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INSIDE

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Boundary Dispute Reaches Legislature

Pleasanton, Hayward Battle Over Future of Ridgelands

A dispute between Hayward and Pleasanton over control of ridgelands property has escalated into a battle in Sacramento over the ability of cities to control whether land is detached from their boundaries.

The subject of the dispute is Pleasanton Ridge, a 7,400-acre area on the ridgelands west of Hayward and east of Pleasanton. Environmental activists want to preserve all of the land as open space, while Pleasanton city leaders are supporting a plan that would permit construction of 2,600 homes on the ridge.

However, part of the property is located inside the city limits of Hayward — and the Hayward City Council refuses to consider detaching the property from the city limits, even though it's already been placed in Pleasanton's sphere of influence by the Alameda County Local Agency Formation Commission.

In response, the main landowner in the area has sponsored a bill in the Legislature — AB 2307, introduced by Assemblyman William Baker, R-Pleasanton — that would permit the forcible detachment of territory from a city's boundaries. But after incurring the wrath of Assemblyman Johan Klehs, a Democrat who represents Hayward — as well as the opposition of the League of California Cities — Baker has pulled the bill from consideration by the Assembly Local Government Committee.

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Affordable Housing Still Suffers

Despite an Increasing Flow of Money, Localities Aren't Very Interested

By Morris Newman

Over the past decade, state and local funding for affordable housing throughout California has increased dramatically, and a strong, stable collection of non-profit housing developers has emerged throughout the state. Yet statistics suggest that the state is falling further behind on the affordable housing curve, with local inaction, citizen opposition, and the difficulty of piecing together deals all contributing to the problem.

Homebuilding activity is falling seriously behind demand in the current recession. According to the California Building Industry Association, the state needs 300,000 new residential units annually for the next five years, of which 128,000 should be "affordable," or set aside for low- and moderate-income residents — that is, residents who make between 50% and 120% of their area's median income. Yet homebuilders were able to construct only 111,000 residential units in total last year, a 32% drop from 1990.

At the same time, the state's population growth remains strong, especially among poor immigrants from Asia and Latin America, and this trend is leading to more overcrowding at the low end of the housing market. Though California's population growth

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Two Down, One To Go

Supreme Court Rules in *Yee*; *Lucas* Still to Come

It's two down and one to go for the government on the Supreme Court's three important land-use cases this year.

In late March, the high court ruled 9-0 to uphold the City of Escondido's mobile-home rent control law, which property rights advocates had claimed constituted a taking of property by physical occupation. But the court held open the possibility of a regulatory taking challenge in the future. The *Yee* ruling came down less than three weeks after the court dismissed a Puerto Rico land-use case, saying that it had been "improvidentially" reviewed.

Still to come, of course, is the court's ruling in the big case of the year: *Lucas v. South Carolina Coastal Council*, which could define the course of takings law for years to come.

Coverage of the *Yee* ruling, by *CP&DR*'s special legal affairs correspondent Kenneth Jost, begins in the *CP&DR Legal Digest* on page 5.

CALIFORNIA DIRT

William Fulton

Con Howe's Challenge

A couple of weeks ago, the Los Angeles County Transportation Commission reaffirmed its decision not to build L.A.'s crucial "Orange Line" to the Westside along Wilshire Boulevard, but, rather, a mile south along Pico and San Vicente Boulevards. This was done because of — and/or in spite of — the following facts:

1. Wilshire Boulevard is one of the most densely developed and heavily traveled corridors in the United States.

2. The Pico-San Vicente route may cost more and will surely serve the city as a whole less well.

3. The Pico-San Vicente route may do more to serve Koreatown and minority neighborhoods further south than the Wilshire route would.

4. Studies have identified a methane gas problem along the Wilshire corridor.

5. Homeowner groups near Wilshire Boulevard don't want the Orange Line anywhere near them.

6. Under the influence of Rep. Henry Waxman, who listens to homeowner groups, the federal government has prohibited construction of the Orange Line in "methane danger zones."

7. Retaliatory scientific studies produced by the L.A. County Museum of Art have shown that the methane problem along the Pico-San Vicente route may be just as bad.

8. The L.A. City Planning Department, the agency in charge of shaping the future development patterns of the city, was nowhere to be found in the conversation.

Welcome to L.A., Con Howe.

Unfortunately, the Orange Line debate is a pretty typical L.A. planning story: a crucial decision, one that will establish the development patterns of the city for several decades, quickly degenerates into petty warfare among different factions with narrow agendas. Maybe it's a world-class city, as Mayor Tom Bradley and others have touted it over the last decade, but it's not yet a mature enough city — a city with enough of a sense of itself — to engage in a consistent and high-toned discussion about its own future.

> *"L.A. is not yet a mature enough city — a city with enough of a sense of itself — to engage in a consistent and high-toned discussion about its own future."*

Con Howe, of course, is the New Yorker who this month is taking over as head of the L.A. City Planning Department. More than anything else, his job is to build a constituency for good planning in L.A. — a constituency that will bicker, that will fight, that will even sue, but nevertheless a constituency that agrees on what L.A.'s future ought to be and what direction the city needs to take to get there.

Such a consensus began to surface in the 1970s, when Planning Director Calvin Hamilton drew up an innovative general plan. But strong development pressure in the '80s scattered it. Today, though the city is choking on its own growth, and residents and business interests are deeply divided on planning and development issues, there's hardly any constituency for strong, visionary planning. Everybody talks a good game, but nobody really wants things to change.

Homeowner groups, who wield a good deal of power at City Hall, repeatedly say they want good planning. In truth, however, many of them were burned when the Hamilton general plan was never implemented and, as a result, they lost faith in broad-based plans. Homeowner groups would much rather devote their time and attention to fighting individual projects, where they stand a better chance of being effective.

Similarly, many City Council members ritually call for good planning, and even a strong-willed director. But the real source of their power is their virtually unfettered ability to approve or deny development projects within their districts. So the last thing they want is a strong, visionary planning director who will challenge their feifdoms. What most members want is somebody who looks tough, talks tough, and then rolls over for their favorite developers.

In the long run, no doubt, Los Angeles, its residents, and its business community will recognize that a city with global ambitions and seemingly unmanageable problems needs to take planning seriously. The question is whether Con Howe can make this happen now.

On the plus side are two factors. First, he's got lots of experience in New York. This fact may scare some of the NIMBY homeowner leaders, but it has prepared Howe well to negotiate his way through a highly complex political environment. And second, he hasn't been to Los Angeles. much, which means he doesn't have any preconceived notions about this city and its power structure, and he doesn't come with any local baggage.

But on the minus side is the city itself. During the past 30 years, as Los Angeles has emerged as a global city, local planners have been unable to manage its shape because urban planning, as a profession and as a public-policy tool, has never been accorded the public respect it has received in San Francisco, New York, Philadelphia, Chicago, Seattle, and other large cities. This is not necessarily a permanent state of affairs. But if some of the pieces needed to effect change have begun to fall into place — the rise of planning as a major issue, the election of city council members sympathetic to the problem — episodes such as the Orange Line routing argument show that there is a long way to go.

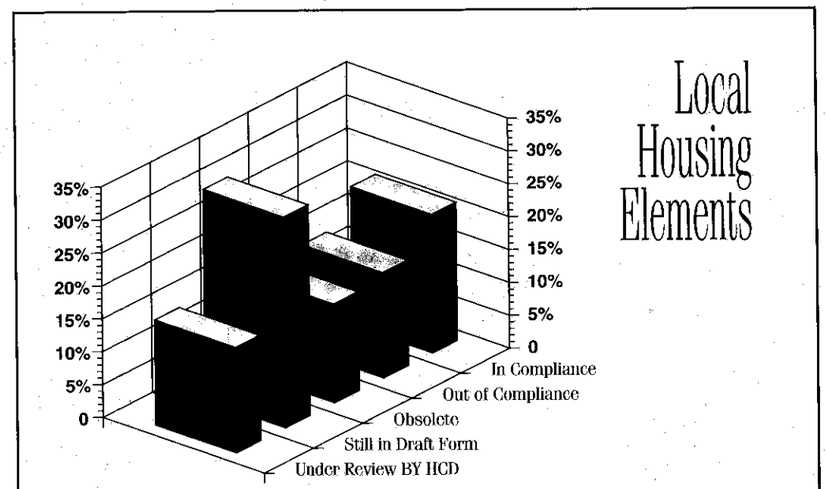
Con Howe is smart enough to understand this, and he is slick and articulate enough to try to overcome it. In order to operate effectively, Howe must craft a vision for for the future of the city and try to sell it to the different interest groups around town. But history argues that he won't be able to stimulate a complete transformation on his own. The best he'll probably be able to do is advance an agenda incrementally, thereby laying the foundation for a planning constituency that will rise in the future — when Los Angeles decides what kind of city it wants to become. You can't lead people who don't want to be led, and sometimes you can't make things change faster they they want to change. ❑

Despite Funding Increases, Politics Makes Construction Tough

Continued from page 1

slowed in 1991, it remained above the 600,000 range — a growth rate of about 2% per year. And overcrowding issues have recently cropped up throughout California. Data from the Census Bureau and the Southern California Association of Governments indicates that more than 20% of the region's rental units are overcrowded, meaning that they contain more than one person per room. (*CP&DR Numbers*, February 1992.)

And while all this is going on, housing remains beyond the reach of most Californians. Despite the recession-induced drop in prices and interest rates, 16 of the 20 least affordable housing markets in the country are in California, according to the National Association of Home Builders. The San Francisco Bay Area remains the least affordable metropolitan area in the nation, where the median-priced home is within the price range of less than 10% of all residents making the area's median income of about $50,000.



Source: Department of Housing and Community Development

In the past few years, funding for below-market housing has become available through a variety of new sources, including federal tax credits, state bond funds, and local redevelopment and inclusionary zoning programs. According to the Senate Local Government Committee's estimates, some $1.2 billion in government funds was devoted to housing purposes in California during the 1991-92 fiscal year. Only about half came from the federal government, while state bond funds and local money accounts for the remaining 60%, or a total of about $800 million.

Mixing and matching money from these different sources, some 250 non-profit housing developers have emerged in the state. Perhaps the best-known firm is BRIDGE Housing Corp. of San Francisco; with 2,900 units constructed since 1983, it is one of the largest homebuilders in the Bay Area. Other, smaller companies have emerged throughout the state and especially in the Los Angeles area.

Still, obstacles remain for the non-profits and others working to construct below-market housing. Neighborhood opposition to such projects is strong, especially in suburban communities, and the state's "housing element" law gives local governments considerable wiggle room on the issue of affordable housing. According to a 1990 survey by the California Coalition for Rural Housing, only 11% of the state's cities have produced their "fair share" of the state's affordable housing need, and 24% of all California cities have produced no affordable housing at all. "Anyone at the local level who has had to vote for housing realizes there is no constituency for it," says Contra Costa County Supervisor Sunne Wright McPeak. "When you have to vote on housing and you know it's important and you really care about it, the political support isn't there."

Housing Policies

At the heart of California's housing policy — and also at the heart of its inability to produce enough below-market housing — is the state's so-called "housing element" law. (Government Code §65580 et seq.) Under this law, each city must devise a strategy to handle all local housing needs, and this strategy must be reviewed by the state Department of Housing and Community Development. But the law is riddled with loopholes. The cities are supposed to set an affordable housing target based on their "fair share" of regional housing need as established by the regional council of governments. But cities may easily dispute the COG's figure and set a lower one in its place. Furthermore, HCD has no administrative power to force local governments to improve their housing element, and the legal presumption in a court case is that the city's strategy is correct.

As a result, HCD has certified only 21% of all local housing elements as "in compliance" with the state law. About a third are either obsolete or out of compliance, another third have never responded to HCD's comments, and 16% are still under review by HCD. (Furthermore, critics have often suggested that a housing element "in compliance" does not necessarily ensure the construction of housing.) Tom Cook, HCD's deputy director in charge of policy, acknowledges that the law has few teeth but says the department is making an energetic "outreach" to cities with bad housing elements. He says the department's approach is one of "starting dialogue" and offering technical assistance. "The law is not advisory; local government is supposed to comply with it." But, he adds, "We don't want to have this be a confrontational exercise. Our approach is to sit down with local government, look at their draft, point out the shortcomings in it and work toward making changes."

Other state laws, however, provide the state with a little more clout in the area of housing elements. For example, SB 2011, the so-called "anti-NIMBY bill" passed into law two years ago, penalizes cities which lack valid housing elements, by refusing them the right to turn down affordable projects, even if the housing is inconsistent with the existing land-use designation, except when such projects threaten public health and safety. The law has not been widely used so far, but may eventually prove important in permitting housing advocates to overcome code requirements — such as two parking spaces per unit — they believe are aimed at discouraging construction of affordable housing.

In a high-profile case from Albany, homeowner Eliza Shefler has invoked the law — so far to no avail — in an attempt to legalize an existing 400-square-foot "granny flat" behind her house. Last year, after the Albany City Council ignored the recommendation.

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Despite Funding Increases, Politics Makes Construction Tough

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of its own planning commission and rejected the unit, Shafler tried to use SB 2011 to change the council members minds; but then the council rejected her request again, concluding the second time that the lack of off-street parking indeed represents a threat to health and safety.

Financial Tools

Policy is only half the battle is construction of below-market housing in California, however. Financing is often just as big an obstacle to the non-profit developers. The act of assembling financing for low income housing has become a sort of art form for nonprofits. Lenders are rarely willing to lend the entire construction amount on such risky, low-yield projects; often, the financing is a patchwork quilt of federal, state, city subsidies, equity for tax-credit investors, and conventional lenders. And, as in the case of redevelopment set-aside funds, local politics can sometimes make it difficult or impossible for local governments to dole out the money even when it is available.

Fifteen years ago, funding for below-market housing was almost exclusively a federal game, with the Department of Housing and Urban Development providing both construction financing and rent subsidies. During the Reagan era, however, the federal government withdrew almost completely from low-income housing finance.

The most important remaining tool, however, is a crucial one — the federal low-income housing tax credit. "Easily two-thirds to three-quarters" of all newly built affordable projects use the credits, according to Stephanie Smith, a deputy director of the San Francisco Office of the Local Initiative Support Corp., a national non-profit that raises money for below-market projects. In fiscal 1992, the tax allocation committee of the State Treasurer's Office will distribute $37.9 million to qualifying home builders. In recent years, the committee has toughened its standards, limiting the tax credit only to those home builders who already have entitlements; LISC's Smith says the policy is a good one because it weeds out builders who may fail to complete projects and thus "waste the allocation." And recently tax credits have become even harder to get, due in part to growing competition for the credits and in part to a new "point system" designed to give more credits to elderly and single-room occupancy housing, according to executive director Ronne Thielen. This year the board received 180 applications and will fund 78.

State housing bond money, another important source, appears to be running out. Voters approved three state bond issues in 1988 and 1990 providing $600 million in funds for below-market projects. HCD is distributing this money on a competitive basis, using its own point system. (Projects that already have the tax credit are more highly rated, "because they have a better chance of being built," according to HCD's Kranhold.) All but $185 million of that money has been allocated.

Meanwhile, two other sources of homebuilding finance are drying up: the California Housing Rehabilitation Program has put out requests for proposals for $34.6 million, while the Rental Housing Construction Program has RFPs for $53 million. No further funding is in sight for either program.

Local Financing Programs

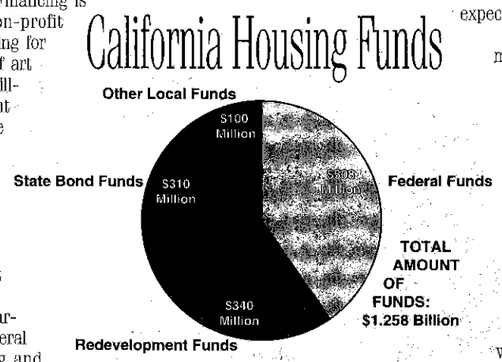
"As budget restrictions force state and federal officials to limit housing assistance programs, local governments' efforts become more significant," according to a December 1991 report by the Senate Committee on Local Government. One of the most important — and controversial — sources of funds is the 20% tax increment set-aside from redevelopment agencies.

The problem with the redevelopment set-aside money is that while local governments love redevelopment, for political reasons they are reluctant to use the resulting set-aside money for low-income housing. As the Senate Local Government Committee report noted, "After almost 15 years of steady accumulation, the unused set asides are piling up." In 1989-90, the committee estimated, unspent housing funds totaled more than $450 million, and another $340 million is expected to be set aside in 1991-92.

One way to make cities use their housing money is to threaten to take it away from them. A proposed "use it or lose it" law, part of a redevelopment reform package, SB 1711, proposed by State Sen. Marian Bergeson, R-Newport Beach and chair of the Senate Local Government Committee, would oblige redevelopment agencies to spend their set-aside money within a set time. The most recent version of the bill has tough penalties for cities that attempt to dodge their "fair share" requirements. First, they would be forced to surrender 20% to the county housing authority, and in addition they would be obliged to set aside 40% of all future tax increment for housing, and are not allowed to turn down any affordable housing project unless it presents a threat to public health or safety. SB 1711 would also permit limited "trading" of redevelopment set-aside money across city boundaries. (For more details, see "Deals" column, page 12.) Sacramento observers say the bill's prognosis is poor, because it lacks support from the redevelopment lobby.

Aside from redevelopment, the biggest local sources of funds for below-market housing are inclusionary zoning and linkage programs. Under inclusionary programs, a certain percentage of projects are set aside for very-low, low and moderate-income residents. Fifty-two inclusionary zoning programs exist in the state (45 cities and seven counties), according to a January 1992 by the San Diego Housing Commission. According to the report, inclusionary projects in California have generated more than 20,000 affordable units, primarily in the 1980's. Nearly all of the programs offer some "offset" or bonus to developers, such as extra density or fee waivers. Thirty-five jurisdictions allow developers to pay an in-lieu fee (the highest is $16,641 in Davis,) although in some cases the money has not been used to build affordable units.

Linkage programs are possibly the most controversial method of raising housing funds. Linkage is generally an in-lieu fee paid by commercial developers into a housing trust fund. Currently, 13 such programs exist nationally; in California, linkage programs exist in San Francisco, San Diego, Sacramento, Santa Monica, Berkeley, Palo Alto, West Hollywood and Menlo Park, and in parts of Los Angeles (Central City West.) ❑



Source: Department of Housing and Community Development

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CP&DR
LEGAL DIGEST

Supreme Court Rules Against Mobile Home Park Owners

Yee Decision Shuts Off 'Physical Occupation' Tactic, But Leaves Open Regulatory Taking Challenge

By Kenneth Jost

The U.S. Supreme Court has unanimously rejected one legal attack against mobile home park rent control laws, but left property owners with some hope of using a second argument to overturn such measures.

The high court's April 1 ruling held that the vacancy control provisions of Escondido's ordinance did not amount to an unconstitutional physical taking of the park owners' property without compensation. However, the opinion left open the possibility of a legal challenge based on regulatory taking grounds.

The attorney who brought the unsuccessful challenge to Escondido's rent control ordinance promptly filed a new suit based on the legal theory the justices left open. But lawyers representing the city and an association of mobile home tenants said the new line of attack had little chance to succeed.

The decision in the Escondido case was the second setback within a month for conservative activists hoping the Supreme Court would give broader constitutional protections to economic and property rights. In early March, the dismissed *PFZ Properties v. Rodriguez*, 91-122, saying that review had been "improvidentially granted. The property rights movement had been cheered when the justices docketed three such cases during their current term, but now just one case remains: a takings challenge to a South Carolina statute limiting beachfront development.

In the mobile home case, attorney Robert Jagiello, representing eight park owners in the northern San Diego County city, had claimed that the ordinance constituted a taking of property by physical occupation by allowing tenants to sell the right to a rent-controlled "pad"-along with their homes. Jagiello had previously persuaded the Ninth U.S. Circuit Court of Appeals to adopt such a doctrine in a different case, *Hall v. City of Santa Barbara*, 833 F.2d 1270. (For more background, see *CP&DR*, December 1991.)

But in an opinion by Justice Sandra Day O'Connor, the high court conclusively rejected Jagiello's argument. "Put bluntly," O'Connor wrote, "no government has required any physical invasion of petitioners' property."

But O'Connor said the rent control measure could still be challenged as an unconstitutional regulatory taking — an issue she said Jagiello had failed to properly present to the court. While physical takings are subject to strict and somewhat well-defined constitutional limitations, a regulatory taking claim involves what O'Connor described as an "essentially ad hoc, factual" inquiry to determine whether a regulation "goes too far."

O'Connor acknowledged Jagiello's arguments that the rent control measure transferred wealth from park owners to mobile home owners and, by leaving the sale of the mobile home uncontrolled, benefited only existing home owners rather than future owners. Those arguments, she said, "might have some bearing on whether the ordinance causes a regulatory taking," but did not support the physical taking claim.

Jagiello filed his new suit the day after the Supreme Court ruling. "It's not as easy as a physical taking," Jagiello said of his new argument. "But when somebody gets $100,000 for a worthless piece of tin, something is wrong and I think a jury or court will understand that." Jagiello said he would argue the ordinance does not meet the constitutional requirement that it "substantially advance a legitimate government interest."

"It doesn't help advance low- or moderate-income housing," Jagiello said. "The reality is that if you want to wipe out an industry that's provided more affordable housing than any other program in the state, enact rent control."

Some 87 cities in California have mobile home rent control laws on the books. Escondido, which today has 29 mobile home parks with about 6,000 spaces, adopted its measure in 1988 through a voter initiative.

Assistant City Attorney Jeffrey Epp said he was "absolutely delighted" with the court's ruling and predicted Escondido's ordinance will survive any further challenges. "The court seems to have left open at least a glimmer of hope that they can pursue a regulatory challenge," Epp said. "But that will be a very, very difficult challenge for them to be successful in mounting."

Bruce Stanton, a San Jose lawyer representing the Golden State Mobilehome Owners League, agreed. "Everyone I've talked to — all the city attorneys and attorneys for our task force — are much more confident of our ability to short-circuit the regulatory attack at an early stage," Stanton said.

Carter Phillips, a lawyer with the Washington office of Sidley & Austin who argued Escondido's case before the Supreme Court, also foresaw little chance of overturning such rent control measures as a regulatory taking. "I don't know how you can get anywhere with an argument that a rent control ordinance amounts to a taking because if it is, then any public utility statute is a taking. And I don't think the court wants to say that," Phillips said.

Despite the setbacks, property rights activists said they took encouragement from the court's opinion in the Escondido case. R. S. Radford, an attorney with the Pacific Legal Foundation in Sacramento who helped prepare a brief in support of the park owners in the Escondido case, said the regulatory taking issue was "very promising, probably more so" as a result of the court's ruling.

He said that O'Connor's opinion indicates that the court views one of its key property rights rulings — *Nollan v. California Coastal Commission*, 485 U.S. 825 (1987), which dealt with the dedication of beachfront property as a condition of approval — as a taking case, rather than a physical invasion case. "That means that the heightened scrutiny accorded in .Nollan. is appropriate in a regulatory taking ' Radford said.

Clint Bolick, director of the conservative Institute for Justice in Washington, also said he believes the justices are ready to approach rent control measures more skeptically in future cases. "I think a growing portion of the court is hostile to involuntary transfers of wealth, including rent control, and in a well argued case may make a move in that direction," Bolick said.

For now, though, Escondido's ordinance remains on the books, and assistant city attorney Epp was confident it will stay there. "I don't think you'll see Escondido's ordinance changed one bit," he said. "You may see it enforced more aggressively now that we have this litigation out of the way.❑

■ The Case:
Yee v. City of Escondido, 90-2947.
■ The Lawyers:
For the mobile home park owners: Robert Jagiello, (714) 336-5345.
■ For the City of Escondido: Jeffrey Epp, assistant city attorney, (619) 741-6408.

Kenneth Jost, former editor of the Los Angeles Daily Journal, is a freelance legal affairs journalist in Washington.

SALES TAX

Court Upholds Majority Vote On L.A., OC Transportation Taxes

Special sales taxes for transportation have been upheld as constitutional by appellate courts in Los Angeles and Orange counties. But both cases appear headed for the state Supreme Court, where they could be used to test the limits of the Supreme Court's recent controversial ruling in *Rider v. County of San Diego*, 1 Cal.4th 1 (1991), which overturned a similar tax dedicated to jail construction purposes.

At issue are Proposition C in L.A. County, which passed in 1990 with 50.8% of the vote, and Measure M in Orange County, which received about 54% of the vote the same year. The two measures generate a total of about $500 million a year for transportation purposes, and are considered key financing tools in the construction of Southern California's transportation infrastructure over the next 20 years. In both cases, the Libertarian Party and other plaintiffs argued that, under Proposition 13, the special half-cent sales tax for transportation required approval by two-thirds of the voters. Their argument seemed to be bolstered by the recent California Supreme Court ruling in the Rider case.

In that case, the Supreme Court ruled that San Diego's half-cent sales tax for jails was designed to replace funds lost through Proposition 13 and therefore should have been subject to Proposition 13's required that new taxes obtain two-thirds voter approval. (*CP&DR Legal Digest*, January 1992.) However, in the Los Angeles case, the Second District Court of Appeal ruled that Proposition C should not be subject to the two-thirds requirement because the agency that uses the tax money, the L.A. County Transportation Commission, was established prior to the passage of Proposition 13. In an unpublished ruling, the Fourth District Court of Appeal used the L.A. case as a precedent in reaching the same conclusion about Measure M, which is administered by the Orange County Transit Authority. Both rulings also concluded that Proposition 62, a 1986 ballot initiative requiring a two-thirds vote in many instances, cannot be used to strike down the sales-tax measures.

The two rulings will undoubtedly heighten the controversy over the impact of the Rider case — and, in particular, the question of whether the Rider opinion undermined the Supreme Court's 1982 ruling in a similar case, L.A. County Transportation Commission v. Richmond, 31 Cal.3d 197. Both the L.A. and Orange County appellate courts relied on Richmond, not Rider, in their recent rulings.

In upholding Proposition A, a 1980 L.A. County ballot measure that imposed the county's first transportation sales tax, the state Supreme Court also concluded that two-thirds approval was not required because the LACTC was formed prior to the passage of Proposition 13. However, in writing the majority opinion, Justice Stanley Mosk wrote that the two-thirds majority requirement is "fundamentally undemocratic" and therefore legal interpretations must be strictly construed. In the Rider case, however, the majority opinion seemed to back off this strongly worded argument, instead concentrating on the circumstances under which Proposition 13's two-thirds requirement applies. (In a dissent, Mosk criticized the ruling for "effectively overruling" Richmond.)

Mark Rosen, the Libertarian Party's lawyer in both the L.A. and Orange County cases, calls Rider "essentially a repudiation of the Richmond case," and says that the Rider case removes the Richmond case's "legal presumption against the supermajority requirement." Thus, he argues, courts should not be bound by Richmond but, rather, should be free to explore the intent of Proposition 13, as the Supreme Court did in the Rider case.

In both the L.A. and Orange County cases, however, the appellate justices chose not to follow Rosen's reasoning, however. Rather, relying on Richmond, both courts simply stated that the two-thirds rule does not apply because the two entities involved were created before the passage of Proposition 13.

Prior to the Rider decision, the linchpin of Rosen's case before both courts was the question of whether a two-thirds vote was required under Proposition 62, a statewide initiative passed in 1986. The Court of Appeal in Los Angeles decided that Proposition 62 did not apply, and the Orange County court followed the L.A. decision.

Proposition 62 appeared to extend, by statute, the two-thirds vote requirement to all special taxes. But the Court of Appeal found several flaws with the argument that Proposition 62 applied to L.A.'s Proposition C.

First, the Court of Appeal, relying again on the Richmond case, concluded that Proposition 62's two-thirds requirement does not apply to taxing entities that do not have property-tax power. Second, the court concluded that Proposition 62 cannot overrule the Richmond case, as the Libertarians argued, because Richmond was decided on constitutional grounds and Proposition 62 did not amend the state constitution but merely added statutory language. Third, the court concluded that Proposition 62 was intended to codify the Richmond decision, rather than overturn it, as the Libertarians had argued. Referring to the defeat of Proposition 36 in 1984 and Proposition 136 in 1990, the court concluded "the voters have twice rejected any attempt to extend the two-thirds vote requirement beyond those circumstances established in Proposition 13 and the Richmond decision."❑

■ The Cases:
Vernon v. State Board of Equalization, No. B057899, 92 Daily Journal D.A.R. 2904 (March 5, 1992)
Ward v. State Board of Equalization, No. G011284 (unpublished, March 17, 1992)

■ The Lawyers:
For plaintiffs in both cases: Mark Rosen, (714) 972-8040.

LOCAL ZONING

Court Of Appeal Overturns Denial Of San Diego Development Permit

The Fourth District Court of Appeal has overturned the City of San Diego's denial of a six-lot subdivision, ordering that the city issue a development permit after all.

Under pressure from citizen groups in the Normal Heights neighborhood, the San Diego City Council had rejected the Vista Del Alcala subdivision based on incompatibility with the existing neighborhood. However, the appellate court concluded that there was no substantial evidence in the record to suggest that the new project would adversely affect the surrounding neighborhood.

The case involved a 1989 proposal to subdivide a 2.26-acre parcel of land in Normal Heights, which already had one house on it, into six parcels, four of which would contain new houses. The size and configuration of the houses was different than the surrounding neighborhood. The houses would be more than 2,000 square feet, and would be accessible only by a 114-foot private driveway, while most of the existing houses are small bungalows set back 50 feet from the street.

The project required a permit under the city's Planned Infill Residential Development (PIRD) ordinance and also a tentative subdivision map. According to Deputy City Attorney Leslie Girard, who litigated the case, the PIRD ordinance is designed to protect older neighborhoods by assuring that new development is compatible. The Normal Heights Community Association, the Sierra Club, and the city planning department all opposed the project, and in May 1990 the city council voted to deny the PIRD permit, stating that its design was not consistent with the rest of the neighborhood and claiming that the neighborhood would be "adversely affected" by the project. The tentative subdivision map was also denied on similar grounds.

The developer, J.C. Martinez, sued. "No other development in the city was ever turned down on that basis," said Martinez's lawyer, Michael McDade. Superior Court Judge Judith Haller denied Martinez's request for a writ of administrative mandamus ordering the city to issue the permits. The appellate court, however, overturned Judge Haller and ordered her to approve the writ and require the city to issue the permit.

The appellate court claimed that the PIRD does not include a definition of "adversely affect," and therefore the court imposed its own interpretation. "In light of the need to narrowly construe the phrase 'adversely affect,' discretionary or subjective factors, such as mere aesthetics of a proposed development, cannot constitute a legitimate basis for denial of a PIRD permit," wrote Acting Presiding Justice Don R. Work wrote for the unanimous three-judge panel. "Accordingly, a permit cannot be denied merely because a proposed development is different from the design or aesthetics of the existing neighborhood."

Work went on to conclude that the city council had no substantial evidence before it that the project would "adversely affect" the neighborhood — and, in fact, used the city's own environmental impact report as proof.

First, the court noted that the city's denial of the PIRD permit was based on the setback and private road characteristics. "Although such facts reveal project differences from most of the existing neighborhood properties, they do not show the neighborhood or nearby properties would be 'adversely affected'." Then the court went on to note that the environmental impact report concluded that any adverse environmental impacts would be mitigated to a level of insignificance.

"Mere conclusions of incompatibility and a showing of different setbacks provide no objective, substantial impact upon the economic value, habitability, or enjoyability of neighboring properties," Justice Work wrote. "Furthermore, the encouragement of similar developments in the future in the neighborhood cannot be a legitimate basis for denying the PIRD permit."

In so ruling, Justice Work relied heavily on the case of *Gabric v. City of Rancho Palos Verdes*, 73 Cal.App.3d 183 (1977), in which a city council's decision to deny a building permit because it would "affect the character" of the neighborhood was rejected because there was no basis for such a conclusion.

Girard, the deputy city attorney, said no decision has been made on whether to ask for a rehearing or seek review by the California Supreme Court. He also said he believed that the court's language about the invalidity of aesthetic criteria is dicta and therefore the city would not be required to rewrite the PIRD as a result of the ruling. A line of cases led by *Novi v. City of Pacifica*, 169 Cal.App.3d 678 (1985), establishes the ability of California cities to adopt zoning regulations based on aesthetic criteria. Both lawyers agreed that the aesthetics issue was not central to the Martinez case.❑

■ The Case:
J.C. Martinez v. City of San Diego, No. D014080, 92 Daily Journal D.A.R. 21445 (February 26, 1992).

■ The Lawyers:
For the Property Owner: J. Michael McDade, Sullivan Cummins Wertz McDade & Wallace, (619) 233-1888.

■ For the City: Leslie Girard, Deputy City Attorney, (619) 533-4700.

Restriction on Home Occupation Upheld By Appellate Court

A Los Altos ordinance restricting home occupations has been upheld as constitutional by the Sixth District Court of Appeal in San Jose.

The ordinance prohibits home occupations where the resident in question has a non-resident employee. Virginia Barnes, who had operated the business end of a family camp in Sequoia National Forest out of her home for 17 years, claimed that the ordinance was unconstitutional because it violates her rights of privacy and free association and because it is too vague.

But the appellate court rejected her argument on all counts. Relying heavily on City of *Santa Barbara v. Adamson*, 27 Cal.3d 123 (1980), the court noted that zoning ordinances "are much less suspect when they focus on the use than when they command inquiry into who are the users." In contrast to the Adamson case, which restricted occupancy to families with a blood or legal relationship to one another, the Los Altos ordinance "does not intrude into Barnes's private affairs. It does not regulate with whom she resides, inquire into whom she employs, or force her to divulge information about whom her associates are.'

The court also rejected the vagueness argument, saying that such phrases as "occupation carried on at home" and "provided no assistants are employed" were, in fact, models of clarity.

Barnes had also argued that the ordinance was unconstitutionally applied because the evidence presented against her was obtained by a neighbor who videotaped her activities, violating her privacy in the process. However, the court ruled that "her neighbor observed conduct in plain view" and "anyone could have witnessed these same activities."

In upholding the constitutionality of the Los Altos ordinance, the court discussed the legal rationale for home occupation ordinances at length. "(O)rdinances restricting home occupations represent a compromise between removing incompatible commercial use from residential neighborhoods and the social necessity of permitting some home occupations," the court wrote. Regarding the Los Altos ordinance, the court added: "Although there will no doubt be instances in which these restrictions seem harsh when applied to a particular situation, we believe they represent a reasonable compromise between the competing interests at stake." The court noted that some home occupation ordinances permit non-resident assistants, but said that Los Altos is not required to.

Barnes had also tried to persuade the Court of Appeal to throw out the trial court's ruling against her on the grounds that the trial judge had not taken hardship considerations into account. Given the fact that Barnes admitted violating the ordinance as written, however, the court said the trial judge acted properly even though he did not explain his decision in detail.❑

■ The Case:
City of Los Altos v. Virginia Barnes, No. P53399, 92 Daily Journal D.A.R. 2404 (February 26, 1992).

■ The lawyers:
For the City of Los Altos: Robert K. Booth Jr., Atkinson & Farasyn, Mountain View, (415) 967-6941
For Virginia Barnes: Alexander Henson, (408) 659-4334.

Supreme Court Decertifies Warner Ridge Case

The controversial appellate ruling that struck down "hierarchical zoning" within the City of Los Angeles has been de-published by the California Supreme Court, meaning it cannot be used as precedent in any other case.

The de-publication of Warner Ridge Associates v. City of Los Angeles would seem to get the city off the hook for perhaps thousands of similar situations, in which the zoning designation permits less density than the general plan designation.

In the Warner Ridge case, the Second District Court of Appeal in Los Angeles concluded that a hierarchical system of zoning, permitting lower-density zoning than general-plan designations, wrongly permits the zoning tail to wag the dog of planning.

Writing for the court, Presiding Justice Joan Dempsey Klein said: "A general plan which designates property for intense development with the contemplation that designation may thereafter be prohibited by zoning is, in effect, no general plan....The hierarchy theory, in essence, repeals the consistency requirement."

The Warner Ridge case itself was an unusual situation, in which the L.A. City Council downzoned a 21-acre parcel in Woodland Hills in response to political pressure, but did not change the general-plan designation. However, a similar situation exists on thousands — and maybe tens of thousands — of parcels in the city.

In part, the city boxed itself into this situation by the way it had proceeded with the so-called "AB 283" rezoning program in the mid-1980s. As part of a legal settlement between the city and the Hillside Federation, a group of homeowner associations, Los Angeles undertook a massive program to resolve inconsistencies between the general plan and the zoning ordinance. (This program was originally called for under a state law known as AB 283.)

In instances where the zoning called for more intense use than the general plan, parcels were downzoned. However, the city made a policy decision not to reconcile inconsistencies when the zoning ordinance called for a less intense use than the general plan. In part, this decision was made so that the whole AB 283 process would be more manageable. (It involved rezoning hundreds of thousands of parcels.) In part, according to sources close to the situation, the city did not see any advantage in giving away "free" upzonings to developers without exacting

any concessions in return.

Yet L.A. city officials say many of the now "inconsistent" parcels do not involve such a stark difference between the zoning and general-plan designation; many are designated in the general plan for high-density residential use but are zoned for lower-density residential projects. Indeed, another pending case against the city involves a parcel of land planned for high-density residential use but zoned for low-density residential use.

The Warner Ridge case is perhaps the most contentious land-use dispute to arise in Los Angeles since the city's balance of power began to shift toward slow-growthers in the mid-1980s. The parcel of land at stake is a prime one: 21.5 acres located in Woodland Hills, near both the high-rise Warner Center development and working agricultural land owned by Pierce College. The 1984 district plan for the area designated the parcel for "Neighborhood and Office" use, even though the zoning on the land remained RA-1 (rural residential) and A1-1 (agricultural). In 1985, Warner Ridge Associates — consisting of developer Jack Spound and his development partner, Johnson Wax — purchased the property and proposed a 950,000-square-foot commercial project.

At the suggestion of Councilwoman Joy Picus, who represents the area, the city appointed a citizen advisory committee for the area and charged the group with preparing a specific plan. The citizen group and the developer worked out a new proposal, which called for an 810,000-square-foot project and a 50% increase in open space, and in 1986 the developer sought to change the zoning to C-4 (Commercial) so that it would conform with the specific plan.

In 1988, however, the Woodland Hills Homeowner's Organization announced its opposition to the project. Later that year, Picus announced her opposition as well, and in early 1990 the city council rejected the Warner Ridge project and approved a zoning proposal, initiated by Picus, to rezone the property to (T)RS-1 (residential suburban), which permits residential development on 7,500-square-foot lots ❑

HOMEOWNER ASSOCIATIONS

Satellite Dish That Can't Be Seen Can't Be Banned, Court Says

Without mincing any words, an Orange County appellate panel has shot down a deed covenant prohibiting a satellite dish that no one can see.

After failing to receive permission from the Portola Hills Community Association to install a satellite dish hidden by landscaping, homeowner John James did so anyway. The appellate court concluded that the community association had no legitimate interest in banning a satellite dish that cannot be seen. Furthermore, the Court of Appeal sanctioned the community association $3,000 for making the appeal. "Bluntly speaking," the justices wrote, "the judicial system does not have the resources to indulge petulant litigants."

The Portola Hills covenants, conditions, and restrictions — CC&Rs — includes a complete ban on exterior satellite dishes. Appearing before the association's architectural control committee, James received approval for his entire landscaping plan except for the satellite dish. After James installed the dish anyway, the community association sued him. Orange County Superior Court Judge Richard J. Beacom said that the legal presumption favored the association's by-laws, but found that the ban against exterior satellite dishes was unreasonable. He awarded James costs, including more than $14,000 in attorney fees.

The appellate court affirmed Beacom's finding that James's dish could not be seen by other residents or by the public. "With that established," wrote Justices Thomas Crosby for a unanimous three-judge panel," the question becomes whether the ban against a satellite dish that cannot be seen promotes any legitimate goal of the association. It clearly does not." Crosby went on to say that, since the association's CC&Rs define "exterior" structures as those visible to the public or other residents, "a dish that cannot be seen by anyone else would not even appear to qualify as an exterior structure under the association's own rules."

But Crosby saved his most severe words for the fact that the association even appealed the case. "(W)e agree no reasonable attorney could believe this appeal had any merit," he wrote. "The only conclusion is that it was taken solely to harass defendant or delay judgment."

For example, the association had argued that the trial judge had the mistaken belief that the by-laws provide for a total ban on satellite dishes. "Mistaken belief?" Crosby wrote. "The stipulated facts describe the ban as `complete[]' and `absolute[]'.

"The mistake here was solely plaintiff's," Crosby said. "And it will prove costly," he added in imposing the $3,000 sanction. "(M)ore than distaste for the verdict is necessary to justify the consumption of scarce and overburdened judicial resources." ❑

- The Case:
  Portola Hills Community Association, No. G01067, 92 Daily Journal D.A.R. 3454 (March 16, 1992)
- The Lawyers:
  For the community association: James F. McGee, Irvine, (9714) 553-1530.
- For the homeowner: Sandra J. Brower, (629) 456-0811.

FYI

The Second District Court of Appeal's ruling in *Griffin Homes Inc. v. Superior Court*, 229 Cal.App.3d (1991), has been decertified by the California Supreme Court. The ruling upheld the City of Simi Valley's administrative process in bumping Griffin Homes from the "allocation queue" under its growth control initiative, meaning that Griffin did not have a cause of action. The Court of Appeal had reversed itself in the Griffin case after a rehearing....

In a follow-up to a well-known U.S. Supreme Court case, the U.S. Claims Court has ruled that Vermont landowners J. Paul and Patricia Preseault have a property interest in an abandoned railroad right-of-way under Vermont law. *Preseault v. U.S.*, Claims Court No. 90-4043L. In *Preseault v. ICC*, 494 U.S. 1 (1990), the U.S. Supreme Court ruled the Preseaults' taking claim unripe for review because they did not first seek relief in the Claims Court, as permitted under the so-called "Tucker Act." Now the Claims Court must decide whether the Preseaults are entitled to compensation....

The U.S. Supreme Court declined to hear J.G. Boswell Co.'s appeal of an $11.1-million malicious prosecution award against the company. The award came from a so-called "SLAPP" libel suit by Boswell against three Kern County farmers who opposed Boswell's position in the 1982 Peripheral Canal campaign. The Supreme Court case was *J.G. Boswell Co. v. Wegis*, 91-1069....

Opponents of a proposed 85-mile toll road in the East Bay have lost two rounds in the courtroom. Sacramento Superior Court Judge Allen Field rejected the arguments of the Greenbelt Alliance and the Sierra Club that the state should have conducted environmental studies before awarding the franchise for the toll road to a private entity, the California Toll Road Development Group. Meanwhile, San Francisco Superior Court Judge Stuart Pollak rejected the claims of state employees that the East Bay toll road project — and several others around the state — would illegally divert state jobs and resources to the private sector....

New lawsuits of interest filed recently in California:

- A group called Save Our Forests and Ranchlands has sued San Diego County over the recent approval of an 18-home subdivision near the gateway to Cleveland National Forest. The group claims the county's environmental impact report on the project was inadequate. Subdivision of forest land in eastern San Diego County has become a controversial public issue in recent months. (*CP&DR*, February 1992.)
- Two homeowner groups in West Los Angeles have sued to stop the expansion of the Fox Inc. TV/movie studio near Century City. The homeowners allege that the City of Los Angeles did not follow its own rules that call for community meetings before changing the zoning and general plan designation for the site.
- Three "adult cabarets" go to U.S. District Court in Los Angeles to file a constitutional challenge to the City of Los Angeles's adult entertainment zoning law, which forbids such uses within 500 feet of a neighboring area of residences. ❑

Pleasanton, Hayward Battle Over Future of Ridgelands

Continued from page 1

The land in question has long been a matter of dispute between Hayward and Pleasanton. In 1967, Hayward annexed a long "finger" of 2,500 acres that stretches over Pleasanton Ridge. This property remains largely undeveloped today, though some construction has occurred. Pleasanton residents often complain about one large and highly visible house — dubbed the "Hayward Hotel" — that is visible from all over Pleasanton, and Pleasanton Mayor Ken Mercer claims that Hayward residents in this area are actually served by Pleasanton police and fire departments. Though included inside Hayward's city limits, the property has never been in Hayward's sphere of influence, which was not established until after the original annexation. For most of the 1980s, the land was categorized in Hayward's general plan as a "detachment study zone."

In the last few years, however, debate over what to do with the land has heated up considerably. In 1989, East Bay Regional Park District voters targeted at least part of the land for purchase as part of Measure AA, a bond issue approved by voters in Alameda and Contra Costa counties. In 1990, Sweeney was elected mayor of Hayward and the city voted to oppose the property's detachment from the city, changing the general plan designation from a "detachment study zone" to a designation encouraging "interjurisdictional planning."

At the same time, however, Amador Land and Cattle Co. — the chief landowner in the ridgeland area — came forth with a proposal to build 2,600 homes. In response to this proposal, Pleasanton appointed a citizen committee to draw up a plan for the area. According to Pleasanton Mayor Ken Mercer, the plan calls for construction of all 2,600 homes while setting aside 80% of the Pleasanton Ridge property for open space. Pleasanton residents will vote on the plan in June.

The battle came to a head last spring, when the Alameda County LAFCO voted 3-2 to include the Pleasanton Ridge area — including the Hayward property — in the Pleasanton sphere of influence. The deciding vote was cast by Pleasanton Mayor Mercer, who was accused by environmentalists of a conflict of interest. (A pending bill in the legislature, AB 3060, introduced by Assemblyman Mike Gotch, D-San Diego, would prohibit a city representative from voting on a LAFCO issue affecting that city.) Despite the LAFCO ruling, Hayward still opposed detachment of the property.

All these actions led to a series of lawsuits — and to a "juice" bill in the legislature, sponsored by the West Pleasanton Home and Property Owners Association, the principal member of which is the Amador Land and Cattle Co.

According to Hayward Assistant City Attorney Penny Nakatsu, the city is currently facing three lawsuits filed by Amador Land. One charges that the council violated the Brown Act at a meeting discussing the detachment. The second alleges that the change in general plan designation on the Pleasanton Ridge property violates the state general plan law because it was not based on any recommendation from the planning commission. The third charges that Hayward did not negotiate in good faith over proposed allocation of post-detachment property taxes.

At the same time, the Greenbelt Alliance and the Sierra Club have sued the Alameda County LAFCO on two grounds. First, the environmental groups argue, as a matter of law the LAFCO cannot place land in Pleasanton's sphere while it is still annexed to Hayward. And second, the groups say that Pleasanton cannot service the property. Hayward and Alameda County have joined in the lawsuit.

But the situation began to receive wide attention in March, when the Assembly Local Government Committee held a hearing on AB 2307, the Baker bill that would permit a LAFCO to detach property from a city without that city's agreement. To work on the bill, Amador Land hired high-powered lobbyist Jack Knox of Nossaman Guthner Knox & Elliott — former chairman of the Senate Local Government Committee and author of the original LAFCO bill.

However, in an unusual move, Assemblyman Klehs personally testified against the bill, calling it "sleazy" and "the kind of bill that gives the Legislature a bad reputation." Both Klehs and the League of Cities claimed that the bill would not apply only to the Hayward-Pleasanton situation but might also permit other cities to steal each other's territory. Though AB 2307 was scheduled for a committee vote on April 8, Baker withdrew it from consideration two days before the committee meeting. Knox said that Klehs's vehement opposition made it impossible to get a favorable committee vote. ❑

- Contacts: Mike Sweeney, mayor of Hayward, (510) 237-5342.
  Ken Mercer, mayor of Pleasanton, (510) 484-8001.
  John Knox, lobbyist for landowners, (415) 398-3600.
  Assemblyman Johan Klehs, (916) 445-8160.
  Assemblyman Sam Farr (committee chair), (916) 445-6034.

Coastal Commission Rejects Half Moon Bay Initiative

City Sues Commission to Overturn Decision; Builders Also File Suit Against Measure

Half Moon Bay's attempt to restrict housing construction to 100 units per year has landed in court.

First, the Building Industry Association of Northern California sued the city to overturn the housing cap. Then the Coastal Commission voted 10-1 to invalidate the voter initiative that created the cap, and Half Moon Bay sued the Coastal Commission.

The flurry of litigation was precipitated by the passage of Measure A last year. The citizen initiative, which imposed the cap on housing units, received almost 70% of the vote.

In August, the Building Industry Association filed its lawsuit in San Mateo County Superior Court. The BIA's principal argument is that the 100-unit limit is far less than the "fair share" of regional housing need as determined by the Association of Bay Area Governments. However, such arguments have not done well in court in the Bay Area. For example, in Northwood Homes v. Town of Moraga, 216.Cal.App.3d 1197 (1989), the Court of Appeal in San Francisco concluded that a similar limit on housing in Moraga represented such a small decline in the regional housing supply that it was not a legal issue.

Then the Coastal Commission weighed in on the issue. All local actions — even voter initiatives — are appealable to the Coastal Commission if they affect the coastal zone. In February, the commission voted 10-1 against incorporating Measure A into the land-use plan of Half Moon Bay's local coastal program, effectively overturning the decision. Several commissioners criticized Half Moon Bay for its poor record on the issue of affordable housing.

In March, however, the Half Moon Bay City Council — which includes members who were swept into office with the passage of Measure A — voted to pursue litigation against the Coastal Commission. The lawsuit alleges that the Coastal Act prohibits the Coastal Commission from taking regional housing needs into consideration when voting on changes to local land-use plans. ❑

Conservancy Buys Paramount Ranch

The Santa Monica Mountains Conservancy has purchased the 314-acre Paramount Ranch in Agoura Hills, former site of the Renaissance Pleasure Faire, via foreclosure proceedings. The purchase means the end not only of a controversial development proposal, but also of a potentially important court case.

The conservancy agreed to pay $17.6 million, or about $56,000 per acre, to the Union Federal Savings Bank for the property. Union Federal was the creditor because the bank had loaned money to Paramount Ranch Estates, the company that had planned to develop the property. The company went under after the 1990 death of its president, Ezra Raiten, in an airplane crash. Raiten had rejected a $19.3 million offer from the conservancy three years ago.

The purchase was important to the conservancy because the property still has an approved tract map for a 150-unit luxury home subdivision on the site. The Sierra Club had sued to stop the project, but a recent unpublished Court of Appeal opinion ruled in favor of Los Angeles County's approval of the project.

Among other things, the Sierra Club lawsuit charged that L.A. County should not have permitted the developer to directly hire a consulting firm to prepare the environmental impact report on the project. L.A. County Superior Court Judge David Yaffe ruled against the Sierra Club on the project.

Then, in a parallel case, a Second District Court of Appeal panel ruled that developer-hired consultants can prepare draft EIRs if the public agency involved exercises "independent judgment" in reviewing the draft. (The case was *Friends of La Vina v. County of Los Angeles*, 232 Cal.App.3d 1446; for more information see *CP&DR*, September 1991.) ❑

In Brief

Unable to find a bank willing to finance the whole project, the Orange County Transportation Corridor Agencies are now planning to begin construction of the San Joaquin Hills tollway this summer with $200 million in bonds sold through First Boston Corp. The TCAs had hoped to finance the entire project with a $900 million letter of credit, but agency officials say no bank would make such a commitment. The TCAs won an important skirmish in their court battle against environmentalists in late February (*CP&DR*, March 1992)....

Art Bartel, a former mayor of Hanford, has paid a $4,000 fine to the Fair Political Practices Commission to settle an alleged conflict of interest. According to the FPPC, Bartel and his wife received an undisclosed $5,500 loan from Hanford developer Jordan Miller. Bartel later voted in favor of a Miller project, rather than abstaining, as required by state law....

Responding to criticism, the L.A. City Planning Department added two community activists to its task force on environmental review. Sylvia Gross, president of the San Fernando Valley Federation, and Eastside land-use activist David Diaz were added to the panel by Acting Planning Director Melanie Fallon before she gave way to new Planning Director Con Howe. Neighborhood groups complained that six of the original seven members of the committee were developers or developers' consultants....

Led by Jim Thomas and Eli Broad, the principals of Maguire Thomas Partners and Kaufman & Broad have bought the Sacramento Kings basketball team, a move that may provide both firms with a wedge into the Sacramento real estate development market. Maguire Thomas Partners holds an option to buy 435 acres of surrounding property in the North Natomas area which is also owned by the current owners of the Kings. ❑

CALENDAR

April

- **23-26: California Preservation Conference.** Eureka. Sponsor: California Preservation Foundation. Call: (510) 763-0972.
- **23-26: Association of Environmental Professionals State Conference.** San Diego. Sponsor: AEP. Call: (619) 528-9090.
- **24: Subdivision Map Act.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **24: Challenging the Dogmas: Symposium on Density.** Burbank. Sponsor: L.A. Section/APA. Call: (213) 622-4443.
- **27: Endangered Species: Practical Approaches to Resolving Conflicts.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **29: Farmlands: Impact Assessment and Mitigation.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **29: Advanced Subdivision Map Act Law.** Ventura. Sponsor: UC Santa Barbara Extension. Call: (805) 893-4200.

May

- **1: Issues and Trends in Mello-Roos Financing: Ten Years of Hindsight and a Look to the Future.** Covina. Sponsor: UCLA Extension Public Policy Program. Call: (310) 825-7885.
- **1: Subdivision Map Act: An Advanced Seminar.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **1: GIS: An Introduction.** Goleta. Sponsor: UC Santa Barbara Extension. Call (805) 893-4200.
- **6: Design Review: A How-To Course.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **8: Zoning and Code Enforcement.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **9-13: American Planning Association National Conference.** Washington, D.C. Sponsor: APA. Call: (312) 955-9100.
- **13: Property Development Agreements: Exactions, Dedications, and Vested Rights.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **14: TDM, CMP, AQAP And You: A Transportation Alphabet for the '90s.** Sacramento. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **15: CEQA: An Update.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **15: How To Be A More Effective Planning Commissioner.** Irvine. Sponsor: UC Irvine Extension. Call: (914) 856-1414.
- **16-19: Urban Land Institute Spring Conference.** Houston. Sponsor: Urban Land Institute. Call: (202) 624-7000.
- **20: EIR/EIS Project Management.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **20-21: Environmental Planning & Site Analysis.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **27-29: CEQA: How to Write Your Own Guidelines.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.

NUMBERS

Stephen Svete

A New Kind of Development Economy

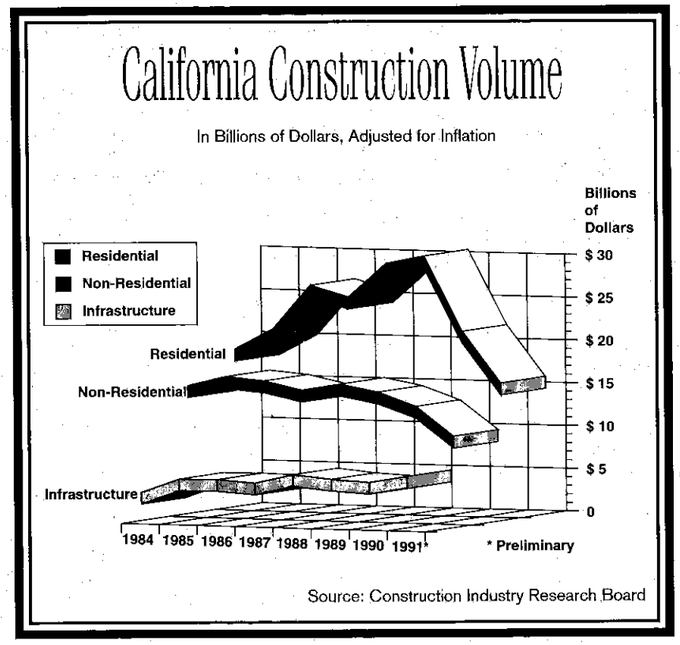
Despite promising statistics at the national level, real estate development in California is still in the doldrums. But the state's heavy commitment to new infrastructure — especially transportation infrastructure — is helping to bridge the gap. Indeed, the shift in construction spending away from private development and into public-oriented infrastructure projects signals a change not only in the construction industry, but also for the scope of planning and development activities that are carried out in the state.

According to recent data released by the Construction Industry Research Board, housing construction in California actually declined in total numbers of units by 6.5% in January 1992 compared to January of the previous year (from 97,500 to 91,500). The number of single-family homes actually increased by nearly 15%, but historical low levels of multi-family construction (down 42.5% in total units) ruined any chances for improved dollar showings in housing.

In the non-residential sector — office, retail, and industrial construction — things looked even worse. The seasonally adjusted annual rate dropped from $11.08 billion in January 1991 to $9 billion in last January — a dropoff of 19%. And indications are that the decline in building is not likely to rebound soon. The Los Angeles Times reported that overbuilding and underfinancing have brought the looming nationwide office/industrial market crisis home to roost in a region that had been able to avoid serious problems so far. Extremely weak leasing activity is forcing developers to cut staffs and lenders to tighten money supplies. The Times reported that commercial real estate lending last year dropped off 45% from the year before, and 80% from the boom year 1986.

All this stands in stark contrast to CIRB's nonbuilding/heavy construction numbers. This category, which includes roads, sewerage, flood control, dams, and other infrastructure, showed a 32.6% increase in the January figures — a seasonally adjusted annual rate of $6.1 billion this year, compared to only $4.6 billion last year, or almost enough to offset the drop in non-residential construction.

Though the category includes private activity such as private port facilities and irrigation projects, 80% of the volume represent outlays for public infrastructure. Most of the individual projects are in the traditional subcategory of streets, highways, and bridges. However, there is an interesting new trend hidden in even these statistics: Many of the public works projects involve investment in environmental infrastructure. For example, the largest single project in January was an $87 million dollar recycling facility built in San Diego County. And transit projects are appearing in the numbers from all of the rail-happy metropolitan jurisdictions (San Diego, Los Angeles, Bay Area, Sacramento).



According to Ben Bartolotto of CIRB, Caltrans remains a mainstay of the heavy construction sector, but the agency is a being joined by a group of newcomers: the joint powers authorities, such as the Orange County Transportation Corridor Agencies, and private tollroad builders. And most of the road projects, Bartolotto says, have been spurred forward through financing provided by voter-approved gas taxes.

Bartolotto says that the shift from "building" to "nonbuilding" construction has been observed for about a year, and should continue for at least two more years. Industry observers have been surprised that the statistics are not even more pronounced, but many large pending public works projects are caught in a web of bureaucratic snags. For example, many transportation expenditures to counties are contingent on adoption of congestion management plans because of strings that were legally attached to Prop 108 and 111 funds.

The shift in development activity is resulting in a fundamental restructuring of the construction industry. The type of building-related industry employment being generated tends to favor the large engineering and contractor firms with connections to government agency decisionmakers. The smaller "craft" contractors that have been the mainstay of the housing industry will not see much relief.

In fact, despite the hopeful signs in the nonbuilding sector of the real estate and development business, some 30,000 construction jobs are expected to be eliminated in California in 1992. That's less than last year, but the state remains in a recessed condition. And with consultants and plan-check planners scrambling to keep busy, it remains to be seen whether the surge in infrastructure spending will translate into real work for the planning and development community. ❑

DEALS

Morris Newman

El Segundo Looks to Redevelopment to Keep the Air Force

For want of a nail, the old saying goes, the shoe was lost. And the loss of the shoe, as all schoolchildren know, eventually leads to the loss of the entire kingdom. This danger of small losses leading to great ones is an apt analogy for the situation facing the City of El Segundo. The city is home to Los Angeles Air Force Base, which is threatened with closure. The Air Force, however, may choose to stay in the city — if El Segundo can assist the military in obtain some affordable housing for its officers.

No city more highly prizes its local military base than El Segundo. The Los Angeles Air Force Base is home to the force's Space Services Division, a high-tech operation that is one of the jewels of the Southern California aerospace diadem. The Space Services Division is not a traditional military base; covering only 95 acres in El Segundo (and 90 acres of residential land in San Pedro), it is responsible for the development and purchase of military launch vehicles. Much of the division's effort is devoted to managing $7 billion in contracts with private firms. According to the Air Force, the base employs 2,000 military personnel and provides about 15,000 direct and indirect jobs to the area, with an economic impact of $1 billion a year. So it's no wonder that the city is eager to do whatever it takes to keep the Air Force in town.

> *"The proposal to share housing funds has caused a red alert throughout the state's affordable-housing community."*

The Air Force needs about 250 units of affordable housing off base. According to an Air Force spokesman, even the highest-paid officers at the L.A. Air Force Base would qualify for moderate-income housing assistance (80-120% of a region's median income). A couple hundred homes seems a small price to pay to keep an aerospace juggernaut happy. To produce the housing, El Segundo and the neighboring city of Hawthorne decided to create a joint powers authority, with El Segundo pooling some of its housing funds with those of Hawthorne, where 17 acres have been set aside to build the housing. (Neighboring cities such as Redondo Beach, Inglewood, Torrance, Compton, and Carson may join the JPA later.)

As reasonable as it sounds on its face, this proposal to share housing funds has caused a red alert throughout the state's affordable-housing community and sparked some hot-tempered public hearings in Sacramento. At issue is the notion of taking housing money from one city and building units in another. Under state law, every California city with a redevelopment agency must plan to build a certain amount of affordable housing; to this end, redevelopment law obliges cities to set aside 20% of their tax increment to fund such housing. (See story on housing issues beginning on page 1.) Housing activists are strong advocates of the doctrine of "equity," that is, the obligation of every city to build its fair share of affordable housing. And although supply-side politicians have regularly suggested that cities should be allowed to traffic in affordable-housing credits, housing activists have attacked the suggestion as a dangerous precedent which would allow rich cities to fob off their "undesirable" housing on poor communities. What the activists fear, of course, is a further separation of the middle class and the working poor, and increased social polarization between rich and poor.

Housing activists have reacted poorly in the recent past, when cities have suggested taking their dollars outside city lines to build their affordable units. As it turns out, few California cities have built all the housing as promised, and several have left their housing funds untouched. In some cases, cities appear willing to spend the money outside their communities. The most notorious case occurred in the City of Indian Wells a few years ago, when the Riverside County city proposed to build affordable units with its redevelopment set-aside outside the city. (The decision was part of a settlement with poverty lawyers regarding housing for workers of a proposed resort.) City officials defend the decision, saying that the housing was not intended as a substitute for in-town units, but was a proposal for the use of left-over housing funds. Notwithstanding, affordable housing advocates have since cited Indian Wells as an example of a rich community attempting to avoid affordable housing in their own communities by exporting it elsewhere—a trend that on eventually could result in the "ghettoization" working class areas.

Marc Brown, a housing lobbyist and a director of Sacramento-based CRLA Foundation, testified in March against AB 3325, introduced by Assemblyman Curtis Tucker Jr., D-Inglewood, to authorize the creation of the joint powers authority. The bill applies only to the El Segundo-Hawthorne link, and limits the number of construction of units to 300; once the housing is built, the joint powers authority would cease to exist, and could not accept any additional funds from either city, except to retire the debt from housing bonds used to finance construction. The bill was approved in committee, and has now awaiting a vote by the full senate. Brown remains opposed to the bill, despite his success in winning a number of compromises, including the 300-unit limit. He dislikes the fact that there is no overall spending limit in the bill, and views it as a dangerous precedent.

But even housing stalwarts like Joan Ling, director of the Community Corporation of Santa Monica, thinks that some kind of flexibility in housing-money sharing should be allowable, within strict limits. And a redevelopment reform package known as SB 1711, introduced by Senator Marian Bergeson, R-Newport Beach, would also authorize the donation of housing money from a city to its neighbor. This donation would be constrained by some tough rules: the housing must be within a mile of the donor city, and cities must build at least as much housing inside their boundaries as much as they donate to others; further, the out-of-town units must be on cheaper land, so that the housing dollars can go farther.

Indeed, some compromise on the housing-money-sharing issue is desirable. It would be absurd and wasteful for Southern California to lose an aerospace linchpin on account of 250 apartments. It is also absurd for rich communities like Indian Wells to shirk their housing obligations. Housing activists like Brown are rightfully wary of laws that allow cities to give away their housing monies, especially when so many wealthy communities view affordable housing as an "undesirable land use." The solution is strict limits, not inflexibility. There is a difference between El Segundo, which is a city trying to retain its industrial base, and affluent cities that want to play political games with housing. Law, always a blunt instrument, can still be fine enough to distinguish between those two extremes. If not, thousands of jobs and a regional economy will be sacrificed on the altar of an abstract principal, and the kingdom will be lost for a nail. ❑