CALIFORNIA PLANNING & DEVELOPMENT REPORT

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Wilson Growth Plan Likely to Be Cautious

Governor Pete Wilson, who has held his cards very close to his vest all year, is gradually tipping his hand on the growth management issue. And he appears likely to move in the direction of modest proposals that give great deference to local government, rather than the bold action some of his legislative counterparts have called for.

In several recent speeches and reports, Wilson and his aides have begun to reveal the probable outlines of his growth management proposal, which he is expected to unveil in January. These public appearances have been aimed, partly, at further enhancing Wilson's reputation as a governor unusually interested in growth management issues. For example, in October he addressed the California Chapter, American Planning Association conference — claiming to be the first governor ever to address any APA event.

On the most important element of the proposal — the question of regional governance — the Administration has repeatedly stated that it does not want to create regional governments. Instead, Wilson has indicated that he wants to encourage local governments to work together to solve regional problems, perhaps through a revamped system of regional councils of governments. For example, in a recent issue paper, the Governor's Office of Planning and Research stated: "The overall goal of growth management should be to have regional issues addressed through local COGs, counties, or other *Continued on page 4*

Court Ruling May Slow Creation of New Cities

In a decision likely to have wide-ranging ramifications, an appellate court in Sacramento has declared California's legal scheme for incorporating new cities unconstitutional — at least as it was applied to the case of Citrus Heights.

State law permits new cities to incorporate if the idea is approved by a majority of voters within the proposed city. But the Court of Appeal ruled that, in at least some cases, voters throughout all of a county's unincorporated areas ought to be able to vote on the city's incorporation too. Writing for a three-judge panel, Keith Sparks, the acting presiding justice of the Third District Court of Appeal, said that residents in other unincorporated areas of Sacramento County should be permitted to vote on the Citrus Heights incorporation because they have a "substantial interest" in a boundary change that would have "significant effects" on them. He acknowledged, however, that this test is a "rubbery ruler," making it difficult to assess how widely it could be applied in other situations.

The Court of Appeal also ruled that the incorporation of Citrus Heights required the preparation of an environmental impact report. Relying on the testimony of Lawrence Mintier, a planning consultant hired by the county, the court concluded that the Citrus Heights incorporation could, by contributing to governmental fragmentation, impede the implementation of the county's air-quality plan.

The Sacramento County Local Agency Formation Commission, *Continued on page 11*

INSIDE

State Report Calls for Closer Link Between Mello-Roos and Planning

Local governments which use Mello-Roos districts should incorporate infrastructure finance concerns into general plans and make an effort to understand the tradeoffs between tax equity and financial feasibility inherent in Mello deals, according to a new report from the California Debt Advisory Commission.

The report also suggests the creation of cross-departmental "project review committees" to review Mello-Roos proposals, a standard debt-to-land-value ratio of at least 3:1, and greater disclosure to new homebuyers about Mello-Roos tax liability.

Since 1983, more than $3.5 billion in local infrastructure has been financed through the Mello-Roos technique, which permits cities and counties to impose an additional "special" property tax in a particular area and issue bonds against this tax stream. Almost 60% of all the Mello-Roos money raised in California has come from deals in Riverside, Orange, and San Bernardino counties, where the money is typically used for roads, sewers, schools, and other infrastructure in new tracts.

As the CDAC report pointed out, given Proposition 13 and state and federal budget cutbacks, Mello-Roos "is the only feasible method for raising a large sum of capital early in the development process to finance the construction of virtually any public facility, while isolating the cost of doing so on the developing area." At the same time, however, the report notes that all the important decisions on Mello-Roos taxing districts are made by developers and public officials before the ultimate taxpayers (the new homeowners) arrive, which places a special burden on local officials to be fair.

Mello-Roos financing, however, is usually driven by the need to finance infrastructure for specific development projects, rather than by good forward planning. In addition, counties and schools districts have sometimes "fought" over available Mello bonding capacity. "In our view, a comprehensive policy toward mitigating the service impacts of growth is the best way to foster cooperation in allocating available debt capacity," the report said. With respect to cities and counties, which often do not take into account school overcrowding issues, CDAC suggests that Mello-Roos financing decisions "should be guided by the notion that the available debt capacity is a shared resource among the local governments serving developing areas."

CDAC also suggests that local governments establish level-of-service standards for all local infrastructure, including schools, so that all local agencies — and developers — reach agreement on available capacity and the cost of adding new capacity before individual development projects are proposed.

The CDAC report also focuses on the tax equity issues raised by Mello-Roos financing — certainly a major issue in many communities. "The development of special tax apportionment formulas involves a tension between the objective of tax equity and the objective of designing a stable revenue stream," the report states. For example, developed properties and undeveloped land are often taxed at a different rate. And some residents who do not live within a Mello-Roos taxing district may nevertheless benefit from the new facilities.

The report argues that some facilities — especially schools — should be paid for more often from broad-based general-interest bonds. However, CDAC notes that such bond issues, which require a two-thirds vote, rarely pass. As a stopgap measure, CDAC suggests permitting Mello-Roos taxes to be approved with a simple majority vote, rather than two-thirds, which would presumably make it easier to phase in public facilities in emerging areas where some development has already. If Mello-Roos districts were drawn with the same boundaries as school districts, the result may be greater tax equity, the report said.

"Mello-Roos Financing in California" is available from the California Debt Advisory Commission, (916) 653-3269.

BRIEFS

S.F. Approves Bechtel Office Project

The San Francisco Planning Commission has selected a 28-story tower by Bechtel Investments Realty Inc. as the winner of this year's downtown office "beauty contest." But the city is working on a program to monitor beauty contest winners in the future to assure they are making progress toward construction.

CP&DR erroneously reported last month that the planning commission chose not to select any winner in the year's "beauty contest" because commissioners were angry that past winners have made little progress toward construction. In fact, the planning commission eventually agreed with Planning Director Dean Macris's recommendation that the Bechtel project be approved, partly because Bechtel is a San Francisco-based company and has promised to occupy 20% of the building.

At least six past winners have not started construction yet, many because of an inability to obtain construction financing. Macris said the planning commission is concerned that if these projects continue to be approved, the city will not have enough allocation next year for projects such as office buildings in Mission Bay, which would provide needed back-office space near downtown. Under the city's downtown plan and Proposition M, a slow-growth initiative, only 475,000 square feet of downtown office space may be approved each year.

Macris said the planning commission is working with other departments to draw up a monitoring program that will assess the progress of all the beauty contest winners each year. Under city ordinances, the planning commission can terminate permits if the developers do not make diligent progress toward construction.

City Heights Gets Six Months

San Diego's City Heights neighborhood has been given a deadline of six months to line up financing for its innovative but costly freeway alternative.

Unhappy with Caltrans plans to complete I-15 through their neighborhood, City Heights residents hired a national team of consultants to propose an alternative that included four blocks of deck cover over the depressed freeway and a variety of community facilities. (*CP&DR*, August 1991.)

But the neighborhood alternative could cost twice as much as the $150 million budgeted for the Caltrans version of the job. After negotiating with the California Transportation Commission, which allocates highway funds, the San Diego City Council agreed to give City Heights until next spring to line up the financing.

Riverside County CAO Quits

Riverside County Chief Administrative Officer Gary Cottrell has agreed to resign, partly as a result of a controversy over the county's inability to collect development fees.

Cottrell's undoing began in early September, when he told a citizen committee investigating the development fee situation that his duties were unclear, and it wasn't his job to make sure that the county Building & Safety Department collected the fees.

An investigation by the *Riverside Press-Enterprise* last summer found that the county had left at least $1.6 million in development fees uncollected. According to press reports, Cottrell's comments to the citizen committee undermined his ability to oversee the county government. After meeting with the Board of Supervisors, he agreed to step aside.

Meanwhile, county officials have acknowledged that they have also failed to collect so-called Quimby fees — fees used to acquire parkland — from at least two residential subdivisions in Calimesa. However, county officials say they have put new rules in place to assure that the fees will be collected in the future.

Deal May End Bob Hope Controversy

The long-running controversy over the proposed development of Jordan Ranch near Thousand Oaks — owned by entertainer Bob Hope — may have come to an end. Potomac Investment Associates has agreed to a plan that would transfer their project to neighboring land owned by Ahmanson Land Co., allowing the Santa Monica Mountains Conservancy to purchase Jordan Ranch.

The proposed development of both the Jordan Ranch and Ahmanson Ranch has been opposed by slow-growthers in the Thousand Oaks area — led by Ventura County Supervisor Maria VanderKolk, who defeated incumbent Madge Schaefer last November in a close election that turned on the growth issue. Development of the 2,300-acre Jordan Ranch has been especially controversial because it would require access through existing national parkland. Potomac and Hope had offered to sell or donate 5,700 acres of land in three nearby locations in exchange for the 59 acres of parkland required for the access. Opponents argued that the deal would set a dangerous precedent by surrendering existing national parkland.

Under the new proposal, however, Potomac's development project — 750 houses and a golf course — would be transferred to the nearby Ahmanson Ranch, where the Ahmanson interests have already proposed building 1,800 houses and 400,000 square feet of retail and office space. The proposal would allow the two developers to build both their projects on 2,400 acres near the L.A. County line (and L.A. city limits). In exchange, the Santa Monica Mountains Conservancy would acquire the entire Jordan Ranch and the remaining 3,000 acres of the Ahmanson Ranch, as well as three other properties owned by Bob Hope.

Roundup

The Natural Resources Defense Council has **sued the state Fish & Game Commission** over its decision not to list the California gnatcatcher as endangered (*CP&DR*, September 1991)....Placer County asks the Tahoe Regional Planning Commission to **allocate building permits via a lottery**, rather than encouraging a long wintertime waiting line with its current first-come, first-served policy....**Moreno Valley Planning Director Ron Smith quits** amid complaints that his department is run poorly; he is replaced — temporarily, at least — by a retired Air Force colonel who led the planning effort for neighboring March Air Force Base's expansion.

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SPECIAL REPORT: 1991 LEGISLATIVE SESSION

Most Important Growth Bills Held Over by Legislature

This year's session of the Legislature yielded almost 30 new laws involving growth, development, and conservation issues. But most of the important legislation — and even many smaller bills — were deliberately held over as part of a deal to postpone consideration of growth management issues until 1992.

Approximately half of the 80 bills tracked this year by *California Planning & Development Report* were passed by both houses of the Legislature. Of those that passed, Wilson signed 28 into law and vetoed 12. Last year, Governor George Deukmejian signed 13 bills in the growth area and vetoed 15.

But all the big growth management bills — including AB 3, Assembly Speaker Willie Brown's proposal — remain bottled up in committee. Serious negotiations on the growth management issue are expected to begin in January, when Wilson is scheduled to weigh in with his own package of bills. (See accompanying story.)

As part of an agreement among legislators and lobbying groups, however, most other bills dealing with local planning issues were held over until 1992 because they involve issues that could be affected by the growth management negotiations. According to *CP&DR*'s count 18 of the 36 growth-related bills still alive in the Legislature are pending in the Assembly Local Government Committee. Four more are pending in the Senate Local Government Committee.

Here are some highlights of the bills that were signed (and vetoed):

Coastal Permits: The Coastal Commission obtained greater power to halt illegal development projects in the coastal zone. SB 317 gives the Coastal Commission the authority to order illegal projects to "cease and desist" without first going to court. However, Wilson vetoed a companion bill, SB 283, which would have increased the penalties for permit violators.

Housing: For the second year in a row, housing advocates succeeded in passing a potentially important "anti-NIMBY" bill. SB 1019, introduced by Senate Housing Committee Chairman Leroy Greene, requires local jurisdictions to include in their general plans a list of sites on which multifamily housing can be built "as of right." The bill also specifies that, when local water and sewer capacity is limited, water and sewer districts should give special consideration to low- and moderate-income housing projects.

Last year, Deukmejian signed Greene's SB 2011, a bill which requires local governments to approve low-income housing projects unless they make findings that other policy goals are impeded.

Airport Land Use: Also for the second year in a row, a bill to exempt Los Angeles County from the provisions of the state's airport land-use plan law was vetoed (SB 329). Airport land-use planning has been a controversial issue in L.A. County because existing law apparently designates the county planning commission as the airport land-use commission, which would seem to give county officials veto power over city land-use decisions around public airports. (*CP&DR*, April 1990.)

Redevelopment: A watered-down version of Assemblyman Terry Friedman's tough redevelopment housing bill was signed by Wilson. Originally, SB 315 called for an increase in the mandatory housing set-aside from 20% of redevelopment revenue to 40%. As signed by the governor, the bill simply makes it more difficult for redevelopment agencies to avoid the 20% set-aside.

Parks: SB 402 was the omnibus parks bill, but at the last minute it was amended by Sen. Robert Presley, D-Riverside, in an attempt to force the City of Santa Monica to allow restaurateur Michael McCarty to build a proposed hotel on state-owned beachfront property. Santa Monica had approved McCarty as the developer of the hotel, but a local initiative nixed the deal. The Presley amendment would have required the state Parks & Recreation Department to generate at least $1 million a year in revenue from the McCarty site, essentially forcing Santa Monica to allow construction. Wilson vetoed the entire bill rather than permit that provision to go forward.

Wilson Growth Proposal Likely to be Cautious

Continued from page 1

integrated structures that the regions may choose to create."

This idea contrasts greatly with the legislative proposal introduced by Assembly Speaker Willie Brown, which calls for the creation of, essentially, regional growth legislatures that would oversee most big-ticket conservation and infrastructure decisions. Bottoms-up approaches have usually failed in the past because local officials are unwilling to look beyond parochial concerns to deal with regional problems. But in the last few months, Wilson's aides have repeatedly pounded the theme that local governments have come to the realization that "giving up a little local control is tolerable, so long as the needs of citizens and constituents are serve in the end," as the OPR issue paper puts it.

However, Wilson has also stated openly that, given the state's current fiscal situation, there is no way he can provide any financial incentives to support the growth management program. Thus, he seems likely to propose a "carrot-oriented" approach — an approach that uses incentives rather than mandates — but he doesn't have any carrots to throw into the pot.

The other major question at this point appears to whether the Wilson package will endorse some sort of urban growth boundary in the state's leading metropolitan areas.

Lobbying groups continue to be divided on the issue, though legislative sources say that the building industry is not as uniformly opposed to the concept of development "boundaries" as it once was. Thus, many players in the growth management debate see an opportunity to craft some sort of development boundary policy that may be politically acceptable. At a joint legislative hearing on growth management, held on Halloween, OPR Director Richard Sybert said: "I'm a little dubious about urban growth boundaries. They're a quick fix, they're arbitrary." But he went on to say that Wilson would work with legislative leaders in trying to reach a compromise.

In his address before APA statewide conference in late October, Wilson laid out five principals that he said must underlie any growth management policy for California. They are:

- The policy must be guided by the need for California to retain a strong economy.
- Existing regional governance structures should be streamlined and reorganized; regional governments should not be created.
- Local governments should have "maximum flexibility to shape their future, to work with each other and be partners with the state."
- The policy must "streamline and rationalize the development review and permitting process."
- The policy must operate "within the context of existing funding."

The governor is expected to unveil his growth management proposal in the State of the State address in January, and to send a package of bills to the Legislature shortly thereafter.

SPECIAL REPORT: 1991 LEGISLATIVE SESSION

Bill-by-Bill Summary of Legislative Action

Signed Into Law

Air Quality

SB 124 (McCorquodale): Creates new, eight-county San Joaquin Valley Air Quality Management District with city representatives as well as county reps on the governing board. *Chapter 1203, Statutes of 1991.*

AB 2061 (McCorquodale): Requires air pollution control districts in large counties to undertake socio-economic impact analyses of their air quality plans. Requires districts to hire independent consultants to assess methods used in these studies. *Chapter 794, Statutes of 1991.*

Airport Land Use Commissions

SB 532 (Bergeson): Extends deadline for creation of airport land use plans until June 30, 1992, for counties that have made "substantial progress" in preparing those plans. *Chapter 140, Statutes of 1991.*

Annexations/Incorporations

AB 328 (Peace): Permits Calipatria and Crescent City to annex state correctional facilities, boosting their population for tax distribution purposes. Previous bills have given similar permission to Susanville, Soledad, and Blythe. AB 944, still pending in Assembly Local Government Committee, would grant the same permission to Chowchilla and Coalinga. *Chapter 244, Statutes of 1991.*

SB 43 (Davis): Sets timelines for counties to move incorporation efforts forward. This bill is a response, in part, to the lengthy process involved in the incorporation of Malibu in L.A. County. *Chapter 37, Statutes of 1991.*

CEQA

AB 1642 (Sher): Clarifies that environmental impact reports must reflect the independent judgment of the lead agency; that is, they may not be prepared completely by applicants' consultants. This bill came partly in response to the Friends of La Vina case, which challenged L.A. County's practice of permitting developers' consultants to prepare draft EIRs. (*CP&DR*, September 1991). *Chapter 905, Statutes of 1991.*

AB 869 (Farr): Requires discussion of hazardous waste impact in environmental impact reports, and prohibits use of a categorical exemption when project is proposed on property listed on the state's "Cortese list" of hazardous waste sites. *Chapter 1212, Statutes of 1991.*

Conservation

AB 2172 (Kelley): Establishes a legal framework for Natural Community Conservation Plans, Gov. Wilson's concept of providing broad-based conservation planning to protect rare species before they are declared endangered. Establishes the Coastal Sage Scrub habitat in Southern California as a pilot program. *Chapter 765, Statutes of 1991.*

SB 317 (Davis): Gives cease-and-desist authority to State Lands Commission and Coastal Commission. *Chapter 761, Statutes of 1991.*

SB 906 (Hill): Establishes the California Riparian Habitat Conservation Program to preserve and restore riparian habitats around the state. *Chapter 762, Statutes of 1991.*

General Plans

SB 755 (L. Greene): Requires local planning agencies to notify schools districts of proposed general plan amendments. *Chapter 804, Statutes of 1991.*

Housing

AB 1929 (Hughes): Requires replacement of low-income housing within four years of removal. *Chapter 730, Statutes of 1991.*

SB 1019 (L. Greene): Requires local housing elements to include "as of right" sites for multifamily projects, and also requires that low-income housing get first call on limited water and sewer capacity. *Chapter 889, Statutes of 1991.*

Infrastructure Finance

AB 143 (O'Connell): Clarifies use of Mello-Roos law for toxic cleanup purposes. *Chapter 29, Statutes of 1991.*

AB 1001 (Brown): Allows cities and counties to use local general-obligation bonds to pay for seismic safety improvements to private buildings. *Chapter 658, Statutes of 1991.*

SB 682 (Mello): Among other things, makes it easier for localities to establish "mother" Mello-Roos districts to which new territory can be easily added later on. *Chapter 1110, Statutes of 1991.*

Open Space and Parks

AB 659 (Hill): Facilitates creation of L.A. County Regional Open Space District and allows benefit assessment districts in this area to be formed with majority voter approval. *Chapter 823, Statutes of 1991.*

AB 1152 (Friedman): Prohibits certain developers in the San Fernando Valley from connecting their projects to the dirt portion of Mulholland Drive with a paved road through certain state park lands. Affects Mulholland Park, a Tarzana project being developed by Harland Lee & Associates. Requires payment of equivalent funds to L.A. County Transportation Commission for traffic mitigation. *Chapter 875, Statutes of 1991.*

Planning, Zoning, & Development Law

AB 234 (Kelley): Clarifies that building permits issued by counties are still valid in newly incorporated cities and newly annexed areas. A similar bill was vetoed last year by Gov. Deukmejian. *Chapter 348, Statutes of 1991.*

AB 266 (Hauser): Permits community services district board members in Mendocino County to serve on area planning commissions. *Chapter 970, Statutes of 1991.*

Public Real Estate Development

AB 865 (Brulte): Allows San Bernardino County Flood Control District to develop property for uses unrelated to flood control purposes. Similar power was granted to counties in 1983. Governor Deukmejian vetoed a similar bill last year. *Chapter 834, Statutes of 1991.*

Redevelopment

AB 315 (Friedman): Makes it more difficult for local governments to avoid 20% housing setaside requirement. Provisions to increase the percentage of redevelopment funds set aside for housing were dropped. *Chapter 872, Statutes of 1991.*

AB 1026 (Marks): Authorizes San Francisco Redevelopment Agency to develop transitional housing projects, but prohibits use of 20% setaside to do so. *Chapter 1192, Statutes of 1991.*

School Fees

SB 1094 (Vuich): Exempts housing financed by the Office of Migrant Services from school fees. *Chapter 536, Statutes of 1991.*

Subdivision Map Act

AB 749 (Hauser): Extends until 1995 the expiration of a state law clarifying that final maps approved by counties are still valid in newly incorporated cities. *Chapter 354, Statutes of 1991.*

Continued on page 6

SPECIAL REPORT: 1991 LEGISLATIVE SESSION

Bill-by-Bill Summary of Legislative Action

Continued from page 5

AB 1905 (Frazee): Clarifies that if a moratorium is imposed, the time of the moratorium does not count against time period for which an approved map is valid. *Chapter 907, Statutes of 1991.*

Transportation
AB 84 (Katz): Extends 1/1/92 deadline for county congestion management plans if counties conclude that an environmental impact report is required. *Chapter 164, Statutes of 1991.*

SB 211 (Robbins): Requires an underground rail system in the San Fernando Valley. A similar bill was vetoed last year by Gov. Deukmejian, who said that such decisions should be made locally. *Chapter 70, Statutes of 1991.*

Vetoed

Air Quality
AB 620 (Costa): Would have retained current powers of San Joaquin Valley Air Pollution Control District. Introduced by counties as a defensive move against SB 124, which Wilson signed.

Airport Land Use Commissions
SB 329 (Russell): Would have exempted L.A. County from airport land-use planning requirements.

Coastal Act
SB 283 (Rosenthal): Would have increased penalties for permit violations under Coastal Act.

General Plans
AB 1732 (Costa): Would have required conservation element to include consideration of energy efficiency issues.

Open Space
SB 164 (Mello): Would have created a Santa Clara County Open Space Authority, with the power to levy an excise tax on owners of developed property (but not undeveloped property) with majority voter approval.

SB 402 (McCorquodale): Omnibus parks bill. Vetoed after Sen. Robert Presley, D-Riverside, added language that would have forced the City of Santa Monica to approve the controversial Michael McCarty hotel proposal on state-owned beachfront property.

Redevelopment
SB 442 (Bergeson). Would have allowed the Attorney General to review creation/expansion of redevelopment areas; would have clarified use of redevelopment to clean up toxic-waste sites.

'SLAPP' Suits
AB 440 (Moore): Would have enacted pleading hurdles making it to make it more difficult for developers to file "Strategic Lawsuits Against Public Participation," or SLAPP suits.

SB 341 (Lockyer): Would have enacted similar pleading hurdles in SLAPP suits. The bill dealt mostly with liability protections for volunteer directors and officers of tax-exempt organizations.

Transportation
AB 2074 (Umberg): Would have extended the life of the California-Nevada Super Speed Rail Commission.

SB 1185 (Presley): Would have given county transportation commissions in Southern California power of eminent domain and power to set policy on high-occupancy vehicle lanes. In veto message, Governor Wilson said operational transportation issues should remain with Caltrans.

Miscellaneous
AB 1819 (Umberg): Would have facilitated construction of Orange County Jail at Gypsum Canyon by lowering vote required for approval from two-thirds to simple majority.

Still Pending

CEQA
AB 251 (Frizzelle): Requires a fiscal impact analysis as a supplement to an environmental impact report, on request of applicant if applicant pays. *Pending in Assembly Local Government Committee.*

AB 886 (Arieas): Requires environmental impact reports on projects that would convert farmland to other uses. *Pending in Senate Local Government Committee.*

AB 1023 (Moore): Ends the practice of using inadequate environmental review as grounds for halting an eminent domain proceeding. A recent CEQA challenge successfully halted the condemnation of property near Burbank Airport. (*CP&DR*, October 1991.) *Pending in Senate Judiciary Committee.*

AB 1821 (Ferguson): Clarifies that state law permits a draft environmental impact report to be prepared by a project applicant. *Pending in Assembly Natural Resources Committee.*

SB 352 (C.Green): Limits the authority of air pollution control districts to establish regulations in the area of land use. *Pending in Assembly Natural Resources Committee.*

SB 612 (Calderon): Requires environmental impact reports to contain analysis of the project's impact on the area's labor force. *Pending in Senate Governmental Organization Committee.*

SB 1062 (Maddy): Exempts coastal projects from CEQA if they comply with local coastal programs' long-range land use plans. Introduced to assist Port Disney project. *Pending in Senate Natural Resources Committee.*

Conservation
AB 395 (Costa). Permits local agencies to create benefit assessment districts to acquire and maintain habitat for rare and endangered species. *Pending in Senate Appropriations Committee.*

AB 350 (Costa): Creates Natural Resources Restoration and Development Fund. Requires State Lands Commission to review proposals for riparian parkways. *Pending in Senate Appropriations.*

Development Fees
AB 931 (Cannella): Allows counties to impose countywide development fees inside city boundaries. *Pending in Assembly Local Government Committee.*

General Plans
AB 470 (Jones): Requires agricultural element in General Plan. *Pending in Assembly Local Government Committee.*

SPECIAL REPORT: 1991 LEGISLATIVE SESSION

AB 805 (Quackenbush): Revises requirement for open space element. *Pending in Assembly Local Government Committee.*

AB 908 (Farr): Requires General Plans to include an element dealing with local congestion management plans. *Pending in Assembly Local Government Committee.*

AB 980 (Bates): Requires land use element to identify need for dependent care facilities. *Pending in Assembly Local Government Committee.*

AB 1058 (Wright): Requires that general plan amendments be sent to school districts for review. *Pending in Assembly Local Government Committee.*

AB 1215 (Moore): Requires socio-economic impact report when a general plan is adopted or amended. *Pending in Assembly Local Government Committee.*

Growth Management
AB 3 (Brown): Creates seven regional development and infrastructure agencies throughout the state. *Pending in Senate Local Government Committee.*

AB 76 (Farr): Reorganizes how the state government makes land-use policies. *Pending in Senate Local Government Committee.*

SB 434 (Bergeson): Allows creation of voluntary regional fiscal authorities. *Pending in Assembly Local Government Committee.*

SB 797 (Morgan): Permits implementation of the BayVision 20/20 plan to combine regional planning agencies in the Bay area. *Pending in Assembly Local Government Committee.*

SB 929 (Presley): Implements statewide policies through state, regional, and subregional plans. *Pending in Assembly Local Government Committee.*

Housing
AB 767 (Hauser): Requires cities and counties to submit draft housing elements to all localities within their housing market area for review and comment. *Pending in Assembly Local Government Committee.*

AB 978 (Costa): Clarifies that local agencies are not limited to statutory criteria in doing housing needs assessment for housing element. *Pending in Assembly Local Government Committee.*

AB 1883 (Hauser): Mandates exclusionary zoning for low- and moderate-income housing. *Pending in Assembly Housing Committee.*

AB 1960 (Lee): Creates regional housing appeals boards to hear appeals from local governments on housing development projects. *Pending in Assembly Local Government Committee.*

Planning, Zoning & Development Law
AB 455 (Cortese): Prohibits approval of development project of regional significance unless a reliable long-term water supply is identified. *Pending on Assembly floor.*

AB 479 (Chacon): Would create the "vesting declaration" — a process similar to vesting tentative maps to assure vested rights for development projects not subject to the Subdivision Map Act. *Pending in Assembly Local Government Committee.*

AB 1236 (Mountjoy): Restricts ability of local agencies to impose additional conditions once project is approved. *Pending in Senate Housing Committee.*

AB 1262 (Chacon): Restricts local government's ability to adopt or extend interim moratoriums to instances when public health is threatened. *Pending in Assembly Local Government Committee.*

AB 1923 (Wright): Prohibits local agencies from conditioning a development permit on compliance with policies adopted later. *Pending in Assembly Local Government Committee.*

AB 2223 (Moore): Requires that projects must comply with CEQA before it can be "deemed approved" under permit streamlining act. *Pending in Senate Local Government Committee.*

Public Real Estate Development
SB 508 (L. Greene): Requires local agencies which purchase land for public facilities to notify other agencies and entertain proposals for joint development. *Pending in Senate Appropriations Committee.*

Redevelopment
AB 1865 (Hauser): Seeks to economic competition among cities by splitting tax revenue among two cities if a business was lured from one city to another. *Pending in Assembly Ways & Means Committee.*

School Fees
AB 1846 (Gotch): Requires school officials to consider year-round schools, sale of vacant land, and other actions before cities and counties can impose additional fees for school construction. *Pending in Senate Local Government Committee.*

SB 928 (Presley): Allows school districts to create benefit assessment districts to raise money for school construction. *Failed in Senate Local Government Committee; reconsideration granted.*

Subdivision Map Act
AB 1911 (Frazee): Requires that Department of Fish & Game be given notice of tentative maps and states that F&G must respond within a certain period of time. *Pending in Assembly Local Government Committee.*

Dead

CEQA
AB 1408 (Lempert): Would have required lead agency to notify Office of Planning & Research of cumulative impacts, and calls on OPR to prepare a cumulative impact manual. *Sent to Senate Inactive File.*

Conservation
AB 54 (Friedman): Would have placed restrictions on destruction of seven species of oak trees. *Failed passage on the Senate floor.*

Growth Management
SB 908 and SCA 20 (McCorquodale): Would have created regional infrastructure financing districts. *Died in Senate Appropriations Committee.*

COURT CASES

Challenge to Tiburon's Actions During Moratorium Rejected

The denial of a housing project by the Town of Tiburon — an action taken during a building moratorium — was properly based on a draft of the town's revised general plan, an appellate court has ruled.

The Harroman Co. filed an application with the town in 1988 to construct 70 housing units on a 101-acre parcel of land. At the time, however, Tiburon was in the midst of a two-year moratorium, during which the general plan was being revised. However, Tiburon rejected the application because the draft general plan being discussed at the time called for 40 units on the property. The final general plan approved in late 1989 allows 30 units to be constructed on the property.

Harroman sued on a variety of grounds, arguing — among other things — that that city should have applied the density standards contained in the existing general plan, and that adoption of a draft general plan was a "sham" designed to avoid more stringent findings requirements in the state planning law.

Tiburon had received permission from the Governor's Office of Planning & Research to impose a building moratorium from 1987 to 1989 while the town's general plan was being revised. In such situations, a proposed project is measured against the draft general plan, not against the existing general plan.

Harroman's original application had been received by the town in July of 1988. In April of 1989, the planning commission approved the draft general plan, which included the downzoning of the Harroman property. In June, the planning commission rejected the Harroman application as inconsistent with the draft general plan. In August, the town council upheld the decision on the Harroman property, and then in September the council approved a new general plan that included an even more restrictive downzoning of the Harroman land.

In claiming the process was a sham, Harroman's lawyers argued that the timing of the planning commission's approval of the general plan was designed to thwart the Harroman application. Harroman claimed its application should have been judged by the standards of the existing general plan, and that if the application were rejected, the town should have made findings that the project would adversely affect the public health and safety, as required by Government Code Section 65589.5.

But this line of reasoning was rejected by a three-judge panel of the First District Court of Appeal in San Francisco. Writing for the panel, Presiding Justice Harry Low said that, having received permission to impose the moratorium from the director of OPR, the town was within its rights to measure the Harroman application against the draft general plan. "Otherwise," Low wrote, "we would require the town to approve a development proposal based upon an abated or suspended general plan. This result would undermine the expressed legislative intent to encourage periodic review of the community's changing conditions and circumstances."

The full text of Harroman v. Town of Tiburon appeared in the Daily Journal Daily Appellate Report on October 22, beginning on page 12896.

Sierra Madre Erred in Extending Moratorium, Court Rules

An appellate court has ruled that the City of Sierra Madre violated state law in prohibiting construction in hillside areas for more than three years, and has ruled that the moratorium should not apply to a landowner who filed the suit. The city and the landowner are negotiating a possible settlement now.

At issue in the case is the way the city imposed and extended a series of moratoriums and rezonings affecting a 550-acre hillside area above the city, which is located at the base of the San Gabriel Mountains.

Under state law (Government Code Section 65858), a local jurisdiction may impose a 45-day "pause for planning moratorium" and then extend it twice so that it covers a period of no more than two years.

Sierra Madre initially imposed a hillside moratorium in May of 1988. This moratorium was extended until September of 1989. However, in March of 1989, the city imposed a second moratorium covering part of the same hillside area, including an 11-acre parcel owned by William Lawson Martin III, the plaintiff in the case. The second moratorium remained in place until March of 1990.

In December of 1989, Martin filed an application for a 10-lot subdivision on his land. He noted that the first moratorium had expired, and claimed the second moratorium violated Section 65858 because, in essence, it further extended a moratorium that had already been extended twice.

The city rejected Martin's application and, in January of 1990, enacted a new zoning ordinance permitting a total of about 100 houses in the 550-acre hillside area. This ordinance was criticized by hillside property owners, however, and in the spring of 1990 Sierra Madre created a new task force to draw up a new hillside ordinance.

In June of 1990 the city imposed yet another hillside moratorium while the new ordinance was being devised. (The city council was scheduled to consider the moratorium in early November.) At the same time, Martin sued.

Before the appellate court, Sierra Madre argued that the passage of the new hillside ordinance in January of 1990 effectively terminated the existing moratorium, and therefore gave the city permission to begin a new two-year moratorium. "We find nothing in the words of the statute nor its legislative history which would suggest such a meaning," wrote Presiding Justice Joan Dempsey Klein for a unanimous three-judge panel. The state law's provisions, she added, "allow the City Council to use the moratorium only once for an aggregate period of two years. It would have been a simple matter for the Legislature to permit a new two-year limit upon each rezoning of affected property or upon termination of a prior ordinance. However, it did not. The City therefore cannot obtain a new two-year moratorium limitation merely by rezoning or awaiting the expiration of an earlier ordinance."

The full text of Martin v. Superior Court, No. B058753, appeared in the Daily Journal Daily Appellate Report on October 18, beginning on page 12786.

COURT CASES

Tentative Ruling Overturns Judge, Upholds Riverside General Plan

A judge's decision to overturn the City of Riverside's general plan has been tentatively overturned by the state Court of Appeal.

In a 58-page tentative ruling, the Fourth District Court of Appeal panel in San Bernardino affirmed that a charter city such as Riverside need not maintain consistency between its general plan and its zoning ordinance. State law requires so-called "general law" cities to maintain consistency. By upholding the validity of the general plan, the court also upheld the validity of Riverside's two slow-growth initiatives, Measure R and Measure C, which were the true target of the lawsuit filed by property owners.

The San Bernardino panel is the only appellate panel in the state that issues written tentative rulings prior to oral argument. The panel heard 90 minutes of oral argument in early October, but at press time had not issued a final ruling.

In 1989, the Riverside plan was struck down by Superior Court Judge Vincent Miceli. The case is really a combination of two separate challenges brought by landowners shortly after the passage of Measure C in 1987. Measure C built on an earlier slow-growth initiative, 1979's Proposition R, by extending two- and five-acre hillside zoning into the city's sphere of influence.

Among other things, Miceli found that the plan, last revised in the 1970s, was out of date, incomplete, and internally inconsistent, and that it was not readily accessible in one location in Riverside City Hall. By extension, Miceli also declared the slow-growth initiatives invalid because they constituted zoning ordinances inconsistent with the general plan, and because they were adopted at a time when the city had an invalid general plan in place.

In its tentative ruling, the Court of Appeal said that the question of consistency between the Riverside General Plan and the two initiatives was "the linchpin issue by which many of the other issues in this case are bound and fixed." In striking down the argument of the landowners, the appellate court simply noted that state general planning law (Government Code Section 65803) specifically states that the consistency requirement does not apply to charter cities such as Riverside.

The landowners' lawyers — including Daniel J. Curtin, author of *California Land-Use and Planning Law* and James Longtin, author of *Longtin's California Land Use* — had argued that Riverside had pursued consistency between the general plan and zoning ordinance as a matter of policy. But the court pointed out that Riverside never adopted a charter amendment or an ordinance to that effect. The justices said the city enjoys "an exemption from consistency requires unless the same are assumed `by charter or ordinance' —'not `by remote implication'."

While ruling that Riverside's zoning ordinances need not be consistent with its general plan, the appellate court did rule that the general plan of a charter city must be internally consistent. (This conclusion was based on an interpretation of Government Code Sections 65300 et seq.) Despite this line of reasoning, however, the Court of Appeal — in great detail — reversed Judge Miceli's conclusion that the Riverside general plan is inadequate.

For example, Miceli agreed with the landowners that the general plan was out of date, and, in fact, the city is currently pursuing a general plan update. But the appellate court concluded that, with the exception of the required five-year update of the housing element, "there is no statutory requirement that a general plan be updated at any given interval, or in connection with any given event."

The appellate court also faulted Miceli's conclusion that the general plan is inadequate because it is not readily available in one location in Riverside City Hall. This was one of the most colorful aspects of the case — the result of a lengthy attempt by a representative of Longtin's office to retrieve the entire document. The justices noted that the law (Government Code Section 65301(a) allows the plan to be adopted "in any format deemed appropriate or convenient by the legislative body."

However, the justices warned: "(W)e do not intend to indicate approval of a general plan which is scattered among various governmental departments and for which there is no comprehensive index, or which is otherwise difficult to obtain in whole or in part. We merely hold that the ease of access to a plan (as opposed to whether it actually exists) is not the basis for attack" under a writ of mandate proceeding.

In a section the court admitted was dicta — that is, merely advisory — the justices criticized Miceli's decision to invalidate the slow-growth initiatives as a result of invalidating the general plan. Instead of invalidating the initiatives, the justices said a judge like Miceli should order — and oversee — the process of bringing the general plan into conformance with state law in a short period of time.

The two cases combined in this decision are Garat v. City of Riverside, E007409, and Arlington Heights Citizens Association v. City of Riverside, E007969.

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Citizen Group Pays FPPC Fine

A group of Riverside landowners who opposed a 1987 slow-growth initiative — and subsequently challenged the general plan in a lawsuit — has agreed to pay a $4,000 fine for violating the California Political Reform Act.

According to the state Fair Political Practices Commission, the now-defunct Riverside Tomorrow organization did not identify itself as a group of Arlington Heights homeowners in two mailings involving growth-related measures in the City of Riverside. FPPC investigators also found that Riverside Tomorrow did not identify the individuals who contributed some $14,000 to the organization on behalf of the Arlington Heights Landowners Association. The Arlington Heights group is one of the two plaintiffs in the Riverside general plan case.

In October 1987, the organization sent out a mailer against Measure C, a slow-growth measure which ultimately passed. The source of the mailer was identified as "Riverside Tomorrow — A Citizens Lobby," but state investigators found that the group failed to identify the source of its funding as the Arlington Heights Landowners Association. The source of a 1988 mailing, intended to generate support for a pro-growth measure which failed, was identified in one spot as "Riverside Tomorrow" and in another as the "Arlington Heights Citizens Association."

State regulations require that campaign mailings bear the full name of sponsoring organizations, and the FPPC concluded that the Arlington Heights Landowners Association should have been identified because its dues supported the Riverside Tomorrow mailings.

BY THE NUMBERS

Citrus Heights Ruling May Slow Incorporation of New Cities

Continued from page 1

the defendant in the lawsuit, quickly decided to appeal the decision to the California Supreme Court. The lawsuit was filed by Sacramento County, which stands to lose more than $2 million in sales and property tax revenue if the Citrus Heights area were to become a city.

If the Supreme Court were to uphold the ruling, it would mean the end of California's longstanding method of incorporating new cities, contained in the Cortese-Knox Local Government Reorganization Act. Experts say that LAFCOs around the state would have to determine, on a case-by-case basis, which incorporations would require a vote of all residents in unincorporated areas. But they acknowledge that this would require a judgment call by LAFCOs in applying the court's "rubbery ruler," so the Legislature may also have to step in with clarifying legislation.

In any event, it seems unlikely that the state could return to the old system, which allowed no voter participation outside the boundaries of the proposed new city. And if voters in other unincorporated areas must approve new cities, the pace of incorporations seems almost certain to slow down. Since Proposition 13 passed in 1978, the pace of new incorporations has picked up, and close to 40 new cities have been formed since then. A half-dozen more are pending now, and they could be affected by the new ruling. New cities typically incorporate for one of two reasons: to keep tax money "at home," rather than sending it to the county government, or to impose slow-growth land-use policies. (*CP&DR Special Report: Drawing Boundaries*, March 1987.)

The Citrus Heights case has been simmering in controversy for close to five years, largely because of the amount of tax revenue at stake in the incorporation. Citrus Heights is one of many unincorporated communities in Sacramento County, which has seen the emergence of an unincorporated "city" of a half-million suburbanites since the last city incorporation in 1946. The county has fought particularly hard to try to block the incorporation of Citrus Heights because it would mean the loss of $2 million a year in sales tax revenue from Sunrise Mall, which would become part of the city. After a bitter fight, the Sacramento County LAFCO gave Citrus Heights the go-ahead to hold an incorporation election in 1988. Shortly thereafter, however, the county and the Sacramento County Deputy Sheriffs Association sued, asking the courts to overturn the LAFCO's decision. (*CP&DR*, June 1987 and June 1988.)

Sacramento County Superior Court Judge James T. Ford ordered the LAFCO to hold up the election while an environmental impact report was prepared, but rejected the county's claim that the voting scheme for incorporation was unconstitutional. In their recent ruling, the appellate justices affirmed Ford's ruling on the EIR but overturned him on the constitutional issue.

Quoting Sacramento County LAFCO staffer John O'Farrell, the court found that the vast unincorporated areas of Sacramento County — created deliberately by the county and maintained through a combination of county governance and special-district services — constitute "a pseudo-city of 550,000." "In Sacramento County," Justice Sparks wrote, "the county government is acting as a de facto city government for the unincorporated areas, exercising its extensive regulatory and financial authority over it."

Accepting the county's argument that the loss of Citrus Heights taxes will have a significant effect on the county's operations, Justice Sparks said: "(T)he remaining residents of the 'pseudo-city' of Sacramento County have a substantial interest in the incorporation vote because they will be significantly affected by it."

The full text of Sacramento County Board of Supervisors v. Sacramento LAFCO, C006792, appeared in the Daily Journal Daily Appellate Report on October 3, beginning on page 12197.

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County Seeks Operating Funds

Claiming it "loses money" on annexation, Stanislaus County is trying to make a case that Modesto and other cities should cover some of the county's operating costs for providing services to a new development. Though developers and cities have often provided capital facilities for jails, schools, libraries, and other infrastructure, this is believed to be the first time in the state that a county has sought operating funds in an annexation.

The county has lost its first battle for operating funds. After postponing a decision for two months, the Stanislaus County LAFCO voted in late October to approve a 1,775-acre annexation to Modesto, the largest annexation in county history. However, the county is now working a set of criteria that might be used in determining the financial impact of annexation.

The dispute began in late August, when Modesto came to the LAFCO seeking the annexation of the so-called "Village I" area northeast of the city. At the last minute, however, county officials expressed concern about the financial impact of the annexation. The LAFCO postponed its decision for 60 days and ordered the two sides to try to strike a compromise.

The Village I annexation was important to the city because it was the first large addition to the city in many years to obtain public support. Under the terms of a 1979 growth-control initiative, all sewer-trunk extensions into areas seeking annexation must be approved by the voters. For 10 years, virtually all such projects were rejected, and the number of building lots in Modesto dwindled.

Working with ROMA Design Group and a variety of citizen coalitions, the city designed a neotraditional-style proposal for the area that called for some 7,000 dwelling units and more than 20,000 new residents over a 10-year period. City voters approved a trunk sewer extension to the Village I area last November.

According to LAFCO Executive Officer Ron Freitas, who also serves as county planning director, the Village I proposal was five times as big as any annexation Stanislaus County had ever handled. The day of the LAFCO hearing, county officials came forward with financial concerns, saying the cost of providing Village I with county services would exceed the revenue the county would receive from the area.

Between August and October, the county and the city tried to negotiate a settlement. When an agreement could not be reached, the LAFCO approved the annexation without any payments from the city to the county.

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COURT CASES

Court of Appeal Upholds Carmel's Ban on Short-Term Rentals

Carmel's ban on short-term rentals in residential neighborhoods has been upheld by the Sixth District Court of Appeal. In an important victory for cities, the court concluded that it was not necessary to base the ordinance on a finding that short-term rentals would create "unmitigatable, adverse impacts."

Carmel has been struggling for 10 years to implement such an ordinance. In 1981, the city passed a similar ordinance, prohibiting owners of single-family residences from renting their homes for less than 30 days at a time. A trial judge found the ordinance unconstitutional and Carmel did not appeal.

In 1989, Carmel passed a similar ordinance. Homeowners again sued, claiming the ordinance is unconstitutional and arguing that, under the doctrine of collateral estoppel, Carmel was prohibited from litigating the same issues a second time. The Court of Appeal rejected the collateral estoppel argument and upheld the constitutionality of the ordinance.

The plaintiffs challenged the city council's finding that the ordinance was needed to prevent "unmitigatable, adverse impacts" such as an increase in required police, fire, and medical services. For example, lead plaintiff John Ewing said his home is vacant half the time and that he has never had any complaints from neighbors.

However, the appellate court concluded that such a finding was not necessary to support the ordinance. "Whether or not transient rentals have the other 'unmitigatable, adverse impacts' cited by the council, such rentals undoubtedly affect the essential character of a neighborhood and the stability of a community," wrote Justice Franklin D. Elia for a unanimous three-judge panel. "....Literally, they are here today and gone tomorrow — without engaging in the sort of activities that weld and strengthen a community." For these reasons, the court concluded, the ordinance does not violate substantive due process and equal protection rights of the plaintiffs.

The court also said that transient rentals were distinguishable from other commercial activities, such as home occupations and day-care facilities, that are allowed in single-family residential neighborhoods. In addition, the court rejected the homeowners argument that the 30-day cutoff was arbitrary, saying that it is within the power of the city council to make such a judgment. "Through Ordinance No. 89-17, Carmel wished to curtail only short-term occupancies for remuneration," Elia wrote. "We believe that the 30-day cutoff is not arbitrary but, rather, is reasonably linked to that goal."

The homeowners had also argued that the ordinance, if enforced strictly, would prohibit house-sitting, house-swapping, and even an overnight guest who takes his or her host out to dinner. The court rejected that argument as well. "We believe that Ordinance No. 89-17 is sufficiently clear to allow people of common intelligence to understand its meaning," Elia wrote.

The full text of Ewing v. City of Carmel-by-the-Sea, No. H007702, appeared in the Los Angeles Daily Journal Daily Appellate Report on October 11, beginning on page 12504.

School District Challenge to San Jose Redevelopment Area Rejected

An appellate court has upheld the creation of one of the state's largest redevelopment project areas, rejecting the claims of a school district that the redevelopment plan was inadequate. However, the court did issue a published ruling establishing the standing of school districts to challenge redevelopment plans in court.

In a mostly unpublished decision, the First District Court of Appeal agreed that the redevelopment plan was "sketchy," but said it met the legal requirements of the state's Community Redevelopment Law (Health & Safety Code Sections 33000 *et seq.*) The decision was a blow for the Franklin-McKinley School District, an impoverished district in southeast San Jose that filed the suit three years ago after an unsuccessful attempt to negotiate a "pass-through" of property tax revenues from the redevelopment project.

The dispute began in 1988, when San Jose created three new redevelopment areas near the Franklin-McKinley district and merged two of those areas with nine existing redevelopment areas. The merged project area generates more than $50 million a year in tax-increment funds for the redevelopment agency, making it one of the most lucrative project areas in the state.

Franklin-McKinley claimed that the new project areas would be "growth-inducing," adding students to an already overcrowded school system. In its court case, the school district sought to invalidate the redevelopment plan and the preliminary reports associated with it, saying they did not contain the minimum amount of information required by law.

San Mateo County Superior Court Judge Frank Piombo ruled in favor of San Jose, saying the school district did not have the standing to challenge the redevelopment plan. In a published portion of the opinion, the appellate court reversed Piombo's ruling on the standing issue. "District boundaries are sufficiently near the new redevelopment areas that there is a geographical nexus between them, such that one might expect the district to suffer whatever consequences increased population and patronage of the redevelopment project areas will cause in those areas," wrote Presiding Justice J. Anthony Kline for a unanimous three-judge panel.

The only other published portion of the opinion dealt with the adequacy of the preliminary reports and project reports on the redevelopment project areas. Under law, the preliminary reports are submitted to other taxing entities, such as counties and school districts, that will be affected by the project. The project report is submitted to the city council. The court concluded that information from preliminary reports, which are prepared early in the process, may be incorporated into the project report, which is prepared later. But the court ruled that a redevelopment agency may not do the reverse — incorporate project report material into preliminary reports — in order to meet statutory requirements.

In unpublished portions of the opinion, the court affirmed the adequacy of both the redevelopment plans and the preliminary reports associated with the three project areas in question. The court ruled that San Jose could properly incorporate the general plan into the redevelopment plan by reference. The court rejected an analogy to the California Environmental Quality Act, which requires all information to be available in one location.

The unpublished discussion of the preliminary report's adequacy acknowledged that this report was sketchy but noted that "the preliminary report is prepared fairly early in the process and is, as indicated by its title, sketchy." The appellate justices did find that the "neighborhood impact" portion of the preliminary report was inadequate. (In fact, their discussion of the neighborhood impact section was longer than the document they were discussing.) However, the court concluded that since the school district owns no property inside the redevelopment project area's boundaries, there was no constitutional violation of the district's due process rights.

The full text of Franklin-McKinley School District v. City of San Jose, No. A047685, appeared in the Daily Journal Daily Appellate Report on October 14, beginning on page 12535.

DEALS

East Palo Alto's Cinderella Deal With Adobe Systems May Work Out

The decision by Adobe Systems to relocate to the City of East Palo Alto has all the makings of a Cinderella story. Impoverished and lacking industry, the city needed an economic shot in the arm to provide both jobs for a troubled citizenry and revenue for a troubled treasury. Enter Adobe Systems, the Prince Charming of the drama. The leading software maker decides to be a tenant in a local office complex, instantly lending cachet and respectability to an area formerly known as Whisky Gulch. It's a happy ending for all. Except, possibly, for Cinderella herself.

The issue is how much the city will truly benefit from the Adobe buildings. The deal looks good on paper, with millions of dollars in tax-increment funds going to affordable housing, local school districts, and other worthy causes. But Adobe has made no commitment to hire local people for the 600-plus jobs to be located in socially troubled East Palo Alto, and a good deal of the tax revenue is likely to be rebated to the veteran Peninsula developer Joaquin DeMonet, who has shouldered the multimillion-dollar cost of getting the University Centre project off the ground. City officials, however, have some interesting — and valid — reasons about why they are taking the long view of University Centre.

East Palo Alto, a city of 19,000 people on the the other side of the ravine (and the Santa Clara-San Mateo county line) from Palo Alto's Crescent Park, presents a strong contrast to the surrounding affluence of neighboring Silicon Valley communities. The city is 65% African-American, and most residents are working class or members of the working poor. Lacking in major employers and industry, the city, which incorporated in 1983, has little tax base and lurches from one financial crisis to another while suffering high staff turnover. The most notable local landmark is a row of liquor stores and depressed real estate known as Whisky Gulch.

But East Palo Alto possesses at least one real estate attribute: location. Whiskey Gulch sits near the important intersection of the 101 Freeway and University Avenue, the gateway to Stanford University. Comparatively cheap and available land provide added bait to developers. "We see it as a very strong location for office buildings," says Bill Skibitske, project manager for DeMonet.

DeMonet has been negotiating with the city's redevelopment agency for several years to build two office buildings and a hotel on the 12-acre site on Whisky Gulch. In its current form, the $170 million project is set to start construction in late 1993, when DeMonet is scheduled to break ground on 325,000-square-foot building of either nine or 10 stories (the height is still undecided). A second, 125,000-square-foot second phase will not start before 1994, and construction of a 200-room hotel is still up in the air.

The project became a lock last summer when software giant Adobe Systems agreed to come into the project as a limited partner and occupy both of DeMonet's proposed buildings. (The company currently occupies 250,000 square feet in four separate buildings in Mountain View, three miles away.) Chief Financial Officer Bruce Nakao says location dictated the decision: "We had a desire to stay on this corridor, between the 85 and Menlo Park, because it's favorable for a lot of our employees. The other reason was to get into a vertical building, as opposed to being in multiple two-story buildings." Given the slow-growth bent of most Silicon Valley cities, coming up with those kind of space requirements isn't easy, and that gave East Palo Alto a leg up. Adobe plans to take occupancy in late 1993.

Getting to this point, however, has cost DeMonet more than $12 million. The developer has literally helped East Palo Alto stay in business in recent years; in exchange for an exclusive right to negotiate on the Whiskey Gulch project, DeMonet has paid the city a development fee of $7.2 million, which has been used to cover administrative expenses. DeMonet shelled out another $5 million for two environmental impact reports and legal bills racked up in three environmental lawsuits filed by the neighboring cities of Palo Alto, Menlo Park and an out-of-town neighborhood group.

Last spring, DeMonet and the city finally settled the litigation with neighboring communities, agreeing to cut the size of the project from 1 million square feet to 665,000, cut the height limit from 18 stories to 12, and limit the amount of retail development in order to cut traffic. The cut in size will also cut the tax-increment revenue the city is likely to realize from the project. At 1 million square feet, University Centre was expected to generate $60 million in tax increment over 30 years. Half the tax-increment funds are earmarked for affordable housing, senior-citizen services, and training programs. The rest is to be divided among local schools and special districts.

Now that construction seems assured, it's possible to evaluate the benefits for the community. And there are criticisms to be made. Though DeMonet has a non-binding agreement to hire local contractors, Adobe has made no commitment to hiring East Palo Alto residents, and, given the skill levels required in the software business, the company is likely to "import" most of its workers.

In addition, East Palo Alto has agreed to give up to $6 million in tax-increment back to DeMonet as reimbursement for capital improvements, though the affordable housing fund and the school districts must receive their money first. And the total pot of tax-increment money is likely to be far less than $60 million over 30 years. — though, curiously enough, city officials claim they have not run the tax-increment projects on the smaller project they're now committed to.

DeMonet's Skibitske gets steamed, however, when he hears criticism that the developer is somehow taking advantage of the city. "In the state of California," he says, "no developer has ever given this amount to a city for the right to build in a redevelopment area." Usually the opposite is true, he observed.

And there is another benefit — undeniable if not measurable — that may make the DeMonet project worthwhile for the city no matter how the numbers look. University Centre will make East Palo Alto into a business destination as well as a low-rent bedroom community. The project "will create an atmosphere of investment, where there wasn't any major investment before," says the city's Miller.

The presence of University Centre may help case the way for a couple of other large-scale redevelopment projects that are kicking around the city now. Planned is a 500,000-square-foot shopping center called Gateway 101, on the other side of the freeway from the Adobe project, and Ravenswood, an 80-acre industrial park.The city's Miller is hesitant to draw a direct connection between these projects and University Centre, but says the DeMonet project's presence "doesn't hurt" in luring the others in.

Is Miller right? Is the value of becoming established as a location worth striking a less-than-optimal deal with the developer? The answer, in a word, is yes.

When real estate types babble about "location, location, location," they mean both geography and high-quality corporate neighbors. Real estate, beyond issues of money and construction, is an irrational and emotional business, driven by reputation and mystique. The perception of buildings is colored not only by architecture but also by the reputation of the developer and/or the tenants.

By relocating to East Palo Alto, Adobe will play the role of "anchor tenant" for the city. The area already has a good geographic location; what it needed — desperately — was credibility, and that is arguably the hardest thing to achieve in real estate. That may be one reason why the Cinderella city chose not to ask more of its Prince Charming than a dance at the ball.

Morris Newman