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State's Growth Issues Resurface in Sacramento

Though not much legislative action was expected in the growth arena this year, California's phenomenal growth has emerged as a headline-grabbing issue in Sacramento over the past few weeks anyway.

As the state Department of Finance's annual estimates revealed the highest population increase since World War II, legislative leaders, the building industry, and local governments are all jockeying for position on the growth issue. Already the new year has seen these significant events:

- The real estate industry has reversed its position on the gas-tax increase scheduled to appear on the June ballot. Both the California Building Industry Association and the California Association of Realtors have taken stands against it, mostly because of their discontent with the "congestion management program" called for in the legislative package. The California Teachers Association may also oppose the package, though for different reasons.
- Meanwhile, local government lobbyists are fuming about a controversial new report by the Assembly Office of Research, which recommends the creation of regional "development and infrastructure" agencies with the power to redistribute local tax funds and use some of the funds to finance regional infrastructure projects. *Continued on page 4*

High Court Will Hear Walnut Creek Plan Case

California's growth-control debate, long centered in local politics and the state legislature, has begun to spin off significant legal issues that appear headed for the highest levels of the state court system.

Most important, the state Supreme Court has, for the first time in decades, decided to hear a case involving state law governing general plans: the long-running legal dispute over Walnut Creek's growth-control initiative, Measure H, which passed in 1985. The high court is likely to establish definitively the relationship between — and the relative power of — state planning law and local initiative powers.

Meanwhile, two other appellate rulings arising from the growth-control movement also may be appealed by the Supreme Court, opening the opportunity for more important case law to be created — if the high court is interested in taking the cases.

The First District Court of Appeal in San Francisco recently upheld an open-space initiative in the Town of Moraga. But it's questionable whether the Moraga ruling contains enough questions of law to form the basis for a useful appeal to the Supreme Court.

The second ruling is the long-standing dispute over the proposed construction of a Hyatt Hotel in Goleta, near Santa Barbara, which has raised several important legal issues under the California Environmental Quality Act. In two *Continued on page 6*



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BRIEFS

Bay Area Regional Effort Launched

Business, environmental, and local government leaders have created a regional task force to deal with the Bay Area's growth problems.

Bay Vision 2020 will be chaired by UC-Berkeley Chancellor Ira Heyman. The commission will examine possible regional solutions to such growth-related issues as transportation, housing, and land use, and is expected to issue a report by the end of this year.

The organization's 30 members include several past and present local government officials as well as business leaders and environmental activists. Staff director will be Joseph Bodovitz, president of the California Environmental Trust.

Cities Seek Chino Ag Preserve Land

The cities of Chino and Ontario are both seeking to expand their sphere of influence to cover the 13,600-acre Chino agricultural preserve, which San Bernardino County has agreed to protect until 1997.

Over the objection of Supervisor Larry Walker, who represents the area, the San Bernardino County Local Agency Formation Commission has decided to examine how to divide the ag preserve between the two cities' spheres.

The county agreed to maintain the ag preserve as part of a legal settlement in 1987 with some dairy farmers and residents of the area who did not want to see the preserve broken up. Last July, however, Ontario petitioned LAFCO to expand its sphere to cover the entire preserve. Ontario, which is working with dairy farms who want to sell their land, hopes to begin advance planning for its eventual development. The Chino proposal, on the other hand, calls for preservation of some property.

S.D. Council Members Oppose Housing Fund

Three members of the San Diego City Council have spoken out in sharp terms against the city's planned \$54 million annual housing trust fund, which includes an office-housing linkage fee.

Ron Roberts, Judy McCarty, and Bruce Henderson all voted against the housing package and say they will work hard to defeat it when it comes up for reconsideration before the city council later this year.

The package includes an increase in business taxes, a new fee on all commercial and industrial development, and a citywide fee on all commercial and residential property owners. Roberts called the fee "an end run around Proposition 13."

Land Acquisition Update

The city of Riverside may use a bond issue to buy parkland and open space, and New York Gov. Mario Cuomo has proposed a \$1.9 billion bond issue, part of which would be used for land acquisition.

The two developments are the latest evidence of a strong trend toward the preservation of land through acquisition rather than regulation. (CP&DR, September 1989.)

In Riverside, the bond-issue concept has received city council approval in general terms. The city will now set up a task force to identify projects and priorities.

Cuomo proposed that most of the New York bond issue be used for land acquisition, since little money remains from a \$1.45 billion bond issue approved in 1986.

The Race for the Mouse

Perhaps taking a page from Al Davis's book, the Walt Disney Co.

has set up an intense game of economic competition between Long Beach and Anaheim.

Disney officials have been dickering with Long Beach officials for several months over a Disneyland-like theme park adjacent to the Queen Mary, which the company owns. In mid-January, however, Disney announced a proposal to expand Disneyland in Anaheim, and made it clear that only one project would not be pursued.

"It depends on which community wants us more," Disney chairman Michael Eisner said in announcing the Anaheim plan. At first bluish Anaheim officials seemed more enthusiastic, with their counterparts in Long Beach expressing more caution — and acknowledging more directly that Disney was deliberately setting up the competition.

Anaheim is already racing with neighbor Santa Ana to be the first city in Orange County to build a professional-level basketball arena.

Cultural Landmarks Reach the '60s

Residents of Woodland Hills are trying to persuade the Los Angeles Cultural Heritage Commission to designate the 29-year-old Valley Music Center a landmark — a move which would make it the youngest landmark in L.A.

Neighboring residents, who oppose a condominium project on the site, say the Valley Music Center should be recognized because it is similar to the Cinerama Dome in Hollywood. The building is owned by the Jehovah's Witnesses, which is in the process of selling the land to a condominium developer. The sect hopes to use the proceeds of the sale to build a new auditorium.

Roundup

Sacramento Kings owner Gregg Lukenbill gets permission to convert his old basketball arena into an office building...A conservancy is formed to permanently protect the Bolsa Chica wetlands...Riverside city officials are considering establishing a network of neighborhood boards throughout the city...The San Francisco Planning Commission approves a 25-story high-rise for Pacific Telephone in the downtown area...Orient Finance Co. and Shimizu, a Japanese construction conglomerate, propose the tallest building in Orange County, a 32-story office tower in Santa Ana.

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Slow-Growth Slate Wins Riverside City Elections

A new mayor and two council members have been swept into office in Riverside after running on a slow-growth slate.

The Riverside election is just one of several indications that the slow-growth movement continues to gain ground in some areas of the state, particularly at the municipal level. In San Diego, Mayor Maureen O'Connor has endorsed a proposed slow-growth ballot initiative.

Ex-real estate agent Terry Frizzel knocked off 12-year incumbent Ab Brown in the mayoral runoff on January 9, declaring that "we're going to see some changes" and "neighborhoods will be listened to." The runoff also saw slow-growth leader Robert Buster win a council seat by less than 20 votes, as well as a decisive council victory by Terri Thompson. Riverside's council members are elected by district.

Although Riverside is the largest city in the fastest-growing county in the state, it has a slow-growth history dating back more than a decade. The first growth-control measure passed in 1979, and slow-growth candidates (including Buster) have been elected to council seats in the past.

Still, the runoff victories may represent the most significant political shift so far in Riverside. Ex-council member Eric Haley, who lost a close mayoral election to Brown in 1978, points to Buster's narrow victory in Ward 4 — where the city's conservative and mostly Republican business leadership lives — as evidence of the depth of slow-growth sentiment. "Bob Buster, more than any one individual, is the symbol of the slow-growth movement in Riverside," he said. "In a district I would think is one of the tougher for him to

win in, his victory is really something."

The big question, however, is how much difference slow-growth leadership will make, considering that the fastest-growing areas are located not in Riverside, but in Moreno Valley, Corona, and unincorporated areas of western Riverside County. The city could exert some slow-growth pressure on its 95-square-mile sphere of influence — most significantly the area to the southwest of the city, near Lake Mathews. If Frizzel becomes a high-profile slow-growth leader, she may also seek to use the newly formed Western Riverside County Association of Governments as a forum as well.

San Diego

In San Diego, Mayor Maureen O'Connor recently endorsed the proposed slow-growth ballot measure drafted by Prevent Los Angelization Now (PLAN). But business and development interests are preparing a competing proposal.

The PLAN measure seeks to rectify problems that led to the November 1988 defeat of two slow-growth measures, the citizen initiative Proposition J and the council-backed Proposition H. The initiative contains no annual building cap and exempts permits for home remodeling from its provisions.

Rather, the PLAN initiative would tie development to traffic congestion and availability of public facilities, similar to the famous Measure H initiative in Walnut Creek and the failed Orange County growth-control initiative in 1988.

Bradley's Politics Take Sudden Anti-Development Turn

Los Angeles Mayor Tom Bradley has taken a sharp political turn in recent weeks, criticizing several large development projects and appointing community activists to several positions previously reserved for more typical establishment figures.

Bradley's first move was to criticize the massive Porter Ranch project, proposed by longtime Bradley supporter Nathan Shapell. However, shortly thereafter Bradley reached a compromise with Shapell and City Councilman Hal Bernson, who supported the project. As it now stands, Shapell will set aside 18% of the project's housing for low- and moderate-income residents; set up an internal public transit system with private funds; and reduce required parking by 25%, with a third of parking revenue set aside to support public transit.

Bradley's next salvo was to attack Santa Monica's airport development project, which would bring Santa Monica considerable revenue but cause traffic problems on L.A. streets. The project had already been criticized by L.A. Council Member Ruth Galanter and political support for it is even evaporating in Santa Monica itself.

Then came Donald Trump's high-profile press conference to announce he would be involved in the redevelopment of the Ambassador Hotel. Bradley was photographed next to Trump at the press conference, but declined comment on Trump's specific proposal; a few days later he issued statements critical of it.

Even more startling than his shifting attitude toward large-scale development, however, has been a recent series of appointments that have included some of the mayor's community-based critics. In quick succession during January, Bradley made the following appointments:

- Legal Aid Foundation attorney Michael Bodakan was named

to oversee the city's affordable housing programs; he will lead the charge for a housing-office linkage fee. Bodakan, who had been critical of Bradley and the Community Redevelopment Agency for emphasizing commercial development over housing, said he was "very surprised" by the appointment.

- Environmental lawyer Carlyle Hall, co-founder of the Center for Law in the Public Interest, was named to the board of the Community Redevelopment Agency. Hall's firm was already working on community outreach for Bradley's effort to increase the downtown redevelopment spending cap, though he is hardly the establishment type Bradley has favored for the CRA board. (Bradley also named Larry Kirk, general manager of the L.A. Hilton and Towers, to the board.)

- Lillian Kawasaki, little-known director of environmental affairs for the L.A. Harbor Department, was named to head the city's new Department of Environmental Affairs. She is the first Asian-American department head in the city's history.

- Dorothy Green, president of Heal the Bay, was appointed to the Water and Power Commission. Heal the Bay is an environmental group that lobbies for cleanup of the Santa Monica Bay; the city's sewage treatment system has created problems in the bay from time to time.

Bradley also appointed his former deputy mayor, Michael Gage, to the Water and Power Commission. Gage left Bradley's office just a few months ago to accept a job with a San Fernando Valley homebuilder. In fact, all of Bradley's "new wave" appointments — and his criticisms of the large-scale development projects — have come since Gage was replaced by Bradley's former counsel, Mark Fabiani.

State's Growth Issues Resurface in Sacramento

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• And local government and real estate lobbyists together have called on Gov. George Deukmejian and the legislative leaders to appoint a blue-ribbon task force to look into the growth and make recommendations for the 1991 legislative session.

All these developments took place in the context of startling new numbers on growth. The Department of Finance estimates that the state's population grew by 740,000 people between July 1, 1988, and July 1, 1989 — the highest figure since 1943. (A fuller account of the Department of Finance's estimates appears in — CP&DR's "By The Numbers" column on page 7.)

Gas Tax

As the new year dawned, the delicate political coalition surrounding the gas-tax package began to crumble. Northern lawmakers criticized the north-south distribution of gas-tax revenues. The California Teachers Association expressed fears that the gas-tax package would harm the budget gains they had made with the passage of Proposition 98. And real-estate brokers and developers continued to complain about the "congestion management program," sponsored by Assembly Transportation Committee Chairman Richard Katz, D-Sylmar, which would make local receipt of gas-tax funds contingent on the adoption of local congestion management plans.

The gas-tax package would increase gasoline taxes 9 cents per gallon over a five-year period, a move that would raise \$18.5 billion in 10 years for transportation. The package also calls for an amendment to the Gann expenditure limit to permit the smooth distribution of these funds.

Though the building industry signed off on the gas-tax package in June, the Irvine Co. and some other builders began complaining in the fall about the congestion-management provisions of the plan. Specifically, the builders said, urban areas probably would not qualify for the gas-tax funds because they could not meet the congestion standards contained in the bill. More recently, building-industry lobbyists have said that the congestion-management provisions were "railroaded" through the legislature just before last year's budget deadline. They have proposed a number of changes to Katz, but he has rejected them.

In late December, CBIA decided to oppose the gas-tax initiative. In mid-January, the CAR followed suit. But Katz, who has worried about losing environmentalist support if he accepted the builders' amendments, expressed confidence that the rest of the coalition would hold. If so, the real estate industry would be virtually alone in opposing the gas-tax package — a state of affairs he doesn't seem to mind. "If you're going to take an issue to the public," he said, "would you rather have the environmentalists saying no to it or the builders saying no to it?"

Report on Regionalism

In late January, the Assembly Office of Research issued a report — requested by Assembly Speaker Willie Brown — calling for the creation of powerful regional "development and infrastructure" agencies. Some of the recommendations seem likely to appear in a bill Brown will introduce, though local government lobbyists quickly jumped on its recommendations.

The report, "California 2000: Getting Ahead of the Growth Curve," also called for the adoption of a policy statement on growth by the state government — potentially a significant change in a state which has traditionally favored planning processes over substantive requirements.

The creation of regional agencies proved to be the more controversial of the two proposals, however. The report called for the sweeping abolition of single-issues regional agencies, such as solid-waste and air-quality districts, to be replaced by a powerful,

full-service regional agency in each metropolitan area of the state.

These agencies would be responsible for regional infrastructure, resource management, and even assume the role of Local Agency Formation Commissions. They would be controlled by a mix of local officials, state appointees, and directly-elected officials. Most significantly, they would be empowered to re-allocate property-tax revenue on a regional basis in order to reduce economic competition and fiscal zoning in the local government arena.

Tod Kaufman, the Assembly Office of Research consultant who prepared the study, said that reducing economic competition — which can lead to land-use decisions driven by tax considerations, rather than planning considerations — was the report's most important recommendation. Under the proposal, all increases in the region's property tax base would be thrown into a region-wide pool, to be allocated by the regional agency. In all probability, Kaufman said, only some of the funds would be redistributed in order to reduce tax-base disparities. Some money would be distributed according to population and the rest would be held by the regional agency to make regional infrastructure investments.

The report was immediately criticized by local government officials, who stand to lose the most power and money from its recommendations. The League of California Cities, for example, criticized the report for "finger-pointing rather than working with local governments."

Kaufman acknowledged that some of the report's recommendations may be dropped before Brown's bill is introduced, especially if local government objections persist. He said the property tax-sharing concept may be dropped and replaced by some sort of new regional tax that does not threaten local governments.

As if to drive points of the Assembly report home, two controversial local issues emerged in January dealing with local air-quality districts and land-use regulation. First, the South Coast Air Quality Management District took the unprecedented step of issuing an 11-page analysis of a specific development project, the gigantic Porter Ranch project in the San Fernando Valley. AQMD declared that the step signalled an intent to be more aggressive in the land-use field. AQMD challenged the developer's claim that Porter Ranch would improve the area's jobs-housing balance, saying those who work at Porter Ranch would not be able to by houses there.

At almost the same time, the Ventura County Board of Supervisors moved forward with plans to make the county Air Pollution Control District more power over land use and growth. Under a proposed rule dealing with "indirect source control," the APCD would be given power to impose restrictions on all new developments if they are deemed necessary.

Task Force Proposal

Just a week before the Assembly Office of Research report was released, a broad group of lobbyists representing the building industry and local government called on Gov. George Deukmejian and the legislative leadership to establish a task force on growth.

The letter specifically mentions several bills pending in the legislature, including SB 1332 by Sen. Robert Presley, D-Riverside, which would authorize the creation of sub-regional planning boards, and SB 969 and SB 838 by Sen. Marian Bergeson, R-Newport Beach, which would reorganize the Southern California Association of Governments. The letter specifically points to the "unanswered policy question" of how these bills might relate to the South Coast Air Quality Management District, which is moving toward a regional planning role.

The letter was signed by most of the major lobbying groups from local government and the building industry, including the League of California Cities, the County Supervisors Association of California, CBIA, and CAR.

BY THE NUMBERS

State, Federal Estimates Reveal Huge Population Increase

California's population growth continues to churn forward at a staggering pace, according to recent figures from both the state and federal governments.

The state Department of Finance estimated that between July 1, 1988, and July 1, 1989, California added 740,000 new residents — the highest total since the influx during World War II. Even the percentage increase in population (2.6%) was the highest since the early '60s. The state's estimated total population as of last July was 29,063,000, a 5.4 million increase since 1980.

Meanwhile, the U.S. Census Bureau estimates that California's population grew 2.7 million between 1985 and 1989, an increase of about 10% in only four years. California was only the fifth-fastest-growing state in percentage terms. But in sheer numbers, California's growth exceeds the combined population increase in the four states above it on the list (Nevada, Arizona, Florida, and New Hampshire), plus the two states immediately below it on the list (Washington and Georgia).

Here are other highlights from the state and federal population estimates:

• According to the state figures, Riverside and San Bernardino counties remained the fastest-growing counties in the state, with population increases of 7.8% and 6.7% respectively. These figures are even more remarkable in light of the fact that San Bernardino is already the fifth-largest county in the state (with close to 1.4 million) and Riverside is seventh (close to 1.1 million).

• Riverside and Sacramento became the sixth and seventh counties

in the state to pass the 1 million mark last year.

• According to the state's figures net migration accounted for more population increase between 1980 and 1989 (2.9 million) than did natural increase (2.4 million).

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Fastest-Growing Counties Over 100,000 Population (1988-1989)

	Population	Percentage Increase
1. Riverside	1,062,700	7.8
2. San Bernardino	1,378,800	6.7
3. El Dorado	128,900	6.3
4. Solano	330,200	5.3
5. Stanislaus	358,100	5.0
6. Placer	162,900	4.9
7. Shasta	146,600	4.8
8. San Luis Obispo	216,600	4.5
9. Imperial	117,600	4.1
10. San Diego	2,459,500	3.8

Largest California Cities (Minimum 200,000 population)

	1988	1980	1988	1980	National Ranking
1. Los Angeles	3,352,710	2,968,528	2	3	
2. San Diego	1,070,310	875,538	6	8	
3. San Jose	738,420	629,402	12	17	
4. San Francisco	731,600	678,974	13	13	
5. Long Beach	415,040	361,496	33	37	
6. Oakland	356,860	339,337	44	43	
7. Sacramento	338,220	275,741	48	52	
8. Fresno	307,090	217,491	51	65	
9. Anaheim	244,670	219,494	62	63	
10. Santa Ana	239,540	204,014	63	69	
11. Riverside	210,630	170,591	74	84	

Emerging California Cities (Cities that reached the 100,000 population mark in the 1980s.)

	1988	1980	National Ranking (1988)
1. Chula Vista	126,240	83,927	135
2. Ontario	123,380	88,820	140
3. Pomona	120,470	92,742	143
4. Oceanside	112,630	76,698	156
5. Santa Rosa	108,220	83,320	164
6. Orange	105,710	91,450	170
7. Inglewood	103,920	94,162	175
8. Hayward	103,600	93,582	177
9. Thousand Oaks	101,530	77,072	179
10. Salinas	101,090	80,479	182
11. Vallejo	100,730	80,303	184
12. Irvine	100,130	62,134	186

Nation's Fastest-Growing States (Numbers in thousands)

	1989	1985	% Increase, 1980-1989	
1. Nevada	1,111	939	800	18.3
2. Arizona	3,556	3,161	2,718	12.5
3. Florida	12,671	11,368	9,746	11.5
4. New Hampshire	1,107	998	921	10.9
5. California	29,063	26,355	23,668	10.3
6. Washington	4,761	4,407	4,132	8.0
7. Georgia	6,436	5,976	5,463	7.7
8. Delaware	673	626	594	7.5
9. Virginia	6,098	5,704	5,347	6.9
10. Maryland	4,694	4,393	4,217	6.8

Fast-Growing Cities (California cities that have moved up at least 10 places in national census rankings in the 1980s.)

	1988 Pop. (Rank)	1980 Pop. (Rank)	No. Places Moved Up
1. Bakersfield	157,650 (105)	105,611 (152)	47
2. Modesto	148,670 (113)	106,963 (147)	34
3. Stockton	190,680 (80)	148,283 (107)	27
4. Fremont	166,590 (96)	131,945 (119)	23
5. Chula Vista	126,240 (135)	83,927 (155)	20
6. San Bernardino	148,420 (114)	118,794 (131)	17
7. Fresno	307,090 (51)	217,491 (65)	14
8. Glendale	161,210 (101)	139,060 (114)	13
9. Oxnard	130,080 (133)	108,195 (145)	12
10. Riverside	210,630 (74)	170,591 (84)	10

COURT CASES

High Court to Hear Walnut Creek Case, May Take Others

Continued from page 1

separate decisions, both called *Citizens of Goleta Valley v. Board of Supervisors*, the First District Court of Appeal panel in Ventura greatly expanded the required scope of alternative site analysis under CEQA. The Hyatt Corp. has asked the state Supreme Court to take this case, arguing, among other things, that the Court of Appeal ruling calls into question the validity of local planning processes.

The Supreme Court's decision to hear *Leshar Communications Inc. v. City of Walnut Creek*, 213 Cal.App.3d 1287 (1989), could lead to a landmark ruling in California land-use law.

The Walnut Creek initiative, which passed in 1985, restricted construction of buildings that would create further traffic congestion on already crowded streets. Dean Leshar, publisher of the Walnut Creek-based *Contra Costa Times*, sued the city, charging that the initiative was a zoning ordinance inconsistent with the general plan and also that it created internal inconsistencies in the plan. In early 1987, Contra Costa County Superior Court Judge Richard Patsey struck the initiative down. (CP&DR, February 1987.)

The case then lay before the Court of Appeal in San Francisco for more than two years while Walnut Creek sought to remedy the initiative's legal problems. Finally, last August, the city approved a new general plan incorporating the initiative's provisions. The Court of Appeal upheld Measure H, giving great deference to local initiative power and ruling that the initiative should be construed as a general plan amendment. (CP&DR, October 1989.) Because a new general plan consistent with Measure H had been approved in the meantime, the court saw no need to issue an order requiring consistency.

Walnut Creek's lawyer, Mark Weinberger, praised the appellate ruling as a victory of the initiative power over the cumbersome procedural requirements contained in the state planning law. If a growth-control initiative were required to be integrated into the entire general plan, he said, local ballots would be filled with thick, "telephone-book" initiatives.

However, Leshar and his lawyers argue that even if Measure H was a general plan amendment, as the Court of Appeal ruled, its passage created inconsistencies with the previously existing general plan. "The issue is still the same," said Daniel J. Curtin, one of Leshar's lawyers. "What do you do with that inconsistent document? Do you declare it void, or do you require the general plan to be completely rewritten to conform?"

The Supreme Court's ruling in the Walnut Creek case will be particularly important because it will be the court's first ruling ever on the "consistency" doctrine. The state legislature passed a law in 1971 requiring consistency between general plans and other planning documents. The law strengthened the legal power of the general plan — power that has been further reinforced by several appellate court rulings since 1971, even though the Supreme Court has been silent on the matter.

An appeal of *Northwood Homes v. Town of Moraga* could also yield an important ruling on general plan law. So far, however, Northwood has not decided whether to appeal the ruling — and an overworked Supreme Court might not accept the case even if an appeal were forthcoming.

The Moraga case, which was also heard in Contra Costa County by Judge Patsey, involved Northwood's challenge to the city's open-space initiative, passed in 1986 as a response to a Northwood housing project. Northwood argued that the open-space plan discriminated against its own development project and restricted regional housing opportunities. Patsey ruled in the city's favor on

both counts, and the First District Court of Appeal upheld Patsey's ruling.

Prior to the passage of the initiative, the Moraga Planning Commission approved subdivision maps that called for 110 units on 404 acres and required Northwood to dedicate 80% of its property to the city for open space. In response, Moraga citizens passed an initiative amending the city's open-space element to limit density of development on lands designated as.

Before the appellate court, Northwood's lawyer, Howard Ellman, argued that the open-space initiative would restrict the regional supply of housing, in violation of the state's law on housing elements. Ellman also tried to persuade the appellate court to use the concept of "cumulative" impact — borrowed from cases on the California Environmental Quality Act — in determining whether a city has complied with state housing law. The Moraga initiative, he argued, must be assessed in light of the cumulative impact of restrictive policies throughout the Bay Area.

But the appellate court didn't take the bait. Since a trial had already taken place before Judge Patsey, the appellate justices deferred to his judgment in upholding his ruling. Regarding the cumulative impact argument, the court wrote: "(W)e think the crucial inquiry under these circumstances is whether the challenged ordinance had significant regional impact and is reasonably related to the regional welfare. We are unaware of any authority for undertaking a cumulative analysis for purposes of determining the constitutional validity of a single ordinance."

The court also affirmed Patsey's ruling that the initiative was not discriminatory, saying that there was sufficient evidence on the record about Moraga's mudslide problems.

In an interview, Ellman expressed disappointment that the appellate court would not buy the housing arguments. "The housing element law contains all that good stuff about an action program, but you can't find a court willing to read one and find one inadequate," he said. "If the city doesn't have one at all they'll strike that down. But if you have one and it's nothing more than a bunch of eyewash they'll uphold it."

Moraga's lawyer, Sacramento-based William Owen, said he was surprised that Northwood even decided to appeal, since a full trial had taken place before Judge Patsey — a rarity in a land-use dispute. Thus, Patsey had made many factual determinations that the appellate court was unlikely to reverse. (Appellate judges prefer to deal with appeals based on questions of law, and are likely to defer to the trial court on questions of fact, as the appellate court did here.) "Most of their theories revolved around questions of fact rather than questions of law," Owen said of Northwood's case. "There's not much the appellate court could do."

The full text of *Northwood Homes v. Town of Moraga*, No. A042129, appeared in the *Los Angeles Daily Journal Daily Appellate Report* on December 28, 1989, beginning on page 15310.

The *Goleta I* case, 197 Cal.App.3d 1167, was originally reported in the February 1988 issue of CP&DR. The *Goleta II* decision was reported in the October 1989 issue, though subsequently the Court of Appeal revised the second decision. The full text of the revised *Goleta II* opinion appeared in the *Los Angeles Daily Journal Daily Appellate Report* on December 5, beginning on page 14390.

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COURT CASES

Lawyers Appeal \$600,000 Sanction in Environmental Suit

Two lawyers have appealed a sanction of close to \$600,000 imposed on them for representing a group of Thousand Oaks homeowners in an environmental lawsuit. And they've been joined by environmental lawyers, the state Attorney General's Office, and even the Los Angeles County Bar Association, all of whom fear a chilling effect on environmental litigation.

U.S. District Court Judge Dickran Tevrizian Jr. originally imposed the sanction on Hooks' and Moore's client, the Westlake North Property Owners Association. Tevrizian charged that the homeowner group had filed a bad-faith lawsuit after a previous suit between the Lang Ranch Co. and the City of Thousand Oaks had been settled.

In an apparently unprecedented move, however, Tevrizian slapped the homeowners not just with legal fees (a little over \$100,000) but also with the Lang Ranch Co.'s "economic losses" as a result of the lawsuit — a sum close to \$600,000, mostly costs associated with financing the project. And when the homeowner group settled for the legal fees, Tevrizian ruled that Hooks and Moore were still liable for the rest of the money. The two lawyers have appealed the sanction to the Ninth U.S. Circuit Court of Appeals, where it is now pending. (*Westlake North Property Owners Association v. City of Thousand Oaks*, Ninth Circuit Docket Nos. 89-55377, 89-55510, 89-55666, and 89-55668.)

Tevrizian's sanction came at the end of a long series of legal maneuvers over the proposed development of Lang Ranch, a 2,500-acre parcel of land. The litigation began in 1983, when the Lang Ranch Co. filed a federal lawsuit seeking an exemption from the city's growth-control ordinance, which permits the construction of only 500 homes per year. Lang Ranch claimed a 1968 annexation agreement permitted construction of some 6,600 homes on the ranch.

Three years later, Lang Ranch Co. and Thousand Oaks agreed on a settlement permitting the company to build about 2,200 homes that would not be subject to the growth-control ordinance. The settlement also permitted some construction by another developer, The Anden Group, on the Lang Ranch property.

Shortly thereafter, however, the Westlake North homeowners filed a suit in state court, claiming that the city had not complied with all requirements of the California Environmental Quality Act in reaching the legal settlement with Lang Ranch. At the request of both the city and Lang Ranch, the homeowner case was moved back to federal court, where Tevrizian dismissed it. Then, however, he imposed a sanction of \$735,000 on the Westlake North group under Rule 11 of the federal Rules of Civil Procedure, which permits sanctions for lawsuits that are frivolous or filed in bad faith.

The use of Rule 11 was not unusual, but the size of the sanction shocked the legal community. Rule 11 is typically used to impose a sanction consisting of court costs and legal fees — which, in the

case of Lang Ranch, amounted to a little over \$100,000. But Tevrizian also ordered the homeowner group to pay Lang Ranch's "economic losses" resulting from the lawsuit, a figure that approached \$600,000. The figure apparently included the carrying cost of the property for several months, as well as an increase in the cost of funds that occurred between the time the lawsuit was filed and the time it was dismissed.

Eventually, the Westlake North homeowners settled with Lang Ranch for \$123,000, a figure roughly equivalent to the legal fees in the case. But then Tevrizian ruled that Hooks and Moore, the Westlake North group's lawyers, should pay the remainder of the judgment, saying they had filed the suit in bad faith.

Environmental lawyers say that if the sanction sticks, homeowner and environmental groups will have a tough time finding any lawyer willing to represent them in a challenge against a large real estate company. "We believe it's an attempt to warn attorneys who do plaintiffs work in environmental law not to do it," said Hooks.

Both the Attorney General's Office and the Los Angeles County Bar Association have filed amicus briefs before the Ninth Circuit on behalf of Hooks and Moore. Deputy AG Antonette Cordero said she believes the sanction is wrong in concept because the underlying lawsuit had merit. "We think it's clearly an arguable case," she said. By contrast, the county bar association brief deals only with the use of Rule 11 to cover economic losses.

The Lang Ranch lawyer, Paul Hamilton of Hamilton & Samuels in Newport Beach, acknowledges that there is apparently no precedent for such a broad use of Rule 11. But he insists that using the rule to cover economic losses was well within Tevrizian's discretion. "There's no decision that said a court cannot award, in addition to attorney's fees and costs expended, the actual losses," he said.

Furthermore, Hamilton said, both Hooks and Moore knew a claim for economic losses was coming. "The plaintiffs and their counsel were warned early on, by both our clients and the judge, that the client would incur substantial losses," he said. "Had they withdrawn the lawsuit early on, we would never have sought those sanctions."

Meanwhile, Lang Ranch Co. apparently doesn't intend to take the money and run. When the first payment of \$25,000 came in from the settlement with the homeowner group, the company promised to contribute the money to three non-profit community organizations in Thousand Oaks. Homeowner leaders say that's taken some of the sting out of anteing up.

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State, Federal Estimates Reveal Huge Population Increase

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- The Census Bureau's statistics on city population disclosed that San Diego has become the sixth most populous city in the country with a population of more than 1 million, displacing Detroit. San Jose is now 12th, up from 17th at the beginning of the decade. It's true that San Jose had to pass San Francisco to pick up a notch on the national rankings, but even San Francisco has reversed its population loss of the '70s, growing from 678,000 in 1980 to 731,000 today.

- The truly remarkable numbers have been posted by cities in the 100,000-200,000 population range. Five such cities moved up at

least 20 spots in the national rankings during the 1980s, including Bakersfield (which rose 47 places, from 152nd to 105th), Modesto, Stockton, Fremont, and Chula Vista. And 12 cities hit the 100,000 population mark in the '80s. A few of these cities, such as Inglewood and Hayward, are growing slowly, but most are adding people quickly. Ontario, for example, grew from 88,000 to 123,000, while Thousand Oaks grew from 77,000 to 101,000 and Irvine (which wasn't even incorporated until 1971) grew from 62,000 in 1980 to 100,000 in 1988.

DEALS

Just Lose, Baby: Oxnard's Gamble on Al Davis Doesn't Pay Off

What Svengali-like power does Los Angeles Raiders owner Al Davis have over California cities? In recent months he has received fawning proposals from Sacramento and Oakland to relocate his team to those cities, countered by an equally salivating offer to stay in L.A. But these cities that are courting the football tycoon and his team so earnestly may do well to examine the experience of Oxnard, which bent over backwards to lure the Raiders pre-season training camp. The largest city in Ventura County hoped to reap added prestige, credibility, and tourist interest. What it ended up with, however, was a \$1-million-per-year drain on the city treasury.

So eager was the coastal city to accommodate the notoriously footloose football team that Oxnard conceived a hotel project on public land as the team's summer home. From start to finish, however, the project appears to have been marred by wishful thinking about both the Raiders' potential as a tourist attraction and the state of the local hotel market.

Said one source close to the project: "The city proceeded on a whole set of assumptions that were supported by very little formal investigation. It's a very sad story."

The first of those assumptions was that the city stood to gain from the presence of an off-season football team. In 1985, the city managed to lure the Raiders into making a five-year commitment to a practice site, in part by providing the team with an off-season home. The city bought the site for a hotel next to the municipal golf course and selected Inner City Equities, a Los Angeles-based partnership, as the developer of a 250-suite Radisson Hotel. To pay for various improvements to the site, including a parking structure, Oxnard floated a \$9 million bond. Inner City agreed to pay the city \$985,000 a year to lease the ground underneath the hotel. The ground-lease payments to the city were supposed to cover the debt service on the bonds, also about \$985,000 per year. The city also had the right to participate in a percentage of any profits.

For their part, the Raiders agreed to spend at least five summers in Oxnard, during which the 120 players, coaches, and team officials would occupy 75 suites at the hotel and eat three meals a day there as well. Hotel officials would not reveal the exact figure that the Raiders pay but indicated that it was "slightly below corporate rate," currently about \$64 nightly at the Radisson.

The deal was hastily prepared, according to one source, because the impending Tax Reform Act of 1986 would soon shut down the market for tax-exempt bonds such as those issued in the Raiders deal. That might help explain several of Oxnard's oversights, such as its analysis of the local hotel market. In October 1989, hotel occupancy was only 64.7% in the Ventura-Oxnard area, according to Smith Travel Research, a Tennessee-based hotel market research group. Many hotel operators require at least 70% occupancy to show a profit.

Haste, however, does not explain a crucial error the city made in negotiating the development agreement with Inner City Equities. Perhaps as an incentive to the developer, the city agreed that the ground-lease payments would be subordinated to the construction debt. In other words, the developer had the right to prioritize the payment of its construction loan above the ground-lease payments to the city; if money was tight, the city would lose, not the construction lender.

And that, of course, is exactly what happened. From 1985 to 1989, Oxnard did not collect a single penny from the Radisson, meaning the city had to shoulder all the bond debt. "The Radisson continues to eat us away," outgoing city manager David Mora told the *Los Angeles Times* last year. "It was a very bad deal. It was a liability. It

was a mistake."

Meanwhile, the Raiders didn't do much to promote tourism or civic pride. Although officials at the Oxnard Convention and Visitors Bureau estimate that the football team spends \$500,000 annually in the city, few other benefits are evident. During training camp, the bureau receives about five requests daily from tourists who want to watch the Raiders go through their paces. Even if they can find the Radisson, however, they're not likely to see much; the secretive Davis erected a fence covered with black tarpaulin around the practice field to keep out spies from other teams.

Early in 1989, the city renegotiated the Radisson deal. Instead of \$985,000 yearly, Oxnard is supposed to get \$30,000 the first year, a figure that rises steadily to \$150,000 the fifth year and \$985,000 in the 10th year. The city also has the right to participate in the net income from the hotel when — and if — the Radisson becomes profitable. At the same time, Inner City Equities was reorganized as Westland Inc. of Oxnard, and a new hotel operator, Sterling Hotels Corp., was brought in to manage the hotel.

Since the reorganization, business at the hotel appears to be improving. Robert Burk, director of sales and marketing for the hotel, says occupancy grew from 54.2% in October 1988 to 63.9% in October 1989. Sterling is also bolstering the bottom line with other new profit centers, such as outside catering. "It's just another form of revenue enhancement," says Burk.

The Raiders organization, which has completed its five-year obligation to Oxnard, currently negotiates its deal with the hotel on a year-to-year basis. Nevertheless, the deal continues to pay off for the hotel. "They (the Raiders) are our second or third largest source of income," says Burk.

Unfortunately, the same cannot be said for the City of Oxnard. The financial demands of the Radisson deal have simply served to make a bad situation worse. Oxnard experienced a \$2 million shortfall in its 1988-89 budget and ran \$850,000 over budget. City reserves have shrunk from \$12 million in 1985 to \$3 million in 1989. Besides the Radisson deal, the culprits were a utility tax that was voted out by the city council in 1987, the loss of all federal revenue-sharing funds, the diversion of revenue from drunk-driving fines from city to county, and reductions in franchise-fee revenue, says Assistant City Manager John Tooker. In response, the city slashed 16 city positions last year and shrank the size of both the fire and police departments.

Not all cities make mistakes like this one because they're pursuing somebody like Al Davis. Anybody can misread a market if they're hoping for an optimistic conclusion. A deal similar to the Radisson, for example, is floundering in Baldwin Park — and for much the same reason. The Baldwin Park Hilton, one of the tallest buildings along the San Gabriel Valley's Interstate 10 corridor, opened last year with the financial assistance of the city's redevelopment agency. After six months, however, the hotel was still struggling to reach a 50% occupancy. That's not good news for the redevelopment agency, which owns half the project and, as in Oxnard, can look forward to a financial beating if the hotel doesn't fill up soon.

The simple truth is that market economics aren't suspended just because a project involves some sort of public-private partnership. Such a project still has to be a good business decision. Thanks to a hard lesson in market realities and business negotiations, the largest city in Ventura County is squeezed for cash and casting about for ideas to replenish its reserves. Now, about that idea for a football stadium...

Morris Newman