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Inside

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CEQA Remains 'Moving Target' For Reformers

Critics Will Try Again Next Year

By
Morris Newman

The California Environmental Quality Act remains a moving target for opponents who would like to see the state's environmental regulations streamlined and simplified.

Despite reform attempts by business and homebuilders, the law has not been substantially changed in the last two legislative sessions because of successful rear-guard actions by environmentalists. A set of reform recommendations put forth recently by the Little Hoover Commission may stimulate legislative action next year, but political disarray in Sacramento may prevent sweeping change until after the 1996 election.

In 1995, lobbyists on both sides of environmental issues expected a big push for CEQA reform. But the only major piece of CEQA legislation to win approval was SB 901 (Costa), a bill that actually broadens CEQA. The bill requires lead agencies to identify the sources of water for major projects, including residential projects of 500 dwelling units or more (*CP&DR*, October 1995).

The most aggressive battering ram among last year's CEQA reform bills was SB 1180 (Calderon/Haynes), which would have added consideration of "social, economic or recreational development" to CEQA's policy language, and would have encouraged more frequent use of negative declarations. The proposed law would have also eliminated the "fair argument" standard, which requires an environmental impact report to be prepared if there is a fair argument that substantial evidence exists that a project might create substantial environmental damage. In its place, the bill would have raised the standard to require an EIR only when significant environmental effects are a certainty, rather than merely a possibility.

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Slow Growthers Gain Mixed Results On November Ballot

Number of Ballot Measures Remains Low

By
Larry Sokoloff and
William Fulton

Slow-growth forces made a comeback of sorts in the November election, winning 6 of 11 land-use issues that appeared in local ballots around the state.

That's a significant improvement over last year, when slow-growthers won only 28% of land-use measures on the November ballot. But according to *CP&DR's* database, which dates back to 1986, it's the worst showing ever for slow-growth forces in an off year.

Traditionally slow-growthers have fared better in off-year elections when turnout is lower. According to *CP&DR's* database, slow-growth forces have won 74% of November issues in odd years, as opposed to only 50% in November elections during even years.

Even more dramatic is the dropoff in the number of measures placed on the ballot designed to slow growth rather than promote it. Only four of the 11 ballot measures this year promoted slow-growth goals, and only two of those measures passed — a highly publicized farmland protection initiative in the City of Ventura and a narrowly drafted measure to ban oil drilling on a parcel of property across from the City Hall in Hermosa Beach.

This year's dropoff continues a dramatic trend that began in 1993. Between 1987 and 1993, November ballots featured an average of 15 slow-growth measures per year. However, in the last three Novembers (1993-95), a total of only 9 measures have appeared on the ballot. The number of pro-growth ballot measures has remained fairly constant since 1989.

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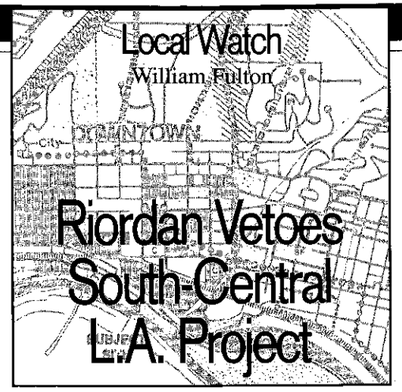

In a controversial move, Los Angeles Mayor Richard Riordan has vetoed a city loan for a housing and retail project on Vermont Avenue in South-Central L.A. that was heavily promoted by First Interstate Bank and Councilman Mark Ridley-Thomas, who represents the area. The veto has sparked a debate over whether revitalization of commercial strips in L.A. should include housing.

The $15 million project is proposed for a 75,000-square-foot site at the corner of Vermont Avenue and 81st Street in Los Angeles. The building is the original site of Pepperdine University but has been vacant — except for an unoccupied art deco building — for more than 20 years.

The project was originally proposed by First Interstate Bank, which made a $2 billion commitment to riot zones in Los Angeles after the 1992 riots. Seeking to create a "model" affordable housing project, First Interstate selected the Vermont site and conducted a "design/build" architectural competition.

The Vermont corridor was heavily damaged during the riots and has been targeted by city officials for extensive revitalization. In addition, an Urban Land Institute panel concluded in 1992 that the Vermont corridor would be a good location for mixed-use projects that included housing.

The competition was eventually won by local developer Rodney Shepard and Bay Area architect Daniel Solomon, who proposed building 36 townhouses and six small commercial/retail spaces and using the existing art deco building for the USC Business Expansion Network. Although First Interstate agreed to provide construction financing, the project required a loan of almost $1.8 million from the City of Los Angeles in federal housing funds to acquire the site. (Another $2.5 million is being put into the commercial portion of the project by the Department of Community Development.) The project won the support of Ridley-Thomas, who called it "the most important development project in South-Central Los Angeles."

However, opposition surfaced from a group of homeowners in an adjoining Vermont Knolls neighborhood, whose residents include Rep. Maxine Waters, D-Los Angeles, traditionally a strong advocate of government funds for low- and moderate-income housing. (Vermont Knolls was originally built by George Pepperdine for faculty housing, according to First Interstate.) Seeking to satisfy the neighbors, the developers reduced the number of housing units and abandoned the use of low-income housing tax credits. The 36 townhomes now envisioned for the site would be ownership units ranging in price from $88,000 to $132,000.

The city loan won approval from the City Council by a 10-0 vote on Nov. 3. But the neighbors, including Rep. Waters, continued to oppose the project. In particular, they said they did not want to see housing on the site. Instead, they said the Vermont Avenue sites should be reserved for commercial projects and especially retail projects, since shopping opportunities in the area are limited. Regarding the Vermont and 81st project, Waters said: "I just don't think that's economic development. I don't know why people would buy a house in the inner city if they have no place to shop." Ridley-Thomas continued to claim community support as well, noting that more people had spoken in favor of the project at the City Council meeting than against it.

Riordan vetoed the city loan on Nov. 16 in a high-profile ceremony with the neighbors present. Vetoes are unusual in L.A.'s "weak-mayor" system, where the 15 members of the City Council typically get no interference with projects they want to move forward. Riordan cited not only the neighborhood opposition, but also cost issues. He specifically mentioned the relatively high per-unit subsidy (over $100,000) and the fact that the city had no guarantee that all of the $1.8 million would be repaid.

Riordan's veto was not the end of the story, however. After his veto, Ridley-Thomas vowed to obtain the two-thirds (10 votes) required to override the veto, and some journalists characterized the dispute as part of a personal political feud between the two politicians, who have clashed on affirmative action, privatization of city services, and other issues. Furthermore, former Mayor Tom Bradley broke his long silence about his successor and told the Los Angeles Times: "Dick Riordan, just because he has a hatred for Mark Ridley-Thomas, vetoed it . . . and we were stunned."

Riordan and his staff subsequently said they were negotiating with First Interstate to change the project to include an "uptick" in commercial space and a drop in housing. However, Ridley-Thomas appeared intent to continue pushing the project through over the mayor's veto.

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Mayor Richard Riordan, (213) 485-5175.
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Maxine Waters, U.S. Representative, (202) 225-2201.

Little Hoover Commission Proposes Reform

The Little Hoover Commission, which makes recommendations on governmental reform in California, has proposed an overhaul in the state's policies toward land-use planning. But the commission's report focuses narrowly on the state's role and does not address local government finance or structure.

Much of the commission's report involved recommendations to streamline the California Environmental Quality Act and dovetail its processes with state agency permitting processes. (See CEQA story, page 1.) However, overall the commission made four recommendations:

1. The state should establish a single, timely process for dealing with environmental issues. Among other things, the commission proposed coordination among state agencies and tightening EIR and negative declaration deadlines.

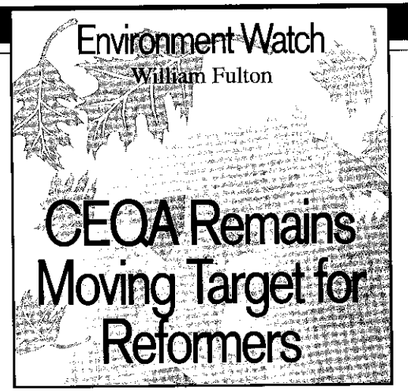
2. Planning laws should be reformed to encourage local agencies to establish regional planning strategies. Among other things, the commission proposed creating a state revolving fund to finance master EIRs, watershed plans, and other broad-ranging plans, and "rewarding regional cooperation" by giving local governments engaged in regional efforts priority for various state funds.

3. The state should invest in well-planned and efficient infrastructure. In this area, the commission proposed a governor's task force on infrastructure, funding the State Infrastructure Bank created last year, and requiring local agencies to complete infrastructure plans as a precondition for receiving funds from the bank.

4., The state must "accelerate the land-use learning process." The commission recommended that the state direct the Business, Transportation, and Housing Agency to work with lenders and other financial institutions to overcome barriers to investing in high-density, infill, and mixed-use projects. The commission also recommended that the Office of Planning and Research should develop model zoning and parking ordinances "that would create more flexibility, prevent density downzoning, and reduce requirements that undermine housing and transportation goals."

The commission is now presenting its conclusions to Gov. Pete Wilson and legislative leaders with the hope that some legislation will be introduced next year. The commission undertook the land-use study on its own initiative, not at the direction of Wilson or the Legislature.

"Making Land Use Work: Rules to Reach Our Goals" is available from the Little Hoover Commission, (916) 445-2125. ❑



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And in an attempt to subvert the use of CEQA as a means to oppose projects in court, the Calderon bill would have limited the power of the courts to set aside agency decisions or issue injunctions against projects in CEQA lawsuits, would have limited attorney's fees in some CEQA lawsuits, and would have allowed defendants to collect attorney's fees in "frivolous" suits.

A well-organized coalition of environmental groups, combined with the political disarray of the Republican-dominated Assembly, helped thwart the bill in its original form. In the end, SB 1180 lost most of the reform provisions, and was enacted primarily as a bill requiring closed military bases to prepare EIRs. Some lobbyists expect Calderon to reintroduce many of the reform provisions in the coming year, although Calderon himself sounded uncertain earlier this year.

Four issues are currently at the forefront of CEQA reform, according to Albert I. Herson, senior vice president and legal counsel of Jones & Stokes: integrating CEQA better with general plan and related environmental laws; streamlining both project EIRs and master EIRs; reducing the number of frivolous lawsuits from the economic opponents of projects, such as labor unions; and revising the "fair argument" standard.

A recent report from the Little Hoover Commission criticizes CEQA for meshing poorly with general plans, because of the use of CEQA on a project-by-project basis. (Though master EIRs were explicitly authorized by CEQA reform in 1993, they are not widely used, partly because the expense of preparing the massive reports is not easily subsidized by developer fees.) At the same time, the report suggests that CEQA could help provide the certainty that is currently missing from the approval process, due to the "complexities of current growth patterns, competing regulations, and fiscal realities, (that) the general plan process cannot deliver."

The report recommends that "planning laws — including CEQA — should be reformed to encourage local agencies to establish regional strategies for protecting water quality, open space, wildlife habitat, and other natural assets. Projects complying with those plans should be relieved from having to assess separately those problems." Specifically, the Little Hoover report recommends that (1) the state should create a revolving grant/loan fund for Master EIRs; (2) local agencies should be required to standardize CEQA thresholds; and (3) jurisdictions should use fiscal incentives, such as allocation from a regional infrastructure bank, to reward preparation of regional plans.

The report contains a separate recommendation for the establishment of a "single, timely process for assessing the environmental consequences of proposals, compensating for the harm projects will cause and resolving conflicts with public agencies." Identifying CEQA as the vehicle for this process, the report says state permitting agencies should use the CEQA process and calls for tighter decision deadlines and the creation of a standing CEQA mediation council among state agencies.

Herson welcomed the commission's call to use CEQA "as the main tool to integrate all regulatory programs." He observed, however, that the notion of CEQA as the traffic-cop of environmental regulation was "not necessarily envisioned when CEQA was enacted." Still, an expanded role for CEQA would be a "wonderful evolution," he said, "as opposed to the litigation machine that some people claim it is."

The question of thresholds could also be a significant one. The Little Hoover Commission stopped short of proposing uniform state thresholds but, rather, merely called on local governments to adopt uniform thresholds. At present, significance thresholds — which often form the basis of whether an environmental impact report is prepared — are sometimes determined on a case-by-case basis, or are determined by environmental consulting firms rather than the local governments.

It is too early to see whether the legislature will consider the Little Hoover Commission's recommendations seriously next year. But Jeannine English, the commission's executive director, said: "We're getting very good bipartisan response. One of the things we were trying to do is kick-start the debate again."

The "fair argument" standard is "the biggest hot-button issue" in the CEQA debate, according to Michael Zischke, a lawyer in the San Francisco office of Landels Ripley & Diamond. He is one of many observers who expect reform bills attempting to change the standard. "The fair argument standard continues to be a thorn in the side of businesses, and it will be revisited," he predicted. A committee of the state bar, however, has recommended that the standard go unchanged.

Owen Byrd, director of policy and legal defense for Greenbelt Alliance, said he was suspicious of efforts to "streamline" CEQA. "I worry that 'streamlining' is a euphemism for reducing the law's substantive requirements," he said. "We are open to conversations about making the law work better procedurally, in a more cost-effective and timely manner. That's a far cry from saying CEQA should be made less strong."

Byrd vowed that the environmentalist coalition — Greenbelt Alliance, the Planning & Conservation League and the California League of Conservation Voters — which expunged the toughest provisions of the Calderon bill last year, will "participate in any similar effort in the upcoming session that is required to defend the integrity of CEQA," adding, "this never seems to end."

But given the political uncertainty in Sacramento, "who knows what will happen next year?" said Herson, adding, "I am concerned that, given the turnover in the legislature and staff, it may be difficult to have some well thought out, well-considered CEQA legislation. I'm not sure the leadership is there."

Gary Patton, general counsel of the Planning & Conservation League, and a key figure in heading off the Calderon bill last year, was skeptical that any new version of the Calderon bill would make it in the legislature this year. "Last year, they couldn't even get it through the Assembly," he said. "Frankly, there are not enough votes in the Assembly Natural Resources Committee to get that terrible bill out. They will not be successful in the senate, and will take a lot of time, so maybe this isn't the year to do a massive attack of CEQA." ❑

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Owen Byrd, director of policy and legal defense, (415) 543-4291.
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Schools Watch

Morris Newman
and William Fulton

Newhall Land Strikes $70 Million School Deal

In an apparently unprecedented agreement, a Los Angeles county developer has agreed to pay for nine new schools — at a cost of up to $60 million — as part of a proposed 12,000-acre master-planned community near Santa Clarita.

Under the terms of the deal, Newhall Land will provide funding for about nine schools, each projected to cost about $6.8 million, to accommodate the nearly 9,000 students to be "generated" by the new communities. However, under the agreement the school district would repay the developer if other sources of funds become available.

The deal between Newhall Land & Farming Co. and the Newhall School District is so large that it appears to be changing the rules of the game in the Santa Clarita area, where school districts and developers had agreed on a specific mitigation policy in 1991. At the same time, however, the deal has several subtle wrinkles that actually lessen the developer's obligations in the long run.

The deal emerged from a lengthy series of events surrounding school mitigation in the Santa Clarita area north of Los Angeles. In 1991, the area's major developers and five school districts — along with the City of Santa Clarita and Los Angeles County — agreed that developers would pay $2.72 per square foot for school mitigation. That figure is $1 over the state limit and about half of full mitigation as defined by the school districts. But the shortfall in state funds made the deal unworkable, so Newhall School District, an elementary district, pulled out of the plan and began negotiating separately with Newhall Land, the largest property owner in the area.

Meanwhile, a local citizens group, Santa Clarita Organization for Planning the Environment (SCOPE) sued Newhall Land over the environmental impact report on an 1,800-unit residential project called Westridge. L.A. County Superior Court Judge Robert O'Brien found the EIR inadequate in covering air quality, library, and school issues. O'Brien's ruling led to a new round of negotiations between the school district and Newhall Land. According to Newhall Land spokeswoman Marlee Lauffer, these negotiations later broadened to include not only the Westridge project, but also the Newhall Ranch project, which proposes 24,700 houses on 12,000 acres of property.

The agreement, which works out to $2.60 per square foot just for the elementary district, covers both the Westridge and the Newhall Ranch projects. (William S. Hart High School District might make a separate deal that would bring the overall value up to $4.10 per square foot.) The Westridge EIR must return to Judge O'Brien for his approval, while the Newhall Ranch project is in the EIR stage before Los Angeles County.

The arrangement is a "public-private partnership that is designed to ensure adequate school facilities when needed, where needed and as needed. It's a good deal for all concerned," said Ken Bley, the lawyer who represented Newhall Land in negotiations with the school district. Lawyer Alex Bowie, who represented the school district, who observed that Newhall Land actually agreed to a larger sum than originally requested by the school district.

However, the deal does contain several wrinkles that might reduce the cost for Newhall Land. Under the agreement, Newhall Land would be reimbursed by state funds or local bond funds if either of those sources ever becomes available. However, the reimbursement would come by selling the school property to the school district, which is currently leasing the school sites for $1 per year. Furthermore, school district officials acknowledge that the deal does not provide enough money to accommodate all students expected to be "generated" by the two development projects on a traditional school year. The district will have to switch to a year-round schedule or else purchase portable classrooms to accommodate about 20% of the students.

School facilities consultant Rob Corley, who did not work on the deal, questioned some of these provisions, including the requirement that Newhall be reimbursed out of local or state bond funds before the district may use funds for other school facilities purposes. In the event that state funds become available, the agreement allows the district to retain enough money to buy six relocatable classrooms for each school, with the developer taking the rest of the funds as pay for school sites. In the event that a bond measure is approved, however, the developer would be fully reimbursed for the school sites "before the district retains funds received from the State or any federal agency for permanent relocatable classrooms."

Superintendent Mike McGrath acknowledged that asking voters to raise their taxes for the purpose of reimbursing a wealthy developer would be a tough sell. "I would call it a sales problem. If we ever did that, we would package it by saying that the only way to avoid multi-track schools is for the community to pay for its share of the schools."

Newhall Land officials also defended the land buy-out requirement against criticism that it would permit the company to make windfall profits. Newhall has owned the land for more than a century and, arguably, the school sites could become far more valuable once development occurs. But Ken Bley, Newhall Land's attorney, rejected that argument. "That's like saying that somebody who inherited stock that originally cost very little and has appreciated in value should give it away. That's nonsense," he said.

Meanwhile, the Newhall deal appears to have hastened the demise of the earlier deal among developers, school districts, and local governments in the Santa Clarita Valley. Since the Newhall agreement was reached, almost all school districts in the area have pulled out of the earlier agreement. Apparently the Newhall deal is now the standard by which school mitigation will be measured in the area. ❑

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CP&DR
LEGAL DIGEST

New Owners Not Liable

Coastal Act Doesn't Place Blame for Illegal Grading

The Second District Court of Appeal has ruled that new property owners can't be held liable for violations of the Coastal Act committed by previous landowners, even when the violations involve ongoing land development efforts.

"It is plain to us," wrote Municipal Court Judge Brett C. Klein, sitting as part of Division Four of the Second District, "that one who merely owns the land, without conducting any activities on it, does not 'perform or undertake any development' and therefore does not violate the statute by failing to obtain a coastal development permit."

The case involved 22 acres of land in Malibu near Pacific Coast Highway. In 1988, Vista Pacific Development Co. obtained the property and began grading it without any coastal permits. By the time the commission stopped work on the project in October of 1988, Vista had moved 50,000 cubic yards of earth and created pads for four homes.

Subsequently, Vista agreed to a plan to restore the hillsides but disagreed with the Coastal Commission about its cost. In 1989, as restoration was proceeding, Vista borrowed $800,000 from a group of investors. Vista made only one payment to the investors, however, and eventually defaulted. In 1990, the investor group purchased the property at a public hearing.

In the appellate ruling, Klein acknowledged the possibility that the default "might have constituted a distinguished cash sale of the property." But the investors claimed that they were duped by Vista and had no legal obligation to fix the problems Vista created. The Coastal Commission then sued the group of investors, but the investors were granted summary judgment by Superior Court Judge Paul Boland.

On appeal, the Coastal Commission sought to rely on the reasoning in *Leslie Salt Co. v. San Francisco Bay Conservation and Development Commission*, 154 Cal.App.3d 605 (1994). In that case, the Court of Appeal ruled that the current property owner could require the removal of fill material dumped in marshy wetlands by an unknown person at some point in the past.

"The present case is distinguishable," the court wrote, "because respondents did not own the land at the time of the unlawful grading. Nor were they beneficiaries under the deed of trust at that time. Even the broadest remedial construction of the Coastal Act cannot stretch so far past the generous interpretation *Leslie Salt* gave the similar language of the San Francisco Bay statute."

The court also rejected the notion that Vista's violation of the Coastal Act should be considered a "continuing wrong, analogous to a nuisance," saying that the law's language simply does not support such an argument. ❑

■ The Case:
California Coastal Commission v. Adams, No. B076478, 95 Daily Journal D.A.R. 14918 (November 10, 1995).

■ The Lawyers:
For Coastal Commission: Michael L. Crow, Deputy Attorney General, (916) 327-7856.
For Adams and other property owners: David S. Ettinger, Horvitz & Levy, (818) 995-0800.

CEQA

Council Demand for EIR Constitutes 'Final Action'

In yet another case involving liquor stores damaged in the 1992 riots, an appellate court has upheld the Los Angeles City Council's decision to overturn a city Planning Commission decision and require that an environmental impact report be prepared for the reopening of two liquor stores in the city.

The ruling turned on the appellate court's interpretation of the city's complicated procedures for permitting the council to assert jurisdiction over matters that have been before the planning commission. The city charter, which gives considerable independence to boards and commissions, requires the council to take a quick "final action" on planning matters, or else the Planning Commission's decision stands. In this case, the liquor store owners claimed that an order to prepare an EIR did not constitute a final action, but the appellate court disagreed.

The case involved Tony and Tai Kang and Satoshi Miyamoto, who own liquor stores in South-Central Los Angeles that were damaged in the 1992 riots. After the riots, both owners sought to rebuild their liquor stores, which required a conditional use permit. (The CUP requirement to rebuild liquor stores has been the subject of considerable litigation. In *Korean American Legal Advocacy Foundation v. City of Los Angeles*, 23 Cal.App.4th 376 (1994), the Court of Appeal ruled that the CUP procedure was not pre-empted by state Alcohol and Beverage Control laws.)

The city planning staff concluded that the liquor-store projects were categorically exempt from CEQA, but the Planning Commission disagreed and ordered preparation of a mitigated negative declaration. After Planning Commission approval, however, the City Council asserted jurisdiction over the projects and ordered EIRs prepared for both. The Kangs and Miyamoto refused to pay the necessary fees and sued instead, claiming, among other things, that an order of EIR preparation did not constitute a "final action" within the meaning of the city charter.

Under §32.3 of the charter, passed by the voters in 1985, the council can assert jurisdiction over matters after a board or commission vote only under certain circumstances. Among other things, the council must take a final action on the matter within 21 days or else the commission's action becomes final.

Miyamoto and the Kangs argued that the council had not taken a final action but simply placed their applications on hold. They also argued that using §32.3 to require an EIR when none was required by the Planning Commission is inconsistent with CEQA. However, the Second District Court of Appeal, Division 2, disagreed.

"Nothing contained within §32.3 suggests that the city council, once it has assumed jurisdiction made by the City Planning Commission, is restricted to granting, conditionally granting, or denying a land use or any other type of application," wrote Justice Morio Fukuto for the appellate court. "...[T]he action taken by the council need not be 'final' as it relates to the subject matter of the item for consideration (in the sense of an approval or denial of a permit, for example). Rather, the council must make a final decision on whatever action, if any, it deems appropriate."

In making the ruling, Fukuto relied heav-

ily on Carmel Valley View v. Maggini, 91 Cal.App.3d 318 (1979). In that case, the Monterey County Board of Supervisors had 50 days to act on a tentative map request. Instead of approving, conditionally approving, or disapproving the map, the board requested a supplemental EIR. The Court of Appeal upheld this action as indicating that the board had placed the applicant on notice that the map would be denied unless the supplemental EIR was prepared.

Though not identical to the liquor-store case, Fukuto said, the case does "strongly suggest that governmental bodies such as the city council in the instant case are not limited to either granting or denying an individual's application for plan approval — that other 'final' dispositions are possible."

The court did not act on broader CEQA issues because it did not have the entire administrative record. ❑

■ The Case:
City of Los Angeles v. Superior Court, No. B090551, 95 Daily Journal D.A.R. 15490 (November 27, 1995).

■ The Lawyers:
For City of Los Angeles: Claudia McGee Henry, Senior Assistant City Attorney, (213) 485-5419.
For liquor store owners: Stephen L. Jones, (213) 612-7701.

CEQA

Court Upholds CEQA Action But Laments Approval

In an unpublished ruling, the Second District Court of Appeal has affirmed a lower court ruling that rejected all environmental challenges to the controversial Ahmanson Ranch project in Ventura County. However, in a concurring opinion, one appellate judge lamented the apparent unfairness of the development project to neighboring jurisdictions across the county line.

Ventura County approved the 3,000-unit development project in December of 1992 as part of a broader deal to preserve some 10,000 acres of open space throughout the Santa Monica and Santa Susana Mountains. The key to the deal was a decision to shift some development to Ahmanson from nearby Jordan Ranch, which was subsequently purchased by the National Park Service.

The county was sued by four neighboring jurisdictions, two homeowner associations, two individual plaintiffs, and one environmental group. The plaintiffs argued that the so-called "combined project" created a variety of defects under the California Environmental Quality Act, including a faulty project description and a faulty alternatives analysis. Ventura County Superior Court Judge Barbara Lane ruled in favor of the county and Ahmanson on all grounds in 1994. (*CP&DR Legal Digest*, April 1994.)

The project's opponents had no better luck before the Second District Court of Appeal, Division 6, in Ventura — at least not on the legal issues. But in an extraordinary departure from the usual practice, Justice Kenneth Yegan filed a concurring opinion in which he agreed with the legal conclusions yet complained that Ventura County's actions in the case create "the appearance of unfairness."

The Ahmanson project is bounded on two sides by Los Angeles County and its municipalities. All road access in and out of the project is through L.A. County; the project does not connect directly to any other road in Ventura County. The claims of the other jurisdictions, in particular, dealt with the traffic impact on their roads, although a number of mitigation measures imposed by Ventura County address this question.

"An objective person viewing this might question the impartiality of the board in approving the project," Yegan wrote. "However, absent a change in the law, the board was vested with the authority to both approve the EIR and amend its general plan."

The court's ruling, written by San Luis Obispo County Superior Court Judge Paul Coffee, who sat as a member of the panel, rejected the plaintiffs' claims under the California Environmental Quality Act on a wide variety of grounds.

Many of those claims stemmed from the fact that the county did not prepare a new environmental impact report after combining the Jordan and Ahmanson projects on the Ahmanson property, but, rather, prepared a revised draft EIR instead. The plaintiffs argued, among other things, that:

• The project description was inadequate because it referred only to the original Ahmanson proposal and not the combined proposal.

• The combined project created an EIR that had new information that should have triggered a recirculation requirement.

• The range of alternatives should have been amended to deal with the new situation created by the combined project.

However, Coffee rejected those claims outright. "There is no evidence that any of the appellants were either confused or in the dark as to what was proposed for the Ahmanson Ranch development," Coffee wrote. "They clearly expressed their objections, before the board's vote on December 15, 1992, approving the project."

He also rejected plaintiffs' claims challenging the statement of overriding consideration and claims of inadequate traffic analysis. Relying on the California Supreme Court's strong language in the Laurel Heights I case, Coffee stated that "the appellants are quarreling with the conclusions reached by the Board. ... This ... is a political judgment to be answered at the ballot box."

Coffee also rejected the separate claims raised by the City of Calabasas that Ventura County did not take into account the anticipated policies of the future general plan of that city, which incorporated in 1991. ❑

■ The Case:
County of Los Angeles v. County of Ventura, No. B084275 (filed October 17, 1995).

■ The Lawyers:
For Los Angeles County and other plaintiffs: Mark Weinberger, Shute Mihaly & Weinberger, (415) 552-7272.
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ROADS

Malibu Required to Accept Responsibility for County Road

The City of Malibu owns a road lying within its boundaries, even though the city specifically stated upon incorporation that it would not accept the road from Los Angeles County, the Second District Court of Appeal has ruled.

Rambla Pacifico Road was blocked by earth movement and closed by L.A. County in 1984. Subsequently, Re-Open Rambla Inc., a group of homeowners, sued to try to re-open the road. However, after Malibu's incorporation in 1991, the county claimed the road belonged to the city, while the city insisted the road still belonged to the county.

The case turned on interpretation of two sections of the state Streets and Highways Code, §1806, which says a city must accept a street in order for that street to be part of the city's road system, and §989, which calls for transfer of a county's title to a road to a new city upon incorporation.

In 1989, the Court of Appeal ruled in *Rink v. City of Cupertino*, 216 Cal.App.3d 1362, that a city had the explicit power not to accept a road upon annexation if that road does not meet its standards. In 1991, the Legislature changed the state law to reverse the *Rink* case and stated: "It is, and always has been, the intent of the Legislature that roads of highways which have been accepted into the county road system ... and which are situated in an area which is subsequently incorporated or annexed to a city, be included within the city street system upon that incorporation or annexation."

Earlier in 1991, prior to the Legislature's action, Malibu incorporated and accepted the county's street system, but specifically excepted Rambla Pacifico and two other streets from that action.

Malibu argued that it held the power to reject Rambla Pacifico under the *Rink* ruling, which was still in place at the time. Los Angeles County argued that the 1991 legislation simply clarified longstanding state law. The Second District Court of Appeal, Division One, ruled in favor of the county.

In making its ruling, the court had to harmonize the two code sections, 1806 and 989. "At the time *Rink* was decided, under section 1806 no public or private street or road became an existing city's street or road unless the city's governing body accepted it, and no existing city could be held liable for failure to maintain a road unless the city accepted the road by resolution of its governing body," wrote Justice Reuben Ortega for the appellate panel. "However, under section 989, a newly created city automatically acquired all of the county's right, title and interest in any county highway located within the boundaries of the new city." The only exception, he said, applies to the process of creating a county highway inside city limits.

Malibu had argued that the 1991 legislation made significant changes to the law. But Ortega wrote that the legislation "did no more than clarify existing law." ❑

■ The Case:
Re-Open Rambla Inc. v. County of Los Angeles, No. B083097, 95 Daily Journal D.A.R. 15003 (November 13, 1995).

■ The Lawyers:
For Re-Open Rambla: Scott L. Grady, Grady & Grady, (310) 476-5773.
For L.A. County: David B. Casselman, Wasserman, Comden & Casselman, (818) 705-6800.
For Malibu: Christi Hogan, City Attorney, (310) 456-2489.

WETLANDS

Thomas Dissents From Denial Of Hearing in Leslie Salt Case

Once again, Justice Clarence Thomas has filed a strong dissent to the U.S. Supreme Court's decision not to hear an important land-use case.

On October 30, the court denied certiorari in *Cargill Inc v. United States*, 95-73 — the longstanding wetlands dispute more commonly known as the *Leslie Salt* case. In that case, the Ninth Circuit ruled that a seasonally dry wetlands near San Francisco is subject to the Clean Water Act because its use by migratory birds creates a connection to interstate commerce. The court made the ruling even while acknowledging that "the migratory bird rule certainly tests the limits of Congress's commerce powers and, some would argue, the bounds of reason." *Leslie Salt Co. v. U.S.*, 55 F.3d 1388 (1995).

The U.S. Supreme Court denied cert without comment. But in his dissent, Thomas took the Army Corps of Engineers to task on the migratory bird rule. He relied heavily on the Supreme Court's recent ruling in *U.S. v. Lopez*, 514 U.S. _____ (1995), in which the court ruled that possession of a firearm in a local school zone does not substantially affect interstate commerce.

Thomas conceded that hunting, trapping, and observing migratory birds is a major business, as the Ninth Circuit claimed. But, he said, "that ... does not give the Corps carte blanche authority to regulate every property that migratory birds use or could use as habitat. The point of Lopez was to explain that the activity on the land to be regulated must substantially affect interstate commerce before Congress can regulate it pursuant to its Commerce Clause power."

Though migratory birds occasionally visit the property, Thomas said, there was no showing that the property was ever visited by anyone wishing to hunt, trap, or observe the birds except the government's own experts. "This case raises serious and important constitutional questions about the limits of federal land-use regulation in the name of the Clean Water Act that provide a compelling reason to grant certiorari in this case," Thomas concluded.

Last year, Thomas and Justice Sandra Day O'Connor wrote a similar lengthy dissent to the court's decision not to grant cert on a case upholding the City of Atlanta's exactions on owners of large parking lots. (*CP&DR*, July 1995.) ❑

■ The Case:
Cargill Inc. v. U.S., 95-73. The dissent can be found at 64 U.S. Law Week 3313.

■ The Lawyers:
For Cargill (Leslie Salt): Edgar B. Washburn, Washburn, Briscoe & McCarthy, (415) 421-3200.
For U.S.: David C. Shilton, Department of Justice, Washington, D.C.

PERMIT STREAMLINING ACT

California Supreme Court Accepts Case From Piedmont

The California Supreme Court has agreed to hear a case from Piedmont involving the Permit Streamlining Act, but has de-published two recent appellate cases involving land-use issues.

The Permit Streamlining Act case is *Bickel v. City of Piedmont*, No. S048396, which involves the question of whether the city violated the law by continuing a home remodeling item for more than three months even though the applicant apparently consented to some sort of continuance.

The case arose when the remodeling proposal was continued for three months as permitted under the law, then taken up before the three months was up, then continued again for three more months. At the Piedmont Planning Commission meeting in question, the applicant accepted the idea of a continuance. However, the plaintiffs sued, arguing that the three-month continuance apparently placed the decision beyond the time limit permitted by law (six months from application plus a three-month extension.)

Overturning a trial judge, the First District Court of Appeal ruled that the Planning Commission did not have the authority to push the decision beyond the nine-month period even with an apparent verbal waiver by the applicant. To permit a waiving of the one-time extension rule, the court said, would lead to local governments "politely requesting" waivers. "Most applicants would, we venture be under severe pressure to acquiesce in such a 'suggestion'. In no time at all, indeed, perceptive municipal staffs and their attorneys would sure have designed a 'Permit Streamlining Act Waiver' form. We are unwilling to open up the processes under the Act to these possibilities."

(*CP&DR Legal Digest*, August 1995.)

The two de-published cases involved the use of an environmental impact report on a conditional-use permit for a church, and the question of whether a violation of a CC&R should be recorded with the deed to the property.

In *LSI Logic Corp. v. City of Santa Clara*, the Sixth District Court of Appeal ruled that the City of Santa Clara should have prepared an environmental impact report before approving a church, school, and day-care facility in an industrial area containing several businesses that use and store toxic materials. In *California Riviera Homeowners Association v. Superior Court*, the Second District Court of Appeal ruled that a homeowner association may record a notice of violation of CC&Rs with the county recorder, even though such actions are sometimes taken because they are cheaper than suing the homeowner in question. Both cases were reported in the *CP&DR Legal Digest* in October 1995. ❑

TAXATION

Mill Valley Land Tax Isn't 'Special Tax' Under Prop 13

A "municipal services tax" imposed on all property owners by the City of Mill Valley isn't a special tax subject to a two-thirds vote, the Second District Court of Appeal has ruled. The tax meets the requirements of Proposition 62 and the California Supreme Court's recent Guardino ruling because it was approved by a bare majority of voters in 1987, two years after it was originally imposed by the city.

The Mill Valley tax was not a parcel tax per se, but, rather, a flat-rate "municipal services tax" imposed on five categories of property. The tax typically runs approximately $145 per year per property owner.

Property owner Joel Neecke challenged the tax beginning in 1990, when he filed two refund claims with the city. He argued that the tax was both a special tax requiring a two-thirds vote and a non-ad valorem property tax, prohibited under Proposition 13. Neecke later filed and won the case before Marin County Superior Court Judge Gary Thomas, who relied on *Rider v. County of San Diego*, 1 Cal.4th 1 (1991) in concluding that the tax was a special tax. Neecke received attorneys fees but his request for class-action status was denied.

The Court of Appeal reversed Thomas's decision on the special tax portion of the ruling, but affirmed his decision on the class-action portion of the ruling. Not surprisingly, the court undertook an extensive dissection of the Supreme Court's opinion in the *Rider* case, which held that a sales tax for jail construction required a two-thirds vote. In particular, the appellate court concluded that *Rider* specifically did not overrule *City and County of San Francisco v. Farrell*, 32 Cal.3d 47 (1982), which concluded that any tax levied by a general-purpose agency is not a special tax and therefore does not require a two-thirds vote.

"The essence of a special tax as explained in both *Farrell* and *Rider* is that its proceeds are earmarked or dedicated in some manner to a specific project or projects," the court wrote. "Since we have concluded that the 'general fund' exception found in *Farrell* remains viable in cases, like this one, where a tax is levied by a general purposes agency and the proceeds are deposited into its general fund, there can be no doubt that the tax at issue here is not a special tax."

The court also affirmed the trial judge's conclusion that class-action certification in tax refund cases is prohibited under the California Supreme Court's ruling in *Woolsey v. State of California*, 3 Cal.4th 758 (1992). ❑

■ The Case:
Neecke v. City of Mill Valley, No. A065966, 95 Daily Journal D.A.R. 14345 (October 27, 1995).

■ The Lawyers:
For Neecke:Peter Brekhus, Brekhus, Williams, Wester & Hall, (415) 461-1000.
For Mill Valley: Andrew Saltzman, Meyers Nave Riback Silver & Wilson, (510) 351-4300.

Slow-Growthers Win Mixed Results

Continued from page 1

In addition, voters in one recall election refused to oust city council members because of their pro-growth views. In the north Orange County city of Cypress, three council members who had voted to approve construction of a warehouse building in an office park near residential neighborhoods all received at least 60% of the vote.

The November ballot issues also indicated that use of ballot measures statewide has retreated to a small number of communities where "ballot-box zoning" has been common over the years. These communities include Marin County, Half Moon Bay, Redlands, Palo Alto, and Santa Barbara. But even in these communities, pro-growth ballot measures won in most cases.

Of the seven card club measures on the ballot in November, two included specific land-use language to permit construction of card clubs, and the results were split. In Palm Springs, voters approved zoning changes needed to bring gaming to the resort town, while in San Mateo, citizens refused to allow a card club at the Bay Meadows Racecourse.

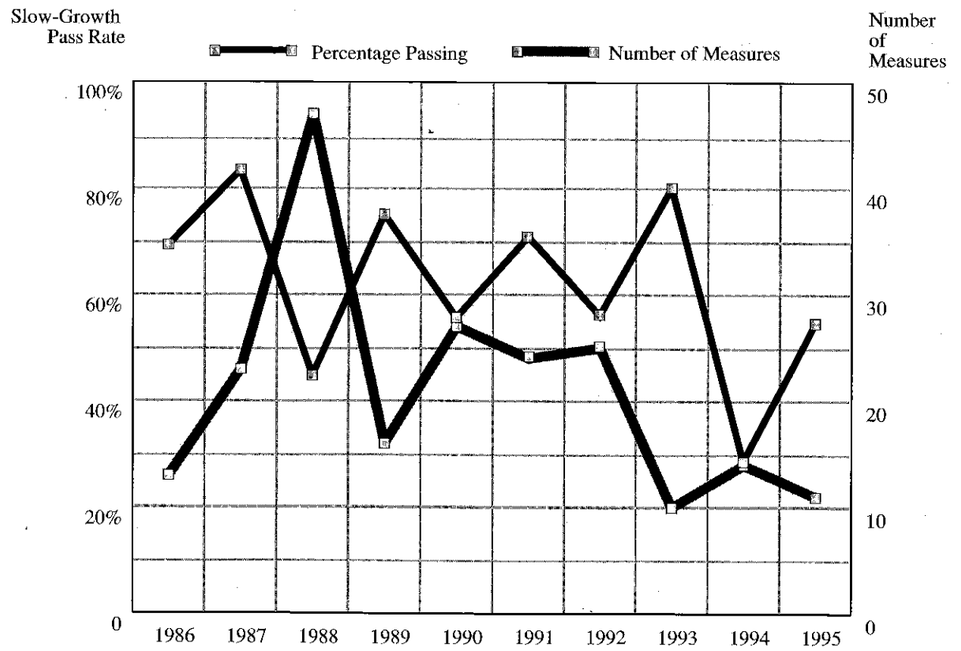
Perhaps the most unusual situation came from Marin County, where the Buck Center for Research in Aging has been seeking to build a $40 million research center on unincorporated territory outside Novato. The Board of Supervisors had approved the project, but slow-growthers and animal rights activists banded together to place a referendum on the ballot. Meanwhile, however, the City of Novato placed a measure on its own ballot to clear the way for possible annexation of the site to Novato.

Marin County voters overturned the county's approval of the project, while Novato voters said they want the project annexed to their city. Both sides are claiming victory, and the project appears headed for court.

Meanwhile, in Monterey County, a proposed dam that would have provided a stable water supply to the Monterey Peninsula while flooding important agricultural and Native American lands, was defeated. ❑

Ballot Results

Slow-Growth Measures 1986-1995



November Measures only. Source: CP&DR

County-By-County Results of November Election

Los Angeles County

City of Hermosa Beach

Voters in this oceanside town approved a measure to ban oil drilling on a 1.5 acre piece of city-owned land near City Hall. The land has already been leased for drilling, so the matter is expected to be ultimately resolved through litigation. Voters had already banned oil drilling in the rest of the city in the 1980s.

Measure E: Yes, 56.35%.

Marin County

In a referendum, Marin County voters overturned a Board of Supervisors decision to build the $40 million Buck Center for Research in Aging on a large site in an unincorporated area outside Novato. The measure was placed on the ballot by a coalition of animal-rights activists and slow-growthers.

Measure A: No, 52.1%

City of Novato

Meanwhile, Novato voters agreed to the concept of annexing the Buck Center property and permitting construction under the city's own processes. Novato officials say the project will now proceed through the annexation projects, while opponents have vowed to continue fighting it.

Measure B: Yes, 55.9%

Monterey County

The New Los Padres Dam, which would have brought a stable water supply and more growth to the Monterey Peninsula, lost decisively. Despite the vote, backers of the dam have indicated they may still try to build it.

Measure C: No, 57.3%.

Riverside County

City of Palm Springs

Voters overwhelmingly approved a measure to amend the general plan to allow legal gaming and adopting an amendment to the zoning ordinance to establish a gaming overlay zone, which allows gaming clubs in three specific areas.

Measure L: Yes, 62.2 %.

San Bernardino County

City of Redlands

In a close race, Redlands voters defeated Measure H by 227 votes out of approximately 12,500 votes cast. Measure H would have guaranteed that appropriate infrastructure such as roads and city facilities was in place before any major construction occurred. The measure would have affected the Majestic Mall, a proposed 124-acre power center to be built on county land that is contiguous to the city, and will use city roads and services. Redlands already has a growth management ordinance in place which limits construction to 400 new units a year.

Measure H: No, 50.8%.

San Mateo County

City of Half Moon Bay

Voters turned down a city-sponsored advisory vote on whether to allow construction of the 750-unit North Wavecrest golf course community on coastal bluffs. Because the vote was advisory only, a citizens group placed a similar but binding initiative on the ballot for the March election. The March 1996 election will mark the third time the development has been on the ballot in less than two years. In November 1994, voters were asked to decide on whether North Wavecrest should be a 750- or 850-unit development.

Measure I: No 64.7%.

City of San Mateo

A measure defeated by voters would have added a card room as part of a special use permit at the Bay Meadows horse racecourse.

Measure J: No, 61.95%.

Santa Barbara County

City of Santa Barbara

A measure approved in this city will transfer growth allocations for commercial development when allocations for defunct projects have lapsed. Under the city's general plan, Santa Barbara is limited to 3 million square feet of commercial space over a 20-year period, allocated on an annual basis. This measure will permit the city council to reallocate old square footage that was never used.

Measure F95: Yes, 66.7%.

Santa Clara County

City of Palo Alto

Palo Alto voters resoundingly rejected a restrictive growth control ordinance that would have capped commercial development over the next 20 years and also would have subjected the rezoning of residential property to a citywide vote. The measure would have stopped several large projects in the city. Supporters of the measure said that after the measure was placed on the ballot, one large project was rejected by the city council.

Measure R: No, 70.3%

Ventura County

City of Ventura

Ventura voters approved a measure to restrict development on land inside the sphere of influence currently designated in the general plan for agriculture. The voters narrowly accepted Measure I, a measure similar to the Napa County farmland protection initiative that was upheld by the California Supreme Court last spring. (*CP&DR*, April 1995.) The Ventura measure locks up farmland in the city until 2030 unless residents vote otherwise.

Ventura voters rejected a second measure, sponsored by the same group of citizens, that would have achieved similar goals but was written prior to the Napa County decision.

Measure I: Yes, 52.2%.
Measure J: No: 47.9%.

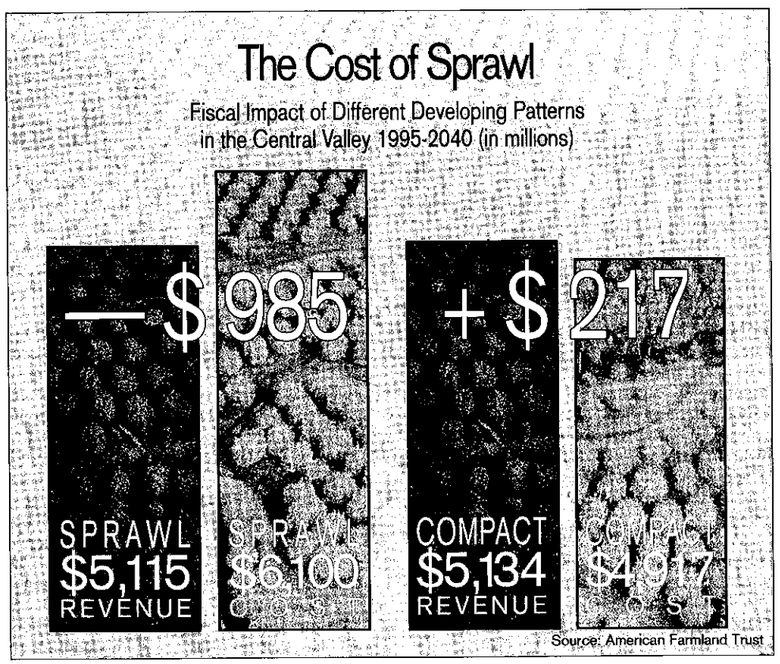
NUMBERS

Stephen Svete

Land and Money in the Central Valley

The paving of California has been a hot topic for research groups in 1995. First came the Bank of America's "Beyond Sprawl" report. Now comes another attack on sprawling development patterns — this one from the American Farmland Trust, which has narrowed the sprawl inquiry to its effects on agriculture in the Central Valley. Though it retains an academic tone, its theme is unmistakable: current development patterns are not only seriously questionable from a planning policy perspective, but are in fact fiscally disastrous.

Using population growth projections from the state's Department of Finance, the study — titled "Alternatives for Future Urban Growth in California's Central Valley: The Bottom Line for Taxpayers and Agriculture" — evaluates the way two contrasting development patterns would affect the land patterns and fiscal health of the sprawling region. Borrowing a page from both the new urbanism and sustainability movements, the report compares the outcomes of a conventionally "low-density urban sprawl" pattern with "compact, efficient growth." According to the report, there's no question which type of development is more intelligent to pursue.



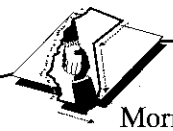
State demographers say an 11-county region stretching from Sutter and Yolo counties north and west of Sacramento to Kern in the south San Joaquin will triple in population from 4 million in 1993 to 12.2 million in 2040. Yet this region is currently one of the most important agricultural areas in the country. Fresno, Tulare, and Kern counties are ranked first, second, and third, nationally. In all, the 11-county region encompasses over 6.7 million acres of irrigated farmland.

According to the AFT report, well over half of those acres would be affected by the year 2040. If current low-density development patterns continue, 1 million acres would be converted directly, and another 2.5 million acres would be within a report-defined "zone of conflict," which would preclude full production potential.

The AFT ingeniously incorporates government-provided data into its assumptions in order to paint a picture of what the farmbelt would look like — geographically and fiscally — under the two growth patterns. In giving equal weight to fiscal impacts, the Trust shows that it is hip to the planning dictum of the late 90s: It's the economy, stupid. The report points out that the sprawl alternative would result in a deficit of nearly $1 billion to local governments in the region, whereas the compact pattern would result in $217 million surplus. This works out to a $123 deficit per-capita for the sprawl pattern, compared to a $27 surplus for the compact pattern.

The economic data has been questioned because it has not assumed any new special assessment or Mello-Roos districts in the revenue streams. But this was the case in both the sprawl and the compact scenario. Others have criticized the notion that existing tax policies — such as Proposition 13 — are assumed to remain in place, a notion that may not be credible. But economist David Strong, who prepared the fiscal analysis, says that "in any long term forecasting exercise, one holds as many factors as constant as possible. It would not be sound to conjecture some unknown future policy."

In a move that perhaps portends a future where citizens no longer rely on government as the first resort for problem-solving, the AFT urges the public to get involved in organizations that watchdog growth. With that bold stroke, the report moves beyond simple academic reporting and has started a new buzz surrounding resource-oriented planning in California. ❑



DEALS

Morris Newman

Wasco's Wild Marks-Roos Ride

I have excoriated many cities in this column for taking on the role of real-estate developer. But the experience of the City of Wasco, a community of 18,000 people in Kern County, suggests there is something even worse for a city to do: acting as an investor in unrated bonds and high-risk real estate. Currently, a number of city's investments are foundering, and the city agency responsible for the investments can't pay its own bills and may go bankrupt. Meanwhile, the federal Securities and Exchange Commission is investigating the city to determine if the city defrauded investors.

Part of the blame lies with the hubris of former city officials. Another part of the blame, however, lies with the type of bonds used to underpin this questionable enterprise.

Wasco's problems began in 1989, when the city floated a $35 million Marks-Roos bond issue — a lot of money for a city that, even today, has an annual budget of only about $6 million. The city's intent was to realize a profit on the income from its investments, minus the cost of debt service on the bonds. The problem was that Wasco, like several other California cities which undertook Marks-Roos issues, found itself with far more bond money than projects to spend it on. Wasco city officials decided to invest the money in high-yield, unrated municipal bonds in other communities that offered the best opportunities for profit. As it turned out, many of the most attractive bonds were Mello-Roos bonds in other jurisdictions, which provided the infrastructure for high-risk home-building projects. To administer the investments, the city set up a separate entity, the Wasco Public Finance Authority; city funds were not directly involved.

"Wasco's problems began in 1989, when the city floated a $35 million Marks-Roos bond issue. The problem was that Wasco found itself with far more bond money than projects to spend it on."

Among WPFA's investments in Mello-Roos bonds was $7 million in Rosamond, located in southeast Kern County, which subsidized the costs of infrastructure for a proposed residential development. WPFA also sank $4 million into bonds for Valley Rose Estates, a 2,200-home subdivision in Wasco that is also floundering, and tied up another $3 million in residential/recreational project in the City of Ione in Amador County. The worst case involved the $3 million in Mellos for the Wildwood Estates subdivision in Nevada County, which defaulted on its Mello Roos bonds, and was foreclosed on by First Commercial Bank of Sacramento.

Arguably, the most nettlesome project is the Wasco Valley Rose Golf Course, which WPFA financed in 1989 with $8.8 million. The City of Wasco is leasing the golf course from the WPFA. The golf course, however, has consistently lost money, and is in arrears to its bond holders. Although the performance of the golf course has improved slightly in recent months, "it's not improved to the point where the projections that were made are anywhere close to being real," said Tom McCartney, an attorney who represents the city. In 1994, WPFA missed a bond payment.

This past fall, the bond holder, State Street Bank, sued both WPFA and the City of Wasco for back rent and unspecified damages. Tom McCartney, the attorney representing WPFA in the case, said he firmly believes the city is not responsible for bond payments. But if the courts decide otherwise, he said, and it turns out that it is the city's responsibility to meet the bond payments, then, "in my opinion, it was too big of a risk for the city to assume."

A slightly happier prospect is facing the Wildwood Estates, which was foreclosed on in December 1993 by the bond trustee, First Commercial Bank of Sacramento. Marin County developer Robert Gold won approval on October 17 from the Nevada County Board of Supervisors for a complex arrangement to resume development of the housing subdivision. Under the terms of the arrangement, the developer will make period payments to the bank, depending on the pace of home sales. The bank, in turn, will use those proceeds to first pay off interest and other miscellaneous expenses, and then will deposit some of the proceeds into a reserve account, to make the bond payment, and then will use the remaining money to buy out the Mellos.

For the time being, however, WPFA is running dangerously low on cash to pay for administrative and legal expenses. Although some city officials had asked the city council to consider lending $60,000 of the city's general fund to help forestall bankruptcy, the council has put off making a decision, "although we may consider it in the future," said city finance director Dru Gibson.

City Manager Larry Pennell, who took office after the bond issue was done, did not respond to phone calls for this story. He did tell the Bakersfield Californian in September, however, that "we hope we can resolve all this in a positive mode and (that) bankruptcy will not be a part of it." But, he added, "we need to generate a revenue stream shortly. The clock is definitely running."

While some cash flow from the Wildwood Estates project will be helpful, it will not solve the city's problems with the SEC. The SEC has sent notification of impending fraud charges to several municipalities, including Nevada County, the cities of Wasco, Ione, and Avenal, as well as the bond underwriter, First California Capital Markets Group Inc., which structured the Marks-Roos deals.

Fortunately, the California legislature has made an effort to head off future problems with Marks-Roos bonds by enacting AB 1275 (Killea) as an urgency statute. The law requires Marks-Roos issuers to spend bond proceeds within 90 days of issuance, with the intent of obliging issuers to line up projects before floating bonds. The same statute also prohibits bond underwriters from acting as investment advisers.

The law comes too late, however, to provide much help for Wasco, whose city officials have the unenviable task of extricating its bond money out of a boneyard of moribund projects. The city that thought it could invest in real estate will be investing increasingly more of its resources on lawyers, instead. ❑