local Area Formation Commissions.

AB 169 would reform LAFCOs in several ways, including:

- Authorizing LAFCOs to initiate certain boundary changes.
- Increasing the number of allowable "public" members on LAFCOs from one to two.
- Revising standards by which LAFCOs must make their decisions.

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LAND USE

Legislative Bills Seek to Deal With Substandard Lots

Three bills to reform rules about substandard building lots have begun working their way through the California Legislature.

The bills were written after considerable study and hearings on the problem of so-called "antiquated subdivisions" by a Senate Local Government subcommittee with the assistance of the Lincoln Institute for Land Policy, which has been examining the same issue in detail in Florida.

Experts estimate that California contains at least 400,000 substandard lots in "paper" subdivisions—that is, small lots which were subdivided at some point in the past, but can't be built on today, either because of modern land-use regulations, or because roads and other infrastructure to reach them were never built. Many people purchase such lots, particularly in resort areas such as Lake Tahoe and Cambria, with high hopes, only to find they cannot build anything.

"Amazingly, people think that anything you can buy with four lines around it you can build on," said Madelyn Glickfeld, a Malibu-based consultant who assisted the Senate subcommittee in researching the issue.

Ideally, the boundaries of these subdivisions should be redrawn, but owners are often scattered throughout the country and local planners are unaware of the problem.

"In general, I think many county planning agencies significantly understate the problem simply because they don't know the full extent of the problem yet," said Glickfeld. As an example, she pointed to San Luis Obispo County, which estimated in 1984 that it had 1,000-5,000 substandard lots—only to discover, after two years of research, that the real figure was more like 70,000.

In response to Glickfeld's research and subsequent hearings, Senate Local Government Committee Chairman Marian Bergeson, who also heads the antiquated subdivision subcommittee, has introduced three bills:

- *SB 442* would allow owners of substandard lots to band together into "private land readjustment associations" to re-subdivide the land. Such private groups would be able to form assessment districts to pay for the cost of the so-called "land readjustment." The bill also contains provisions encouraging local governments to work with such private groups in these efforts, and would require the Coastal Conservancy and the Santa Monica Mountains Conservancy to readjust the boundaries of lots they own.
- *SB 443* is a disclosure bill which would require sellers of substandard lots to inform prospective buyers of the limitations that come with the property. Glickfeld said this bill is intended to discourage speculation on such lots.
- *SB 444* would allow local agencies to use redevelopment powers to adjust boundaries of substandard lots even if they are vacant. Under redevelopment reforms passed a few years ago, redevelopment powers typically cannot be used on vacant land.

All three bills were scheduled for Senate committee hearings in early April.

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Development Agreements

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demands of the state's laws on vested rights.

The huge number of development agreements was a completely unexpected finding. "Most knowledgeable people thought there would be 50 or maybe 100," Cowart said. Instead, his team of researchers have so far unearthed 333 already adopted and 141 more in the works. In all, 30% of all California cities and 37% of the state's counties have been involved in DAs on specific projects.

And the range of those projects is staggering. The size of mixed-use projects varies from 54,000 square feet and nine residential units on one Santa Monica development agreement to 6 million square feet of office and retail space in an historic agreement between the Irvine Co. and the City of Irvine. Residential projects involved in DAs range from a 3,800-unit project in Fremont to one of only 14 units in Vista.

Perhaps the biggest surprise, however, is the fact that development agreements have come into common use in small cities and rural counties, particularly in the foothill areas of the state.

The development agreement statute was enacted in response to a California Supreme Court ruling (the so-called *Avco* case) which stated that a large builder in Orange County was not exempt in 1973 from new coastal protection laws, even though the company had spent more than $3 million on the project at the time. Thus, Cowart said, he expected to find DAs used in urban areas for large projects, such as the one negotiated in Irvine.

While cities in the state's metropolitan regions have been active, Cowart reported that a very large percentage of cities in the foothill and central Sierra regions of the state have been involved in DAs—sometimes using them on almost every development project. More than 20 DAs have been approved in Tuolomne County alone.

Among the unexpected uses development agreements Cowart found were these:

- *Social Exactions.* Some communities have used the negotiating leverage allowed under development agreements to acquire affordable housing and achieve other social goals.
- *Open Space Preservation.* In some cases, open space can be acquired quickly through DAs; because of the assurances a DA can bring a developer, this can occur even if the developer does not plan to build in the near future.
- *Enforcement.* The consequences of violating the conditions of a simple development permit are "paltry" compared to the consequences of defaulting on a DA.
- *Safe Harbors.* DAs can be used in a variety of ways to avoid or deal with litigation. In Santa Monica, a DA was used to allow a moratorium exemption for a developer who otherwise would have sued. In San Diego, DAs were used to collect development fees while the fee system was tied up in court.
- *Incentives.* In some cases, the DA's protection against changing regulations has been used to attract desirable economic or housing development.
- *End-Run Around Initiatives.* In a few cases—notably the Rancho Solano project in Solano County—Cowart found that a development agreement was adopted "specifically to save a project from a citizen initiative designed to kill it." Similar cases have occurred elsewhere, including the fast-growing East Bay community of Pleasanton.

"Even in rural places, local governments and developers may be afraid there's a citizen growth backlash in the works, so they try to slap a development agreement on any project not going to construction immediately," Cowart said.

Cowart's research team is still at work, and the professor expects to produce a comprehensive book that deals with statistical results, as well as legal and policy questions related to development agreements.

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LAND USE

Los Angeles

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council) on all projects over 50,000 square feet.

Such a reform would bring large building projects under careful city scrutiny for the first time. Because they are classified as "ministerial" acts, approval of large projects is virtually mandatory so long as those projects conform to zoning laws, even if they are inconsistent with the city's general plan or likely to cause environmental damage. (The city's general plan and zoning are being brought into conformance by the planning department as a result of a recent court decision.)

The Yaroslavsky-Braude plan caused such a stir that even Mayor Tom Bradley, normally a behind-the-scene player, publicly commented on the issue of limits on development. While endorsing some ideas, such as curbs on mini-malls and hillside construction, Bradley refused to support the discretionary review proposal, saying it would make the permitting system so unpredictable that developers would be less likely to build in the city.

Yaroslavsky and Braude immediately jumped on the mayor, saying he was ignoring the most important issue. "The key issue facing the future of the city is what to do about major construction projects," said Yaroslavsky, a likely opponent of Bradley's in the 1989 mayoral race. "Any proposal that doesn't recognize we have a problem in that area is not serious."

So far, the council has approved only one of the two councilmen's 10 points, a severe restriction on residential development in hillside areas.

Though it hasn't received as much publicity, the recent Westwood court ruling could turn out to be just as important, because it suggests that city review of large development projects may be discretionary, not ministerial, even under current city laws.

In a ruling in late March, the state Court of Appeal in Los Angeles, the state's intermediate appellate court, reversed a lower court decision not to block construction of a skyscraper in Westwood because an environmental impact report, or EIR, had not been prepared.

Superior Court Judge John L. Cole had ruled that the Friends of Westwood group was unlikely to prove that the city's approval of a 26-story $88-million project in Westwood was a not a ministerial act automatically exempt from the California Environmental Quality Act.

However, the appellate court said Friends of Westwood had a reasonable chance of proving that the project was required to undergo environmental review by the city.

Though development attorney Kenneth Bley proclaimed himself "flabbergasted" with the ruling, public interest lawyer Carlyle Hall, who specializes in challenging local governments on land-use policies, said most appellate courts in California will come down on the side of preparing an EIR.

"You've got to go pretty far back to find an appellate case upholding a public agency's decision *not* to do an EIR," he said.

Justice Earl Johnson, who wrote the opinion in *Friends of Westwood v. City of Los Angeles*, warned that the court's ruling does not mean "all or more building permit approvals in Los Angeles represent 'discretionary projects'." However, he used flowing language to describe why the court should give the benefit of the doubt to Friends of Westwood, rather than the city.

"The issuance of the building permit is the only point at which the environmental impact of this project may be considered before a concrete and glass 'mountain' is erected and Westwood's streets are filled with hundreds of additional vehicles," he wrote.

The Ten-Point Plan

The so-called "10-point plan" proposed by Los Angeles City Councilmen Zev Yaroslavsky and Marvin Braude following the passage of Proposition U contained some brand-new proposals, as well as many that have been kicking around City Hall for many years. The 10 proposals are:

- *Discretionary review for projects over 50,000 square feet.* By requiring them to obtain a conditional-use permit, this proposal would subject large building projects in L.A. to public hearings and environmental review for the first time.
- *Discretionary review of residential projects in commercial zones and commercial projects in industrial zones.* Among other things, this proposal is meant to stem the conversion of industrial land to commercial use.
- *Height limits on apartment buildings near single-family neighborhoods.*
- *A ban on billboards within 300 feet of residential land.*
- *Special reviews for mini-malls which are located near residential neighborhoods or contain large amounts of restaurant space.*
- *Increased parking requirements for commercial and industrial buildings.* Special attention would be paid to restaurants, bars, and other large traffic generators.
- *Mandatory ridesharing programs for buildings which employ more than 700 people.*
- *Urban design guidelines.*
- *Limits on construction densities for hillside areas.* This measure is the only one that the city council has enacted into law so far. Prior to its passage, densities on hillsides were the same as densities elsewhere in other parts of the city that had the same zoning designation.
- *A ban on development for hillside lots too small to handle full-sized dwellings.*

ECONOMIC DEVELOPMENT

RTD Defers Downtown Subway Assessments For Five Years

"Privatization" of construction costs for Los Angeles's new subway system is undergoing a stiff test, thanks to downtown property owners.

The Southern California Rapid Transit District has been selling the subway to Congress based on idea that close to half the construction cost can be derived from local sources.

But when some of those "local sources"—specifically, downtown property owners likely to benefit from their proximity to the subway—received their tax bills last year, they weren't too happy. And they complained so vociferously that RTD has decided to postpone, for five years, collection of a 30-cent-per-square-foot assessment on downtown properties.

However, the RTD is still planning to go ahead with a $200 million bond issue—using the downtown assessments as security—to help pay for the first four-mile leg of the subway, which is now under construction. As part of its deal with the federal government, RTD is counting on the downtown assessment district for 11% of the $1.25 billion construction costs for the first leg of the subway, which will run from Union Station to MacArthur Park.

RTD Board President Jan Hall, a member of the city council in Long Beach, said the assessments will resume when the first leg of Metro Rail is open in 1992. She said the action shows that RTD recognizes "concerns raised by downtown property owners who claim they may suffer a financial hardship during Metro Rail construction and do not expect to realize tangible benefits until after the subway opens in five years."

Despite the deferral, however, the downtown property owners are planning to continue their legal and political fight to kill the assessments altogether. Vene Westfall, a lawyer for the Downtown Los Angeles Property Owners Association, said the members of his group feel they are unfairly taxed.

"The burden of 11% of construction is falling on 388 property owners downtown," he said.

RTD says the deferral means the agency will eventually have to collect an additional $30 million from the property owners over the life of the bonds to pay for the interest that will accumulate during the first five years.

The assessment district, believed to be the largest in the nation, was authorized by the state legislature to help pay for the subway. It one of two RTD has established to help pay for the first phase, covering the entire downtown area from the Union Station area to parcels west of the Harbor Freeway.

Creation of the district was justified by statistics from other cities, particularly Washington, which showed that properties in close proximity to subway systems had increased substantially in value.

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Gann Limit

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Proposition 13, passed in June 1978, dramatically rolled back local property taxes and limited their future growth to 2% per year. Seventeen months later, Proposition 4, the Gann measure, limited growth in both state and local government spending to increases in the consumer price index plus population growth. Programs mandated by Congress and the courts don't count, and the expenditure limit can be overridden by a two-thirds vote of the people.

Since that time, Proposition 13 has been the dominant force in local government finance and even in planning and development policy throughout the state. Unable to rely on increasing property tax rates to carry the burden, cities and counties were forced to seek out commercial and industrial developments that generate totally new property taxes, as well as other types of tax revenue, particularly sales and bed tax. At the same time, development that did not "pay for itself" with tax revenue—most notably new residential projects—were restricted or forced to pay high fees to cover public costs.

Now, however, the Gann limit is beginning to complicate the game even more. Low inflation rates also mean small yearly increases in the Gann limit, and many jurisdictions are bumping up against the limit.

The state government, for example, will almost certainly exceed the limit in fiscal year 1987-88. And according to a report from the California Tax Foundation (Cal-Tax), local governments are rapidly approaching the limit. Three-quarters of the state's counties, and 26% of its cities, are within 20% of the Gann limit. And though the counties appear closer as a group, cities are hurdling more rapidly toward the limit.

The reason, apparently, is that the very strategy that can assist local governments in surviving Proposition 13 can sink them under Proposition 4 if inflation is low enough. The Cal-Tax report uses Marin County as a prime example. Because of a boom in commercial development along the Route 101 corridor, property tax revenues in the county rose from $15 million in 1980 to $28 million in 1986, even within Proposition 13's restrictions. With inflation low and Marin's population rising slowly — partly because of locally imposed development controls — the economic boom has led to a Gann limit crisis.

Other cities with big sales tax generators, such as Santa Monica and Costa Mesa (which have regional shopping malls), have also hit the limit. In Santa Monica and elsewhere, however, override elections have been successful, even though they require a two-thirds majority. In fact, according to Cal-Tax, override elections have been remarkably successful, winning 44 of 46 times on the local level.

As the huge wave of ballot measures in 1986 showed, citizen unrest is already focusing on burgeoning commercial development in the suburbs. Gann limit problems could be used as justification for rejecting new development projects—a situation that the Cal-Tax report says (without naming names) has already occurred in at least one city. Furthermore, citizen activists might use Gann override elections to protest commercial development.

It's unlikely, however, that the state legislature will leave the Gann limit alone—not because of the problems local governments face, but

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ECONOMIC DEVELOPMENT

RTD Subway Assessments

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Though the RTD claims the five-year deferral will give property owners the chance to "prepare" for the assessments, the property owners are clearly hoping to use the time to stop the assessment process entirely. The Property Owners Association has sued RTD in Los Angeles Superior Court, and reportedly may lobby the state legislature for changes as well.

In addition, another group, Taxpayers Watchdog, has sued the federal government in Washington in an attempt to stop federal funding of the project. Westfall also said Taxpayers Watchdog is preparing a ballot initiative on the project as well.

It is unclear how much the dispute surrounding the assessments will hurt the marketability of the RTD bonds. "It's clear that we will not be able to sell the bonds until after the legal issues are resolved," said RTD spokesman Marc Littman. He also said the uncertainties may lead to higher interest rates.

Westfall said his group is working on other ways RTD might pay for subway construction, including a surcharge on parking tickets.

"We're not opposed to Metro Rail," said Westfall. "But if they want to build it, let them pay for it some other way."

The deferral came too late to stop the 1986 assessments, which totalled more than $20 million. And despite the additional costs created by the deferral, an RTD spokesman claims that new development downtown—such as California Plaza and Library Square—will add to the tax base sufficiently that the assessment in 1992 may still hover at about 30 cents per square foot. Under law, RTD may levy an assessment as high as 42 cents per square foot.

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Gann Limit

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because the state itself is so close to the limit.

The most talked-about idea is a state constitutional amendment to change the formula for calculating the limit. This approach would replace CPI with per capital personal income, an idea that would have constrained the limit in the late '70s but, if enacted now, would give the state's limit a one-time increase of $3 billion. The idea would, obviously, take the heat off local governments as well, at least for a while.

Versions of this idea have been introduced by Senate Education Chairman Gary K. Hart and Assembly Majority Leader Tom Hannigan, and the idea is supported by California School Superintendent Bill Honig. However, it would require passage in a statewide election, and Gann himself has come out against it. The results of a statewide vote on this issue would go a long way toward determining whether Gann and his tax revolters still have much influence in California.

Some in Sacramento have proposed returning the money to taxpayers as a refund—something that actually occurred in Kern County when an override vote failed. But others are suggesting that the state simply dump the extra money off in the form of block grants to local governments.

A local government give-back might be appealing to both Deukmejian and the legislature. Hard-pressed county governments are already clamoring for more state aid, and in his State of the State speech, the governor endorsed a proposal to give them a larger share of sales tax revenues in exchange for taking over part of the health-care system. (*CP&DR*, March 1987.)

If the state gave a Gann surplus to local governments, it would quell the complaints from below, give the state more room to maneuver in its own finances, and, of course, dump the problem of getting an override onto the locals.

Since the local governments would be asking for approval to spend money not generated by local taxes, however, chances of success would seem to be good.

"My view is that the state will give the money to the locals, and the locals will go to the voters for permission to spend it and say if they don't get that permission, the money will go to the city next door," said Dean Misczynski, principal consultant for the Senate Office of Research and an acknowledged expert on local government finance.

"Up To The Limit: Article XIIIB Seven Years Later" is available from the California Tax Foundation, (916) 441-0490.

BRIEFS

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Since November of 1985, nine coastal cities and five coastal counties have imposed some sort of restriction on onshore oil facilities.

South Lake Tahoe is gingerly moving toward a redevelopment program as a followup to the complicated two-year negotiation effort on the Tahoe area's regional plan.

The city council has already given conceptual approval to several building projects that would be part of the redevelopment plan, including two new hotels and other improvements expected to cost more than $100 million. However, the city will have to go to the voters for approval of at least one tax increase to raise money for public improvements such as bicycle paths, better traffic circulation, and water quality programs.

According to city officials, the goal of the program is to revitalize certain parts of South Lake Tahoe by beautifying the Route 50 corridor, which includes many run-down motels.

Lawsuit, Politics Hold Up Outdoor Commission Report

Though bootleg copies are available from an environmental printing house in Washington, the final report of the President's Commission on Americans Outdoors has been held up by a lawsuit — and, perhaps, by the fact that some of its recommendations were not what the Reagan Administration was expecting.

Many were surprised late last year when the commission, chaired by Republican Gov. Lamar Alexander of Tennessee, took a strong stand in favor of an aggressive posture toward preservation of open space nationwide.

Chief among the recommendations was the creation of a $1-billion-a-year successor to the Land and Water Conservation Fund, which would provide federal, state, and local governments with the money necessary to preserve greenways in urban areas, develop an "outdoors ethic" among Americans, and take other actions to preserve open space.

"The report suggests a framework for national action," states a glossy executive summary issued in December. "The president should light the prairie fire and lead the crusade. But most of the action should be *community by community.*"

The new fund would be paid for from "the sale of nonrenewable resources."

Apparently the pro-conservation stance of the commission surprised some people in the Reagan Administration. Among others, top officials in the Agriculture Department criticized the apparent call for a strong federal role, as well as the emphasis on acquisition of new parkland. Some commission members also said that the billion-dollar fund met with opposition from the White House itself.

"It's clear that the Administration was anticipating the commission would make recommendations in keeping with its ideology—a smaller federal role, more RVs, etc.," said one congressional staffer familiar with the commission's work.

Though some changes were made in the executive summary in response to Administration criticisms, a group representing private property owners within national parks filed suit in Seattle, claiming some of the commission's proceedings had not been public. Prompted by members of the National Inholders Association, the property owners' group, the Center for the Defense of Free Enterprise in Bellevue, Wash., is seeking to stop the final report from being published under the government's imprint.

Claiming many private commission gatherings violated the Federal Advisory Committee Act, Ron Arnold, the center's executive director, said, "The special interests of the environmental movement had captured and held prisoner the entire staff process of that commission."

According to the Interior Department, the final report will be passed on to the White House, but will not be published by the government until the legal questions are resolved.

Members of the commission insisted that their call for conservation was a populist one — and closely tied to the Reagan philosophy of local responsibility.

"We had hearings all over the United States, and the number one thing everybody wanted was the continuation of the land and water conservation fund," said Mayor Frank Bogert of Palm Springs, one of the commission members. "How can we go back and not recommend it?"

And Alexander himself apparently sees the federal role as one of coordination and encouragement.

"What Lamar was strongly for was creating some new constituencies that were not down the traditional environmental lines or commodities (i.e., mining, gas, etc.) lines," said Lewis Lavine, former chief of staff for Alexander, who has been living in Australia since his gubernatorial term ended in January.
"Things had gotten polarized."

Lavine pointed out that the commission suggested only 30% of the $1-billion-a-year be used by the federal government, with the rest going to support state and local activities.

Bogert agreed, noting that the fund could help support a local effort such as a greenway along the Santa Ana River in Southern California, a project some groups are already working on.

"I'm pretty sure that pretty soon they'll release this report and everything will go on just as it would have," Bogert added.

Unofficial copies of the commission report are available from Island Press, (202) 232-7933.

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Frank Bogert, Mayor of Palm Springs, (619) 323-8200.

UPDATE

Drawing Boundaries

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- Making legal challenges to LAFCO decisions easier if the LAFCO has not made those decisions in a manner prescribed by state law.
- Imposing more rigorous conditions on LAFCOs when they seek to include prime agricultural lands in a city's sphere of influence.

Creating New Cities: A History

CP&DR's reports last month of an historic surge in city incorporations may have been overstated.

At the request of the Senate Local Government Committee, the League of California Cities produced a list showing when each of California's 400-plus cities were incorporated. The results were surprising, at least to those who were saying that Proposition 13 had unleashed an unprecedented rash of incorporations.

In fact, the pace of incorporations since 1979 (about three per year) doesn't come even close to competing with the two high-water marks for civic incorporations in this century: the Progressive era between 1905 and 1913, and the suburban-growth era between 1956 and 1964.

In the first period, 86 cities were incorporated in nine years, including an all-time high-water mark of 17 in 1908. Cities incorporating that year included such diverse places as El Centro, Inglewood, Yuba City, and Larkspur. This closely parallels the timing of the Progressive municipal reform movement in California.

Incorporations slowed down in the '20s and came to an almost complete standstill during the Depression and World War II. They picked up again after the war, but the movement didn't skyrocket until after the incorporation of Lakewood in 1954. Lakewood set the standard for small cities in Los Angeles County, many of which incorporate while retaining expensive police and fire services via contract with the county.

The postwar peak came in 1956 and '57, when 30 cities incorporated—most of them L.A. County communities such as Downey, Cerritos, Norwalk, and Industry. New cities continued being formed at a steady clip until the mid-'60s, when the newly created Local Area Formation Commissions, or LAFCOs, in each county began reining them in. While 30 cities were incorporated in 1961-65, only nine were created in the following five-year period.

The post-Proposition 13 boom, then, is the biggest period for new incorporation since the creation of LAFCOs. But it's a long way from the state's high-water marks.