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INSIDE

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1275 Sunnycrest Avenue
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805/642-7838

William Fulton,
Editor & Publisher

Morris Newman,
Senior Editor

Stephen Svete,
Contributing Editor

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Sales-Tax Pie May Shrink Permanently

Cities Still Do Deals With Retailers, But Experts Say Markets Are Saturated

By Morris Newman

As sales-tax revenues continue to fall significantly in communities throughout the state, many real estate experts are beginning to suggest that retail markets in California have finally become saturated. Yet local governments — desperate for funds in the wake of the recent state budget cuts — are continuing to pursue subsidized deals with Wal-Mart, Price Club, Costco, and other big retailers.

The result may be that, for many cities, sales-tax revenues will continue to erode despite the presence of big new retail outlets. "The question is whether we are just rearranging income from one retailer to another, rather than creating an actual increase in sales-tax revenue," says Bart Doyle, general counsel to the Building Industry Association of Southern California.

Overall, the state Board of Equalization shows that revenue from taxable sales fell 4.4% last year. And, as with other economic indicators, the sales-tax figures show the sharpest drops in Southern California — with both Riverside and L.A. county shopping a revenue dropoff in excess of 6%. A larger drop is expected this year. *Continued on page 10*

Redevelopment Agencies Adjust to Big Cut in State Budget

$200 Million 'Hit' Will Affect Local Economic Development

Local governments around the state are struggling to adjust to the "new world order" created by the state budget finally signed by Gov. Pete Wilson in early September. Even so, they are already gearing up for a repeat of the same battles next spring and summer, because next year's state budget situation is expected to be just as bleak as this year's.

All told, local governments took a $1.1 billion permanent hit to balance the state budget. Counties ($525 million) and special districts ($375 million) were the hardest hit, while cities took a $200 million hit. These funds represent approximately 40% of the property-tax base included in AB 8, the Legislature's post-Proposition 13 "bailout" of cities, counties, and special districts, which passed in 1979. (*CP&DR*, August 1992.)

The Legislature considered phasing out the entire AB 8 bailout — meaning a loss of $2.8 billion over a *Continued on page 9*

L.A Non-Profits Undertake Neighborhood Planning Effort

City Will Follow Coalition's Lead On Plans for 10 Communities

A group of community-based non-profit developers has undertaken a new planning effort in Los Angeles, and the city planning department and other public agencies appear willing to follow their lead.

At the same time, four agencies within L.A. City Hall are working together for the first time in hopes of coordinating on-the-ground efforts in rebuilding riot-torn areas of the city once the planning effort is complete. Taken together, the neighborhood planning effort and the attempt at inter-departmental coordination suggest a new awareness in City Hall of the need for better managed, "from-the-ground-up" community development efforts.

The Coalition of Neighborhood Developers has targeted 10 minority neighborhoods in the city — eight of them damaged by the civil unrest in May — for fast-track neighborhood planning efforts. *Continued on page 4*

In Brief

A retail developer will take 260 pre-1972 cars off the road as an air-pollution mitigation measure for a new retail center in Ceres.

Smith's Food & Drug Center agreed to the strategy as part of development approval for a 130,000-square-foot project to be anchored by Smith's own store. Purchasing the cars is expected to cost Smith's close to $200,000.

Heidi McNally-Dial, a senior planner with Ceres, said the city favored the strategy because it is "one of the only ways to get real emissions savings savings." She said it is difficult to measure the success of more common mitigation measures, such as bicycle facilities.

A consultant study found that more common air-quality mitigation measures such as bike racks and ridesharing programs would be a drop in the buck compared to the junker-car purchase, which will mitigate all of the retail center's air-quality impacts. Pre-1972 cars pollute as much as 10 times as much as the average car on the road today....

The U.S. Fish & Wildlife Service has postponed a decision on whether to add the California gnatcatcher to the federal endangered species list.

Fish & Wildlife was due to make the decision on September 17. But agency officials said they are still trying to determine whether the gnatcatcher found in California is a separate subspecies, or the same subspecies as similar gnatcatchers found in Baja California.

If the gnatcatcher were listed, the provisions of the federal Endangered Species Act would shut down development in large portions of Orange, Riverside, and San Diego counties. But Interior Department officials said the listing delay was not motivated by political considerations. Under law, Fish & Wildlife may postpone a decision until next March....

What if they held a beauty contest and nobody came?

That's almost what happened this year in San Francisco's annual competition to determine the allocation of building permits for new office buildings. The only "beauty contest" entrant was Catellus Development Corp., which submitted an eight-story building that will be part of its massive Mission Bay project. The Planning Commission approved the project even though the hardly anyone liked its design. One consulting architect called it "an unfortunate bit of suburban kitsch."

But the commissioners added a condition that no building permit be issued until the design "has been refined to a higher level." Catellus wants to postpone a detailed design until it knows who the building's tenants are going to be....

Santa Rosa has enacted a 10-story height limit on downtown buildings.

The ordinance was the culmination of several years of debate in Santa Rosa, where neighborhood groups rallied to fight a 15-story office building in 1987.

Any downtown building above four stories in height must meet a variety of special requirements, including an open public area and special mitigation measures. City planners predicted that the tall new buildings would be "slender, inviting, and in character" with other downtown buildings. ❑

CALENDAR

October

- **10-13: 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.
- **21-25: 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.
- **29-30: Financing Public Infrastructure and Services in California.** Los Angeles. Sponsor: UCLA Extension. Call: (310) 825-7885.
- **30: Subdivision Map Act.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.

November

- **5: Wetlands and Endangered Species: A Primer for Planners.** Goleta. Sponsor: UC Santa Barbara Extension. Call: (805) 893-4200.
- **6: Zoning and Planning: A How-To Course.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **6: Hearing: "Resolving Land Use Disputes: Mediation, Arbitration, and Litigation."** Sacramento. Sponsor: Senate Local Government Committee. Call: (916) 445-9748.
- **7-10: American Planning Association, California Chapter, Conference.** Pasadena. Sponsor: CC/APA. Call: (213) 848-2039.
- **12: Katz Hollis Annual Redevelopment Legislative Conference.** Los Angeles. Sponsor: Katz Hollis Coren & Associates. Call: (213) 629-3065.
- **13: Katz Hollis Annual Redevelopment Legislative Conference.** Napa. Sponsor: Katz Hollis Coren & Associates. Call: (213) 629-3065.
- **13: Transportation Impacts of Land Use Planning.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **18: EIR/EIS Preparation and Review.** Davis. Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **20: Exactions, Dedications, and Vested Rights.** Ventura. Sponsor: UC Santa Barbara Extension. Call: (805) 893-4200.
- **20: Subdivision Map Act: An Advanced Seminar.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.

December

- **3: After Lucas: Private Property Rights v. Governmental Land Use Regulation**. Los Angeles. Sponsor: UCLA Extension. Call: (310) 825-7885.
- **3: CEQA: A Step-by-Step Approach.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **4: Small Town Planning.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **4: Planning and Zoning Clinic.** Los Angeles. Sponsor: UCLA Extension. Call: (310) 825-7885.
- **11: GIS: An Introduction.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.

Growth Management Bills Fail to Pass Legislature

After a strong push by some Democrats last summer, the growth management issue fell by the wayside in the waning days of the Legislature, and no growth management proposals ever reached Gov. Pete Wilson's desk.

Surprisingly, even the proposed merger of three regional agencies in the Bay Area — an idea endorsed by governmental and civic leaders throughout the region — did not pass the Legislature. SB 797, by Sen. Becky Morgan, R-Menlo Park, failed on a Senate concurrence vote.

Meanwhile, the growth management package promoted last summer by Sen. Robert Presley, D-Riverside, and Assembly Local Government Chair Sam Farr, D-Monterey, did not pass either. Presley's bill, SB 929, was gutted and reused as a school finance bill. Farr's ACA 44, which would have permitted the passage of general-obligation bonds on a simple majority vote, died on the Senate floor.

Meanwhile, however, several bills of importance were enacted, including:

- ACA 6 (O'Connell), which would permit the passage of general-obligation bonds on a simple majority vote for school districts only. This measure, which Wilson supported, will appear on the June 1994 ballot — along with the controversial school voucher initiative, guaranteeing a robust debate on the future of public education in the state.
- SB 1464 (Mello), a bill that made several important changes to the Mello-Roos financing law. Notice to homebuyers (as well as secondary buyers of homes with Mello-Roos taxes) has been beefed up. Local agencies must adopt goals and policies about how they use Mello-Roos financing; and they must also make a legal finding that a 3:1 value-to-lien ratio exists. Also included is the so-called "anti-shopping provision," which prevents school districts and other special districts from acting as lead agency on a Mello financing unless the district is to receive most of the funds.
- AB 38X (Archie-Hudson), which provides tax breaks for construction companies that hire residents of riot-stricken portions of Los Angeles. City lobbyists pushed hard for this bill following the demise of AB 394, a bill which would have permitted L.A. to create new redevelopment areas in the riot zone more quickly. (*CP&DR*, September 1992.) The bill is expected to have a pricetag of $150 million.
- SB 97 (Torres), which permits the state to open the nearly completed state prison near Lancaster, thus ending a long and bitter fight over the proposed state prison in downtown Los Angeles. Torres's bill also calls for some $600 million to build three new state prisons — one near Soledad and the others in Madera and Susanville. Wilson deleted funds for a new prison in Delano.

A full report on the 1992 state legislative session will appear in the November issue of CP&DR ❑

L.A. Approves Warner Center Plan With Lower Traffic Fees

Los Angeles has approved a new plan for the Warner Center area that includes higher levels of development — but lower traffic fees.

The Warner Center Specific Plan will permit the area to grow from 15 million square feet to 35 million square feet over the next 20 years. But as part of the final deal with developers, city planning commissioners agreed to cut front-end traffic fees to $4,900 per vehicle trip — a third of the original proposal.

In return, the developers agreed to form a non-profit public-private entity, the Local Development Corp., that will lobby state and federal agencies for additional transportation funds. If those funds are received, they could add $1,800 per trip to the pool of available Warner Center transportation funds. If they are not received, the developers may have to pay the additional $1,800 at the back end of their projects.

> *"Developers agreed to form a non-profit entity hat will lobby state and federal agencies for additional transportation funds."*

Located in the western San Fernando Valley, the 942-acre Warner Center has emerged as a major office center in the last decade. But developers, neighborhood leaders, and city officials have spent years negotiating the details of Warner Center's future expansion. The negotiations have centered around two issues: how much additional development to permit, and how to pay for the needed traffic improvements.

The city originally proposed an overall development cap of 26 million square feet — meaning an additional 11 million square feet could be built — and a trip fee of $14,990. But developers complained that the growth cap was too low and the trip fee was too high, and neighborhood leaders complained that the transportation plan — expected to cost more than $600 million — called for too many overpasses.

Subsequently, the specific plan was altered to remove all but one overpass; recognize Warner Center's connection to the emerging commuter rail network in L.A.; restrict the number of parking spaces; and increase overall development from 26 million square feet to 35 million square feet. This plan brought the trip fee down from $14,990 to $7,500.

Then David Grannis, a planning consultant working for the Warner Center developers, proposed a shift in the way the trip fees would work: Each developer would pay only for traffic improvements associated with its own buildings, while the developers and the city would work together to try to secure state and federal funds for general street and transit improvements. Grannis's idea seemed aimed at cutting the fee to approximately $4,500 per trip.

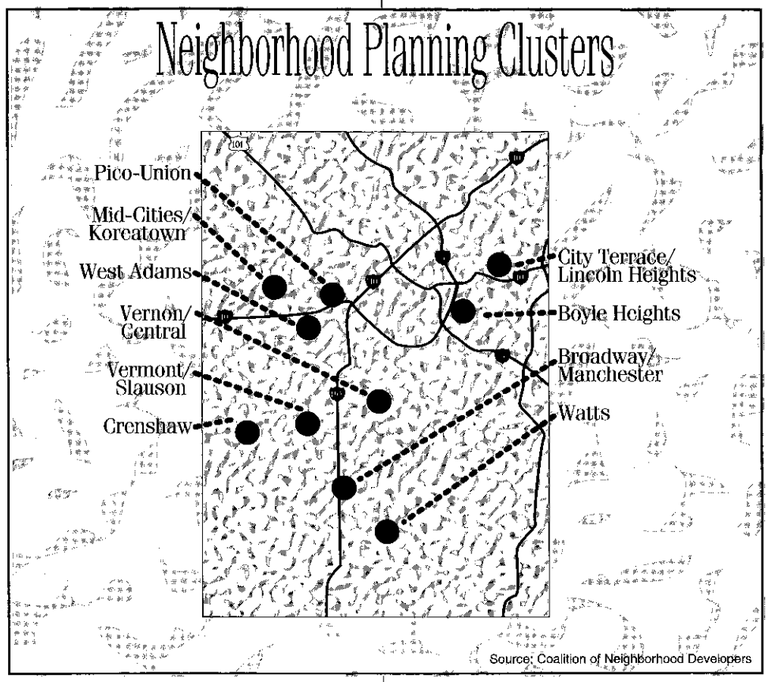
Initially, city officials expressed concern that Grannis's approach would merely put Warner Center in competition with other parts of the city for transportation funds. However, the planning commission agreed to the idea with a few wrinkles. The basic trip fee was increased to $4,900, and the city retained the discretion to increase the fee to $6,700 if other transportation funds are not forthcoming. ❑

L.A. Non-Profits Undertake Neighborhood Planning Effort

Continued on page 1

The initial plans are scheduled to be completed this fall. The coalition's effort is financed mostly by the Local Initiative Support Corp., which has been active in fostering a non-profit sector in L.A. over the last 10 years.

Coalition spokesman Anthony Scott said the non-profits moved quickly to establish the new planning effort "while the fires were still burning" in May. He said the action came partly as a response to the selection of Peter Ueberroth — a white businessman perceived as an outsider in the minority neighborhoods — as the head of Rebuild L.A. "We want to make sure the community is in control of the resources being made available," said Scott, executive director of the Dunbar Economic Development Corp. in the Vernon/Central neighborhood.



And so far, at least, the party line at L.A. City Hall is that the neighborhood planning efforts should be given great deference. The city Planning Department, which is undertaking a community plan update for the West Adams, South-Central, and Southeast portions of the city, plans to use the coalition's work as the basis for the community plans. "We're hoping to take community input (from the neighborhood coalition) and use it as some of the community input for the community plans," said Deputy Planning Director Melanie Fallon.

But those community plans are likely to be somewhat different from the exclusively physical, land-use-oriented plans that the city planning department has drawn up in the past. At the request of Mayor Tom Bradley and City Councilmember Mark Ridley-Thomas — the lead member of the council on reconstruction efforts — Planning Director Con Howe is coordinating regular meetings of officials from the Planning Department, the Community Development Department, the Housing Production and Preservation Department, and the Community Redevelopment Agency. Also meeting with the group is Jackie DuPont-Walker, a top staffer at Rebuild L.A.

Fallon said that city officials hope the inter-departmental coordination at the top will permit greater coordination in the field when plans are implemented. Essentially, she said, the Planning Department will facilitate the planning effort, while the other departments will make financial and other resources available to implement the plans.

Fallon's view was echoed by Roy Willis, the CRA official in charge of all projects in South-Central L.A. "Good planning grows out of the community, not from a bunch of bureaucrats downtown," Willis said. "We become one of an array of resources at the disposal of the community."

The planning effort being put together by the Coalition of Neighborhood Developers may be the most ambitious effort yet put together by L.A.'s non-profit sector. Only a few years ago, the non-profit developers were a fledgling group in Los Angeles, trailing far behind similar efforts in Chicago, New York, San Francisco, and other cities. Since the mid-'80s, however, the non-profit sector in L.A. has matured dramatically — both because of grass-roots efforts in the neighborhoods and because their growth has been fostered by LISC and other funding sources.

Indeed, the neighborhood coalition seems somewhat miffed at the whole idea that politicians from Bradley on down believed that an effort to rebuild Los Angeles had to be initiated after the riots. "The whole idea of rebuilding L.A. is a joke," Scott said. "What have we been doing all these years?"

The 10-neighborhood planning effort cuts across racial lines, including such historically black neighborhoods as Crenshaw, Vernon/Central, and Watts; Latino neighborhoods such as Pico-Union, City Terrace, and Boyle Heights (the last two were virtually untouched by the riots); and the Mid Cities/Koreatown area.

Though many of the non-profits have roots in the black community, they say they recognize the need to reach out to Latino residents who now represent the majority population in many historically black neighborhoods. For example, Scott said the coalition has contracted with the Central American Refugee Center, a Pico-Union-based group, for outreach efforts in the Vernon/Central area. The refugee center is also the lead agency in the coalition's planning effort in Pico-Union. ❑

■ Contacts:
Coalition of Neighborhood Developers, (213) 231-9371.
Anthony Scott, Dunbar EDC, (213) 234-76882.
Local Initiative Support Corp., (213) 624-2995.
Melanie Fallon, Deputy Planning Director, (213) 237-1818.

CP&DR LEGAL DIGEST

CEQA Doesn't Permit Extraterritorial Eminent Domain

Court Rules Against Fresno Attempt To Take Ranchland in Kern County

The California Environmental Quality Act doesn't confer government agencies with the power to take property outside its jurisdiction by eminent domain for the purpose of environmental mitigation, an appellate court has ruled.

Seeking to mitigate the possible loss of a rare plant located in a flood control basin, the Fresno Metropolitan Flood Control District had tried to use eminent domain to acquire 40 acres of land in Kern County. However, the appellate court concluded that extraterritorial eminent domain powers are available to local agencies only when such powers are "necessary" to complete a project. Since CEQA requires only that "feasible" mitigation measures be pursued, the extraterritorial powers may not be invoked for mitigation purposes under CEQA.

The case arose in the context of the Redbank-Fancher Creeks Flood Control Project, a project by the Army Corps of Engineers that would create a series of dams along a creek system near Fresno. In conducting environmental review under CEQA, the local Flood Control District discovered the presence of Tulare Pseudobahia, an aster with yellow flowers that is listed on the California endangered species list.

According to Douglas Jensen, lawyer for the Flood Control District, the district then began negotiating with the California Fish & Game Department over mitigation necessary under the Endangered Species Act. Jensen said the district bought some adjacent land but searched for more at Fish & Game's request. Eventually, the district located a viable stand of the plant on an 18,000-acre cattle ranch owned by Kenneth Mebane approximately 100 miles from the site of the flood control project. After unsuccesssfully negotiating with Mebane, the Flood Control District's board voted to try to acquire a 40-acre portion of the property via eminent domain.

Before the Court of Appeal, the Flood Control District tried to make its case by relying on *Golden Gate Bridge District v. Muzzi*, 83 Cal.App.3d 707 (1978). In that case, the Court of Appeal concluded that the Golden Gate Bridge District's power to condemn property for water transportation implicitly included the power to condemn property for mitigating the environmental effects of a water transportation project.

But the Court of Appeal distinguished the Fresno case from the Muzzi decision. Writing for a unanimous three-judge panel, Presiding Judge Hollis G. Best said that there is a difference between the Golden Gate district's environmental mitigation, which was required by the Army Corps of Engineers and other agencies, and the Fresno Flood Control District's environmental mitigation, which is somewhat discretionary because it was identified under the CEQA.

"In this case, the District alleges CEQA requires it to mitigate the adverse environmental effects of its flood control project by acquiring the Mebane property," Best wrote. "We do not read the pertinent portions of CEQA as *requiring* mitigation in this manner. CEQA imposes a duty on public agencies to avoid or mitigate the significant environmental impacts caused by projects *when feasible to do so*. CEQA also gives public agencies the authority to approve a project notwithstanding its environmental impacts, if the agency determines it is not feasible to lessen or avoid the significant effects." This last phrase is a reference to the ability of local governments to approve projects with a statement of overriding considerations.

Best then went on to link the feasibility requirement with the powers of extraterritorial eminent domain. Extraterritorial eminent domain is available to a local government agency, he said, only when such power is absolutely necessary to build a project — as when the Golden Gate Bridge district required a permit from another governmental agency to proceed.

"Obviously," he wrote, "if District is without legal power to condemn extraterritorially, then the proposed mitigation measure would not be feasible. And if there is no other feasible way to mitigate the environmental impact, District may proceed with the project and be in full compliance with CEQA. Under such circumstances, the property sought to be acquired would not — and could not — be LEGALLY necessary for the proposed project. In short, saying it's so doesn't make it so!"

Best then went on to conclude: "Accordingly, since the Mehane property is not legally necessary for the proposed project, we cannot by implication empower the District to exercise the right of eminent domain to condemn the Mehane property for environmental mitigation purposes as an incident to District's other statutory powers. Our conclusion is bolstered by Public Resources Code §21004, which states CEQA does not grant a public agency additional powers independent of those granted by other laws. Thus, CEQA's provisions, of themselves, do not confer on the District express or implied powers of extraterritorial condemnation." ❑

■ The Case:
Kenneth Mebane Ranches v. Superior Court of Kern County
■ The Lawyers:
For Kenneth Mebane Ranches: William J. Thomas, Seyfarth, Shaw, Fairweather & Geraldson, (916) 446-3970.
For Fresno Metropolitan Flood Control District: Douglas Jensen, Baker Manock & Jensen, (209) 432-5400.

CEQA

CEQA Doesn't Apply to Formation of Mello-Roos Financing Districts

The formation of a Mello-Roos district isn't a "project" under the California Environmental Quality Act, meaning it is not subject to environmental review, a state appellate court has ruled. The court said the creation of the district was not a prerequisite to development and therefore would not have an impact on the environment.

The ruling will make it easier to create so-called "master Mellos" with many landowners, said Dean Misczynski, acting director of the California Research Bureau and a drafter of the Mello-Roos law. Mello-Roos "community facilities districts" allow local governments to impose a special parcel tax for schools, roads, and other community facilities. Many districts are established on raw land with only one property owner, but "master Mellos" involve several landowners acting together with local government agencies.

The CEQA challenge to a Mello-Roos district in the Morgan Hill Unified School District came from Kaufman & Broad-South Bay Inc., a division of the large homebuild-

ing firm. Except for Kaufman & Broad, all the property owners within the proposed Mello-Roos district agreed to support the district's creation in exchange for development approvals. K&B is building 498 single-family homes and condominiums within the proposed district, and according to the appellate court the company believed the special taxes imposed by a Mello-Roos district would force the price of the homes up. A vote of landowners was taken on the creation of the district, but the votes were sealed before being counted when Kaufman & Broad filed suit.

Santa Clara County Superior Court Judge Read Ambler ruled in favor of K&B, ordering that creation of the Mello-Roos district be set aside until the school district complied with CEQA. Ambler also awarded K&B attorneys fees. But he was reversed by the appellate court.

The question of whether a Mello-Roos district's formation is subject to CEQA had not been litigated before. In making its argument, Kaufman & Broad relied heavily on the California Supreme Court's ruling in *Fullerton Joint Union High School District v. State Board of Education*, 32 Cal.3d 779 (1982), which involved the creation of a new high school district in Yorba Linda. The Supreme Court ruled that, to be considered a "project" under CEQA, a government activity did not need to affect the environment directly, but had to be "a necessary step in a chain of events which would culminate in physical impact on the environment." In that case, the Supreme Court concluded that the creation of a new school district was a necessary step in the construction of a new high school in Yorba Linda and therefore it was a project under CEQA. (CEQA applies only to "projects" that are "carried out" by government agencies.)

K&B argued that the Morgan Hill situation is analogous to the facts of the *Fullerton* case, but the Sixth District Court of Appeal disagreed. "Unlike the formation of the new school district in *Fullerton*, the formation of the facilities district here will not create a need for new schools," the court wrote. "Nor is the construction of new school facilities entirely dependent upon the formation of CFD 1 (the name of the Mello-Roos "community facilities district"). Development is already taking place in the area and facilities will (or will not) have to be constructed to accommodate the student population regardless of whether CFD is formed. If CFD 1 fails, the District will have to find some other method to meet its obligation to provide services.." ❑

■ The Case:
Kaufman & Broad-South Bay Inc. v. Morgan Hill Unified School District, No. H009173, 92 Daily Journal D.A.R. 12573 (September 11, 1992).

■ The Lawyers:
For Kaufman & Broad: Louis B. Green, Ware & Freidenrich, (415) 328-6561.
For Morgan Hill Unified School District: Jerome M. Behrens, Smith Woliver & Behrens, (209) 445-1352.

Judge Orders Halt to Construction On I-80 Expansion Project

An Alameda County judge has ordered Caltrans to stop work on expanding an 18-mile stretch of Interstate 80 through Berkeley and Richmond.

The stay was issued in mid-September at the request of the four environmental groups who sued Caltrans over the project, claiming the agency should have prepared a supplemental environmental impact report after the construction project was changed in scope. Caltrans had prepared an addendum to a previous EIR, which, unlike a supplemental, does not require circulation.

Caltrans lawyer Anthony Anziano said the stay could cost the agency millions of dollars in additional costs because construction had already begun. He also said some federal money for the $318 million project might be reallocated if the I-80 project is held up too long. A hearing on the merits is scheduled for October 30.

The I-80 project originally consisted of a series of "mixed flow" lanes — that is, lanes that could accommodate single-occupancy vehicles — designed to circumvent bottlenecks. The revised plan calls for two high-occupancy vehicle lanes to be built along the entire 18-mile stretch of road. However, the EIR was prepared when mixed-flow lanes were still contemplated as part of the project. Caltrans prepared an addendum to the EIR after the mixed-flow lanes were dropped. CEQA permits addenda when minor technical changes "do not raise important new issues about the project's significant effects on the environment." Unlike a supplemental EIR, an addendum need not be circulated for public review.

The environmental groups are arguing that an addendum to the EIR is not legally sufficient under CEQA because the project is essentially a new project. "It doesn't satisfy some fairly clear standards for an addendum," said Mary Hudson, lawyer for the environmental groups.

Hudson also said the environmental groups are making a variety of other arguments. Among other things, the plaintiffs say that the I-80 project stands in violation of policy goals under the new federal Intermodal Surface Transportation Efficiency Act, and that an air-quality analysis should have been conducted using new emissions factors released by the state Air Resources Board. (*CP&DR*, September 1992.) The four environmental plaintiffs are Urban Ecology, the Golden Gate Chapter of the Audubon Society, the Sierra Club, and the Auto-free Bay Area Coalition.

The I-80 project is one of only a handful of major transportation projects moving forward in the Bay Area. Environmental groups led by the Sierra Club Legal Defense Fund have been locked in litigation with the state and the Metropolitan Transportation Commission over the air-quality analyses used by MTC in determining whether transportation projects conform to the federal Clean Air Act. The I-80 expansion project was the first approved by the MTC under a new air-quality analysis method approved by a federal judge in San Francisco. (*CP&DR*, May 1992.) ❑

■ The Case:
Urban Ecology Inc. v. California Department of Transportation, Alameda County Superior Court No. 705332-4.

■ The Lawyers:
For Urban Ecology: Mary Hudson, 510 465-4494.
For Caltrans: Anthony Anziano, (415) 982-3130.

MELLO-ROOS DISTRICTS

Homeowners Must Pay Baldwin Co. $226,000 in Legal Fees on Mello Case

Three homeowners in San Marcos have been ordered to pay the Baldwin Development Co. $226,000 in attorneys' fees as a result of a failed legal challenge involving disclosure of Mello-Roos taxes.

San Diego County Superior Court Judge Ronald Johnson issued the order after granting summary judgment — that is, a legal victory prior to a trial — on behalf of Baldwin.

The homeowners had argued that Baldwin had not complied with the state's disclosure requirements on Mello-Roos taxes when the homes were first sold. The Baldwin disclosure indicated that the taxes would continue for 20 to 30 years, but a city consultant later estimated that it would take 75 years to pay off the Mello-Roos bonds issued to build infrastructure in the 250-home subdivision.

Robert Gilbert, Baldwin's lawyer, said the judge ruled against the homeowners because the consultant had quickly retracted the study which included the 75-year estimate. He said Johnson had found that Baldwin provided "the fullest and most accurate disclosure possible." But Patrick Catalano, the homeowners' lawyer, said: "There is no question that after people bought, the city took the position that the bond would take 75 years to pay off. There is no question of what happened." He said his clients will appeal the ruling.

Homeowners have often complained about poor disclosure of Mello-Roos taxes during the homebuying process. In at least two other instances, homeowners have sued developers seeking relief. But the San Marcos case is believed to be the first instance in which homeowners were ordered to pay a developer's attorneys fees. The attorney fee provision was included in 1988 revisions to the Mello-Roos law, which also beefed up the provisions for disclosure. The provision in question is Government Code §53341.5, which says that in a legal dispute over Mello-Roos disclosure, the losing party *shall* pay the winning party's attorneys fees. ❑

■ The Case:
Berk v. Baldwin Development Co., San Diego County Superior Court No. N51075

■ The Lawyers:
For the homeowners: Patrick Catalano, (415) 788-0207.
For the Baldwin Co.: Robert Gilbert, Latham & Watkins, (619) 236-1234.

BILLBOARDS

Court of Appeal Amends Ruling On Removal of Coastal Billboard

After a rehearing, the Second District Court of Appeal has once again ordered that a major outdoor advertising company's lawsuit against the Coastal Commission be dismissed on procedural grounds. However, both sides claimed victory, saying that the new decision gives each side something they wanted.

The case involves the question of whether the Coastal Commission must pay compensation to billboard owners as a condition of a building permit on beachfront property. In the initial ruling, the appellate court's answer was yes — but that answer was based on constitutional grounds. The Coastal Commission argued — unsuccessfully at first, successfully upon rehearing — that the legal basis for compensation is not the constitution but the state's Outdoor Advertising Act.

Meanwhile, lawyers for Patrick Media Group, one of the state's largest billboard companies, said they were satisfied with the outcome of the rehearing. Among other things, the court ruled that the Outdoor Advertising Act does in fact apply to the Coastal Commission, though the commission's lawyers argued otherwise. "The substantive stuff in this case is very good for us," said Patrick Media's lawyer, Richard Hamlin.

Patrick Media did not wind up with any compensation for removal of the billboards in this particular case, however. The appellate court ruled that the company should have sought compensation by filing an administrative mandamus proceeding — which has a 60-day time limit — rather than filing a takings lawsuit with a longer time limit. Writing for the court, Judge Walter Croskey said that while the Outdoor Advertising "plainly declares ... a right to compensation, he added: "(I)t does not follow that the owners of removed billboards are excused from established procedural requirements for asserting their claims of compensation."

The case is important to billboard companies because it involves the question of how closely they must track other land-use permit activities on or near land they lease for billboards. (Large companies like Patrick have thousands of billboards in California alone.)

The Patrick case began in March 1986, when the Coastal Commission approved a construction permit for a 171-unit hotel along old Highway 101 in Solana Beach, a community just north of San Diego. The permit included a condition for removal of three billboards owned by Foster & Kleiser Outdoor Advertising.

Foster & Kleiser took the signs down in May, but not before sending a certified letter asking the Coastal Commission for $34,514 in compensation — the signs' value under a schedule written by the California Department of Transportation, which administers the billboard compensation law.

The Coastal Commission responded by telling Foster & Kleiser it should discuss compensation with the landowner. Instead, the company filed a claim in August 1986 for compensation with the State Board of Control, the entity that handles claims against the state. Patrick Media Group, which bought out Foster & Kleiser the next month, decided to take the issue to court after the claim was denied.

Los Angeles Superior Court Judge Ronald M. Sohigian agreed that compensation was required and approved an agreed judgment of about $60,000, including the value of the signs plus attorneys' fees and costs. In appealing the case, the Coastal Commission argued either that it was exempt from the Outdoor Advertising Act or, if the law did apply, that the billboard owners had used the wrong procedure to seek compensation.

The Commission had argued that it was exempt from the Outdoor Advertising Act (Bus & Prof Code §5412 & §5412.6) because it is not specifically mentioned in the law. The court rejected that argument by saying the law plainly states that it applies "to any governmental entity." The court also rejected the commission's argument that it was shielded from inverse condemnation actions by Gov. Code §818.4, which protects the government from tort liability for ordinary injuries caused by the issuance of a permit.

The appellate court did, however, buy the Coastal Commission's argument that Patrick Media Group should have filed an administrative mandamus proceeding, the general procedure for challenging an administrative agency's action, rather than an inverse condemnation claim with the State Board of Control. That meant that Patrick Media Group had just 60 days to file its demand for payment, rather than the three-of five-year statute of limitations for inverse condemnation claims.

Croskey wrote that "where — as here — a claimed taking is the consequence of an order, determination, or other action of record by an administrative agency, and the existence, and substantially the full extent, of the taking are known to the claimant at the time when it remains reasonably possible for the acting government agency to rescind or modify its action rather than become liable for the payment of compensation, the claimant must comply with procedural requirements which afford the agency the opportunity to do so."

In an interview, Hamlin said he believed this argument flies in the face of the "temporary takings" section of the U.S. Supreme Court's ruling in *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 487 U.S. 304 (1987), which requires compensation for regulatory actions even if they are reversed later. However, he said overall the revised ruling was one his client "could live with." ❑

■ The Case:
Patrick Media Group v. Coastal Commission, No. B056181, 92 Daily Journal D.A.R. 12785 (September 15, 1992).

■ The Lawyers:
For Patrick Media Group: Richard Hamlin, Stall & Hamlin, Los Angeles, (310) 552-0744.
For Coastal Commission, Richard Frank, assistant attorney general, (916) 445-8178.

ASSESSMENT DISTRICTS

Court Rejects Broad-Based Attack On Assessment District Law

In a case from Sacramento, the Court of Appeal has deflected a broad-based attack on assessment districts.

The ruling could lead more localities to use financing schemes available under the little-known Integrated Financing District Act, which has been tied up in litigation since shortly after its passage in 1986.

In upholding the law, the appellate court followed a line of California cases stating

that, in forming assessment districts, localities do not have to engage in a precise accounting of the costs and benefits for individual property owners.

The court also ruled that assessment schemes may be used to pay for the entire cost of public facilities, even though the general public may benefit from them. And the court concluded that localities may use the property-owner protest procedures included in the Integrated Financing District Act, rather than those contained in the Majority Protest Act of 1931.

The concept of the integrated financing district emerged from the Legislature shortly after the California Transportation Commission decided, in 1984, that it would no longer provide funds for freeway interchanges. According to Dean Misczynski, acting director of the California Research Bureau and a drafter of the law, integrated financing districts are designed to provide a funding mechanism in cases when one developer is willing to foot the bill up-front for big-ticket infrastructure items. Other landowners within the district must eventually pay their share, but not immediately. Instead, they are levied with "contingent assessments" — assessments which kick in when they develop their property. Owners of already developed property continue to pay assessments under previous, more traditional assessment schemes — hence the term "integrated."

In the case before the Court of Appeal, Sacramento County had established an integrated financing district to deal with traffic improvements for the Bradshaw Road/U.S. 50 corridor.

However, the assessments were challenged in court by Southern Pacific Pipe Lines Inc., which was assessed some $300,000 for 30 acres of industrially zoned land owned within the district. Most important, the pipeline company claimed that the assessment was invalid because the improvements would create a benefit to the general public, and that the company's own property would derive no benefit from the improvements. The company also claimed that the assessments were based on erroneous traffic counts; that the county should have included homeowners, churches, and schools in the district; and that the board had subverted a property-owner protest by not following the Majority Protest Act of 1931.

In 1990, Bertram D. Janes, a referee appointed by the Superior Court, issued summary judgment in favor of the county. Southern Pacific Pipeline appealed, but a three-judge panel of the Third District Court of Appeal in Sacramento affirmed Janes' ruling.

The central focus of Southern Pacific Pipeline's argument in the appellate court was that the county's assessment was disproportionate to the benefits the company received. But the appellate court shot this argument down quickly, using as its ammunition the California Supreme Court's ruling in *City of Baldwin Park v. Stoskus*, 8 Cal.3d 563 (1972). The appellate court quoted the Supreme Court as stating that "the amount of each individual assessment is not necessarily measured by the precise amount of 'benefit' flowing to the property owner affected. The assessment is usually based upon the cost of the improvement, spread among the benefited property owners upon some equitable, nondiscriminatory basis. The absence of an exact relationship between the assessment levied and the benefit received will not, however, invalidate the assessment, at least in the absence of fraud, mistake or gross injustice."

Southern Pacific Pipeline also made a variety of arguments related to the protest measures available to property owners in proposed assessment districts. But these were struck down by the court as well. ❑

■ The Case:
Southern Pacific Pipe Line Inc. v. Sacramento County Board of Supervisors, No. C010587, 92 Daily Journal D.A.R. 12583 (September 11, 1992).
■ The Lawyers:
For Southern Pacific Pipe Line: R. Gregory Cunningham, (213) 486-3000.
For Sacramento County: Kenneth C. Mennemeier, Orrick Herrington & Sutcliffe, (916) 323-7904.

EMINENT DOMAIN

Eminent Domain Value Must Consider Future 'Unity of Use'

Separate lots may be considered contiguous for eminent domain purposes if they are likely to be used as an integrated economic unit, the Fourth District Court of Appeal in San Diego has ruled. The ruling overturned a trial judge's decision that the lots should be considered separate because they are not used for a unified purpose.

The case involved the City of San Diego's attempt to take three of five lots on San Ysidro Boulevard owned by Fritz and Betty Neumann. The city's desire to take some lots and not others presented complications for the Neumanns, because neither of the two remaining lots had independent access to San Ysidro Boulevard.

At trial the Neumanns attempted to introduce evidence that they would incur "severance damages" on their remaining property. San Diego Superior Court Judge Robert J. O'Neill would not permit the evidence to be introduced, ruling that legally separate lots could be considered together only if there was currently a unity of use. But the appellate court overturned him.

In analogous cases in California law, the Court of Appeal found little support for Judge O'Neill's position. Furthermore, the court found that other principles of just compensation may reinforce the conclusion that future uses should be included.

The court warned, however, that its decision "not be misconstrued or over-extended." First, the court said, "we do not hold that existing diverse uses are irrelevant to the issue, because the presence of such diverse uses is proper evidence in evaluating the probabilities of an integrated development." And second, the justices made clear that they were not passing judgment on whether the Neumanns deserved severance damages — only that future unity of use must be considered in determining what those damages are. ❑

■ The Case:
City of San Diego v. Fritz Neumann, No. D014683, 92 Daily Journal D.A.R. 11481 (August 20, 1992)
■ The Lawyers:
For the city: Leslie J. Girard, Deputy City Attorney, (619) 533-4700.
For the Neumanns: Roscoe D. Keagy, Asaro & Keagy, (619) 297-3170.

FYI

Air-quality regulations designed to limit emissions from enamel house paints are subject to the California Environmental Quality Act, the First District Court of Appeal has ruled. The court found that an adverse environmental impact might result from the rule, and said that the state law requiring local air districts to regulate air toxics (Health & Safety Code §39666) is not exempt from CEQA. The case is *Dunn-Edwards Corp v. Bay Area Air Quality Management District*, No. A055155, 92 Daily Journal D.A.R. 12829 (September 18, 1992)....

The tax-sharing agreement between the city and county of Fresno appears to be falling apart, as evidenced by the recent lawsuit filed by the city against the county. The city claims the county tried to block annexation of a Mitsubishi dealership, a business both entities appear to want within their borders for sales-tax purposes. *City of Fresno v. County of Fresno, Fresno County Superior Court* No. 467179-8....

The City of Anaheim will receive $5 million to settle a dispute with its own insurance companies over legal costs from the city's longstanding fight with the California Angels over development of the Anaheim Stadium property.❑

Redevelopment Agencies Adjust to Big Cut in State Budget

Continued from page 1

two- or three-year period — but did not do so. Instead, a further cut in the AB 8 bailout will probably be discussed as part of next year's budget negotiation.

The budget cut with the most important consequences for land-use planning and real estate development was the unprecedented one-time shift of $205 million from redevelopment tax-increment accounts to school districts. The cut will mean a major shift in redevelopment activities this year — especially in economic development activities.

With a total cash-flow of more than $2 billion — including about $1.3 billion in property tax increment funds — redevelopment is the state's largest economic development program. The $205 million cut represents 16% of total tax-increment funds statewide, but it will have a disproportionate impact on new economic development activities for three reasons.

First, the state budget cut is subordinate to existing bond debt of redevelopment agencies.

Second, redevelopment agencies may take no more than half of the tax-increment hit from their current low- and moderate-income housing revenues – the so-called "20% setaside."

And third, redevelopment agencies do not receive credit for "pass-through" agreements with other taxing entities, including schools.

Thus, cities with recent redevelopment projects that have pass-through agreements are likely to have less room to maneuver than cities with old projects that do not have pass-through agreements. As an example, the City of Lancaster — which lobbied for pass-through credits — passes through about half of its $20 million in annual tax-increment revenues to other agencies, leaving $10 million for redevelopment activities. Another 20% — or $4 million — must be used for low/mod housing. Of the remaining $6 million, about $4.9 million is need for bond debt. Thus, Lancaster has $1.1 million in general redevelopment funds available, but must provide well over $3 million toward balancing the state budget.

"We put these deals together right (by passing through funds to the school district) and we're getting a double hit for it," said Lancaster redevelopment director Steve Dukett. "We may have to borrow money to make the payments."

Another hard-hit city is Walnut, which passes through up to 77% of its tax-increment to Los Angeles County under an agreement reached in 1981. Under the deal, Walnut receives a maximum of $4 million in tax-increment funds from its own redevelopment. The remainder of the money — currently $8 million — goes to the county. But Walnut must pay 16% of the total tax increment — or about $1.9 million — to local school districts to help balance the state budget. Because none of this money is flowing to local school districts, City Manager Linda Holmes complained that Walnut is having to pay "the county's share" of the tax-increment to the schools.

Holmes said city officials have asked State Sen. Frank Hill, R-Whittier, to carry special legislation giving Walnut credit for the money passed through to L.A. County. She claimed that very few other redevelopment agencies have such a high percentage pass-through as well as a cap on the tax-increment they receive. Unlike many redevelopment agencies, which concentrate on commercial and industrial development, Holmes says Walnut's agency has focused on constructing public facilities.

In response to these local complaints, state officials merely stated, in the words of Senate Local Government Committee Chair Marian Bergeson, that in 1992 there were "no good choices" and "no easy decisions." But redevelopment is becoming more of a target in Sacramento, especially because the state loses an estimated $400 million a year by "backfilling" property tax revenues lost to school districts because of redevelopment.

However, even though the state has ordered cities and counties to turn over $205 million in redevelopment funds, the total amount may not be forthcoming. A group of 80 cities around the state — the so-called "lows and nos" — receive very little general property tax money because prior to Proposition 13 they had either no property tax or very low property tax rates. (Lancaster is among these cities.) These cities may not have enough money — either in redevelopment coffers or in general property-tax money — to meet the 16% cut.

In those situations, Sacramento experts say, the school districts probably won't receive the expected funds from the local governments and will have to rely on the state to provide an equivalent amount. Experts predicted that the figure could be as much as $30 million statewide. ❑

■ Contacts:
Bill Carlson, California Redevelopment Association, (916) 448-8760.
Peter Detwiler, Senate Local Government Committee, (916) 445-9748.
Steve Dukett, Lancaster Redevelopment Agency, (805) 723-6100.
Linda Holmes, City of Walnut, (714) 595-7543.

OPR Budget Emerges Unscathed

After a bruising battle with the Senate Budget Committee, the Governor's Office of Planning and Research won approximately the same size budget as last year.

OPR received a $3.9 million budget — including $700,000 for the Office of Permit Assistance, which the Legislature allocated to the state Resources Agency. The Resources Agency will contract with OPR to do the permit assistance work. The agency will have to take a small but as-yet-undetermined hit as part of Gov. Pete Wilson's "unallocated cuts" — a $65-million reduction in executive branch spending he agreed to as part of the budget deal. "The unallocated cut will make things tight for us," said OPR Director Richard Sybert.

But for a while, it looked like OPR's budget would be much tighter. Unhappy with OPR's performance — and its supposed lack of cooperation with the Legislature — a Senate budget subcommittee chaired by Sen. Daniel Boatwright, D-Concord, proposed cutting OPR's budget to approximately $250,000. Such a cut would have virtually eliminated the agency, leaving only Sybert and support staff. "We were trying to send a message that if this is the OPR we've got, we don't want it," said Boatwright staffer Barry Brokaw.

However, Wilson objected to this and other cuts, claiming the Legislature was trying to micro-manage his office. Impatient for a budget deal in September, Boatwright and other Senate leaders agreed to restore OPR's funding.

Sybert called the transfer of funds for Office of Permit Assistance to the Resources Agency "a clerical error." However, Democrats in the Legislature have had a long-running battle with the Wilson Administration this year over permit assistance issues. ❑

■ Contacts:
Richard Sybert, Governor's Office of Planning & Research, (916) 322-2318.
Barry Brokaw, aide to Sen. Boatwright, (916) 445-6083.

Sales-Tax Pie May Shrink Permanently

Continued from page 1

Some of the revenue loss is clearly due to the recession. Increasingly, however, analysts are suggesting that the fabled California retail market has at last reached its limit. In a recent report for the California Housing Round Table, Orange County retail consultant wrote that "the inventory of retail floor space is growing considerably faster than available consumer expenditure. As a result, consumer expenditure is being spread over more square feet of gross leasable area, resulting in suboptimal sales volumes per square foot."

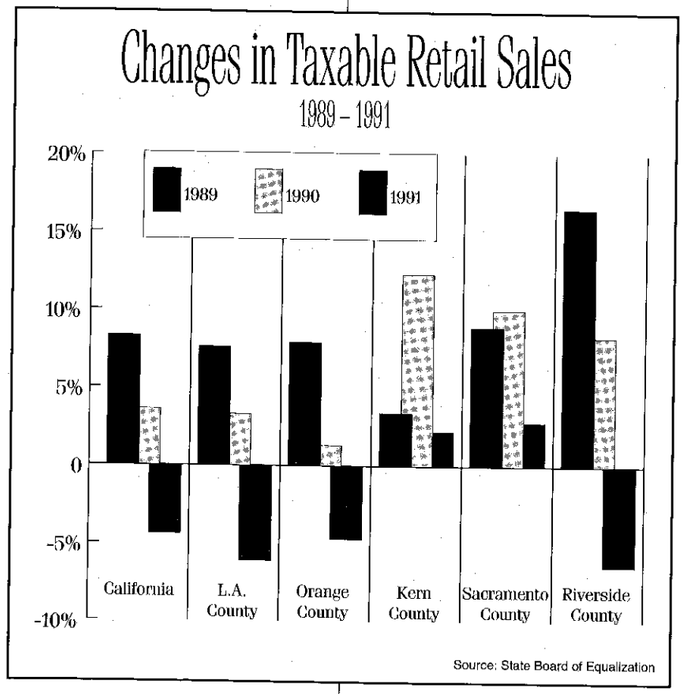
Nevertheless, local officials throughout the state continue to subsidize major retailers and auto dealers, sometimes through land write-downs, sales-tax rebates, and other incentives. In the case of Price Club and Wal-Mart — the latter has become a major player in California in just the last year — it is not uncommon for California cities to offer $3 million in subsidies and incentives, usually through a redevelopment deal. Critics of redevelopment have long claimed that local governments are artificially creating too many retail outlets. Gobar says that so many Wal-Marts and Price Clubs "would not be developed in a pure market environment."

The need to generate revenue is understandable. Many of these cities are so-called "lows and nos," meaning they had low property taxes prior to Proposition 13 — or none at all — and therefore receive a small share of such taxes today. "They don't have the property taxes to fall back on," says Richard Norris, executive director of the Building Industry Association in the Antelope Valley. "They have been almost totally reliant on impact fees and sales-tax revenues to run their cities."

With construction down, impact fees have dropped precipitously, and the fight over sales-tax revenues is increasing. And the deals are continuing to be made. Palmdale recently doubled the size of its regional mall to 1.5 million square feet. And Oxnard just approved a 600,000-square-foot retail center anchored by a Wal-Mart. "We need revenue," City Councilman Manny Lopez said at the meeting where the project was approved. "We're at a situation where we can't even keep our restrooms open in the park." In an interview, Lopez acknowledged he wasn't sure whether the mall would be a success; he said he had merely taken "an educated guess" based on a consultant's projections.

Yet it's not clear that bringing in a Wal-Mart or a Price Club into town results in a net increase in sales-tax revenue — either for the community which subsidizes it or for the surrounding region. Not only do big stores soak up the retail dollars that would otherwise flow to smaller, locally owned businesses, but they're so efficient at generating high-volume sales that they actually displace "Mom and Pop" stores on more than a one-for-one square-foot basis. Because a Circuit City can generate $650 per square foot in retail sales, every square foot can displace four square feet of little-guy space grossing $150 per foot.

At the same time, however, many cities seem to think they need the big retailers as a defensive move — to protect their sales-tax base against the inevitable decline of smaller retail stores when the bigger stores move into the region.



In Riverside County's Moreno Valley, where a Price Club opened in September, planner Mitch Slagerman acknowledges that sales tax is decreasing in the greater Riverside market area. But he still expects an increase in Moreno Valley's taxable sales: "In our community, taxable sales have traditionally been lower than in other communities because we didn't have the outlets." Also, Moreno Valley recently "won" a battle with Riverside over location of a regional mall.

At the Cerritos Auto Mall — long recognized as an economic development colossus — something similar is happening. The mall's sales figures have actually climbed slightly, from $430 million in 1990 to $500 million in 1991. But within a 10-mile radius, auto malls have collapsed in Long Beach and Compton, while individual dealer sites have folded in Bellflower, Santa Fe Springs, Lakewood, and Downey.

"Eight years ago, the car dealerships in Cerritos were doing three times (the business) per dealership as the average dealership in the same county," Gobar said in an interview. "Cities said, 'Here's magic.' And they all get auto plazas. But there only so many consumers. When every city has an auto mall, sales revert to average sales volumes." Thus, the advantage any particular city has may be only temporary — and the sales-tax base that built up by aggressive cities may erode no matter what further actions they take. "There are limits to beggaring your neighbor," Gobar says. ❑

■ Contacts:

Alfred Gobar, retailing consultant, (714) 524-1000.
Bart Doyle, general counsel, BIA of Southern California, (213) 489-4060
Richard Norris, BIA of Antelope Valley, (805) 949-6857.
Mitch Slagerman, City of Moreno Valley, (714) 243-3467.
Bob Rossi, State Board of Equalization, (916) 445-6464

NUMBERS

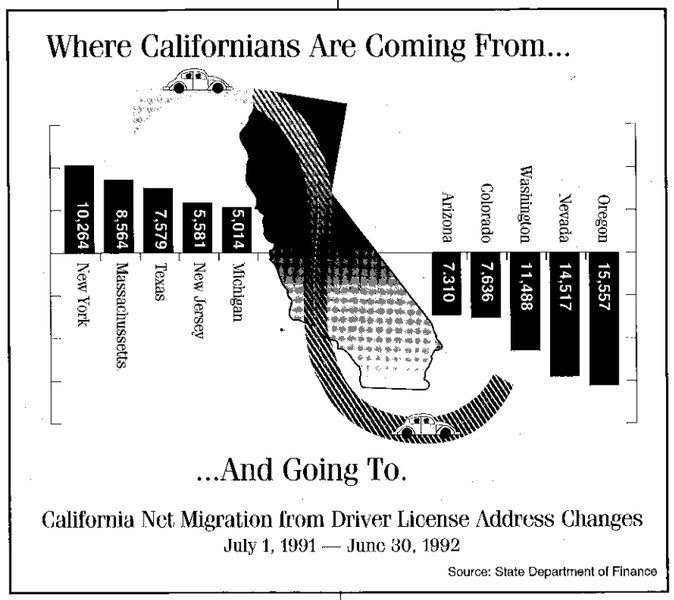
Stephen Svete

The Exodus Begins

"Welcome to California," the bumper stickers used to announce, and then: "Now go home." And for the first time since 1974, people in other states are heeding that advice.

The state Department of Finance recently released its annual Drivers' License Address Change data, and found that California experienced a net loss of more than 13,000 registered drivers to other states during the 1991-92 fiscal year. But driver outmigration was not uniform, and a look at the county-level data may give strong clues about the relative health of California's regional economies.

The DMV data does not reflect an overall decline in population. On the contrary, continuing immigration and a birthrate 20% higher than the national average will yield a population of 36 million by the year 2000. (The state checked in with 29.8 million in 1990.) What the driver data reflects is the movement of a subset of the general population — those who already have driver's licenses in one of the 50 states and changed their residence to or from California.



Still, the driver records are considered the best indicator of movements between states, and the net loss of 13,060 drivers represents a significant reversal of a longtime migration pattern. As recently as 1989, the state experienced a net gain of 131,000 drivers — and even last year the figure was up by 36,000. The statistics for 1992 were culled from a total of almost 700,000 people who filed for changes in drivers' licenses resulting in a move to or from California.

The reason for the loss will come as no surprise to most: fewer employment opportunities are available here, and the cost of living is cheaper elsewhere. According to Elizabeth Hoag, demographic research manager at the state Department of Finance, "one of the main reasons people move is for jobs." She concedes that much of the data can be directly attributed to California companies either downsizing here and/or consolidating operations in other states. Another large out-migrating group is retirees, cashing out sizable home equities to reside in more bucolic — and less expensive — hinterland states. This latter theory is borne out by another statistic: the negative migration shows up only to the over-30 age group, and the oldest age group (65+) has the most outbounders (66%).

The biggest gainers are all the other western states. Leading the way was Oregon, which received 15,557 more drivers than it sent our way. After Oregon come Nevada, Washington, Colorado, and Arizona, in that order. The list of "donor" states is topped by New York, which sent 10,264 more drivers than it received from us. Other top donor states include Massachusetts, Texas, New Jersey, and Michigan — all states whose economies are less than robust.

Interestingly, the state with which California shares the strongest migration relationship (as measured in total number of both inbounders and outbounders) is Texas: 53,651 drivers moved from one state to the other in the last year, or close to 8% of California's total in- and out-migration. The state with the weakest migration relationship is West Virginia, with whom California exchanged only 1,059 drivers.

There are interesting variations in migration at the county level. For example, whereas urban Southern California experienced a negative migration pattern, the urban Bay Area saw increases. The biggest loser was L.A., where a net total of 12,658 drivers packed it in. The big winner, oddly, was San Francisco — a city of stagnant population growth — which saw a net increase of 6,926 drivers.

Other net-loss urban counties in the south were San Bernardino (losing 4,303 drivers), Orange (3,981), Ventura (2,611), and Riverside, (1,402). Other gainers in the Bay Area were Alameda (adding 1,708 drivers), Santa Clara (1,465), Marin (569), and Contra Costa (212). Another notable gainer was San Diego County, which had a net increase of 3,824 drivers from other states.

The age group that saw the biggest out-migration was the 45-to-64-year-old group, which experienced a net loss of more than 26,000 drivers. On the other hand, young drivers continue to pour into the state. Eighteen-to-24-year-olds still flock to California in large numbers — a net increase of 35,828. Perhaps the lure of stardom for the young still outpolls a steady job. ❑

DEALS

Morris Newman

Will Twin Ports Be A Binational Pipe Dream?

The concept of TwinPorts sounds like an economic development dream. A new $1 billion airport is built in the San Diego area just over the border from the international airport in Tijuana. In combination, the two airports become an international hub for travelers and freight destined for both Mexico and California. Thousands of jobs are created, and San Diego becomes the Gateway to the North American Free Trade Agreement.

Despite the visionary sound of the proposal, many San Diego politicians are dead-set against the idea of building a major airport on the U.S.-Mexico border. The objections are many: increased traffic on what is already the world's busiest border crossing; noise; pollution; and time-consuming negotiations with a foreign government. Some of the opposition likely masks a darker agenda of racism and xenophobia. At the heart of the issue, however, is whether San Diegans want their city to become a major trade center.

> *"At the heart of the issue is the question of whether really San Diegans want their city to become a major trade center."*

Under the TwinPorts concept, the Rodriguez Airport in Tijuana and the TwinPorts facility in San Diego would share runways but operate separate terminals. The two airports may be connected by a bridge or a special road, although customs details have not been fully worked out. In September, the U.S. Federal Aviation Administration awarded a $450,000 grant to San Diego to conduct a fuller study on the TwinPorts concept.

Nearly everyone in San Diego seems convinced that a new airfield is desirable, but the consensus ends there. In an April survey, the Union-Tribune showed county residents favoring a new airport by a 3-1 ratio. But opinion was split among a border airport, a commercial airport at the present site of Miramar Naval Air Station, and an expansion of the existing Lindbergh Field, perhaps the smallest airfield in any major U.S. cities. Lindbergh cannot be expanded because mountains interfere with radio transmissions, and the Navy is firmly against giving up Miramar. TwinPorts appears the best option.

The concept has been championed most vigorously by Deputy Mayor Ron Roberts. He spearheaded a moratorium in June of 1991 on a 1,500-acre portion of the 5,000-acre TwinPorts site in Otay Mesa. He also instructed planners to prepare a preliminary TwinPorts conceptual study for the feds in anticipation of the FAA grant.

To be sure, TwinPorts is not without problems. To offset the traffic impact of such an airport, "you have to have the world's most sophisticated and extensive transportation to meet federal air standards," says Assemblyman Steve Peace, D-Chula Vista, perhaps the most visible opponent of TwinPorts.

Another objection is that the City of Chula Vista would not receive much of the benefit of the Otay Mesa airport. Though Chula Vista is adjacent to the Otay Mesa site, it has little developable land. "San Diego gets all the benefits and Chula Vista gets all the impacts," says Peace.

The difficulty of planning an airport with a foreign government is a further objection. Councilman Filner claims an agreement would take 10 years. Filner aide Gwen Davis points out that only one binational airport currently exists — at Basel between France and Switzerland. "There's probably a reason why there's only one," Davis says.

But beyond all those issues is a fear and loathing of Mexico and Mexicans in San Diego. Champions of TwinPorts accuse opponents of racism, and the charge is plausible in a city where people spend their leisure hours shining their headlines at the border. On the other hand, critics of a Mexican agreement have some concerns that are not easily dismissed: the nation's record of corruption, extreme poverty, and poor planning.

The city has been negotiating with the Mexican government since June of 1991. The process is diplomatically awkward: The Mexican government controls its airports through the federal government, while airports are a local issue in the U.S. The Mexicans have held their cards close during the tense months preceding the conclusion of negotiations on the trade agreement. Mexican authorities met with a San Diego contingent led by Roberts in early September. The subsequent statement released by Mexican authorities — "it is essential to engage in an intensive and accelerated planning effort aimed at developing the solution that best meets the aviation needs of the San Diego-Tijuana region" — sounds more like a summary of Israeli-Syrian peace talks than a plug for a billion-dollar airport.

One person attempting to sort out the issues is Charles Nathanson, director of the public policy program at UC San Diego and director of a citizen group, San Diego Dialogue. Widely viewed as a supporter of TwinPorts, Nathanson maintains he is only interested in making sure the idea is properly explored. "Given very few technically feasible sites, we should not lose any site whose benefit has not been thoroughly evaluated," he says. He wants to create a joint powers authority that would include San Diego County, the feds, the San Diego Association of Governments, and the San Diego Unified Port District.

The biggest political card in the TwinPorts debate so far has been played by Assemblyman Peace. Five South Bay cities, including San Diego, share revenue from the port district on the condition that all five cities agree on the split. In September, Peace wrote Chula Vista Mayor Tom Nader, asking him to threaten the other cities that he would shatter the agreement unless San Diego drops the TwinPorts proposal. Officials in other cities responded with outrage and charges of "blackmail." Peace says it was "just a suggestion."

Such shenanigans are good reason to create the joint powers authority suggested by Nathanson. And ultimately, San Diego may have to decide whether to build an Otay Mesa airport or remain a second-tier city economically despite its large population. The problem is that the latter is exactly what a lot of local residents want. "We don't want to be Los Angeles," says Peace. The TwinPorts decision is really a decision by San Diegans about their future. Until they make that decision, TwinPorts will remain just a pipe dream. ❑