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INSIDE

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

William Fulton,
Editor & Publisher

Morris Newman,
Senior Editor

Stephen Svete,
Contributing Editor

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Planners Challenged On Commitment To Riot Zone

L.A. Transit, Land Use Plans May Change to Reflect Post-Riot Political Reality

By William Fulton

As the reconstruction of Los Angeles after the riots moves forward, the role of land-use and transportation plans — and planners — is beginning to come under the microscope. Minority leaders in L.A. are asking why their neighborhoods have received so little attention from planners over the past two decades. And they are beginning to question how much L.A.'s minority neighborhoods will benefit from the county's $180-billion rail transit construction program.

At a hearing of the Assembly Select Committee on the Los Angeles Crisis in late July, Committee Chairman Curtis Tucker Jr., D-Inglewood, took aim at both the Los Angeles City Planning Department and the L.A. County Transportation Commission. "We want to make people conscious of the roles (of these agencies) and their responsibilities in rebuilding L.A.," Tucker said at the hearing.

The emerging debate focuses, essentially, on the distribution of resources for planning in L.A.,

Continued on page 4

Budget Crisis Affects Local Governments

Repeal of AB 8 May Lead To New Land-Use Policies

California's system of local government finance — which for the past decade has depended heavily on manipulation of local land-use policies — may be at a crossroads.

This year's state budget crisis has unraveled a 13-year-old bailout program that has shielded cities and counties from the full impact of property-tax losses under Proposition 13. At the same time, the recession and the real estate bust are eating away at sales-tax revenues and development fees, which many cities have pursued ardently to make up for lost property-tax funds.

As a result, cities and counties will have to face a harsh financial climate this year without much help from the revenue sources they came to rely on in the 1980s. And for many cities, this situation may cause a reassessment of the fiscally driven land-use policies that have sustained them for the past decade. Simply put, cities that lived by sales taxes and development fees in the 1980s may die by them in the 1990s because they are so volatile as funding sources.

Continued on page 9

Split Decision on Vested Rights

San Diego Ruling Erodes Them; Costa Mesa Case Expands Them

A San Diego appellate court has reversed itself on an important vested rights issue.

In a split decision, the Fourth District Court of Appeal reversed last year's ruling in *Consaul v. City of San Diego*, which appeared at the time to be a victory for property owners. After a rehearing, the court ruled that obtaining housing "allocation" under San Diego's growth management law did not create a vested right; a building permit is still necessary.

Consaul was one of two important vested rights cases handed down recently in California. In a case from Costa Mesa, a tavern owner won a significant appellate victory stating that cities don't have much discretion in revoking conditional use permits of well-established businesses.

Coverage of both vested rights cases appears in *CP&DR Legal Digest*, beginning on page 5.

In Brief

The City of Marysville has revived its planning commission after a one-year hiatus.

In so doing, however, Marysville reduced the commission's size from seven to five members. Councilman Richard Wood said that the city council had not really wanted to abolish the commission last year but "there were some members we wanted off of it." He told the Sacramento Bee that in the intervening year he had learned that the planning commission "protects the council from a lot of flak."

The council abolished the planning commission last year on a 3-2 vote, and subsequently created a five-member Board of Zoning Adjustment. The five zoning board members will make up the new planning commission.

Only about 5% of California's 470 or so cities do not have planning commissions...

Affordable housing sometimes costs more to build than unaffordable housing, two UC-Berkeley researchers have concluded.

In a new report co-sponsored by the state and Bank of America, the researchers found that projects built with public assistance cost more per square foot to build, although they cost less per bedroom because they typically have more bedrooms.

The report, "The Cost of Affordable Housing: An Analysis of Development Cost," concluded that while financing costs are lower for "assisted" housing, construction costs, the developer's fee, and cost of obtaining permits are all higher than in market-rate housing. Among other things, the researchers said this is partly because assisted projects are often built on a smaller scale and at lower densities to mollify public opposition.

The report, written by Allyson Watts and Frank Rockwood, is available from the state Department of Housing and Community Development...

A city-county tax-sharing agreement in Fresno is in danger of falling apart over the proposed annexation of an auto dealership.

Fresno city officials want to annex a Mitsubishi dealership located in a small county "island." The dealership, which produces considerable sales-tax revenue, was a major point of contention between the city and county in a three-year battle over annexation and tax revenue that was resolved last year.

Under the new annexation agreement, the city will give the county some of the property and sales tax money it would otherwise receive. However, city officials now say the county is trying to block the Mitsubishi annexation, and have threatened to sue...

Former San Clemente planning commissioner Hal Joseph has paid a $7,000 fine to Orange County to settle a conflict-of-interest investigation. Joseph voted on a development proposed by a company in which he was a stockholder.

Joseph bought $30,000 worth of stock in Centex Corp. in 1989 and sold it the following year for a $9,000 profit. In the meantime, however, Joseph cast seven voters on Foster Ranch, a development project proposed by a Centex subsidiary. He resigned in 1990, shortly before the city council was expected to ask from his resignation.

In paying the fine, Joseph called the investigation "nonsense" and said he believed he had done nothing wrong....

A New York planning consultant has unveiled a plan for turning downtown San Bernardino into a more pedestrian-oriented environment.

Fred Kent of Project for Public Spaces Inc. called for wider sidewalks, single-lane streets with slower traffic speeds, and "high activity zones" that would include restaurants, boutiques, and entertainment centers...

A joint development deal between Cal State Northridge and Watt Industries has fallen apart.

Northridge and Watt agreed five years ago to build a large complex called University Park, which would include 300,00-square feet of office space, a hotel, a sports stadium, and restaurants.

Both sides cited the economic situation in explaining why the deal fell apart, but university officials also complained about poor relations with the L.A. Planning Department. The university and the city negotiated for three years over mitigation measures, and a bill to exempt the project from local planning regulations died in 1988. ❑

Calendar

August

- **14: Advanced CEQA Seminar**. Goleta. Sponsor: UC Santa Barbara Extension. Call: (805) 893-4200.
- **21: Planning For Ethnically Diverse Communities.** Los Angeles. Sponsor: Los Angeles Section, American Planning Association. Call: (818) 405-3099.

September

- **1: Land Use Issues in the Wake of Lucas.** Washington, D.C. Sponsor: National Real Estate Development Center. Featured Speaker: David H. Lucas. Call: (301) 657-8220.
- **17-18: California Public Finance Conference.** San Francisco. Sponsor: The Bond Buyer. Call: (212) 943-2221.
- **20-22. National Association of Housing & Redevelopment Officials National Conference**. San Francisco. Sponsor: NAHRO. Call: (202) 429-2960.
- **23: Role of the Planning Commissioner.** Davis. Sponsor: UC Davis Extension. Call (916) 757-8887.

October

- **9: Grading Workshop for Land Use Planners.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **9-11. League of California Cities Annual Conference.** Los Angeles. Sponsor: League of California Cities. Call: (916) 444-5790.
- **14: General Plan: Preparation and Revision.** Davis. Sponsor: UC Davis. Call: (916) 757-8887.
- **16: Easements and Related Land Use Law.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **19-24: Urban Land Institute Meeting**. Los Angeles. Sponsor: ULI. Call: (202) 624-7000.
- **28 Wetlands Impacts and Mitigations.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **30 Subdivision Map Act.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.

Local Officials Have Mixed Views on Regional Government

Planning Directors in Northern California Have More Favorable Attitude, Survey Finds

Planning directors around the state have a mixed opinion of regional government — but support for the idea is more solid in Northern California, according to a new survey from the California Policy Seminar.

Most planning directors around the state are skeptical of having regional governments deal with land-use planning issues, the survey results showed. And while most planning directors said regional government would be more effective than local government in planning for the future, only a third said regional government could be more effective in solving current planning problems.

"For regional government to take a larger role in state growth management, it will have to have stronger support at the local level than is currently achieved," said Mark Baldassare, a planning professor at the University of California, Irvine, who conducted the survey. "Municipal planning directors will need to be convinced that regional government has a place in land-use planning, that it can be an effective tool for dealing with current problems, and that it can be responsive to local needs."

Only 52% of the 225 planning directors surveyed said they had generally favorable opinion of regional government, while 48% said they had an unfavorable opinion. In Northern California, 62% said they like regional government, while that figure was only 45% in Southern California.

Consensus did emerge on the need for regional government in dealing with certain planning issues Continued on page — but not land-use planning. At least 70% of the planning directors surveyed favored a regional role in toxics regulation, open-space preservation, water supply and distribution, public transit, and solid waste. But only 36% of the planning directors statewide favored a regional role in land-use planning, while 57% opposed it.

But there was a pronounced difference among regions on the land-use question. Some 54% of Northern California planning directors favored regional intervention on land-use issues, compared with 39% for Central California and only 24% for Southern California.

Baldassare and his team of UCI researchers found no statistical correlation between city characteristics (growth rate, size ethnic composition, and home value) and support for regional government. Rather, they concluded, support for regional government was more likely to stem from the planning director's personal perception of regional government's effectiveness and responsiveness to problems.

When asked about the form that regional government should take, almost half of all planning directors surveyed said it should be a multi-purpose agency. Only 22% favored a multi-county regional government. Again, support for both these ideas was much stronger in Northern California than anywhere else in the state. ❑

■ "Do Local Officials Support Regional Government?: A Survey of City Planning Directors in California" is available from the California Policy Seminar, (510) 642-5514.

Planning Commission Rejects Huge Desert Landfill

The Riverside County Planning Commission has rejected the massive Eagle Mountain landfill project, which could accommodate up to 25% of Southern California's solid waste in the decades ahead. The county's Board of Supervisors will conduct a two-day hearing on the landfill in early September.

The proposed landfill — to be constructed in an abandoned mine pit 60 miles northeast of Indio owned by Kaiser Steel Resources Inc. — has become one of the most controversial land-use proposals in recent Riverside County history. On the one hand, the project could accommodate up to 20,000 tons of trash per day, which would be transported from Los Angeles and elsewhere in Southern California by both rail and truck. The landfill could also revive the financial prospects of the struggling Kaiser company; among those supporting the project have been retired Kaiser Steel workers from Fontana who hope their retirement fund will be replenished with the proceeds.

Even some employees of the National Park Service have opposed the landfill.

On the other hand, neighboring farmers, environmental groups, and even some employees of the National Park Service have opposed the landfill, saying it could harm nearby wildlife and will bring disruption and air pollution to the area. The site is adjacent to Joshua Tree National Monument. ❑

■ Contact: Dave Mares, Riverside County planner, (714) 275-3259.

Landowner Protest Stops Parcel Tax

Almost 6,000 protesting landowners have killed a proposal by the City of Santa Cruz to establish a parcel tax that would finance purchase of a 400-acre "greenbelt" around the city.

The proposal was approved by the Santa Cruz City Council in early July and was to go on the ballot in November. But landowners representing more than 50% of the privately owned acreage in the city — enough, under state law, to nullify the need for an election.

At first, city officials believed they had received protest letters from landowners representing only 48.3% of the private property in the city. However, a consulting firm found that a 31-acre park was incorrectly categorized in public records as privately owned. With the land reclassified, the protest figure rose to 50.9%. All told, the city received 5,791 protest letters. Santa Cruz only has 15,700 privately held parcels of land.

The parcel tax was promoted by a local citizens group, Citizens for a Permanent Greenbelt. The proposal called for an average tax of $36 on all parcels over a 30-year period, allowing the city to issue a $5 million bond issue to buy the land. All parcels in the city would have been included in the assessment district, and larger or more valuable parcels would have paid a higher parcel tax.

After an initial outcry in June, supporters of the idea agreed to limit the first-year parcel tax to only $8, and cap the potential assessment so that it would never rise above the $36 average.

By the time the Santa Cruz City Council took up the issue on July 1, city records indicated that protests had been received from almost 5,800 landowners representing 48% of the city's private property. Even so, the council voted to place the measure on the November ballot. Two weeks later, however, BSI Inc., a consulting firm hired by the city, discovered the records error, that revealed protests had, in actuality, topped 50%. ❑

Transit, Land Use Policies Questioned in Wake of Riots

Continued from page 1

and for infrastructure construction, especially in the transportation area. Although LACTC leaders extolled the virtues of their rail-building program to Tucker's committee, UCLA planning professor Eugene Grigsby questioned its benefit to riot-torn minority neighborhoods. "The system is designed to facilitate commuter travel to downtown Los Angeles and Mid-Wilshire," Grigsby said. "South-Central will benefit little."

And, under Tucker's questioning, Melanie Fallon, L.A.'s deputy planning director, acknowledged that most planning resources in recent years have been directed toward prosperous communities fighting over-development. But she said L.A. is now revising community plans for South-Central and Southeast Los Angeles, and that the new plans would reflect economic development and community goals as well as physical planning concerns. "That's probably one of the best things that has happened in the last couple of months," Fallon said.

> *"Ultimately, the planning department is a creature of the political system," said Fernando Torres-Gil, president of the Los Angeles City PlanningCommission. "You have 15 separate cities, one in each council district. And they are not equal."*

But Fernando Torres-Gil, president of the Los Angeles City Planning Commission, insisted that planning's flaws in Los Angeles were simply reflective of political power in the city. "Ultimately, the planning department is a creature of the political system," Torres-Gil told Tucker's committee. "In L.A., for better or worse, you have 15 separate cities, one in each council district. And they are not equal." He said new council members such as Mark Ridley-Thomas, who represents South-Central, "are more assertive on community development issues as opposed to downtown redevelopment."

As general tax money has dwindled in recent years, so has the ability of planning agencies to deal with the problems of poor neighborhoods. Indeed, in Los Angeles and elsewhere, large developers have been able to speed up public planning efforts on their projects by subsidizing the public agencies. The developers of L.A.'s large Central City West project, for example, were able to obtain a specific plan quickly by paying for the planning department's expenses in preparing it. (See CP&DR Deals, August 1990.)

The planning conflicts in transportation, however, may prove far more explosive than those in the land-use arena, simply because of the potential for L.A. County's new rail lines to shape the city's and the region's development patterns over the next several decades. And many transportation planners and minority leaders are casting the debate over the rail system as a classic battle of rich versus poor over public resources.

At the Assembly committee hearing, many speakers — and committee member Willard Murray, D-Paramount — noted that most transit riders in Los Angeles are lower-income people who are too poor or otherwise unable to have a car. Yet, they claim, most of the new rail lines will benefit commuters elsewhere in the region — many of them outside L.A. County altogether. Transportation expert Brian Taylor told the Assembly committee that "the residents of Central and South-Central Los Angeles will benefit far more from crude local bus service."

He urged a redistribution of funds from commuter rail lines to inner-city bus lines. (Taylor, a planning professor at the University of North Carolina, is doing Los Angeles research at UCLA this summer.) By contrast, rail supporters have defended the emphasis on commuters by noting that the main purpose of the system is to relieve traffic congestion created mostly by suburban commuters who drive to work.

Other speakers — and Tucker staffers — also questioned whether the rail transit system would serve Los Angeles's southern neighborhoods well. Committee co-counsel Geoff Gibbs suggested that the rail system, like the freeway system, might simply serve to isolate South-Central L.A., rather than actually serving it.

In response, LACTC's executive director, Neal Peterson, said that the L.A.-Long Beach Blue Line serves some of South-Central's poorest neighborhoods and ridership has been higher than expected. However, Gibbs's questions led to considerable discussion about the viability of a proposed light-rail line down Crenshaw Boulevard — a line that has been considered by LACTC in the past, but is currently shelved. Urban planner Grigsby, while acknowledging a light-rail line would serve the Crenshaw district, said that the line's ability to stimulate economic development along Crenshaw Boulevard would probably be limited.

But Torres-Gil said the rail system does contain the potential to serve minority neighborhoods better. As an example, he pointed to his own support of the Pico-San Vicente routing of the proposed Orange Line, rather than the Wilshire Boulevard routing favored by developers and some community leaders in the Wilshire Corridor. He said he envisions the Pico-San Vicente rail stop as a busy transfer point for bus riders from the south, and said he would like to foster a sense of community identity by establishing a "major ethnic cultural landmark" at the stop.

Fallon said the L.A. Planning Department and LACTC have been working together on a joint land-use/transportation policy that will emphasize equity in transit lines and new development in targeted areas. She said the planning department has not emphasized poor neighborhoods in the past because "we have allocated 75-80% of our resources on processing development permits, and there is not a lot of activity in South Central."

In response, Tucker asked: "But you're the planning department, not the processing department. Why has there been no planning in South-Central?"

Fallon said the city's General Plan Framework — a multimillion-dollar consulting project that grew out of the L.A.'s sewage capacity problems — has been expanded in scope to consider the needs of minority communities. She also said the city had committed $2 million and 15 staff members to updating the first five of the city's community plans, and three of those planning areas are located in the riot area — West Adams, South-Central, and Southeast. ❑

■ Contact: Assembly Select Committee on the Los Angeles Crisis, (213) 620-2224.

CP&DR
LEGAL DIGEST

Appellate Court Reverses Earlier Ruling on Vested Rights

San Diego Property Owner Loses After Rehearing

After rehearing an important vested rights case, the Fourth District Court of Appeal in San Diego has reversed its earlier ruling.

In a split decision, the court ruled that allocations obtained under the City of San Diego's residential growth-control ordinance don't constitute a vested right to build.

The case of *Consaul v. City of San Diego* involves an attempt by a developer to build a condominium complex on a one-acre parcel of land. Last year, the Fourth District ruled that the allocation constituted a vested right, and that a building permit was not required because all discretionary permits had been issued. (*CP&DR*, July 1991.)

In the rehearing, though, a two-justice majority went the other way, saying that even though the developers had obtained allocation for 26 units they still needed a building permit to obtain a vested right to build. In so doing, the court majority reaffirmed the California Supreme Court's landmark ruling in *Avco Community Developers v. South Coast Regional Commission*, 17 Cal.3d 785 (1976), which laid down the building permit rule.

In the majority opinion, Acting Presiding Justice Richard Huffman, wrote that "the vested rights doctrine enunciated by Avco has stood the test of time, and may properly be applied even to modern land-use planning devices such as a dwelling-unit allocation procedures like the (interim development ordinance.)"

The dissenter was Justice Gilbert Nares, author of the unanimous opinion originally issued by the court. In a dissent, he reiterated his earlier position — that a building permit is not required for vested rights under California case law, and that the Consauls had obtained a vested right to build, even though they had no building permits, because the housing allocation constituted discretionary approval on the part of the city.

The underlying dispute involves an attempt by landowners Robert and Eva Consauls and developer Thomas Ahrens to gain permission to build a condominium complex on a one-acre parcel of land in San Diego's Peninsula neighborhood. Though the city zoning ordinance permitted construction of 54 units and the hillside ordinance permitted 44 units, the developers and city staff eventually agreed on a 26-unit project. Subsequently, the city passed an "interim development ordinance," or IDO, placing a city-wide limit on new housing construction of 8,000 units per year. In 1988 and 1989 the developers received "allocations" under this ordinance to build all 26 units.

"(E)ven though a dwelling unit allocation was made, no vested right to proceed with the development project was created thereby," wrote Justice Huffman for the majority. "The language of the IDO and the letters notifying Ahrens (the Consauls' partner) of the dwelling unit allocation only created in Ahrens the right to apply for a building permit and a plan check."

Huffman added: "It makes no difference that building permit approval is normally considered a ministerial process where appropriate land-use regulation compliance is present ... since the IDO by its terms required such an application to be timely made in order to exercise and perfect the entitlement...."

The majority relied heavily on the California Supreme Court ruling in *Russ Building Partnership v. City and County of San Francisco*, 44 Cal.3d 839 (1988), which stated that a vested right must involve "a promise such as that implied by a building permit that the proposed use will not be prohibited by a class of restrictions that includes the regulation in question."

In his dissent, Justice Nares said: "Russ does not hold that the possession of building permits is the sole criteria for applying the vested rights doctrine....The dispositive question was whether the developer had obtained all necessary discretionary approvals, making the issuance of the final subdivision map a ministerial function." ❑

■ The Case:
Consaul v. City of San Diego, No. D012162, 92 Daily Journal D.A.R. 7330 (June 3, 1992).
■ The Lawyers
For Consaul: William Fischbeck, Fischbeck & Oberndorfer, (619) 464-1200.
The city: Alan Sumption and Larry Renner, Deputy City Attorneys, (619) 533-4701.

VESTED RIGHTS

Tavern Owner Has Vested Right In Spite of Conditional Use Permit

It may be harder for localities around the state to revoke conditional use permits for existing businesses, thanks to a new ruling from the Fourth District Court of Appeal in Orange County. In a unanimous decision, the court ruled that a Costa Mesa tavern owner has a vested right to continue operating his business, even though his conditional use permit has expired, and that the city bears a heavy burden in proving the need to shut the business down.

The court concluded that the city had not proved complaints about noise and crime in the adjoining neighborhood were the result of the tavern, and under such circumstances the city did not have the power to revoke the CUP. The city has decided to appeal the case to the California Supreme Court.

The case began in 1988, when Goat Hill Tavern owner Robert Ziemer expanded the tavern without obtaining any permits from the city. Subsequently, he applied for a conditional use permit to cover the expansion; the city approved a six-month CUP in September of 1988. A year later, the city planning staff discovered that the permit had not been renewed. City officials granted one three-month renewal, then agreed to a second three-month renewal only if the tavern restricted its hours because neighbors had complained about noise and trash problems around the tavern. Goat Hill filed suit, and a Superior Court judge stayed the restricted-hours requirement.

Three months later, when the CUP was up for renewal again, Ziemer was given the staff report on the Friday evening before a scheduled Monday hearing. He asked for a continuance, but the city council refused to grant the continuance unless he agreed to curtail his hours. He refused, and the city denied the renewal of the CUP. Ziemer sued again. This time, a judge found that the city had violated Ziemer's due process rights and ordered a new hearing. The new hearing was held, and the tavern's CUP application was denied again.

Subsequently, Temporary Judge Greer H. Stroud granted Ziemer a writ of administrative mandamus ordering the city to set

aside the CUP denial and recognize that the tavern had a vested right to continue operating.

The city appealed, arguing that Stroud had applied the wrong legal test to the question of the tavern's vested rights. Stroud had applied the "independent judgment" test and concluded that in order to revoke the CUP, the city either had to prove that the Goat Hill Tavern was a public nuisance or demonstrate a "compelling public necessity" to shut it down. Costa Mesa argued that Stroud should have applied the "substantial evidence" test, which would simply have required the city to prove that substantial evidence existed to support its position.

But the appellate court didn't buy the city's argument. While acknowledging that "the courts have rarely upheld the application of the independent judgment test to land-use decisions," the court noted that those cases in which the independent judgment test has been applied typically have been vested-rights cases. The court went on to conclude that Goat Hill Tavern did, indeed, have a vested right to operate and therefore Judge Stroud was not wrong in applying the independent judgment test.

"We might conclude differently were this, as the city attempts to suggest, a simple case of a property owner seeking a conditional use permit to begin a use of property," wrote Justice Edward J. Wallin for the unanimous three-justice panel. "But it is not. Rather, Goat Hill Tavern is an existing business and a legal nonconforming use."

He went on to say: "Denial of an application to renew a permit merits a heightened judicial review....By simply denying renewal of its conditional use permit, the city destroyed a business which had operated legally for 35 years. The action implicates a fundamental vested right of the property owner and the trial court was correct in applying the independent judgment test."

The court went on to say that even if the substantial evidence test were applied, the city was in the wrong. "There was no showing to distinguish complaints about Goat Hill Tavern from other possible causes, including the Helm bar which adjoined Goat Hill Tavern and the homeless who frequent the area," Wallin wrote. ❑

■ The Case:
Goat Hill Tavern v. City of Costa Mesa, No. G011143, 92 Daily Journal D.A.R. 7289 (June 2, 1992)

■ The Lawyers:
For the city: Thomas Kathe, City Attorney, (9714) 574-5399.
For Goat Hill Tavern: Alan Burns, Harper & Burns, (714) 771-7728. ❑

General Plans

City Project Need Not Comply With County General Plan

Redding's plan to build a softball field on city-owned property outside the city limits need not be consistent with Shasta County's general plan, the Third District Court of Appeal has ruled.

The appellate court ruled that cities are categorically exempt from provisions in state law requiring "local agencies" to comply with city and county land-use regulations. In an unpublished portion of the opinion, the court found Redding's own general plan internally inconsistent with regard to the softball project, and also ordered more mitigation measures to lessen the noise impact of the project.

Ironically, while the case was on appeal, the Redding City Council chose not to proceed with the softball project because of budget constraints. However, the Third District rejected the city's argument that this action made the appeal moot.

The case involves a city plan to use Quimby Act money to build six softball diamonds and two soccer fields on land outside city limits. The property is located inside Redding's sphere of influence, and the city included the property in its general plan.

In 1988, the Shasta County Board of Supervisors made a finding that the softball project was inconsistent with the county general plan. Relying on Government Code §65402, the plaintiffs in the case — neighboring residents — claimed that this finding should have prevented the city from approving the project.

The appellate court disagreed. The court noted that another Government Code section, §53091, requires local agencies to comply with county land-use regulations. While acknowledging that "nothing in (this section) expressly exempts cities and counties from each other's building and zoning ordinances," the appellate court noted that the same section establishes a general policy of intergovernmental immunity. The court rejected the county's argument that §53091 is not controlling because it was passed prior to the state's general plan consistency law, which gave general plans much broader power.

In the unpublished portions of the case, the court found that Redding's general plan did not contain text for the land-use designation used in the area of the softball fields and ordered the city to make the necessary corrections. The court also rejected a series of complaints about the environmental impact report, requiring only additional noise mitigation. ❑

■ The Case:
Lawler v. City of Redding, 3 Civ. C010806, 92 Daily Journal D.A.R. 8752 (June 26, 1992).

■ The Lawyers:
For the city: Randall Hays, City Attorney, (916) 225-4050.
For the plaintiff: Daniel S. Frost, Carr Kennedy, Peterson & Frost, (916) 222-2100.

Takings

Mobile Home Case Dismissed By 9th Circuit After Rehearing

Apparently following the lead of the U.S. Supreme Court, the Ninth U.S. Circuit Court of Appeals has dismissed an important mobile home rent control "takings" case after a rehearing.

Last year, the Ninth Circuit ruled in *Azul-Pacifico Inc. v. City of Los Angeles* that the vacancy control provisions of L.A.'s mobile home rent control ordinance constituted a taking of property by physical occupation. The court based the decision on evidence that, under rent control, some value of the property was transferred from landlord to tenant and, under the ordinance, the landlord could not remove the tenant (or the tenant's mobile home) from his mobile-home park. The physical occupation argument was first sanctioned by the Ninth Circuit in another mobile home rent control case, *Hall v. City of Santa Barbara*, 833 F.2d 1270 (1986).

However, the U.S. Supreme Court recently overturned *Hall* in a similar case, *Yee v. Escondido*, 112 S.Ct. 1522. (See CP&DR Legal Digest, April 1992.) The high court ruled that Yee could file a new lawsuit based on a regulatory taking claim.

In late July, a three-judge panel of the Ninth Circuit concluded that Azul-Pacifico had no direct cause of action under the U.S. Constitution and should have filed a federal civil-rights action instead. The court also stated that even if a direct constitutional challenge were allowed, it would be barred by a three-year statute of limitations on such lawsuits contained in another Ninth Circuit case dealing with mobile home rent control ordinances, *DeAnza Properties X Ltd. v. Santa Cruz County*, 936 F.2d 1084 (1991)

Judge Alex Kozinski, author of Hall and the original Azul-Pacifico ruling, disagreed that *DeAnza* could be used as the basis for the statute of limitation ruling. He said that by overturning *Hall*, *Yee* also implicitly overturned *DeAnza*, which relied on *Hall* for its legal reasoning.

The original *Azul-Pacifico* ruling was reported at 948 F.2d 575. More details were included in *CP&DR*, December 1991.❑

■ The Case:
Azul-Pacifico v. City of Los Angeles, Nos. 90-55853 and 90-56066, 92 Daily Journal D.A.R. 10250 (July 24, 1992).

■ The Lawyers:
For the city: Gwendolyn Ryder Poindexter, Deputy City Attorney for L.A., (213) 485-4511.
For Azul-Pacifico: Sherman Stacey, (310) 393-1007.

Environmental Law

EPA Must Assume Responsibility For L.A. Air-Quality Plan

The Environmental Protection Agency has been ordered to assume responsibility for writing air-quality regulations in the Los Angeles basin.

In the latest chapter of a longrunning battle between environmentalists and EPA, the Ninth U.S. Circuit Court of Appeals has ruled that the 1990 Clean Air Act did not relieve EPA of the responsibility for implementing air-quality rules in the four-county South Coast Air Basin.

Environmentalists have been arguing in court for 20 years that EPA should intervene directly in the Los Angeles air-pollution problem. Under the 1970 provisions of the federal Clean Air Act, EPA is required to approve a state's implementation plan — or SIP — for cleaning up air pollution in smoggy areas such as Los Angeles. If EPA disapproves the implementation plan, it must take responsibility for producing its own implementation plan — a so-called federal implementation plan, or FIP. Because of the federal government's ability to regulate airlines, trucking, and other forms of interstate commerce, a federal plan might contain more far-reaching regulations than a state plan.

Several times between 1972 and 1988, EPA disapproved — or indicated its desire to disapprove — the L.A. air-quality plan drawn up by the South Coast Air Quality Management District. The Coalition for Clean Air and other environmentalists continually sued EPA, attempting to force the agency to take control of L.A. air regulations. In a settlement agreement in 1989, EPA agreed to do so.

Subsequently, however, EPA asked U.S. District Court Judge Harry Hupp to vacate the settlement agreement based on the 1990 Clean Air Act amendments. EPA claimed that because the amendments established new deadlines for air-pollution cleanup in the Los Angeles basin, the federal and state governments were "back to square one" — meaning the EPA could not intervene unless the state failed to prepare adequate implementation plans under the new deadlines. The earliest EPA could intervene under the new deadlines is 1998.

Hupp agreed, but, in a split decision, he was reversed by a three-judge panel of the Ninth Circuit.

EPA made a variety of arguments, among them narrow, technical arguments based on the wording of the 1990 Clean Air Act amendments. EPA argued that the language of the law is future-oriented, saying the EPA administrator "shall" promulgate a federal plan "at any time within two years after" a state plan is disapproved. EPA claimed this language did not apply to past disapprovals because it is phrased in the present tense. But, wrote Judge William A. Norris for the majority, "the present tense is commonly used to refer to past, present, and future tense all at the same time."

EPA also argued that requiring federal intervention now would be inconsistent with the new set of deadlines included in the 1990 amendments. But the court found that the federal implementation plan for the South Coast, drawn up under the settlement agreement of 1989, contained the same deadlines as the new Clean Air Act.

"Running throughout EPA's argument is the notion that federal involvement necessarily preempts state planning to control air pollution," Norris wrote. "However, this is a misconception. The Clean Air Act created a federal-state partnership for the control of air pollution, which continues after EPA's obligation to promulgate a FIP has been triggered."

The dissenter was Judge John T. Noonan Jr., who disagreed with the majority about the impact of the 1990 amendments on the Los Angeles situation. "The Clean Air Act in its original form and as amended in 1990 specifies that the state has primary responsibility for satisfying pollution requirements and requires it to develop a plan in the first instance," he wrote. "That applies to the new requirements enacted in 1990. California must have an opportunity address these requirements before EPA steps into the breach."

Noting that the Coalition for Clean Air had accused EPA of "entrenched footdragging," Noonan added: "(E)ven if the courts could supply what the Coalition sees as the missing will in the agency, the court cannot supply a will that is not present in the legislation. In a major economic and political battle, Congress has chosen the path of slow progress. It is not the task of judges to produce a different rate of attainment." ❑

■ The Case:
Coalition for Clean Air v. EPA, No. 91-55383; Coalition for Clean Air v. South Coast AQMD, No. 901-55386; and Coalition for Clean Air v. EPA, No. 91-55634. ❑

■ The Lawyers:
For Coalition for Clean Air: Alan Waltner, Gorman & Waltner, (510) 465-4494.
For EPA: Karen L. Egbert, U.S. Department of Justice, Washington, D.C.

Conditional Use Permits

County May Overturn Erroneous Land-Use Permit

Santa Barbara County was not prohibited from revoking an erroneous land-use permit used by a property owner in constructing microwave towers, the Second District Court of Appeal's panel in Ventura has ruled.

The appellate court overturned a trial judge's decision not to require the county to issue a stop-work order on TMC Communications' towers atop Gibralter Peak in Santa Barbara. The county refused to issue the stop-work order, even though TMC installed five microwave dishes instead of the maximum of three allowed under the conditional use permit, because TMC had relied on the CUP "in good faith" while constructing the towers.

The case began in 1987, when TMC, a cellular telephone company, took over property on Gibralter Peak with the intent of building microwave transmission dishes. Although the land is zoned for residential use, communications facilities are permitted as a conditional use, and the county granted TMC a permit to build three towers with one microwave dish per tower.

Subsequently, however, the county building department issued a revised building permit allowing TMC to construct microwave towers that would support two microwave dishes instead of one; though the drawings actually showed two microwave dishes on each tower, TMC still claimed the total number of dishes would remain at three. When construction started, however, a neighboring property owner, Norman Smith, complained that TMC was installing five dishes instead of three. The county issued a stop-work order, but then rescinded the order two weeks later.

Smith appealed this decision to board of supervisors. The board found that the building permit did not conform with the conditional use permit on which it was based, and also concluded that an environmental assessment should have been prepared before the conditional use permit was issued. Nevertheless, the board did not reissue the stop-work order, saying that TMC had expended substantial amounts of money "in good faith reliance" on the building permit issued by the building depart-

ment. (TMC had spent $500,000 and claimed the work was 90% done when the stop-work order was issued.) Santa Barbara County Superior Court Judge James M. Slater agreed with the county and refused to issue a writ of administrative mandate requiring the county to issue a stop-work order.

On appeal, the county argued that it was "estopped" from issuing the stop-work order because of the "good faith reliance" argument. The legal doctrine of estoppel holds that an agency may be prevented from changing a permit or promise that was wrong, even if the change would right the wrong. But the Second District Court of Appeal panel in Ventura ruled that "a public entity may be estopped from enforcing the law only in extraordinary cases," adding: "This case is not one of them.

"The instant case would establish a broad precedent allowing government to operate in violation of its own laws," wrote Justice Arthur Gilbert for the three-justice panel. "It is not enough to say that public policy will not be adversely affected by the application of estoppel because TMC's structure creates no health or environmental hazard. The point is that public policy may be adversely affected by the creation of precedent where estoppel can too easily replace the legally established substantive and procedural requirements for obtaining permits." He added: "In this case the precedent established by applying estoppel would be so broad that no court of equity could justify the harmful effect of its application on the public interest."

The court also concluded that there was no substantial evidence that TMC relied on the conditional-use permit. "The conclusion is inescapable TMC never intended to build a system limited to three dishes," Gilbert wrote. "The only reasonable conclusion is that TMC did not intend to rely on the limited land-use permit." ❑

■ The Case:
Smith v. County of Santa Barbara, No. B058763, 92 Daily Journal D.A.R. 8603 (June 25, 1992).

■ The Lawyers:
For Norman Smith: Alan Blakeboro, Rogers & Sheffield, (805) 963-9721.
For Santa Barbara County: Shane Stark, Deputy County Counsel, (805) 568-2950.
For TMC Communications: Paul J. Neibergs, Hollister & Brace, (805) 963-6711.

SUBDIVISION MAP ACT

Map Act Does Not Apply To 180-Acre Lot Adjustment

A lot-line adjustment involving nine large parcels of land in San Diego is exempt from the Subdivision Map Act, the Fourth District Court of Appeal has decided. In making the ruling, the court ruled that all lot-line adjustments are exempt from the law, even if they involve large amounts of land and/or a large number of parcels.

The Subdivision Map Act (Government Code §66412(d)), which subjects most subdivisions of land to local subdivision regulations, exempts all lot-line adjustments. In the San Diego case, some of the parcels in question did not have street frontage and therefore did not meet San Diego's definition of buildable lots. Because the proposed change in boundaries gave street frontage to five re-arranged parcels, city officials argued that the action was not a mere lot-line adjustment but, rather, the creation of new buildable lots.

Therefore, the city argued, the lot-line adjustments were subject to the Subdivision Map Act. San Diego Superior Court Judge Michael I. Greer ruled in favor of the city, but the appellate court overturned his decision.

The case involved a 189-acre tract of land in the San Dieguito Valley. The land was subdivided into nine parcels in the 1950s, but only four of the resulting lots fronted on El Camino Real, the nearest street. In 1990, the landowners proposed rearranging the property lines so that all nine lots had street frontage. City officials refused to process the landowner's application for a lot-line adjustment and, instead, insisted that the reshuffling of boundaries required a tentative and final map under the Subdivision Map Act.

Judge Greer ruled in favor of the city, relying on the Continuing Education of the Bar's book *California Subdivision Map Act Practice*, which states that the Subdivision Map Act is "intended to permit only minor changes in parcel lines without requiring the processing of an entire subdivision map." He concluded that "the proposed multiple lot line adjustments, which would create 9 reconfigured parcels involving over 189 acres in an environmentally sensitive area, is *not* a minor change in parcel lines."

The appellate court disagreed. "(T)he statutory language does not contain the word 'minor' or any other words conveying the notion of a limitation of the number or size of parcels that may be affected by a lot line adjustment under its provisions, so long as 'a greater number of parcels than originally existed is not thereby created'," wrote Acting Presiding Justice William L. Todd Jr. for the three-justice court. "There is no question the lot line adjustment under consideration comforts with the no greater number of parcels element." ❑

■ The Case:
San Dieguito Partnership v. City of San Diego

■ The Lawyers:
For San Dieguito Partnership: Donald R. Worley, Worley Schwartz Garfield & Rice, (619) 239-0815.
■ For the city: C. Alan Sumption and Eugene P. Gordon, Chief Deputy City Attorneys, (619) 533-4701.

FYI

A federal judge in San Francisco has ruled that the Army Corps of Engineers should have asserted jurisdiction over former wetlands in San Leandro Bay being dredged by the Port of Oakland. U.S. District Court Judge Thelton Henderson rejected the Corps' claim that it had no jurisdiction under the Clean Water Act because the land had been converted to dry uplands by 1975. *Golden Gate Audubon Society v. U.S. Army Corps of Engineer*s, No. C 87 6063 TEH, 92 Daily Journal D.A.R. 9408 (July 8, 1992)....

Seeking to get the jump on its environmentalist opponents, the San Joaquin Hills Transportation Corridor Agency in Orange County has filed a suit in federal court, asking that the environmental impact statement on the project be upheld. The EIS was approved recently by the Federal Highway Administration and environmentalists were expected to sue to challenge it....

The University of California isn't bound by the provisions of the Subdivision Map Act in constructing for-sale faculty housing on campus, the Attorney General has concluded. In a recent opinion, the AG stated that "providing for on-campus faculty housing serves the educational purposes of the university. As a means of attracting and retaining the highest qualified professors and improving the learning environment, such a program helps fulfill the university's educational mission and purpose." AG's Opinion No. 91-811, 92 Daily Journal D.A.R. 7717 (June 11, 1992)....

The state Supreme Court has let stand an appellate ruling upholding the adequacy of the environmental impact report for a state prison in East Los Angeles. The action removes the last legal hurdle regarding construction of the $115 million prison, which community activists have bitterly opposed....

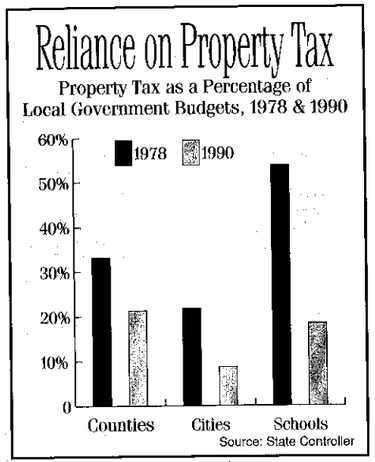
A San Bernardino County judge has rejected two attempts to place the controversial Birmingham Ranch development project on the ballot in Yucaipa. San Bernardino County Superior Court Judge Duane M. Lloyd said one set of petitions was invalid because it did not include a copy of the ordinance it sought to overturn, while another included the wrong city case number.❑

Fiscal Crisis Will Alter Local Government Finance

Continued from page 1

"We've concluded that revenue is going down, and it's going to stay down, and we must gear our operations to a lower rate of expenditure," says Fairfield City Manager Charles Long, whose city has succeeded in dramatically increasing its sales-tax revenues in the last decade.

Though the final figures aren't in yet, the state budget agreement will call for an "un-bailout" of cities and counties that reverses the pattern of financial assistance established with the passage of AB 8 in 1979. Flush with income taxes in an inflationary period, the state bailed out local governments by shifting some property tax funds from school districts to cities and counties, and then giving the schools more state aid.



Now, however, the AB 8 bailout costs the state $2.8 billion a year — a figure that both Democrats and Republicans agree can no longer be sustained. In this year's negotiations, the Legislature's conference committee on the budget decided local government should take a "hit" of $1.7 billion this year to help balance the $11 billion budget deficit — and that most of this "hit" should come in the form of undoing AB 8. The state plans to shift property tax from cities and counties back to school districts. In this fashion, the state will be able to reduce its aid to school districts.

At press time it was not certain just exactly how much property-tax revenue would be shifted from cities and counties back to school districts as part of the final state budget deal. But most of the proposals floating around Sacramento in July called for shifting between $900 million and $1.4 billion — that is, between one-third and one-half of the original AB 8 bailout — in the 1992-93 fiscal year. Some proposals also called for a complete phase-out of the AB 8 subsidy over a two- to three-year period.

The AB 8 bailout did not protect cities and counties completely from the impact of Proposition 13. Tax rates are still capped at 1% of assessed valuation, and property is not reassessed each year to market value, as it was before Proposition 13. Thus, even with the AB 8 bailout, cities and counties have lessened their dependence on property tax considerably since 1978. According to the State Controller, when Proposition 13 passed, property taxes accounted for 35% of county revenues and 22% of city funds. By 1990, those figures had shrunk to 22% for counties and less than 9% for cities. Local governments have made up for those losses in a variety of ways, including increased competition for sales taxes and, especially, increased fees.

Development Fees

Total fee revenue (all sources) for cities has skyrocketed since the passage of Proposition 13, from $567 million in 1978 (9% of city revenue) to $8 billion in 1990 (40% of city revenue). Planning-related fees have grown at about twice the growth rate of local government revenue overall since Proposition 13. Zoning, subdivision, and plan check fees statewide totaled $200 million in 1990, compared with about $31 million in 1978. That may be just a drop in the bucket in statewide revenue terms, but it is illustrative of the trend.

But with the real estate development business in a near-depression, it's unlikely that development fee revenue will provide much help in the 1990s. "In the last half of the '80s, everybody turned to new development on a wholesale basis to pay for things, and new development just kind of swallowed it," says Dick Recht, a fiscal consultant to local governments. "In the last two years, two things have happened. New development has been protesting a lot, and political pressures against growth have moderated quite a bit. So there's still a real question of how adequate infrastructure is going to be financed."

One good example is Rancho Cucamonga, a fast-growing city in western San Bernardino County that incorporated in 1977. With little property-tax revenue (Rancho Cucamonga had a low property-tax rate prior to Proposition 13), the city had to build its revenue strategy around development fees.

According to City Planner Brad Buller, the strategy worked in the boom years of the '80s, when Rancho Cucamonga tapped developers to pay for specific plans all over town and sustained a Planning Department with more than 20 employees. But fee revenue has plummeted during the recession, with predictable consequences. The city's 1991-92 budget originally forecast building permit fees at $1.4 million; the final figure was $450,000. Rancho Cucamonga laid off four planners in June, bringing the size of the planning staff down to 14. "We have mandates to amend some of our general plan deadlines," Buller said. "And in the past we've always met our deadlines. But now we may have to re-evaluate our ability to be on top of the situation."

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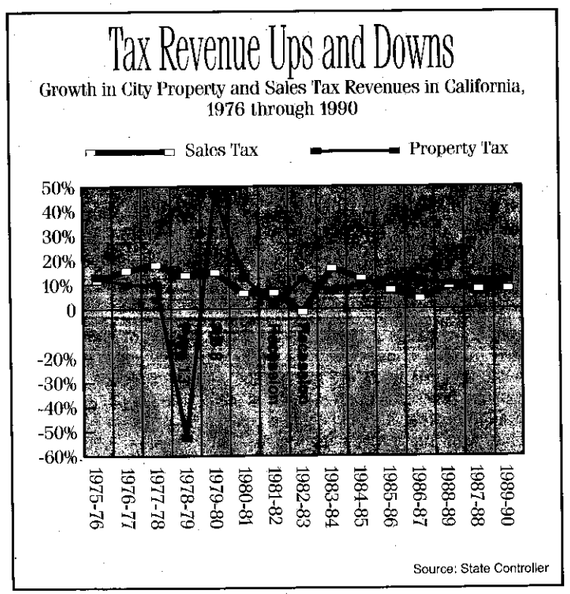

Fiscal Crisis Will Alter Local Government Finance

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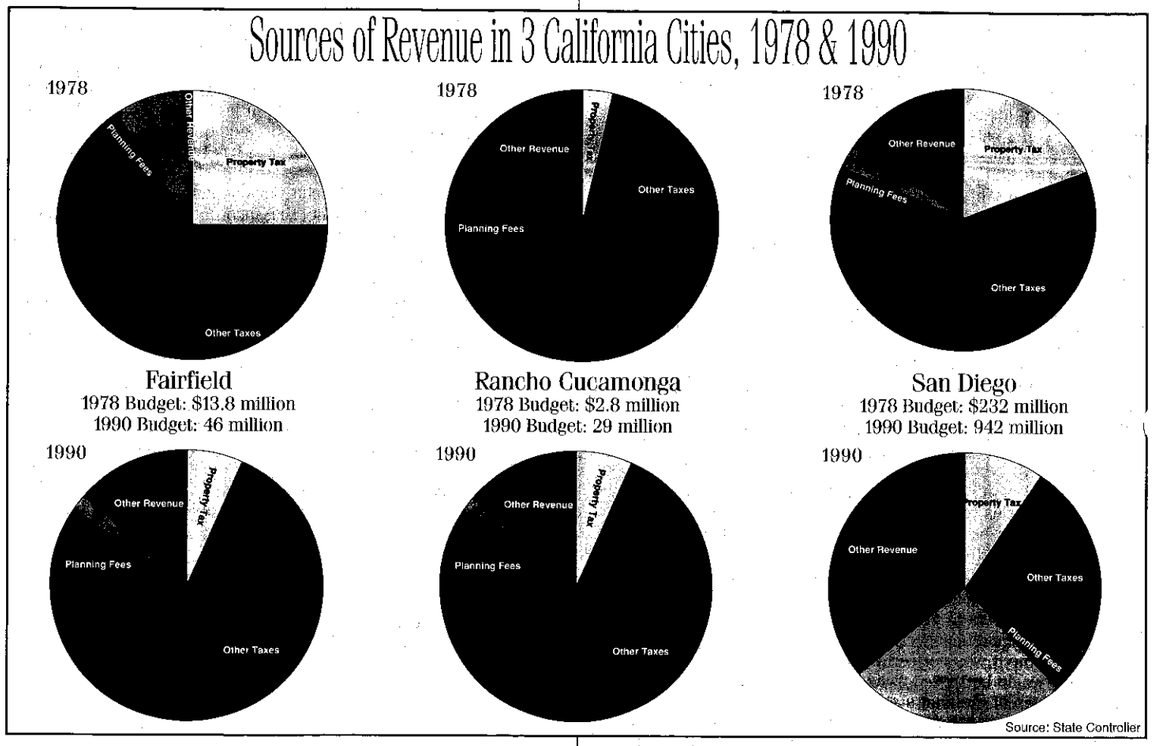
Sales Taxes

Throughout the 1980s, California cities competed with each other — and with counties — for retail sales outlets, hoping to replace lost property tax revenues with sales-tax funds. For some cities, this strategy has worked. But sales-tax revenues are dropping because of fluctuated considerably, ranging from a 16.5% increase to a decrease of 1.3%. Thus, sales taxes, like fees, can leave a locality financially vulnerable at the very time it needs financial stability the most.

Significantly, there is growing evidence that fiscal zoning may be played out because many of the state's retail markets have become saturated, thanks to the ardent pursuit of shopping malls and discount centers by cities. Indeed, sales-tax revenue statewide — while



the recession — and there's evidence that retail markets are so saturated that the sales-tax game won't be as effective in the 1990s.

Cities — and, to a lesser extent, counties — chase retail sales outlets because sales-tax revenues are unrestricted. Unlike property tax, there is no Proposition 13-type ceiling on them; each local government receives 1 cent for every $1 in retail sales in its jurisdiction, and that money goes into the general fund. But there are problems.

First, sales tax is a much more volatile source of revenue than property tax. Sales taxes fluctuate wildly with the state of the economy, while property taxes are more stable — especially when property is usually reassessed only when it is sold. "The simple reason (for the stability) is that it's unlikely that residential property will sell for less than what the owner bought it for," says taxation Jeffrey Chapman, director of the University of Southern California's Sacramento public-affairs center.

The State Controller's statistics on property and sales taxes bear out Chapman's theory. Between 1983 and 1990, the cities' share of property tax revenues statewide grew steadily and predictably, ranging between 7% and 12% each year. During that same seven-year period, however, growth in the cities' share of sales tax revenues growing faster than property-tax revenue — is declining as a source of funds for cities generally. City revenue grew 255% between 1978 and 1990, but cities' share of sales-tax revenue grew by only 161%.

Though Wal-Mart is now making a major push into California — getting sweetheart deals from all over the state in the process — local officials increasingly fear that pursuit of new discounters will simply serve to erode their existing sales-tax base. A good example here comes from Fairfield, an aggressive city in Solano County that increased its sales-tax revenue from $2.4 million in 1978 to $8 million in 1990. Though still pursuing discounters, Fairfield sees an end to the sales-tax pot of gold. "You can have too much of a good thing," says Long, the city manager. "If we knock ourselves out to bring in a Wal-Mart, we'll kill our other retail sales outlets. We're just stealing from ourselves now." ❑

■ Contacts:
Peter Detwiler, Senate Local Government Committee, (916) 445-9748.
Charles Long, Fairfield City Manager, (707) 428-7400.
Brad Buller, City Planner, Rancho Cucamonga, (714) 989-1861.
Dick Recht, fiscal consultant, (510) 839-8383.
Jeffrey Chapman, USC Sacramento Center, (916) 442-6911.

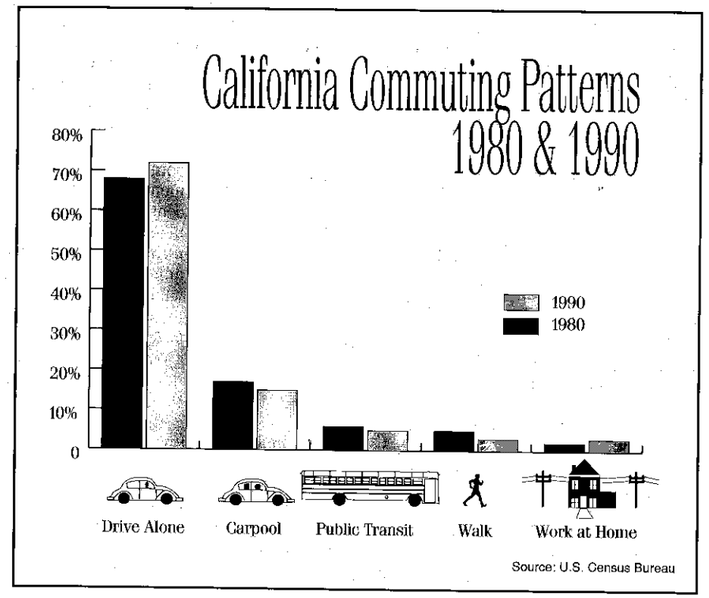
NUMBERS

Stephen Svete

Getting to Work: Californians Still Like Their Cars

Over the past few years, California's planning agencies have made a major push to get commuters out of their cars. But according to new figures from the U.S. Census Bureau, Californians still insist on driving to work alone in greater numbers than ever before. Despite major policy and infrastructure investments in alternative transportation, carpooling, transit usage, and walking all declined as commuting methods during the 1980s.

Not all of the new Census information is discouraging. Jobs/housing balance advocates will be pleased to find that those practicing the ultimate means of achieving jobs/housing balance — working at home — greatly increased their numbers between 1980 and 1990. Still, analysis of county-level data shows that there have not been significant improvements in commuting patterns in those select areas where transit systems and high-occupancy vehicle lanes were built during the '80s.



The commuting data was collected from the Census's long survey form, which was filled out by one in every six households and then weighted to represent the nearly 14 million workers established to live in the state in 1990. The results were not encouraging to advocates of transit and other alternative transportation modes.

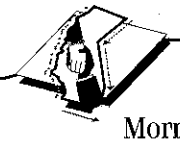
In 1980, 68% of the state's 10.6 million commuters traveled to work in a single-occupancy vehicle, meaning almost a third got to the office by other means. But during the decade of the '80s, the state added 3.3 million more commuters — and more than 80% of those new commuters drive to work alone. Thus, by 1990, drive-alones had actually increased their percentages, now making up 72% of the state's 13.9 million commuters.

The number of people carpooling increased by 250,000 over the 10 year period — but because of the large increase in the number of commuters, the relative number of carpoolers dropped from 17% to 15%. Transit ridership also increased, from 615,000 to 685,000, but transit's share of the commuting population dropped from 6% to 5%. As possible proof of lifestyle changes resulting from technological advances, the number of people working at home increased dramatically, even relative to the total pool of commuters. The number of work-at-homes more than doubled in the 1980s, from 197,000 in 1980 (1.9%) to 436,000 (3.1%) in 1990 — a much larger increase than transit ridership and almost as big as the increase in carpoolers.

The statistics provide particularly discouraging results in counties where major investments in rail and HOV lanes were made. For example, despite the introduction of light-rail systems in San Diego, Santa Clara, and Sacramento counties, transit's share didn't change much. It remained a steady 3% in San Diego and Santa Clara and actually dropped from 4% to 3% in Sacramento. Orange County, which has invested heavily in HOV lanes on Interstate 405, State Highway 91, and other local freeways, saw a drop in the relative number of workers who carpool, from 16% in 1980 to 14% in 1990.

As might be expected, figures from other counties vary considerably. Shasta County, at the northern reaches of the Sacramento Valley, wins the drive-alone award, with 81% of commuters using single-occupancy vehicles. Not surprisingly, San Francisco is at the other end of this statistic, with only 38% of its commuters traveling in a car solo. In fact, in San Francisco just as many commuters (38% again) ride transit as drive alone. The San Joaquin Valley county of Kings tallied the highest percentage of carpoolers: 19%. And Yolo County, home of the compact college town of Davis, has the highest percentage of bicyclists, with 10% of all commuters getting to work on two-wheeled vehicles. Tiny Sierra County logs in with both the highest percentage of walkers (14%) and work-at-homes (9%).

So what is the bottom line for all these shifting commuting patterns? About three minutes. The average California commute took 22 minutes in 1980 and grew to 25 minutes in 1990. And residents of Los Angeles County — despite the notorious traffic jams — take an average of only 26 minutes to get to work. That's a cool two minutes less than Marin's 28-minute average, and a full three minutes less than Contra Costa residents' 29-minute commute, the state's longest. ❑



DEALS

Morris Newman

Finally, a Solid Plan for the L.A. Coliseum

The Los Angeles Memorial Coliseum, a venue where many sports records have been set, has set a few records of its own. Perhaps the most glamorous is that it is the only stadium to have been the site of two Olympic Games — 1932 and 1984. Another record, less glorious, is that the Coliseum has lost more sports franchises than any other stadium.

Indeed, the story of the Coliseum is one of inept public management on the one hand and aggressive maneuvering and manipulation by sports teams on the other. Both sides have struggled, meanwhile, to find a way to modernize and expand an antiquated facility. Now, after 15 years of negotiation and failed deals, a feasible plan to expand the stadium has emerged. The new plan stands a good chance of success — if it is not torpedoed by further wrangling.

The stadium itself is antiquated and awkward. Located in Exposition Park near USC, the Coliseum will be 60 years old next year. And while the stadium is well-known for its noble classic moderne architecture, it is poorly configured for modern sports events. Much of the problem, however, lies not with its physical layout but with its governing board, the Coliseum Commission.

> *"Like all other Coliseum matters, the attempt to modernize and expand the stadium has been a continuing debacle."*

Founded in the 1940s, the public board has traditionally been amateurish in its negotiations with team owners, slow to reach consensus, and distinguished only for its ability to alienate sports interests. Disgruntled former Coliseum tenants include the L.A. Rams, the now-San Diego Chargers, UCLA, and the L.A. Lakers (who played at the adjoining Sports Arena). All left the Coliseum after disputes.

The Coliseum Commission's membership includes political appointees from city, county, and state, reflecting the stadium's joint ownership. In his memoir, *Made in America*, Olympics czar Peter Ueberroth wrote that the Coliseum is "governed by three parents" but "it's treated like an orphan." He also criticized the Coliseum Commission's business style, noting that even after the Commission had agreed to hold the opening ceremonies of the '84 Olympics, "disagreements over terms continued virtually up until the morning of the opening ceremonies."

Like all other Coliseum matters, the attempt to modernize and expand the stadium has been a continuing debacle. In 1973, to keep the Rams happy, the commission agreed to add 13,000 seats and build 75 luxury boxes in exchange for the Rams' commitment of $7 million in renovating financing. But five years later nothing had happened and the Rams defected to Anaheim.

Desperate for another professional football team, Coliseum Commission President William Robertson negotiated a 10-year deal in 1982 with Al Davis, owner of the Oakland Raiders. The deal included an $8.75 million "loan" to Davis, to be paid back only when luxury suites were built by Davis himself. Davis received $4 million up-front — part of the $18 million award that the Coliseum and Davis jointly won in a 1982 antitrust suit against the National Football League. The rest of the money came in the form of free rent for the first four years.

But the Raider deal infuriated longtime tenant UCLA, which didn't like the fact that choice between-the-goal seats would be sacrificed for Davis's luxury boxes; soon UCLA had fled to the Rose Bowl. Meanwhile, Davis did not begin work on the skyboxes until 1987, and even then he stopped work after only three weeks, saying he would not complete the job until the commission honored an unwritten promise to beautify the Coliseum.

But Alexander Haagen, the crusty developer who had replaced Robertson as president of the commission, didn't want to honor a verbal commitment made by somebody else. Besides, the commission didn't have the $15 million needed to renovate the stadium. Davis went looking for another location before resigning himself to the Coliseum for the time being.

Shortly after the Davis debacle, the Coliseum Commission hired Spectacor, a national company experienced in stadium management, to run the stadium on a fee-plus-percentage basis. In 1990, Spectacor decided to take a shot at expanding the stadium without public funds. Last year, Spectacor announced a $240 million expansion plan which included 15,000 club seats and 282 luxury suites. But the plan was shelved for lack of a lender.

Then, last April, Spectacor hired Los Angeles developer Wayne Ratkovich — renovator of the Wiltern Theater building — to rethink the stadium expansion. "The numbers didn't work, and the economy had changed, and it was clear that the project was going to have to be reformulated," Ratkovich says. He drew up a new plan that cost only $116 million — mostly by cutting the number of club seats from 15,000 to 4,000 and the luxury bodes from 282 to 150. Most important, he adjusted the stadium's revenue projection from $85 million a year to $24 million.

These lowered expectations have triggered a whole new round of negotiations with the Raiders and the USC Trojans, presumably because both revenues and stadium lease rates will be lowered. The Raiders are upbeat about the negotiations — at least publicly — while USC fears that game revenues might fall short of the school's expectations.

A further hitch is Spectacor's July request for $4 million from the commission to pay for engineering and design costs; this would make it possible for Spectacor to start the expansion in January. Because Spectacor had earlier promised not to use public money, the commission appears unenthusiastic.

But that lack of enthusiasm may be a mistake. Unlike Al Davis, Spectacor has a solid plan for rejuvenating this important Los Angeles landmark, and the Coliseum should recognize this fact by disgorging the requested $4 million. Politically, it's probably too much to ask for the dissolution of the Coliseum Commission itself; neither state nor city nor county will want to give up power. But, in the long run, this is probably the only way to end a 20-year record of remarkable ineptitude. Then, perhaps, the Coliseum can prosper in a field in which it has never done well: to function profitably as a stadium on behalf of the public that owns it. For the Los Angeles Memorial Coliseum, that would surely set some kind of record. ❑