

# LITTLE HOOVER COMMISSION



## MAKING LAND USE WORK: RULES *to* REACH *our* GOALS

*November 1995*

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State of California

# LITTLE HOOVER COMMISSION

November 2, 1995

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The Honorable Pete Wilson  
Governor of California

The Honorable Bill Lockyer  
President Pro Tempore of the Senate  
and Members of the Senate

The Honorable Brian Setencich  
Speaker of the Assembly  
and Members of the Assembly

The Honorable Rob Hurtt  
Senate Republican Floor Leader

The Honorable Willie L. Brown Jr.  
Assembly Democratic Floor Leader

Dear Governor and Members of the Legislature:

By now it is clear that in good times and bad, California's population grows at a staggering pace. Newcomers are inspired by the State's history of economic and natural wealth, and newborns inherit a claim to California's tradition of prosperity -- comfortable homes, rewarding employment and a safe environment.

Californians have long realized that the success of their aspirations rests largely on how citizens, as individuals and collectively through government, make economic use of the landscape.

But the State's success also depends on an expeditious process for making those decisions. While California may never win a "cheapness" contest with its inland neighbors, there is no reason that the rules governing development decisions cannot be competitive in the time and costs required to determine what will be built where.

The Commission also has concluded that the costs and conflicts that define the land-use process are undermining efforts to provide more efficient growth patterns. Increasingly, planners, economists, business interests and environmentalists believe that innovative urban designs -- including "compact developments" that contain a variety of housing types and enable a variety of transportation modes -- are essential to the State's economic and environmental health.

The Commission's recommendations are intended to reduce the risk, cost and time associated with the process. These reforms would clarify the ground rules and encourage the planning that is essential to reducing the regulatory burden on individual projects. The reforms would change the California Environmental Quality Act from being a source of disputes and lawsuits to a venue for making all required environmental decisions and resolving conflicts between competing public priorities.

Milton Marks Commission on California State Government Organization and Economy

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The Commission is not questioning the validity of the State's existing policies that call for an open and democratic process and protection of natural values. But those goals are not served -- and at times are sacrificed -- by procedures that create uncertainty for all projects.

To California's credit, some communities are cooperating with their neighbors and some builders are designing more liveable neighborhoods. The State has an opportunity to capitalize on this energy -- by reducing conflicts between state departments with divergent missions, by rewarding communities that are jointly solving common problems, by contributing to infrastructure projects and by helping communities learn from each other.

Just as the State a generation ago recognized its obligation to facilitate environmentally-sound growth, it has an obligation now to reform those regulations to efficiently achieve those goals. Toward that end, the Commission's report, which is being transmitted to the State's top policy makers with this letter, makes four findings and four recommendations:

**Conflicting Goals.** Competing state policies invite conflicts that turn project approval procedures into costly, calendar-consuming gantlets that can short-change environmental protections while discouraging innovative developments.

- The Commission recommends that the State establish a single, timely process for assessing the environmental consequences of proposals, compensating for the harm they will cause and resolving conflicts between public agencies. This reform will prevent projects from having to study the same issues and revise plans more than once, saving both time and money.

**Seeing the Big Picture.** Inadequate planning has resulted in regional problems being debated on a project-by-project basis. The consequences are higher costs and a diminished effectiveness of efforts to accommodate growth while protecting community interests.

- The Commission recommends that State laws be changed to encourage regional solutions to growth-related problems, relieving projects that contribute to those solutions from having to separately address those issues. This reform would allow cumulative impacts to be considered regionally, reducing the costs and length of environmental documents prepared for individual projects.

**Necessary Groundwork.** The State's failure to invest in infrastructure has increased housing prices, aggravated growth-related disputes and diminished California's economic potential.

- The Commission recommends that the State improve its investments by funding the infrastructure bank and establishing an inter-agency task force to coordinate state and local efforts to provide for growth and protect environmental assets. This reform would enable communities to resolve a major source of controversy by funding the projects needed to accommodate traffic and other physical demands of growth.

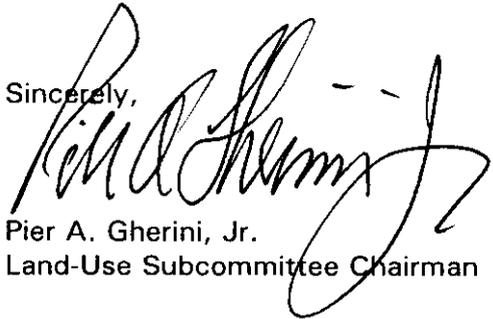
**State Leadership.** Long-held policies advocating orderly growth are being undermined by private-sector concerns over some kinds of development and obsolete local ordinances.



- The Commission recommends that the State work to resolve concerns lenders and builders have about pursuing innovative developments, and that the State taps its wealth of expertise to revamp zoning, parking and other ordinances that stifle creative solutions to intransigent problems. This reform would reduce unwarranted burdens on development, such as parking requirements that raise construction costs by hundreds of thousands of dollars while undermining state transportation goals.

These issues may be perennial. But their persistence proves they have not been resolved. The Commission stands ready to work with the Governor and the Legislature to make these policy changes a reality.

Sincerely,

A handwritten signature in black ink, appearing to read "Pier A. Gherini, Jr.", written in a cursive style.

Pier A. Gherini, Jr.  
Land-Use Subcommittee Chairman



# Making Land Use Work:

*Rules to Reach our Goals*

**November 1995**



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# **Executive Summary**

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# Executive Summary

**W**hen the Little Hoover Commission met to discuss California's land-use policies, bleary-eyed veterans of this debate reported that the spirited effort of recent years to create a new growth strategy for the State was dead. But strategy or no, the population continues to grow -- as do the housing shortage and the traffic congestion. And for the most part, where there is construction, there is conflict.

The latest attempts to address these problems -- first in the name of managing growth and then to spur economic recovery -- did lead to incremental improvements. Permits are being streamlined and some jagged edges in the California Environmental Quality Act have been filed down. But the daily process of providing homes to California's growing population while preserving the refuge of its previous residents remains in too many cases a thorny path up a rocky cliff.

For the State to restore its economic vitality, it must reduce the time, cost and risk associated with the development approval process. While California should not compromise its environmental goals, it must reform procedures that by reputation or reality discourage would-be homeowners and corporate executives from investing in the State.

Toward this end, the Commission's recommendations would clarify the ground rules, require the State to resolve competing public policies, and encourage the planning needed to ease the regulatory and financial burden on individual projects. The recommendations would reform the

California Environmental Quality Act to prescribe a process for resolving conflicts and deriving certainty -- rather than being a source of disputes and litigation.

The Commission also found that beyond the monetary costs to individual projects, the current land-use procedures are thwarting the very innovation that some of the regulations are designed to encourage.

The Commission was told by one developer who has been lauded by environmentalists for his vision that the interminable process -- burdened with risk and conflict -- discourages the kind of progressive designs necessary to build "sustainable cities."

The Commission heard from California's largest bank that continued urban sprawl, the easiest type of development to get through the current process, was bad for business and endangered species. And it was told by economists that current infrastructure policies were failing to provide the public works needed for cities to be physically and economically healthy as they grow into the next century.

In other words, California cannot afford to surrender to these problems. And as it turns out, Californians in small towns and big cities have not. In some places where growth controversies have been the hottest, there are signs of cooperation and reform.

On the edges of the Bay Area, neighboring cities are jointly planning a future with homes, offices, stores -- and vineyards and oak trees. In Southern California's mega-city, regional competition is giving way to regional cooperation. And within Los Angeles City Hall, radical reforms are being considered.

California, however, cannot wait for every city and county to stumble one by one into the regulatory abyss and then attempt heroics to save itself. Just as California led the nation 20 years ago in adopting laws to protect the health and quality of life of its residents, it must pioneer new ways to efficiently meet those worthy goals. California must learn from its mistakes and capitalize on the ingenuity that is being mustered some place in the state every day.

These locally born initiatives should be inspiration enough to those in state government to resume work on land-use policy reform. To assist their efforts, the Commission makes the following findings and recommendations:

**Finding 1: Competing state policies invite land-use conflicts that complicate the project approval process -- squandering fiscal resources, short-changing environmental protections and discouraging compact development.**

Considerable effort has been made in recent years to streamline the process for obtaining permits and for reviewing proposals under the California Environmental Quality Act. Many of the reforms are too new to evaluate. But even if these reforms are completely successful, the public review and approval process of development projects will remain fractured. Duplication in the process is costly. But more important, duplication makes it difficult to truly balance public priorities and to recognize both environmental and economic limits. Complicated procedures and multiple approvals -- each a potential source for conflict and delay -- are particularly onerous to mixed-use and higher-density projects that many planners believe are essential to provide efficiently for a growing California.

**Recommendation 1: To speak with one voice, the State should establish a single, timely process for assessing the environmental consequences of proposals, compensating for the harm projects will cause and resolving conflicts between public agencies.**

The State should replace its sequential approval process with a unified one. The California Environmental Quality Act should be the sole vehicle for determining the potential consequences of projects, considering public comments, modifying projects, compensating for remaining impacts, and providing all necessary approvals for the project to proceed. A unified process is essential to balancing competing public needs, reducing the waste and redundancy of current procedures, resolving conflicts and encouraging compromise -- all of which will be needed for the State to accommodate growth with new efficiency. The Governor and Legislature can accomplish this recommendation by:

1. ***Requiring state permitting agencies to fully participate in the CEQA process.*** Legislation should be enacted to require permitting agencies to raise concerns and requirements at the earliest time possible, to comment on modifications and mitigation plans, and respond to draft EIRs by stating any outstanding conditions that would have to be met for permitting.
2. ***Requiring government agencies to mediate disputes that arise in CEQA.*** The Governor should establish a standing council of the

appropriate agency secretaries and department heads to quickly resolve stalemates between agencies. The council would create transparency in the bureaucracy, ensure that requirements are reasonable, and help to identify conflicts in state policies.

3. ***Tightening up decision deadlines.*** The Governor and the Legislature should enact legislation requiring lead agencies to act on a project within 180 days of certifying an Environmental Impact Report and within 45 days of completing a negative declaration.
4. ***Creating objective-based pilot projects.*** Legislation should be enacted allowing and encouraging pilot projects that explore new techniques for coordinating mitigation requirements. The State should support the pilot project with funding, technical assistance and high-level policy support.

**Finding 2: The failure of community planning has resulted in a project-by-project review of regional growth-related problems that is costly, time-consuming, ineffective, and discourages the innovations that could provide more housing with fewer urban impacts.**

The current process burdens individual projects with determining how and where communities should grow and resolve communitywide issues such as transportation, air pollution and loss of wildlife habitat. Individual projects contribute to these problems and should have to contribute to their resolution. But attempting to address these issues on a project-by-project basis diminishes environmental protection, increases costs, and discourages new development designs needed to give Californians a greater choice in housing styles and an improved quality of life.

**Recommendation 2: 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.**

The State should create incentives and provide technical assistance to communities that perform the kind of big-picture planning called for in existing laws and policies. This approach would provide significant regulatory relief to cities and counties that for the most part now coordinate and consider cumulative impacts on a project-by-project basis. This approach would allow for more creativity and efficiency in satisfying

environmental regulations -- and therefore increase the chances those goals will be met. And it promises to reduce conflicts over individual projects and between cities and counties. The Governor and the Legislature can accomplish this goal by:

1. ***Creating a revolving fund.*** Legislation should be enacted to provide grants and loans to help communities pay for Master Environmental Impact Reports, watershed-wide water quality plans, regional habitat conservation plans or similar documents. Communities could repay the fund as they receive existing fees collected at the time of development.
2. ***Requiring local agencies to standardize CEQA thresholds.*** CEQA should be amended to require lead agencies to establish thresholds that would more consistently determine when different levels of environmental review would be required and how impacts can be mitigated. The thresholds for conducting environmental impact reports for most infill and for small compact development projects should be raised to require EIRs only in cases when there is substantial evidence that the environment may be harmed.
3. ***Rewarding regional cooperation.*** Legislation should be enacted creating incentives -- including a priority system for funding from the state infrastructure bank -- that reward communities that prepare regional plans for transportation, open space, habitat, air and water quality. With an executive order, the Governor should direct the Resource Agency, Environmental Protection Agency and Office of Planning and Research to provide technical assistance and regulatory flexibility to communities that want to experiment with market-based or performance-oriented regulatory compliance.

**Finding 3: The State's failure to invest in infrastructure has increased housing prices, aggravated growth-related disputes and diminished California's economic potential.**

Over the last 15 years, the provision for infrastructure has become a significant factor in California's land-use controversies. As local governments have lost the ability to spread the costs of capital improvements throughout the community, much of those costs have been pushed onto new development -- increasing housing prices and discouraging economic development. Other needs, such as freeway interchanges and regional parks, have gone unmet, fueling concerns that growth is reducing the quality of life.

**Recommendation 3: The State must invest in well-planned and efficient infrastructure to accommodate a growing population and capture economic opportunity.**

California must coordinate its investments. And it must better manage the demands on existing resources to stay economically competitive while preserving our quality of life. A coordinated state infrastructure policy has the potential of reducing a major source of controversy, while helping to pioneer new solutions to perennial growth-related problems. The Governor and the Legislature can implement this goal by:

1. ***Establishing an infrastructure task force.*** The Governor should create the task force through executive order. It should include transportation, water supply, air and water quality, conservation, agriculture and commerce officials. The task force should review the State's existing infrastructure programs for consistency and compatibility. It should provide technical assistance to local and regional officials. And it should recommend policy changes to enable better management of the State's infrastructure.
2. ***Funding the State Infrastructure Bank.*** The Legislature and Governor created the bank in 1994, but it has never been funded. Funding the bank will help California communities to build for their future, and provide a valuable incentive to do better planning. The state task force should set up guidelines and review applications for funding from the state infrastructure bank.
3. ***Requiring locals agencies to complete infrastructure plans.*** The guidelines established for participation in the state infrastructure bank should include the requirement that participating communities have completed infrastructure plans. The plan should show how the community will accommodate the development projected in comprehensive general plans and consider market mechanisms, such as rush hour toll pricing, to encourage efficiency.

**Finding 4: The State's long-held policies encouraging orderly growth are being undermined by the failure to address private sector concerns and reform obsolete local ordinances.**

Research, innovation, experimentation and practical experience are yielding answers to some of California's most intractable growth-related problems: how to encourage redevelopment of aging neighborhoods; how to encourage efficient transportation patterns; and how to encourage mixed-use development. But the State lacks the mechanisms for recasting this knowledge as policy.

**Recommendation 4: To equip California for a future that will look much different than today, the State must accelerate the land-use learning process. The State must help communities and regions learn from the mistakes and successes of others. And it must work with the private sector to encourage market-based solutions to innovation in development.**

The State should actively coordinate experts in California's universities, in local planning departments, private consulting services and elsewhere to create model zoning, parking and other land-use ordinances to eliminate the disincentives to redevelopment, infill and mixed-use projects. The State should work with lending and other financial institutions to identify concerns about mixed-use, higher density and infill development, and to craft market-based solutions to these concerns. The Governor and the Legislature can fill this role by:

1. ***Directing the Business, Transportation and Housing Agency to resolve private-sector concerns about investing in innovative projects.*** The agency should work with lenders and other financial institutions to identify concerns about investing in higher density, infill and mixed-use projects. The agency should recommend regulatory or other policy changes that could ease those concerns and encourage investments in a greater variety of housing types.
2. ***Directing the Office of Planning and Research to develop model zoning and parking ordinances.*** The office should tap the resources of the State's planning agencies, private consultants and universities to craft model ordinances that would create more flexibility, prevent density downzoning, and reduce requirements that undermine housing and transportation goals.



# **Introduction**

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# Introduction

In 1994, California's population grew at the slowest rate in more than 20 years. Just under 400,000 newcomers arrived in the state. While that is a lull compared to the frenetic pace of the 1980s, California still grew by more people than any other state in the union.

Each newcomer arrives with the hope of acquiring a safe and comfortable home, of secure employment, of long-term health and a growing opportunity to enjoy the coasts and deserts, mountains and valleys that have long lured people to California. The success of those aspirations rest in large part on how Californians, as individuals and collectively, make use of the landscape.

At stake is the affordability of housing, the viability of the economy and the livability of the State's communities. At issue are the procedures used to approve development proposals, and how the failings of those procedures limit the ability to provide efficiently for the vast numbers of people, changing family structures, and pay scales that have not kept pace with the costs of homes and commutes. The risks and uncertainties in the process discourages innovation that futuristic planners assert would provide more affordable housing, reduce reliance on automobiles and encourage social cohesion.

These problems are highly emotional and technically complicated. They are not vanquished to history by simple solutions. The experience of the last 10 years testifies to their intransigence. Neither the growth backlash of the 1980s or the severe recession of the early 1990s provided enough political momentum to fundamentally alter how California decides what will be built, how that growth will be financed,

and what changes if any should be encouraged in the shape of development.

Nevertheless, both events and the political debate they sparked helped to identify persistent problems with California's land-use policies. The Little Hoover Commission undertook this study out of a belief that the problems have not been fully resolved, yet remain critically important to the long-term health of the State. That suspicion was quickly validated.

The Commission in January conducted a round table discussion and invited some of those who fought the growth management and competitiveness wars, as well as those who were living day to day with the problems, looking for solutions on the margin and hoping the statewide debate would be revived. (See **Appendix A** for a complete list of participants.)

At that round table, the participants expressed some consensus that development had to become more compact, more multi-use and more transit-oriented. Communities needed incentives to cooperatively solve subregional or regional problems and the approval process needed to be improved to meet more efficiently existing policy goals.

The Commission in April conducted a public hearing in Los Angeles dedicated to these issues, using the compact and mixed-use Playa Vista project in Los Angeles as a case study. (See **Appendix B** for a list of witnesses.)

The Commission and its staff conducted nearly 100 interviews, with developers and the lawyers who battle on their behalf, with local officials and planners, with transportation experts, academicians and researchers, environmental and community activists. (See **Appendix C** for a list of those interviewed.)

In the resulting report, the Commission has identified four fundamental problems and crafted four recommendations that it believes will: reduce conflicts that exact a price on the economy and the individual consumer; encourage the civic cooperation necessary for creative governance, and reduce the risks that discourage innovation in development essential to more efficiently providing for another 10 million Californians over the next 15 years.

This introduction is followed by a background section, the four findings and four associated recommendations, a conclusion and appendices. The experience of the Playa Vista development is incorporated throughout the document.

# Background

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- *Of California's 58 counties, 22 are expected to double in population by the year 2040. Another 14 counties are expected to triple in population by 2040.*
- *During the 1990s, California must build 1.2 million owner-occupied homes and 680,000 rental units to meet demand.*
- *Nearly half of California's cities have some form of growth control mechanism.*
- *Among the households formed during the 1980s, only about one in four involved a married couple or a married couple with children.*
- *In each of the past four decades, travel on California highways has increased at significantly higher rates than increases in the population.*
- *A commuter from an interior valley to a workplace in a coastal city spends \$7,000 a year more on transportation than someone living near their workplace.*



# Background

California has struggled over the last half century to seize the challenges of a population growing at the same pace as India. Freeways, airports and entirely new cities testify to the collective ambition, while environmental policies attest to public priorities to protect natural assets, human health and the community fabric that comprise the State's allure.

This persistent growth -- from 6.9 million people in 1940, to 32 million today, and to an anticipated 49 million in the year 2020 -- drives the land-use debate.

The problems associated with growth also are becoming more complex -- as cities expand and age, as society diversifies, as technology redefines lifestyles and the economy evolves globally, and as the long-term consequences of development on natural resources become evident.

The ability of local governments to solve these problems is undermined by state fiscal policies that encourage communities to compete for large retail projects and discourage affordable housing and primary businesses that create economic wealth. The inability to finance infrastructure inflames anti-growth sentiment -- a tension redoubling as new middle-class neighborhoods no longer generate the revenue needed to sustain police, fire fighting and parks.

This is the context of California's land-use controversies, and it is described in this section as a prelude to the Commission's findings and recommendations.

## ***Land Use: Problems Defined and Redefined***

The modern uses of land are an amalgam of market forces that shape and are shaped by public policies.<sup>1</sup> From a pure economic perspective, a parcel of land is a bundle of goods that includes the ocean view, the safety of the neighborhood, the efficacy of schools and the flow of roadways. In turn, land is one of three major inputs in the production of goods -- along with capital and labor. So just as land-use policies can have a fundamental effect on a region's economic vitality, the economic cycles can substantially define the pace, pattern and value of development.<sup>2</sup>

Because of the extent of existing development and the value of California's natural landscapes, the conversion of new lands to urban uses has become a series of zero-sum choices. Urbanizing agricultural land has a permanent effect on the farm economy. Hillside development unravels pastoral remnants. Constrained housing increases prices and reduces opportunity. These are the frontiers of contention.

The boom-and-bust cycle of the late 1980s and early 1990s illustrates the dynamics between economics, public sentiment and formal policies. As both the population and the economy soared in the late 1980s, so did public demands that growth be controlled. By 1989 more than 50 California cities had capped the rate of growth. Another 323 cities had invoked some kind of growth management policy.<sup>3</sup>

One researcher concluded that the tide of protest represented a fundamental change in public sentiment: "For many residents, no-growth-ism, slow growth-ism and NIMBY-ism (Not In My Backyard-ism), positions that once seemed to represent a radical attack on the California dream, now represented the only chance of preserving that dream."<sup>4</sup>

Throughout California, however, researchers documented that local measures did not stop growth. At most, the measures pushed growth elsewhere -- to communities interested and prepared for growth, and to communities less equipped to stop it.<sup>5</sup>

At the state level, the grassroots no-growth wildfire prompted a debate that yielded three assessments of the core problem:<sup>6</sup>

- ***The problem is structural.*** While local jurisdictions have authority over land-use decisions, most growth-related problems have regional impacts. This perspective offered regional governments as the solution.
- ***The problem is financial.*** Growth problems are magnified because the State has stopped building the infrastructure needed to make roadways, faucets and toilets flow without constraint. This perspective gave rise to financial reform proposals, including a state infrastructure bank to finance community improvements.

- ***The problem is procedural.*** The evolution of permitting and environmental review did not produce a vehicle for communities to reach a consensus on what would be built where. The result is a series of growth battles over individual projects. This perspective advocated detailed community and environmental planning.

These assessments led to several attempts to re-engineer the way the environment is protected, cities are planned and community infrastructure is built.

The Legislature sponsored a consensus project conducted by the Center for California Studies at California State University, Sacramento. Thirty diverse stakeholders sought a collaborative solution and in January 1992 arrived at 13 "key areas of emerging agreement." Among them: the need for a consistent and clear state growth policy, for social equity in land-use decisions, and for a system that provides certain protection to environmentally sensitive lands and certainty to developers who pursued projects on land designated for urbanization. They agreed on a need for infrastructure improvements, affordable housing, incentives for effecting change and the use of market-based solutions, such as higher rush-hour tolls, to increase the efficiency of public works.<sup>7</sup>

Governor Pete Wilson responded to the growth debate by assembling a Strategic Growth Council, which in January 1993 advocated more coordinated state planning and state funding of infrastructure, a streamlined process for approving housing and comprehensive local planning, reforms to the California Environmental Quality Act and permit streamlining.<sup>8</sup>

Both groups also recommended that development in California take on a new shape. The groups advocated more compact development, which includes moderately higher densities, a mixing of residential and commercial uses, infill development, and cluster projects around mass transit stations. Such projects are thought to provide more economically housing and transportation for a changing population -- one composed of more single parents and other non-traditional family structures, households with multiple wage earners, and an increasing percentage of workers employed in lower-waged, service-related jobs and in industries forced to offer globally competitive wages.

The administration's report said:

*The issue of housing is the most politically contentious in the growth management puzzle, but it is also the piece without which no others will fit. Higher densities, market-driven, inevitably must be some part of this piece. California cannot support a population growth past thirty million people based on existing housing and transportation patterns without unacceptable economic, social and environmental costs. If the State wishes to*

*preserve mobility, open space and a viable agricultural industry, clean air and environmental quality, and an economy that works, it cannot continue to support traditional, low-density land use patterns based on large single-family detached dwellings, nor a transportation system based overwhelmingly on single-occupancy vehicle usage.<sup>9</sup>*

Fundamental policy shifts are always difficult to enact. But the political momentum for growth management reforms eroded quickly as the economy slid into the post-Cold War recession. The national downturn, aggravated in California by deep cuts in federal contracts with defense and aerospace firms, spurred a new political imperative to entice rather than manage growth. During the recession, 600,000 Californians lost their jobs in the private sector.<sup>10</sup> As property values plunged, virtually every homeowner lost equity and the sense of security it represented. The move-up housing market vanished and the uncertainty resulted in tighter lending standards, which further depressed the market.

The severity of the recession triggered studies and blue ribbon commissions. Chief among them was the Council on California Competitiveness, which focused on reducing regulations -- some relating to land-use -- as an inducement to economic activity.<sup>11</sup>

While the grand growth management efforts failed, those elements of the legislative agenda that were compatible with the economic stimulus reforms were enacted. Among them were some reforms to CEQA, some state permit streamlining, and the creation of an infrastructure bank that was never funded. Into the 1995 session, legislation continued to be pursued in that vein.

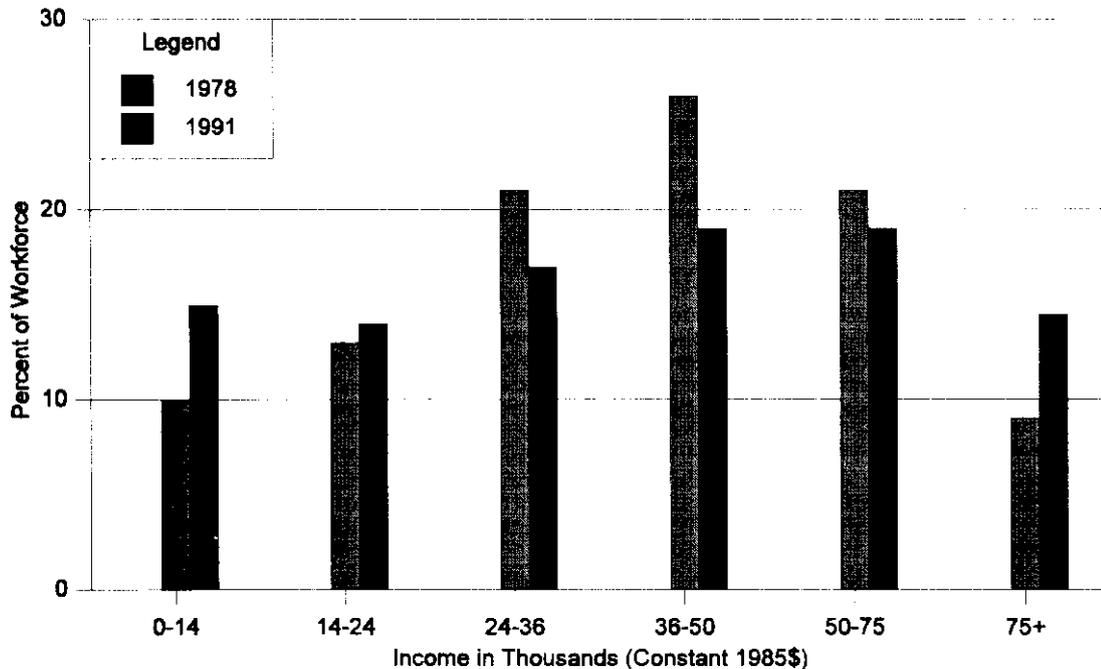
Meanwhile, more detailed analyses of the California economy revealed faults that lie deeper than defense cutbacks. Mortgage Securities, the San Francisco-based brokerage firm, found that personal income, average hourly wages and personal savings rates began to decline in the mid-1980s, indicating a crumbling of the middle class long before the Berlin Wall fell.<sup>12</sup>

A study by the Association of Bay Area Governments (ABAG) found that most Bay Area residents were earning less in real terms in 1991 than area residents in 1978. While the median gross income, adjusted for inflation, was the same in 1991 as in 1982, the median was propped up by significantly increased earnings by professionals and managers in the services, high-tech and financial industries.<sup>13</sup>

The study concluded: "Beyond the present economic problems, the trend of income growth, as reported by taxable income data, suggests a long-term fall in the standard of living."

Chart 1 shows the trends in income distribution that ABAG researchers found when they compared 1978 taxpayers with 1991 taxpayers.

Chart 1  
*The Shrinking Middle Class*



Source: Association of Bay Area Governments

The chart shows that the percentage of workers in the middle three income categories decreased during the time period. However, the percentage of workers in the bottom two income categories, and the highest category, increased.

The association believes the Bay Area statistics resemble nationwide trends and document the need for more careful strategies for retraining workers and providing affordable housing as a way to ensure economic competitiveness. The Southern California Association of Governments reached similar conclusions:

*Even if today's business climate were satisfactory, the challenge of maintaining regional economic competitiveness grows greater each year. Firms in an increasing number of industries have a choice of sites around the world for the location of new and expanded facilities. Firms can choose not just between Southern California, and Texas, but between California, Japan, Mexico, Malaysia and European locations.<sup>14</sup>*

The characteristics of a better economic climate, the association determined, are a competitive work force, adequate infrastructure investment and preservation of quality of life issues.

Other economists have concluded that an overemphasis on regulations as a source for economic decline can distract from the needs to encourage infrastructure investment, worker training, adequate housing and other inputs to competitiveness.

The Center for the Continuing Study of the California Economy concluded in a 1993 assessment: "Misunderstanding over why and where California has experienced recent job losses continues to create confusion in assessing the State's future economic prospects."<sup>15</sup>

From this lingering concern over efficiently accommodating population growth while also restoring economic competitiveness, a third wave of land-use reforms is rising.

This platform squarely challenges the suburban model of low-density and single-family development and advocates higher density and mixed-use projects to provide for a growing population, while easing the burden on transportation, agricultural and natural systems.

The effort is characterized in the policy document "Beyond Sprawl" prepared by the Bank of America, the California Resources Agency, the Greenbelt Alliance and the Low-Income Housing Fund. The report, presented as

## *Beyond Sprawl*

"One of the most fundamental questions we face is whether California can afford to support the pattern of urban and suburban development, often referred to as 'sprawl,' that has characterized growth since World War II." When officials at California's largest bank and the State Resources Agency asked themselves that question -- and repeated those words in their treatise "Beyond Sprawl" -- they answered with what they hope will become a clarion's "No."

Bank of America and state officials, along with the Low Income Housing Fund and Greenbelt Alliance, offered the assessment to the Commission in January. The group argues that low-density development accelerates environmental conflicts and inner city decay while increasing infrastructure costs and reducing the State's economic desirability. The current suburban model, the group said, is obsolete given California's large and still growing population. The group offered four steps for getting beyond sprawl:

- Delineate where development should and should not occur.
- Revitalize declining urban areas by attracting jobs and homeownership.
- Streamline rules for development in delineated areas and make fringe projects pay the full costs of development.
- Build political constituency for "sustainable communities."

The Building Industry Association criticized the report: "We find this to be less an objective analysis of the benefits and burdens of new housing and economic development than a one-sided, somewhat hysterical tome singling out suburban housing as a pox upon California's physical and economic landscape."

The report was embraced by others, including Newsweek magazine, which cited it in a cover article on remaking suburbia. And the creators of the document were surprised by the vitriolic reaction, given that both the Governor's Strategic Growth Plan and the Legislature's consensus project advocated compact development to accommodate growth. The Reason Foundation responded by warning that policies attempting to dictate land-use outcomes often fail and stifle growth. The Commission also was told that if the risks and costs of the development process were reduced Californian builders would pursue a greater variety of projects, including higher density and more mixed-use -- that is, less sprawl.

The Bank of America's argument is not new: 25 years ago the bank supported the conclusions of a governor's task force that concluded sprawl was consuming valuable farm land, forcing automobile use, increasing air pollution, aggravating racism and adding to construction costs.

Debates over the costs and benefits of sprawl can quickly become high-centered. Without passing judgment on suburban development, the Commission explored the impediments to compact developments. This dialogue prompts important questions that could yield solutions that a range of interests could support. Among them: Why do builders build what they build and why do consumers buy what they buy? How does government influence these decisions and should it do anything differently?

testimony to the Commission in January, asserts that efficiency in development is essential to long-term economic prosperity.<sup>16</sup>

At the heart of this dynamic are demographic trends that accelerated in the 1980s. The percentage of individuals living alone and single-parent families increased from 29 percent in 1980 to 38 percent in 1990. Of the 17 million households formed nationwide during the 1980s, only about one in four involved a married couple or a married couple with children. Nearly one in four involved people over 65 years of age.<sup>17</sup> These changes are reflected in urban planning models that are being tried in California and other states, and are incorporated in regional planning efforts and statewide reforms implemented in Washington, Oregon, New Jersey and elsewhere. Many of the reforms attempt to create a stronger link between the development of land and mass transit systems, to provide incentives for higher densities, concentric growth and renewal of declining low-density neighborhoods.

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*Of the 17 million households formed nationwide during the 1980s, only about one in four involved a married couple or a married couple with children.*

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New Jersey has created a statewide plan that through zoning and fiscal incentives encourages reuse, slightly higher densities, and compact development of targeted lands. Ongoing studies by Rutgers University have estimated that the plan will directly save \$1.3 billion in infrastructure over 20 years and \$400 million a year in operating costs to cities and school districts. Much of the savings will come from more efficient use of roads, sewer and water systems, and translate into benefits of \$12,000 to \$15,000 per house. The plan also is expected to keep prime agricultural lands in production, reduce air and water pollution, and avoid development of 80 percent of the environmentally sensitive lands that would otherwise be urbanized.<sup>18</sup> The savings will come as New Jersey's population grows by a projected 520,000 over 20 years -- close to one year's growth in California.

### ***Land-Use Equals Housing Plus Transportation***

A significant portion of the land-use debate -- physically, economically and socially -- revolves around housing. Physically, housing takes up the largest share of any land use in the urban landscape. In the land surrounding Santa Monica Bay, for instance, 26 percent of the land is single-family homes. In Southern California, land makes up 22 percent of the sales price of a new home, twice the percentage of 45 years ago. The trend, which is replicated statewide, reflects innovation that has reduced the relative costs of materials and labor and a reduction in the availability of suitable land.<sup>19</sup> In many cases, the shortage of land results from a supply constrained by confrontations over growth.

The price and ultimately the shape of housing also is influenced by the costs of building schools, parks, arterial streets and other community

necessities. Many of these improvements were once financed with bonds repaid with community property taxes. Since Proposition 13, those improvements and the costs of planning are financed with fees or assessments on new homes. The fees range from \$10,000 to \$30,000 for a typical home.<sup>20</sup> One review estimates fees have increased 20-fold since the mid-1970s.<sup>21</sup>

Even with these additional costs, it is hard for the market to keep pace with the demands created by rapid population growth. And the higher costs hinder the ability to provide housing at a price that low-wage earners can afford. During the 1980s, for instance, new cities far from the Southern California urban core grew rapidly as the market responded to the demand for affordable housing, often purchased by commute-willing consumers. Palmdale grew by 460 percent in 10 years, Moreno Valley by 322 percent, Lancaster by 102 percent.<sup>22</sup> During the same time, some of the region's older communities -- Palos Verdes, La Canada and Santa Monica -- decreased in density, as grown children left home, tax policies discouraged turnover, and high prices put the area out of the reach of young families. Some of the Bay Area's more desirable suburbs also lost population.

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***By the year 2000, California will have to build 1.2 million more owner-occupied homes and 680,000 rental units. At current densities, that will require conversion of 300,000 acres of land -- 10 times that occupied by San Francisco.***

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The data also reveals a third trend: In older urban areas, densities increased significantly. The density resulted mostly because of recent immigrants doubling up in existing housing. In Los Angeles County, Compton grew by 11 percent and South Gate by 31 percent. Oakland, after two decades of declining population, saw its population increase by nearly 10 percent. Embedded in these trends is a combination of economics, cultural traits and concerns about crime, the quality of education and other social attributes -- in addition to the prime factor, population growth.<sup>23</sup> Between 1990 and 2000, California will have had to construct 1.2 million additional owner-occupied homes and 680,000 rental units. At current densities, that development will require conversion of 300,000 acres of land -- 10 times the land occupied by San Francisco.<sup>24</sup>

Increasingly, planners have recognized the links between housing and transportation. Low-density housing and segregated land uses encourage automobile driving, which requires still more land and capital to accommodate. Those patterns also discourage transit use because while many people will walk one block to catch a train, few will drive a mile and park their cars to do so.

Faced with pollution-control regulations and declining highway funds, policy makers have struggled to link jobs and housing in a way that reduces traffic, energy use and air pollution. The latest generation of federal and state clean air and transportation legislation requires planners to consider ways that new development can be designed to reduce

automobile travel. But the evidence indicates that to be successful, these strategies would have to combine market incentives, regulations and land-use patterns that make transit convenient, and investments in transit infrastructure.<sup>25</sup> Many of these strategies also have working against them a variety of other public policies that encourage suburbanization of homes and jobs and solo commuting.<sup>26</sup>

And modern lives are getting more complicated, not less. The rise in double-wage earning families means many households send two vehicles heading in different directions each day. In some 1.4 million California families with children under six years old, all parents in the household are working.<sup>27</sup> Stopping at day care and performing other chores linked to one end of the commute makes carpooling and transit-use inconvenient. While population grows by 2 percent per year, automobile use is increasing by 5 percent. While fewer highways are being built, traffic is increasing.<sup>28</sup> Chart 2 shows the growth in population compared with the growth in the vehicle miles traveled.

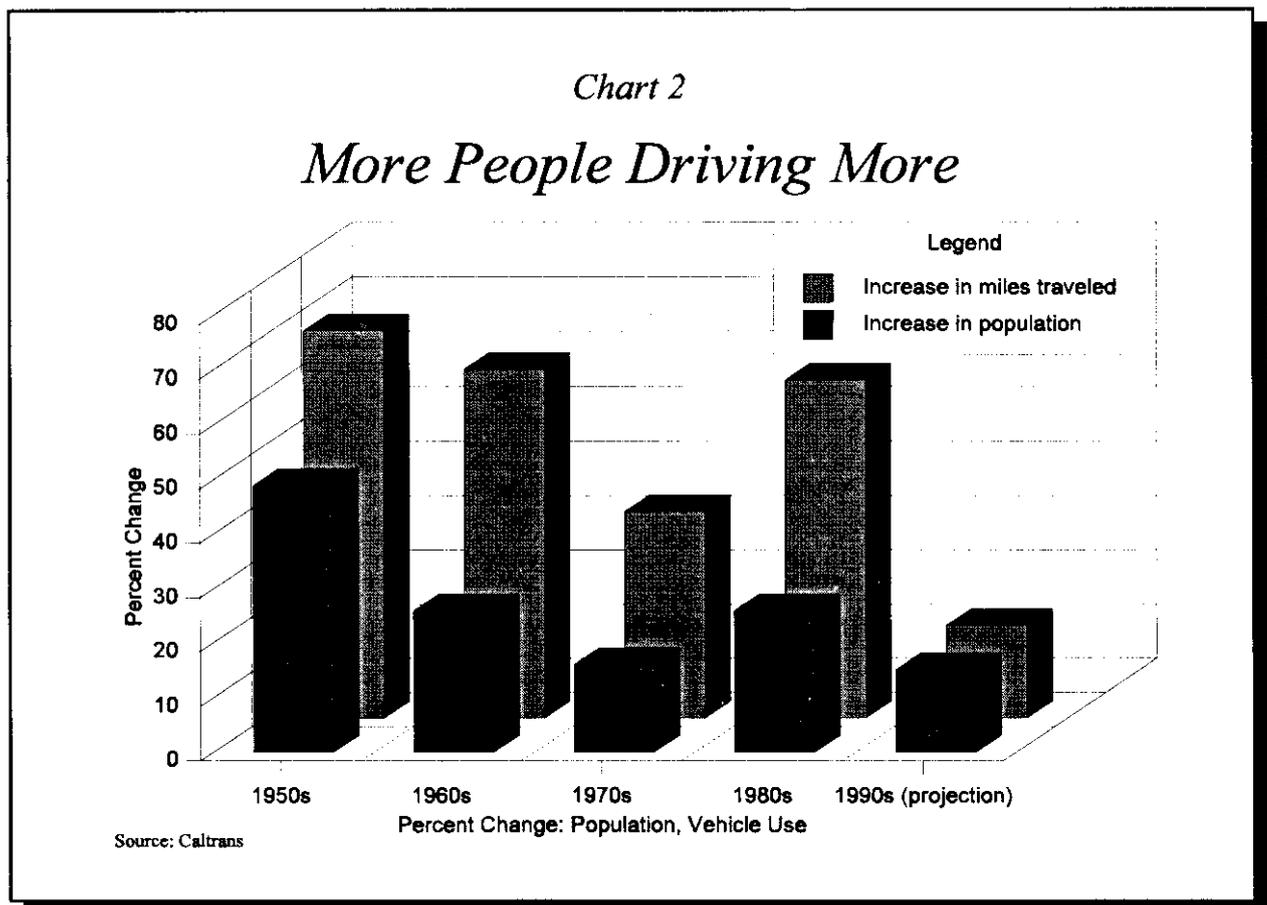


Chart 2 shows that in each of the last four decades, the miles traveled on California roads has grown significantly faster than the growth in population. In projecting vehicle use rates only moderately higher than population growth for the 1990s, Caltrans assumes personnel income will not grow, that fuel efficiency will remain the same, and that fuel

prices will increase. What has not been factored into the calculations is how land-use patterns can increase or decrease vehicle use and the demands on infrastructure.

Similarly, home mortgage policies usually do not consider transportation costs when calculating the monthly expenses of a new home buyer. The worker who heads to the Inland Empire or the Central Valley in search of the affordable dream home ends up paying the cost in transportation. A worker commuting from Modesto or Stockton into the Bay Area can spend \$7,000 a year more for transportation than someone living near their workplace.<sup>29</sup> A person who spends two hours each day commuting loses two years worth of parenting time between the birth of their child and when that child reaches college age. Between 1980 and 1990, the number of commuters from the Central Valley to the Bay Area increased from 11,000 to 45,000. And Bay Area planners expect that trend to increase. Over the next 15 years, the region expects to generate 82,280 more jobs than employed residents.<sup>30</sup>

Noting this trend in other large urban areas, a national study on affordable housing concluded:

*Middle income workers, such as police officers, fire fighters, teachers, and other vital workers often live many miles from the communities they serve, because they cannot find affordable housing there. Workers who are forced to live far from their jobs commute long distances by car, which clogs roads and highways, contributes to air pollution and results in significant losses in productivity.<sup>31</sup>*

## ***What Gets Built Is What Can Get Built***

**T**he Building Industry Association of Southern California asserts that the State's housing market is inhibited by two prime circumstances. The first is the financial burden on new construction to pay for community improvements. The second is no-growth sentiment that constrains the availability of land.<sup>32</sup>

That sentiment often translates into controversies and delays, additional studies and mitigation. The higher costs and risks associated with the approval process prompts developers to build projects that will be least controversial and will contain the biggest profit margins, testified John Landis, professor of city and regional planning at the University of California, Berkeley's California Policy Seminar. Landis believes the market is distorted by four factors: 1) Neighborhood opposition makes it difficult to increase density or redevelop existing cities. 2) Suburban development is often down zoned to a lower density. 3) Current laws make it hard to establish new cities. 4) And for fiscal reasons, local governments encourage developers to build fewer large and expensive homes rather than more compact, affordable units.

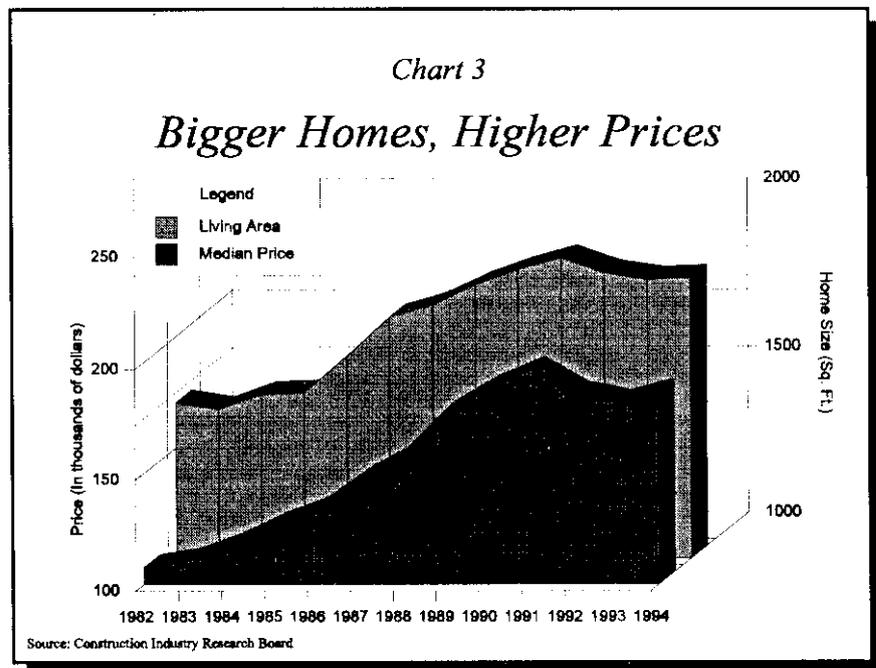
Some of these issues transcend the state, while some of them are much more prominent in California. A federal study found that opposition from neighbors to new development shared the blame for the affordability crisis in many U.S. cities. The study traced NIMBY-ism to concern over the preservation of property values, community characteristics, service levels and homogeneity. But the same study panel was told by the mayor of Livermore that California's fiscal structure was forcing that city to discourage housing: "Livermore, California, is bordered by two jurisdictions that are major job centers, but that look to Livermore to create the housing their workers require. Since Livermore does not share in the revenue generated by development in these employment centers, it is now actively encouraging commercial development of its own while placing caps on residential projects."<sup>33</sup>

Tom Sargent, a principal of San Francisco-based Equity Builders Inc., said for these and other economic-related reasons home builders were encouraged during the 1980s to compete for the low-risk, upper-end market. Between 1980 and 1990, Sargent said suburban builders erected homes that were 20 percent larger, 70 percent more expensive, in lower density neighborhoods and for smaller families. The increase in size and median price of homes in California is displayed in Chart 3.

Chart 3 shows that both home prices and size increased through the 1980s. Both variables dipped during the recession before resuming the upward trend in 1994.

So while middle-class incomes were holding steady and lower income people were doubling up in inner cities, new housing got larger and less affordable. And the trends continue. From 1990 to 1993, the population of Los Angeles County grew by 1.8 million people. The number of households, however, increased by only 380,000 -- approximately half of the household formation rate and indicating a pent-up demand for housing.<sup>34</sup>

The political dynamics of this equation is changing for the worse. While researchers have documented the negative consequence of the inter-city race for the sales tax, economic woes has increased that competition. The competition has spurred contentious fights and lawsuits between cities that want regional malls, warehouse retail outlets and auto



dealerships, often at the expense of housing and primary businesses that are the foundations of a regional economy.<sup>35</sup> Two economists observed:

*With the shift in emphasis from property taxes to sales taxes for funding local government comes increased incentives on the part of the cities and counties to encourage the development of shopping centers and auto malls instead of housing and manufacturing in an effort to boost sales tax revenue. Housing development, particularly low and moderate income housing, cannot provide enough tax revenue to pay for the local services that would have to be provided.<sup>36</sup>*

In 1992 and again in 1993 the state budget was balanced by taking nearly \$4 billion in property tax revenue that would have gone to local governments each year and shifting that money to schools. The long-term consequence is that local governments can expect even fewer new housing projects to generate enough revenue to cover even the basic municipal services of police, fire fighting and parks.

For instance, the Yolo County city of Davis recently approved a project that will include 367 houses, 295 senior units and 180 multi-family units. It will include 32,000 square feet of retail and 20,000 square feet of office space -- homes for 1,713 people and a workplace for 167. The city approved the project despite an economic analysis showing that by the year 2000, it will cost the city and county \$124,000 more to provide services to the new neighborhood than the neighborhood will generate in revenue. Much of that deficit was due to the tax break given to senior housing. But even if the seniors complex were eliminated the project would result in a \$12,000 annual deficit for the city.<sup>37</sup>

In nearby Woodland, planners say new projects must sell homes for \$300,000 a piece -- the extreme upper end in the small city -- in order to generate a positive revenue flow to pay for city services. And in cities weary of trying to compensate for the negative consequences of growth, the financial squeeze is expected to fuel discontent that is already constraining the market. Among the responses being considered by some cities is an "economic impact fee" -- another exaction on new projects to require home buyers and builders to pay up front for services that will be received in future years.<sup>38</sup>

"Our current development problems are the result of tremendous population growth, and a collective desire to defer the fiscal and environmental costs associated with that growth," Professor Landis testified. "When, not if, but when the demand for housing again picks up, and when, not if, we again unnecessarily constrain development, housing will become even less affordable. Unless we do something."

## *Playa Vista: Present View, Future Vision*

On the last piece of real estate of its kind -- more than 1,000 acres of mostly flat and bare land, edging the Pacific and surrounded by urban Los Angeles -- plans are being approved for what planners describe as the community of the future. The city within a city would recycle water for irrigating landscapes, compost sludge with yard clippings, and run free non-polluting shuttles to the beach. Homes and offices would be built to exceed codes in order to consume less energy. The developer would not only avoid a vast marsh, but expand and restore it. Half of the land will be wildlife or public recreational areas. The project was endorsed by the Audubon Society and the LA Eco-Cities Council.

But the project's Environmental Impact Report is eight feet thick and cost "several million dollars" to produce. "I don't believe any human being has read it. I don't believe any human being is ever going to read it cover to cover," said Jim Thomas of the Los Angeles developing firm Maguire Thomas Partners. The firm has been sued once, expects to be sued again and has negotiated deals with neighboring cities to prevent still more lawsuits. It must win the informal consent or formal approval from 79 city, county, state and federal agencies and departments. Many of those agencies have different visions of the future and how this project fits into it.

For its size alone, Playa Vista is unusual. The Commission, however, considered the project as a case study to illuminate problems in the development approval process that affect projects large and small, and to identify possible solutions. Playa Vista also contains many of the attributes that planners nationally believe are essential to efficiently accommodate population growth -- a mix of commercial and residential uses, a variety of housing styles and prices, and other factors intended to discourage auto use and long commutes and to encourage community spirit.

What the Commission found was a process that does not reward creativity and in some cases discourages innovation, a process with multiple sources of conflict and few avenues for resolution, a process that calls for comprehensive review yet requires review after review.

The events involving the large parcel just north of Los Angeles International Airport reflects larger California trends. For decades, it served as a private aviation facility for Howard Hughes. The Spruce Goose and several Hughes movies were made there while the city grew around it. After Hughes died, the Summa Corporation planned to fill in the Ballona wetlands with 2,000 new homes, build a regional shopping center and high rises. Neighbors, environmentalists and regulatory agencies fiercely opposed the plan. After a decade of controversy, the project failed.

When Maguire Thomas Partners took over Playa Vista, the firm held a series of meetings with neighborhood and regulatory interests. The success of those efforts and subsequent redesigns they spawned are reflected in the view of stakeholders such as Heal the Bay Director Mark Gold, who said the proposal "seems to be the best opportunity for restoration of the wetlands."

Homes for 28,785 people, a place to work for 19,767, and the best chance to save a remnant marsh. But for all the project has had going for it, Thomas believes the difficulties it has encountered would make most developers go broke, and especially smaller ones who might otherwise try such "compact" projects on smaller scales. "If no one else came to Los Angeles, we still wouldn't have the ability to accommodate our children," Thomas testified. "And you have to ask the question, 'If you are not going to accommodate growth, who is going to leave?'"

Throughout this report, Playa Vista is used as an example of the challenges and opportunities facing Californians in the struggle over how to grow.



# Conflicting Goals

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- *California has a variety of policy goals to guide development and protect the environment, but the State lacks mechanisms to resolve disputes that arise between conflicting goals.*
- *While the California Environmental Quality Act dictates a process for reviewing and modifying projects, that process is often duplicated in succeeding permit reviews.*
- *Conflict in the development approval process adds costs to homes and often results in lower densities, pushing development farther into open space, farm lands and sensitive environmental areas.*



# Conflicting Goals

**Finding 1: Competing state policies invite land-use conflicts that complicate the project approval process -- squandering fiscal resources, short-changing environmental protections and discouraging compact development.**

Considerable effort has been made in recent years to streamline the process for obtaining permits and for reviewing proposals under the California Environmental Quality Act (CEQA). Many of the reforms are too new to evaluate. But even if these reforms are completely successful, the public review and approval process of development projects will remain fractured.

Duplication in the process is costly. More importantly, duplication makes it difficult to truly balance public priorities and to recognize both environmental and economic limits. Complicated procedures and multiple approvals -- each a potential source for conflict and delay -- are particularly onerous to mixed-use and higher-density projects that many planners believe are essential to more efficiently providing for a growing California.

This chapter describes the CEQA process and the permitting process, the problems associated with both, reform efforts that have been tried, and new avenues for reform.

## ***CEQA's Promise***

The Legislature in 1970 added to the annals of California law both a grand vision for the Golden State and the prescription for achieving it. The California Environmental Quality Act requires informed decision making that is open to public scrutiny. It requires that an array of goals -- from preserving the echoes of history to reducing the excessive noise of future projects -- collectively guide nearly all decisions of civic concern. The law specifically requires decision makers to protect the quality for life of future Californians, as well as contemporary ones.

From this extraordinarily broad mandate, CEQA grew over time to play an even larger role in the State's maturation than originally envisioned. In the absence of detailed community planning, CEQA has become the de facto process for making thousands of minor decisions, while on a project-by-project basis becoming the primary venue for determining how and where communities will grow. As such, the law designed as a plowshare to yield California a future of "productive harmony" has been wielded by some as a sword in the State's ceaseless growth wars. Intended to infuse balance and foresight into public decisions, CEQA has been reduced at times to a series of legal gates opened with exactions. And while intended to be a framework for decision making, the process does not deliver a final decision.

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***The law designed as a plowshare to yield California a future of "productive harmony" has been wielded by some as a sword in the State's ceaseless growth wars.***

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CEQA now spans 150 pages of the Public Resources Code. The CEQA Guidelines crafted to help local agencies implement the law cover another 200 pages. And CEQA, more than many other laws, has been shaped by a myriad of court rulings -- nearly 300 appellate opinions -- that collectively guide a series of subjective decisions necessary to negotiate the CEQA process. Those codes, guidelines and rulings shape some 30,000 environmental documents prepared each year.<sup>39</sup>

The evolution of one paragraph reveals the simple hope of CEQA's creators, and the rocky reality in which that hope has struggled to germinate. As first approved, paragraph (G) of Public Resources Code Section 21001 declared it a goal of the State to "ensure that the long-term protection of the environment shall be the guiding criteria of public decisions." Nine years into the CEQA vision -- at a time of soaring inflation, interest rates and fuel prices -- the Legislature amended the paragraph to "ensure the long-term protection of the environment, *consistent with the provision of a decent home and suitable living environment for every Californian*, shall be the guiding criterion in public decisions."

While environmental protection and development are not incompatible, they can easily conflict on the ground. And despite continuous

evolution, an overriding fault remains: CEQA is not the unified decision vehicle described in its goals. In most cases CEQA is only the first step in a regulatory process that requires individually obtaining permission from independent and narrowly focused government agencies to build new neighborhoods, shopping centers or production facilities.<sup>40</sup>

"It is very important to recognize that we have lost our way on the intent of CEQA," testified the planning director for the City of Los Angeles. "No longer do people do Environmental Impact Reports or go through an environmental review to provide decision makers with accurate knowledge on the environmental consequences of the discretionary action. It is motivated much more by avoiding litigation or winning litigation."<sup>41</sup>

### *The CEQA Path and Where It Leads*

CEQA has four stated purposes: 1) To inform the public and decision makers about the potential significant environmental consequences of a proposal. 2) To identify ways that damage can be avoided or reduced. 3) To prevent avoidable damage by requiring feasible changes to projects, including mitigation. 4) And to disclose to the public why the government approves a project that will have significant environmental consequences.

The CEQA review is conducted by the public agency that is responsible for making the primary decision on a project. That "lead agency" is supposed to coordinate its review with other public agencies that have responsibilities relating to the project, including issuing permits.

The lead agency completes an initial study to determine if a project may have significant impacts on the environment. It must examine impacts on land, air, water, minerals, flora, fauna noise, and objects of historic and aesthetic significance. The initial study can lead to three potential ways to satisfy CEQA:

- If the lead agency finds the project will have no significant impacts, the agency completes what is known as a Negative Declaration, a checklist documenting its decision.
- If the lead agency finds that a project may have a significant impact, but those impacts could be reduced to insignificance by revising the design or otherwise compensating for the damage, the lead agency can issue a "mitigated" Negative Declaration.
- If a project may have significant effects that are not easily avoided, the agency must do an Environmental Impact Report (EIR), often completed under contract with outside consultants and virtually always paid for by the developer.

A 1990 survey found that about 4 percent of the development projects subject to CEQA are required to complete a full EIR. And for every EIR required, 20 projects satisfy the law with a Negative Declaration.<sup>42</sup> The basic steps of an EIR include:

- **Notice of Preparation.** The lead agency prepares a notice stating the scope of the study and the alternatives that will be analyzed. Other agencies and individuals may comment on the notice to influence the study design.
- **Draft EIR.** The draft study describes the project's potential impacts, the possible alternatives and mitigation measures. The draft report is circulated for public review and comment. If the review process identifies significant new information that was not analyzed in the draft report, a revised draft must be prepared and recirculated.
- **Final EIR.** The final document incorporates the comments, and is certified by the lead agency. The lead agency must find that each significant impact -- when feasible -- will be mitigated to insignificance. If every impact cannot be mitigated, the agency may find that there are overriding social or economic reasons for approving a project, despite those impacts. One study determined that three in five CEQA reviews are approved with some impact that is not fully mitigated.<sup>43</sup>

Developers complain that the process does not necessarily end there. A survey of government agencies discovered 353 CEQA lawsuits filed between 1986 and 1990, or about three lawsuits for every 1000 CEQA reviews conducted. Nearly all of the lawsuits were filed by project opponents against cities and counties. A common legal challenge asserts that a CEQA study did not adequately analyze the potential consequences of the project.

While few CEQA reviews end up in court, the threat of lawsuits is pervasive. The fear stems in part from CEQA provisions -- intended to provide full public participation -- that grant essentially anyone legal standing in a court challenge. As a result, CEQA documents are commonly "bulletproofed" to ensure they will stand up to legal challenges. Analyses of routine issues are sometimes based on worst-case scenarios. And while that strategy repels complaints that the study was inadequate, it often portrays consequences as worse than they will be, increases mitigation costs and inflames public concerns.

The American Planning Association, in its review of the law, described the costs of bulletproofing, and the reasons why many CEQA experts believe the lawsuit provisions are abused:

*The perceived threat of a lawsuit has been an important reason for increased effort, cost and time in the CEQA process, as well as a major contributor to the "bloating" of environmental*

*documents. Legal challenges have been used as a means to simply delay or halt a project when petitioners' interests are really to pursue economic or other motives unrelated to environmental concerns.*<sup>44</sup>

Proposals to limit lawsuits quickly clash with the strong desire to protect public access to the process. For the most part, reforms that have been implemented are intended to streamline litigation rather than limit it. For instance, large counties were required under a 1993 bill to assign a judge to CEQA cases, a reform that shows significant promise in speeding up court reviews and encouraging consistency, but is too new to evaluate in detail.<sup>45</sup> In the meantime, the focus is increasingly on clarifying the study process to ensure that CEQA documents are on solid legal footing.

Sacramento County Superior Court Judge James T. Ford, the "CEQA judge" in the capital, believes many of the lawsuits brought under the environmental law are the product of the inevitable dissatisfaction that comes from the political process: "Because the political decision cannot be challenged directly in court, the attack usually focuses on the process." He believes lawsuits could be prevented if more analyses fully described impacts and "honestly" stated which ones will be mitigated.<sup>46</sup>

CEQA defenders say the process forces better decisions. Even the lawsuits, defenders say, force agencies to make honest assessments of a project's impacts and to publicly justify their decisions. One Sacramento attorney and CEQA expert argues the law has had the effect of requiring projects to include costs -- such as air pollution and traffic congestion -- that historically were passed on to society. She wrote: "CEQA forces local agencies to take a step back, consider the long-term implications of their actions, and factor the environment into their decision making calculations. Simply repeating the 'jobs/growth' mantra is not enough."<sup>47</sup>

Critics, however, say CEQA has tainted the approval process with risk and costs that do not necessarily translate into environmental protection:

### *The Dark Clouds of Litigation*

Douglas Gardner, the project manager for Playa Vista, said CEQA has evolved into a legal process, rather than an environmental or informational one.

"As project sponsors and jurisdictions know well, the real vulnerability with EIRs is not in disclosing likely project impacts, but rather in not disclosing any conceivable impacts," Gardner said.

As a defense against potential lawsuits, Gardner said the EIR for Playa Vista describes the worst-case scenario for issues such as traffic congestion, which he believes unnecessarily raises public concern while requiring mitigation in excess of the likely impact the project will create.

One community activist testified that the "bulletproofing" of Playa Vista's CEQA documents made them less useful: Hedge words inserted to defend against inevitable uncertainties diminished the documents' value. Minor points were repeated, while the interpretations of raw data on key issues were minimized.

However, Paul Doebler of the Villa Marina East Homeowners said CEQA does not cause litigation, disagreements do. Most of Playa Vista's neighbors have not entered into the lawsuits, Doebler said, because they were satisfied with the education process.

"Legal uncertainties also allow a variety of non-environmental players to manipulate CEQA to their advantage -- competing developers trying to stop a project, unions seeking leverage in contract negotiations, NIMBY neighbors seeking to stop any developers, or cities trying to keep their tax base from migrating to other areas," wrote a pair of veteran CEQA attorneys. "Although it is important not to strip environmental protection based on economic fears, we believe that the relationship between CEQA's goals and the amount of time and paperwork that is thrown at those goals is seriously out of balance."<sup>48</sup>

Ideally, Environmental Impact Reports or Negative Declarations would provide all of the information necessary for a developer to move through the process of obtaining state and local permits and other approvals.<sup>49</sup> But that is not always the case.

### *Conflicts Begin At The Top*

For small and simple projects proposed for areas where growth is expected, most of the required permits are issued by local agencies: building permits, grading permits, sewer connection permits, conditional use permits. Projects do not have to become very large or very complex before crossing a threshold requiring a state permit. And stumbling over that line may become even easier in the future, as developers must choose between previously developed sites, which are often contaminated by previous uses and must be cleaned up under state law, or venture farther into wild lands protected by state laws.

For instance, projects must receive state permits if they are within the coastal zone, adjacent to San Francisco Bay, in the Lake Tahoe watershed or the floodways of the Central Valley. State permits are required if a project will alter a streambed, encroach on tidelands or submerged waters, and either dredge or fill wetlands. Projects that will generate air or water pollution need permits, as do those that will store or use hazardous materials. Permits are required if the project involves power transmission lines, pipelines, railroad crossings or encroach in any way on a state highway or park land. Developers may have to obtain similar permits from federal agencies, as well.

The various permit procedures reflect a variety of formal policies intended to influence or outright regulate land use -- housing, transportation, air and water pollution, recreation and open space.

In search of inherent incongruities, the Office of Planning and Research in 1992 analyzed 40 long-term plans prepared by such state agencies as the Housing and Community Development, the Department of Fish and Game, and the Office of Criminal Justice Planning. The study concluded that the plans were not prepared to ensure or even encourage compatibility: "There is a noticeable lack of coordination among each of these plans. There is a lack of consistency in format, time horizons,

public participation in their preparation, sources of data used, monitoring and evaluation procedures and other factors."<sup>50</sup>

But even more importantly, officials recognized that the lack of coordination at the state policy level can result in costly conflicts at the project level. "The inherent goals of the transportation plan don't have to disagree with wildlife habitat," said the planning chief for the Office of Planning and Research. But once planning and construction of freeways get started, conflicts with environmental agencies have become routine.<sup>51</sup> Similarly, the State's directive that communities provide housing is compatible with environmental goals until a community endorses a subdivision in wetlands. Among the conflicts cited by the study:

- ***Housing vs. farmland.*** State law requires that all cities provide for their share of California's population growth, and specifically their share of low-income housing. The Department of Housing and Community Development calls for an expedited permitting process for housing projects. But that directive conflicts with the Department of Conservation's goals of protecting farm land, in part by carefully regulating its conversion.
- ***Housing vs. wildlife habitat.*** The State's goal to provide adequate housing also frequently conflicts with state laws protecting wildlife habitat, wetlands and timber lands.
- ***Highways vs. farm and wild lands.*** Caltrans' goal of expanding the transportation system sets up confrontations with state policies for protecting farm and wild lands. "Coordination" usually doesn't take place until a project has been planned, funded and is undergoing CEQA review, the study said, "where it is handled in an adversarial manner."
- ***Water and transportation plans vs. clean air policies.*** The study said water and transportation policies are encouraging urban growth in areas with the worst air pollution in the State and in areas where topography will trap additional pollution resulting from development.

Given that these plans are prepared by single-purpose agencies, the divergence is a predictable byproduct. And with few avenues for compromise, the escalation of conflicts is inevitable. As one analyst observed:

*Especially when linked with federal policies, state policies have developed into a fragmented and complex system, dominated by single-focus agencies with dedicated revenue sources. Boundaries of state agencies don't even coincide, let alone regional agencies boundaries or with natural geographic boundaries. Most of the fragmented systems have been regulatory-oriented, preventing economic approaches and actually*

*encouraging illicit behavior like habitat destruction.*<sup>52</sup>

The construction of highway bypasses in the 1960s and 1970s -- Interstate 680 in Contra Costa County, Interstate 15 in northern San Diego County, Interstate 405 in Orange County and Interstate 80 in Sacramento County -- had direct consequences on farmland preservation policies. More recently, the University of California's criteria for siting a new campus has been criticized for not considering the State's air quality, transportation and other infrastructure plans.<sup>53</sup>

Coordination problems are vertical as well -- between state, regional and local agencies. The City of Los Angeles, for instance, has been debating for months with the California Coastal Commission over a land-use plan for Venice Beach. It is not that the two levels of government disagree about important issues such as public access. Rather, the debate is over whether the plan must be prepared to the city's requirements or the more detailed requirements of the Coastal Commission.<sup>54</sup>

The Coastal Commission also has felt the friction of multiple agencies with overlapping jurisdictions. An agency official testified that efforts to timely process permit applications are periodically stymied because the Commission cannot get agencies such as the Department of Fish and Game or the regional water quality control boards to comment on proposed projects.<sup>55</sup>

In another case involving residential development in the coastal sage habitat of northern San Diego County, the Coastal Commission received a permit application in which the CEQA process had been completed without satisfying federal wildlife officials that endangered species habitat would be protected. In that case, the Commission believes its overlapping jurisdiction over sensitive habitats allowed it to broker a compromise.<sup>56</sup>

### ***Playa Vista: Permission Pending***

The Playa Vista project will require 41 different city approvals, 16 different county approvals, 17 different state approvals and five different federal permit approvals.

"When you are working with these different governmental entities," developer Jim Thomas testified, "you have different mitigation requirements. Each one wants their problem solved with little regard to the other problems."

The traffic consequences, for instance, are reviewed by city, county, state and federal officials -- each using different formulae. Water pollution issues also are addressed at every level of government.

As part of the CEQA process, the developers agreed to restore native plants at the base of the Westchester Bluffs. But after CEQA was completed, the developers were told by city drainage officials that the area will have to be covered with concrete to prevent erosion.

In some respects, however, the project has avoided many of the inter-jurisdictional disputes that can develop. Secretary of Interior Bruce Babbitt, recognizing the political importance of the project, facilitated a formal agreement that commits the federal agencies involved to jointly review the project, negotiate a single mitigation plan for any environmental impacts, and mediate any inter-agency disagreements.

Tracking the number and types of conflict is difficult. State agencies are required to report annually on the time it takes to process permits, which could describe in part the resistance between policies and proposals. But few agencies gather that information.<sup>57</sup> The State does not track

CEQA-related lawsuits, or monitor disputes about mitigation plans. The Office of Permit Assistance estimates that it intervenes on behalf of a project applicant three times a month and offers advice to many more confused applicants. But the office doesn't formally track those conflicts, and officials are confident there are many disputes that they never hear about.<sup>58</sup>

The city planner of Woodland in Yolo County said the lack of coordination aggravates the difficult job facing California's communities, the task of accommodating growth needs while easing the concerns of existing residents that streets will become more crowded and the air will become unsafe to breathe. Reform efforts to link some policies -- such as transportation and air pollution -- blur the lines of authority, which creates tensions that are then aggravated because agencies do not have the resources to fill their traditional role in traditional ways. Put most simply: "If we are going to do housing," the planner said, "the State must build the roads."<sup>59</sup>

The State has repeatedly tried to create mechanisms for resolving disputes. Recent reforms require settlement conferences and allow for mediation in CEQA cases, or for administrative appeals within permitting agencies. Still, both project applicants and even some regulators complain that there is not a routine process for resolving disputes before the conflict escalates. In some cases it is not even a matter of breaking logjams, but of balancing the demands that will be placed on projects to ensure that resources are addressing the most significant problems. As the chief of the Office of Permit Assistance, put it: "There is no air traffic controller."<sup>60</sup>

As the example above demonstrates, projects must negotiate a fractured process, guided by independent agencies charged with conflicting goals, in which disputes are ultimately settled in court, where the decision rests more on legalities than on the merits of a project.

The consequences of conflicts go beyond the viability of individual developments or the direct costs of the protracted process:

- ***Conflict adds to the haze of uncertainty in the economic atmosphere.*** The Center for the Continuous Study of the California Economy believes growth is restrained by "a lack of institutional arrangements to resolve regional growth management issues and conflicts."<sup>61</sup>
- ***Conflict increases the costs of noncontroversial projects.*** Cities and counties now require applicants of large projects to indemnify the government against a CEQA lawsuit, adding costs even in cases where lawsuits are not filed. It is not uncommon for cities to require a full-blown EIR just because the project is controversial. And if the government agency doesn't seek shelter behind an EIR, CEQA lawyers commonly advise their clients to do

a full analysis to stave off an obvious lawsuit. Each precaution costs thousands of dollars.<sup>62</sup>

- ***Conflict can hurt the environment.*** The most common response to public controversy over new housing projects is to lower the density -- virtually assuring that still more land will be urbanized to accommodate the needs of a growing population. A national survey of home builders found that in states with environmental review requirements, 90 percent had changed plans because of those reviews. The most common change was a reduction in density.<sup>63</sup>

## ***Searching for Efficient Compliance***

Previous reformers have attempted to resolve CEQA problems by calling for a unified state plan with clear priorities, by advocating streamlined permitting, by linking state and local procedures, and revising CEQA. The reforms have either not been implemented, or failed to provide the desired improvement.

### ■ ***A Unified Plan***

"The real problem is we have trouble coming up with a common vision," said Robert Cervero, a professor of planning at the University of California, Berkeley, whose research focuses on the connection between land use and transportation.

State law already requires that every four years the Office of Planning and Research prepare a land-use plan called an Environmental Goals and Policy Report.<sup>64</sup> The document is to include an overview of the state for 20 to 30 years and set goals and objectives for land use, population growth and distribution, natural resources conservation, air and water quality and human resources.

Two reports have been prepared, in 1973 and 1978. The 1978 document advocated steering growth first toward renewing existing urban and suburban areas, then filling in land that could be served by existing infrastructure, and then when necessary contiguously expanding urban areas.

The plan detailed 42 steps to achieve the goals, including CEQA relief in established neighborhoods, model tax sharing agreements, career criminal laws, and a tax on land speculation.<sup>65</sup> The strategy asserted that significant public and private effort would be needed to help the State gracefully grow from the then 22 million to 26 million -- or perhaps even 30 million -- by the year 2000.

The State roared past 30 million in 1990, with the plan largely ignored. The Deukmejian administration set aside the report, and when a revised plan was prepared in 1984 it failed to receive the governor's approval.<sup>66</sup>

A new document has been in the works for several months, delayed by budget constraints. A completion date has not yet been set.

Yet essentially all reform efforts -- those initiated to manage growth and those initiated to jump start the economy -- advocated a detailed state plan as essential to balance economic, social and environmental concerns.

The Legislature's Growth Management Consensus Project called for "Guiding State Policies" as the first item under the areas it could agree upon: "The State should adopt internally consistent, coordinated and integrated policies to direct California's growth-related decisions in eight interrelated areas: agricultural and natural resources protection; conservation and development; air quality; transportation; affordable housing; economic development; physical and social infrastructure; and social equity."<sup>67</sup>

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***"A principal obstacle to coordination at all levels is the conflicting messages and mandates that come from different state agencies."***

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The Governor's Strategic Growth report called for a coordinated plan as a vehicle for streamlining and simplifying state policies. The Council on California Competitiveness wrote: "California must clearly identify statewide objectives and require regional and local agencies to conduct their activities in concert with those objectives. Better planning at all levels of government provides predictability in land use for resources protection and for development."<sup>68</sup>

More recently, researchers at UC Berkeley's California Policy Seminar, after studying efforts to resolve public controversies with consensus-type negotiations, concluded that multiple agencies are a central source of conflicts:

*A principal obstacle to coordination at all levels is the conflicting messages and mandates that come from different state agencies. Experience elsewhere demonstrates that at least a few goals and broad principles at the state level are necessary to provide a framework for more specific plans by state agencies and regions and to establish criteria for resolving conflicts in agency missions.*<sup>69</sup>

And finally, short of outright conflict, government is ineffective when its various components are not coordinated. The vice president of research for the Reason Foundation, testified:

*State and local agencies responsible for guiding resource, transportation, housing, and other related land-use policies seldom coordinate their approaches or integrate their goals. Likewise land-use policies in one jurisdiction often are inconsistent with policies in neighboring jurisdictions.*<sup>70</sup>

## ■ *Still Streamlining*

Californians who were born the same year that the Legislature enacted permit streamlining laws are old enough to vote. Yet California is still struggling to reduce the paper and the multiple venues required to get the government's permission to put land to economic use.

The Legislature -- responding to concerns that local and state permitting had become an endless maze, especially for manufacturing facilities -- passed in 1977 what has become known as the Permit Streamlining Act. The law set deadlines for governments to act on permit applications, and allowed those permits to be "deemed approved" when the agency failed to act.

In 1981, the Legislature passed the Permit Reform Act, which among other things required state agencies to file annual reports on their permitting activities. In 1983, the Legislature created the Office of Permit Assistance and directed it to help local agencies develop expedited permit processes and authorized the office to mediate disputes between applicants and the permitting agency.

The laws have been largely unsuccessful. For instance, the 1983 amendments directed the Office of Permit Assistance to develop a consolidated permit application form, but the form was so complicated it went virtually unused. Annual reports on permit activity are seldom, if ever, filed. And a 1992 evaluation by the Assembly Office of Research showed that little progress had been made toward devising more efficient permitting.<sup>71</sup>

Similarly, the effectiveness of action deadlines have been limited. Under the law, if state or local agencies do not act on a permit application within a prescribed deadline, the action can be "deemed approved." The provision is similar to statutes in place in Massachusetts. The California courts have upheld the validity of permits that were approved by government default, but restricted the deadlines to actions that were adjudicatory in nature, rather than legislative. Issuing a building permit, for instance, is adjudicatory, while changing the general plan or zoning is legislative. Because most large projects require some legislative action, that distinction significantly limited the pressure that deadlines placed on government agencies. The laws also have been seldom used because it requires applicants to invoke the act, often with the help of the courts, and "deemed approved" permits may still have to undergo public scrutiny.<sup>72</sup>

During the recession of the early 1990s, the Legislature again tried to institutionalize streamlining by passing SB 1185, which called for a single permit system, primarily for the pollution, waste and hazardous-materials permits that are required of manufacturing facilities. Establishing a single process has been difficult, largely because of the legal requirements that each agency must fulfill to ensure it is protecting

public health and the environment -- requirements that cannot be easily reassigned to another agency. Most agencies also have public review requirements, making consolidation difficult. The state Environmental Protection Agency in 1995 published regulations to implement a pilot project for a consolidated permit. The process would allow an applicant to work with a single agency to acquire all necessary permits, and provides for an expedited appeal process if the applicant believes the agency has not acted swiftly or correctly in processing its application.

In addition to the legislation, Governor Wilson in September 1992 issued Executive Order W-35-92. The order directed the agencies to review and streamline their procedures to the extent allowed by law, and then recommend legislation to make future improvements. It directed the Office of Permit Assistance to develop a consolidated permit application (as required by the 1983 law). The work was to be accomplished by April 1993.

The office has nearly completed a plan for a pilot project that would electronically consolidate permits from various state agencies, similar to Cal-EPA's pilot project for pollution and hazardous material permits. This project could yield valuable information about using technology to cut red tape. It also could yield lessons in how to encourage cooperation between agencies. But the various permitting agencies will still lack the resources and the legal authority or obligation to consolidate their permit reviews with the CEQA process.

The director of the Office of Permit Assistance said the job of consolidating permits is technically more difficult than most people recognize, that streamlining will not work unless the processes are truly integrated, and unless various agencies cooperate. The director believes the pilot project could clear all three hurdles and create a model that can then be extended statewide.

### ■ *Linking State and Local Policies*

The complexity of the permitting process stems in part from the policy that land-use authority rests with local governments, while many of the problems and conflicts are regional in nature and of statewide

#### *Getting Governments to Get Along*

Los Angeles City Councilwoman Ruth Galanter said time is money for developers, and since governments would have more troubles if they waived fees, they should find ways to cut review times. Galanter, who was elected because she opposed the first version of Playa Vista, believes state and local governments must coordinate their requirements at the beginning of project reviews.

"We need the developers and someone from each of our agencies in the same room so we can tell the developers, 'This is what we need to know and these are the kind of extractions we will want to extract.' We need to make sure that none of the agencies come in late, like the Fire Department did in this case when it said, 'You can't have the streets this way.'"

Galanter advocates that whenever more than two state agencies are involved in any kind of state review, they should have to meet at the outset "to make sure the runoff from the road Caltrans wants doesn't pollute the wetlands that Fish and Game is interested in." At the end of the meeting, she said, the agencies should have reached an agreement or have worked out a way to reach an agreement.

significance. The fractured authority contributes to the periodic call for regional governments. One lesson of the growth management debate was that few communities favor another layer of government, and so any hope of resolving regional problems would have to rest with regional coordination among existing government agencies.<sup>73</sup>

The Southern California Association of Governments, which believes the region's regulatory climate is choking off business, is searching for ways to "reduce the cost of meeting legitimate goals."<sup>74</sup> If one-stop permitting proves impractical, SCAG believes the process can be improved with more uniformity in permit requirements across jurisdictional and geographic lines. Reforms that reduce the time it takes to satisfy requirements, SCAG believes, can be just as important as changes to the regulations themselves.

A difficulty of many state efforts is that ultimately they rely on local agencies to implement and blend those reforms with local procedures, which often need reforming as well. Los Angeles Mayor Riordan's Development Reform Committee concluded in its review of local procedures: "The City's Environmental Review Process has become a vehicle for ignoring the State's 'permit streamlining laws' and the rationale for imposing scores of sometimes impossible conditions on projects. ... The City's administration of CEQA, with its truly tortuous bureaucratic requirements, is far more cumbersome than other California jurisdictions."<sup>75</sup>

The city's process is so complex that an engineering firm published a map summarizing the overlapping jurisdictions. The map is frequently used by city staffers.

## ■ *CEQA Reform*

When the latest round of regulatory reform started, so much distance lay between the CEQA and the permitting process that a law had to be passed outlawing a practice by some state agencies of refusing to even accept permit applications until the CEQA review was completed. The Legislature required permitting agencies to begin processing applications before the CEQA process was completed.<sup>76</sup>

Earlier amendments to the law required the lead agency to consult with permitting agencies. And other state agencies are required to raise issues early in the CEQA process if they expect those issue to be addressed in the final report. The law, however, stops short of requiring permitting agencies to raise issues in CEQA that it will want addressed at permitting, or to comment on mitigation plans that could be modified to meet permit requirements, as well.

Most of the 1993 reforms focused on trying to integrate CEQA and the community planning process. Amendments allowed for communities to conduct Master Environmental Impact Reports; individual projects that

followed the master plans would only have to study impacts not anticipated in the master document. While reforms also were attempted in the permit process, little effort was made toward integrating CEQA and the permitting process.

A recent study of CEQA conducted by the California Policy Seminar at the University of California, Berkeley recommended that the Legislature's top priority should be getting state agencies to consistently participate in the CEQA process. Rather than simply mandating participation, the study recommended creating fee structures that will enable resource-poor agencies to get involved in an expanded scoping process at the beginning to better identify the issues that need to be addressed in order to satisfy all regulatory concerns.

The State Bar of California, in its review of CEQA, supported the use of Master Environmental Impact Reports, but cited as a major obstacle the need for better coordination between all the various agencies -- sewer districts, air pollution districts, transportation districts.<sup>77</sup>

While the CEQA guidelines encourage cooperation, the bar noted that the law does not require EIRs to even list the permits that will be necessary. And while the law recommends coordination between the agencies conducting CEQA reviews and those that will issue permits, the bar concluded that the law should require permitting agencies to "meaningfully" participate early in the CEQA process. In addition to institutional inertia, consolidation faces two hurdles:

- **Legal procedures.** Individual agencies are expert in their fields and are often obligated by law to follow specific procedures. Many of those requirements do not allow for balancing, or discourage compromise, or bind agencies to public decision procedures that discourage negotiations.<sup>78</sup>
- **Funding.** Many agencies lack the resources to be actively involved in a project through the design and study phase. Many of them can only collect fees at the time of permitting.<sup>79</sup>

### *Creating Communicative Government*

Jack Broadbent, planning director for the South Coast Air Quality Management District, said Playa Vista is a model for improving the design of a project to reduce automobile use and air pollution. Broadbent attributed the design improvements to a series of meetings held between the developers and regulators to identify issues and understand the regulations.

"Up-front project planning was key to resolving conflicts or problems later," he testified. "Clear and consistent communication was important to resolving problems."

Playa Vista Project Manager Doug Gardner said the lack of institutional arrangement to reach that level of planning at all levels of government, and especially between agencies with different interests, is what is missing. Gardner said the problem of too many governments is particularly true in large cities, and poses a formidable burden to developers willing to try innovative projects in neighborhoods in need of economic rejuvenation.

"The absence of effective mechanisms for reconciling conflicting demands and providing appropriate mitigation measures acceptable to and implementable within all affected jurisdictions in such a context constitutes yet another hurdle to development," he said.

These two factors put the developers and the agencies -- the projects and the environment -- in a double bind. A primary goal of CEQA is to avoid environmental damage by modifying project design. But because agencies are strapped for funds, they do not want to review a project until the CEQA document has been completed. Projects often change as a result of CEQA, and for efficiency sake permitting agencies only want to review a project once. But unless the permitting agencies are involved in CEQA, the project may have to be changed two or three times to satisfy the sequential mandates.

Caltrans -- as a frequent applicant for environmental permits -- has tried to resolve this problem by negotiating an agreement allowed under federal law with the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the U.S. Coast Guard, all of which must approve projects that will damage wetlands or affect navigation.<sup>80</sup>

Traditionally, highway projects would undergo years of transportation analysis, then wait in line for funding, and then be engineered in detail -- long before CEQA or the permitting process would begin. By the time environmental agencies were asked to review and approve the project, the plans were figuratively -- and almost literally -- in concrete.

Under the agreement, each agency will review and comment on plans at each stage, beginning with the project's conception. Caltrans has agreed not to proceed to the next step in its planning until all of the permitting agencies approve. The permitting agencies, in exchange for the opportunity to influence Caltrans when environmental harm can be best avoided, had to reassign staff and be willing to give conditional approval earlier in the process.

"If nothing else, it has clarified the different roles and what information each one needs. It gives formality to nebulous permit processes and it has made everyone realize that you must make decisions with less than complete information," said Caltrans' environmental chief.

The Caltrans project grew out of an effort by the Federal Highway Administration to integrate the federal version of CEQA -- the National Environmental Policy Act (NEPA) -- and the permit process required by the Clean Water Act for projects that damage wetlands. Federal highway officials found projects increasingly delayed by the sequential process, NEPA reviews followed by separate permitting. The most publicized dispute involved a Connecticut project in which 14 years of planning ended when the U.S. Army Corps of Engineers denied a wetlands permit because transportation planners had failed to pursue, as the Clean Water Act requires, a less-damaging alternative -- widening an existing highway rather than building a new one through a marsh. A review by the General Accounting Office concluded that among the obstacles to integrating NEPA and wetland permitting procedures was a lack of adequate resources within the agencies.<sup>81</sup>

## *Opportunities for Additional Reform*

As the dust clears from the recession, research shows that regulations per se cannot be blamed for economic woes or credited with economic prosperity. So far, the evidence shows that environmental regulations by themselves do not greatly hinder or help the economies of individual U.S. States. Two studies conducted at the Massachusetts Institute of Technology showed that states with strong environmental standards were not hit harder by the recession: "On a state by state basis measurable economic growth has not been stifled, state competitiveness has not been undermined, and jobs have not been sacrificed at the alter of environmentalism."<sup>82</sup>

The Center for the Continuing Study of the California Economy agrees that regulations were not a significant cause of California's recession and are not the main obstacle to prosperity. However, the center maintains: "Inappropriate regulations that could be made more cost-effective should be re-examined, whether the economy is growing or not. Business concerns about regulation were here before the recession began and will be present when California again outperforms the national economy."

The U.S. Office of Technology said a constant search for improving the efficiency of environmental protection is particularly important as more U.S. firms and their workers pit their products and prices against global competitors: "U.S. environmental standards are likely to remain among the world's most stringent. In a more competitive global economy, it will be important to find ways for U.S. industry to achieve environmental goals while avoiding competitive handicap."<sup>83</sup>

The California Business Roundtable has found continuous support for streamlining permit procedures -- 91 percent of business leaders and 76 percent of voters in its 1993 survey. The poll also found support for consolidating state agencies that issue permits -- 88 percent of business leaders and 75 percent of voters. But while 74 percent of business leaders favored reducing environmental regulations, less than a majority of voters -- 45 percent -- supported such reductions.

So while there is a need to protect public health and quality of life, there is a continuous need to find more efficient ways of providing those safeguards. Specifically, the Commission was told of several avenues that show promise:

- ***Bureaucratic cooperation.*** A visible step taken by the State during the recession to attract and defend jobs was to develop Red Teams -- high-level officials or their representatives from diverse agencies who worked collaboratively to resolve regulatory concerns that jeopardized jobs. The team, for instance, helped to resolve problems over water quality regulations with a paper recycling plant proposed for West Sacramento. The federal government has taken similar steps to ensure that it is speaking

with one voice on large and controversial projects, to make sure that project developers and the public know they are trying to resolve problems and not be the problem. Similar mechanisms should be available for smaller projects.

- ***Incentives for change.*** While streamlining laws have been on the books for years, public agencies have lacked incentives to do jobs differently, and in some cases funding mechanisms encourage agencies to delay their involvement in projects and require as much mitigation as they can. One suggestion offered was to increase incentives through fee structures. The State Bar concluded: "If it were made explicit that a responsible agency could recover its costs from a project applicant seeking early review, CEQA could require that the responsible agency provide such early review."<sup>84</sup> The Department of Fish and Game, for instance is allowed to collect a fee for reviewing CEQA documents.<sup>85</sup> A recent court decision invalidated the fee because the department could not prove the fee reflected the actual cost of providing the service. In revising the fee structure, the department could be allowed to recover the higher costs for early participation, and be limited in the amount it could charge if it only considered the project after the CEQA review was completed.
  
- ***Effective mediation.*** Virtually everyone who has analyzed California's land-use controversies has described the need for a dispute resolution process, particularly between government agencies.<sup>86</sup> The Southern California Association of Governments is developing a mediation program it hopes will resolve disputes between its members for everything from competition for sales taxes to the traffic consequences of development.<sup>87</sup>

Florida's statewide growth policy requires every regional planning council to develop a dispute resolution process. The plan emplaced in the fast-growing South Florida area sets up a tiered strategy: First a neutral facilitator helps to articulate issues. If that doesn't lead to resolution, a mediator gets involved. If that doesn't work, formal arbitration or some other binding legal process is initiated.<sup>88</sup> In Georgia, local governments also must agree to participate in mediation for local growth plans to be certified by the state.<sup>89</sup>

- ***Performance-based regulations.*** The progress made toward a market-based air pollution program in Southern California has increased interest in allowing permit holders more flexibility in satisfying a variety of regulations. Current regulations often dictate precisely how problems should be solved, making it difficult to consider site-specific problems or opportunities. The Cal-EPA has considered this as part of its consolidated permit process, by allowing facility compliance plans that would describe how a permit holder plans to reduce emissions. Similar flexibility

could be used to encourage new projects to design neighborhoods to reduce traffic rather than pay for the improvements to accommodate traffic.

Bank of America advocates regulations that allow flexibility in meeting established standards or allow for markets to be developed to reduce undesirable consequences such as air pollution, to conserve resources such as water, and to provide for mitigation such as wildlife habitat. Such approaches encourage innovation -- reducing the cost of compliance, allowing for more development within set standards, and taking the pressure off regulators to relax standards during economic recessions.<sup>90</sup>

While CEQA was intended to be the vehicle for making decisions, it remains just one of many steps that must be taken to get government approval of projects. Previous reforms have sought to streamline the various procedures involved, while offering little in the way of a single process for balancing competing public interests and efficiently modifying proposals to satisfy those interests.

***Recommendation 1: To speak with one voice, the State should establish a single, timely process for assessing the environmental consequences of proposals, compensating for the harm projects will cause and resolving conflicts between public agencies.***

The State needs to move from a sequential approval process to a unified one. In this regard, the California Environmental Quality Act should act as the sole vehicle for determining the potential consequences of the project, receiving public comment, identifying ways the project could be modified to reduce or otherwise compensate for those impacts, and for providing the necessary approvals for the project to proceed. A unified process would facilitate a balancing of public goals and reduce redundancies in the process. Fiscal resources saved through a unified process could be expected to result in lower prices and potentially better environmental protection. Similarly, efficiencies in the process could be expected to restore faith in government, improve the business climate, and ease criticism of California's long-held environmental goals.

This approach also would more fully accomplish the goals of previous reforms:

- A unified process could provide much of the benefits of the long-sought statewide plan by requiring the lead agency under CEQA to resolve intergovernmental disputes.
- A unified process could eliminate duplication without eliminating the essential steps of analyzing potential impacts, receiving public

comments and revising the project to minimize harm and maximize public benefits.

- A unified process could give Californians what CEQA promised. At the very least, a unified process would provide as much benefit and more certainty than the current CEQA process. But carried to its full potential, a unified process would allow for lead agencies and the public to benefit from better projects at reduced costs.

The Governor and Legislature can accomplish this recommendation by:

1. ***Requiring state permitting agencies to fully participate in the CEQA process.*** Legislation should be enacted to require permitting agencies to raise all concerns and requirements at the earliest time possible, to comment on modifications and mitigation plans, and respond to draft EIRs by stating any outstanding conditions that would have to be met for permitting. The Legislation should direct agency secretaries to identify any legal obstacles to fully consolidating permitting procedures with the CEQA process, and recommend legislative changes to provide the authority to integrate the procedures. Fee structures should be created allowing agencies to recover the costs of permitting a project covered by CEQA only when they participate in all stages of the CEQA process.

The goal would not be to erode protections or sacrifice an agency's expertise for efficiency. The goal is to raise all issues early, to encourage a single revision to the project's design and a single mitigation plan that makes the best use of available resources.

2. ***Requiring government agencies to mediate disputes that arise in CEQA.*** The Governor should establish a standing council of the appropriate agency secretaries and department heads to quickly hear and resolve stalemates between agencies. The council would create transparency in the bureaucracy, ensure that requirements are reasonable, and help to identify conflicts in state policies that should be addressed at the policy level.
3. ***Tightening up decision deadlines.*** The Governor and Legislature should enact legislation requiring lead agencies to act on a project within 180 days of certifying an Environmental Impact Report and within 45 days of completing a negative declaration.
4. ***Creating objective-based pilot projects.*** Legislation should be enacted allowing and encouraging pilot projects that explore new techniques for coordinating mitigation requirements. Where more than one agency has a stake in a project's design -- such as local traffic engineers, regional and state transportation officials, as well as air pollution officials -- the pilot projects could review the

compatibility of requirements, and the strategy for satisfying those requirements. The State should support the pilot project with funding, technical assistance and high-level policy support.



# Seeing the Big Picture

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- *A lack of effective community planning has placed the burden on specific projects to resolve how and where cities will grow.*
- *That same project-by-project review has been ineffective in resolving growth-related problems that cross city and county boundaries, such as loss of open space and diminished water quality.*
- *Inadequate planning and a lack of community consensus on growth issues is a large hurdle for compact developments that are proposed near existing neighborhoods, or in areas needing revitalization.*
- *Some regions are beginning cooperative planning efforts to solve common problems, but need additional funding, technical assistance and regulatory incentives.*



# Seeing the Big Picture

**Finding 2: The failure of community planning has resulted in a project-by-project review of regional growth-related problems that is costly, time-consuming, ineffective, and discourages the innovations that could provide more housing with fewer urban impacts.**

**T**he current process puts too great a burden on individual projects -- to determine how and where communities should grow, and to solve communitywide problems such as transportation, air pollution and loss of wildlife habitat. Individual projects do contribute to these problems and should contribute to their resolution.

However, the process for evaluating these problems and creating a strategy for resolving them cannot efficiently or effectively be done on a project-by-project basis. Among the consequences of these project-level evaluations is less environmental protection, higher costs, and a lack of innovation in development design that is needed to give Californians a greater choice in housing styles and an improved quality of life.

This section describes California's project-by-project approach to communitywide problems and its shortcomings, reforms that have been attempted, and why those reforms have fallen short.

## *The Failings of General Planning*

The road map to a community's future is the general plan. The document, required by state law, must include elements discussing land use, circulation, housing, conservation, open space, noise and safety. The law requires that housing elements be updated every seven years, and that they make provisions for accommodating the community's share of housing for a variety of income levels. It also requires an assessment of governmental and market-based obstacles to providing that housing. The public must be involved in crafting general plans, and the plans must be formally adopted. An updated and complete general plan tells the community where new housing can be expected, how the additional traffic will be accommodated, and how other municipal services and amenities will be provided.

But the State has long recognized that general plans do not integrate all of the issues that are needed to create an effective strategy for communities to get where the maps say they are headed.<sup>91</sup> The process is diminished by a least four factors:

- ***Many communities do not update their plans as often as needed.*** The currency of a plan depends considerably on how fast a community is growing. But few California communities are insulated from growth, and researchers say few have invested the \$100,000 to \$200,000 that it costs to update the plan for a typical city.<sup>92</sup>
- ***Some communities change general plans frequently.*** In communities where it is easy to amend general plan amendments and rezone parcels, land speculation is encouraged, citizens do not take the plan seriously and disputes are more common.<sup>93</sup>
- ***General plans often lack critical elements of a growth plan.*** Current law does not require infrastructure elements that would evaluate the public works needed to satisfy growth, or how they will be financed. General plans do not require biological elements that could steer development away from the certain conflicts with environmental agencies.
- ***Even well done and adhered to plans are usually not very detailed.*** While the plans may discuss the needs of a growing community, they seldom offer enough specifics to enable officials and residents to avoid and resolve conflicts.

The obsolescence of plans, and the lack of resources to update them, is hard to overstate. For instance, in Los Angeles, the land-use element of the general plan is comprised of 35 different district plans. Twenty-eight of the plans are at least 14 years old, and their obsolescence makes them more of a hurdle for development than a facilitator.<sup>94</sup>

The Legislature in 1993 recognized this problem, and attempted to provide a slight nudge to communities with aging plans.<sup>95</sup> Existing law required cities and counties to update housing elements of their general plans at least every five years. The 1993 amendment required the Governor's Office of Planning and Research (OPR) to notify communities with general plans older than eight years. If the plans were older than 10 years, the state planners were directed to notify the Attorney General. The law did not specify what the Attorney General was supposed to do with the information.

OPR sent out 34 letters to communities that according to its records had not updated their plans in the last eight years. The letters started what OPR officials describe as a "mini firestorm," with the fury coming from local agencies that took umbrage at being told by the State that their plans were obsolete.

The mayor of the City of Corcoran accused the State of trying to "bully cities" into complying with laws they could not afford:

*During the past three years the City of Corcoran has experienced a 20 percent reduction in its revenues due to state take-aways... If the City of Corcoran were to comply with the veiled threat in your letter that we could face action by the Attorney General if we do not revise our General Plan, it would cost up to \$75,000 in consultant fees ... If the State feels this is such a high priority, perhaps you should tell me what service we should eliminate, what two police officers we should lay off, or should we close down our municipal pool and Seniors Program, our only recreation programs?<sup>96</sup>*

But even in cities that have met the letter of the planning laws, researchers have found that a lack of resources has prompted local agencies to push as much planning as possible on to individual projects, when development fees and the California Environmental Quality Act (CEQA) can be used to fund the required studies.<sup>97</sup>

### ***Trying to Fill the Void with CEQA***

CEQA requires that individual projects ask and answer in detail the questions that ideally are addressed more broadly in general plans. When the questions have not been addressed at the general plan level, the issues often surface for the first time when a project is proposed and CEQA studies are launched. One analysis of this problem concluded that communities with older general plans rely more on CEQA to fulfill planning needs, and are sued more frequently.<sup>98</sup> Another study found that communities are increasingly relying on the local permitting process to make growth decisions.<sup>99</sup>

The planning chief for the Association of Bay Area Governments anticipates that this trend will increase: "As cities and counties continue

to be strapped for funds, resources to maintain general plans will increasingly fall short. The lack of proper general plan maintenance will increasingly expose proposed projects and localities to successful legal attack when a neighborhood organization, environmental group or competing business is seeking to overturn a development decision."<sup>100</sup> There are three problems with this approach. The first is the conflict that comes from putting inevitable debates over community growth onto the backs of individual projects. The second is the burden placed on individual projects to assess and try to resolve communitywide growth-related problems. The third is it creates a higher hurdle for compact development projects.

### *CEQA's Additional Burdens*

Paul Doebler of Villa Marina East Homeowners believes one lesson from Playa Vista is that CEQA performs well its function of providing the public with information and the ability to comment on development plans. He also believes it proves that CEQA has been burdened by the lack of poor urban planning.

General and community plans, he said are "vague wish-list statements with colored maps." And he believes the way to improve the process -- and ease the burden on CEQA -- is for communities to do better planning with more public involvement and realistic analyses of both a community's problems and potential.

Playa Vista Project Manager Douglas Gardner said that additional burden is especially heavy for infill projects and compact development, because of the complexity of the uses and the numerous neighbors who fear they will be affected by the project.

"Beyond those concerns common to most development, it can be argued that CEQA poses special dilemmas to progressive land-use planning," Gardner said.

### ■ *The Burden of Fighting the Growth War*

Land-use controversies find fertile ground in CEQA, which requires detailed analysis of complicated issues -- like a project's contribution to overall air pollution -- and then allows anyone in the community who has participated in the review process to challenge the decision in court.

Peter Calthorpe, a San Francisco planner and architect who has pioneered new urban designs, believes that effective community land-use planning is essential to achieving community-supported development:

*In sprawling America, the public perceives development can go anywhere. With no firm decision saying "development here, but not there," every project is thus subject to being a target for opposition on the basis of the broadest public interest and environmental claims. Every fight against development in a process where development is allowed anywhere is a "good" fight. The media usually perceive and report the issue this way.*

The resulting project-by-project, permit-driven land use process all but invites pitched battles over projects. It is where many development issues are turned into lengthy, wide-open ad-hoc policy debates with environmental impact analysis often required.<sup>101</sup>

CEQA -- with its requirements for public participation and its broad access to the courts -- makes for a convenient battlefield. The law also appears to make projects vulnerable over that portion of the CEQA process that researchers say is least effective -- in analyzing and compensating for a project's incremental contribution to regional problems.

## ■ *Cumulative Impact Analysis*

CEQA requires projects to assess their environmental consequences in light of other closely related past, present or reasonably foreseeable future projects. If a project by itself will have an insignificant effect, but when considered in light of other projects it will have a significant impact, an Environmental Impact Report (EIR) must be completed and the project must be changed or compensate for that damage. The goal is to make sure that dozens of environmentally insignificant actions do not add up to a major problem.<sup>102</sup>

Cumulative impact analysis, however, is costly and technically difficult, and thus more easily challenged in court. A CEQA review by the California Chapter of the American Planning Association and the Association of Environmental Planners concluded that the cumulative impact requirement was sound policy, but difficult to implement. The law often requires project applicants to pay for analyses that concern entire regions. And the studies often duplicate those performed by previous projects.<sup>103</sup> Also among the costs of the requirement is the added uncertainty. Two CEQA attorneys recently wrote:

*Adequate preparation of (cumulative impact) analysis is probably the most uncertain area of CEQA practice and the hardest area in which to recommend general rules that may apply to a wide variety of projects. The uncertainties about the method and scope of analysis ... make it virtually impossible to complete an evaluation of cumulative impacts with any confidence that it will survive a legal challenge.*<sup>104</sup>

The legal burden might be easier to endure if developers, planners and public officials were confident that the analyses were preventing California's paradise from being incrementally lost. The planners association concluded that the cumulative impact analyses that are being done for individual projects have not resulted in effective strategies for dealing with the problems that the studies document.

A recent university study of CEQA concluded that "CEQA in practice has failed at effectively addressing either cumulative or growth-inducing effects."<sup>105</sup> Similarly, researchers at the California Policy Seminar at the University of California, Berkeley, reported that most CEQA participants agree that project-by-project review and mitigation of cumulative impacts is not adequately solving environmental problems, and what is needed is larger plans to resolve problems like diminishing wildlife habitat or

polluted streams. The researchers believed those larger plans could then be used to establish standards for calculating a project's contribution to the problem and its contribution to the solution.<sup>106</sup> Professor Landis, who managed the study, testified:

*CEQA has given us high quality development projects, lower residential densities, and site-based environmental impact mitigation, but it has done little to enhance the overall environment. Quite the contrary, our use of CEQA, with its project-specific focus has done little to enhance the overall environment and has distracted us from the need for large scale, long-term ecosystem and habitat planning, statewide long-term water planning and regional land conservation. While we have myopically focused on the environment in our respective backyards, the quality of the natural environment has continued to decline.*

In a survey of California planning officials, 87 percent said CEQA helps to ensure a thorough environmental analysis, while only 61 percent said the law actually helps to protect the environment.<sup>107</sup> And those statistics were supported by testimony from the Association of Bay Area Governments (ABAG) that site-specific cumulative impact analysis is tedious and often ineffective. ABAG's planning director said that the political influences exercised through CEQA actually increase the eventual impacts of growth:

*Neighborhood pressure for reductions in project density often impacts neighboring communities, and leads to higher housing costs, inefficient transportation and sprawl. While coordinated local land use plans could significantly mitigate environmental impacts, existing CEQA procedures do not reward such action.*

And the Southern California Association of Governments believes CEQA's project-oriented review can result in higher and unaccounted for environmental affects: "For instance, if densities or zoning are reduced below levels that allow construction of a balanced share of subregional growth, there is no mechanism to ask what the environmental costs will be to the region if housing must instead be built elsewhere."<sup>108</sup>

## ■ ***A Problem For Compact Development***

The intense scrutiny of individual projects appears to have created a higher hurdle for compact development than for low-density projects far from existing urban areas. A review of the development approval process for Los Angeles concluded that CEQA requirements were undermining the local planning goals of revitalizing existing areas and increasing density around rail stops. That analysis recommended standardizing the thresholds for when certain levels of environmental review would be required. The analysis also recommended raising the threshold for when full EIRs would be required for projects near

community centers and transit stations to encourage those projects by reducing the regulatory burden.<sup>109</sup> That recommendation is similar to one offered by the Governor's Strategic Growth plan.

The planning director of the City of Los Angeles believes that a different scope of study and different standards should be developed for urban infill sites: "The kinds of issues necessary for open land and wetlands are so different than urban parcels that are really being redevelopment. I have heard people say the law allows for variation, but the fact is all EIRs cover pretty much the same issues in amazing detail."<sup>110</sup>

CEQA already recognizes that small projects with higher densities and mixed uses are environmentally beneficial. The law was amended in 1993 to relieve mixed-use projects with fewer than 100 units, and which meet a series of preconditions, from performing cumulative impact analysis.<sup>111</sup>

## *Opportunities for Additional Reforms*

Reformers who analyzed this problem in the late 1980s concluded that communities should do more comprehensive general plans to make it clear to residents and developers where growth will be allowed.

Along with the comprehensive plans, communities would do Master Environmental Impact Reports, to determine how the growth plans will effect big-picture issues like wildlife habitat and polluted runoff, and to establish a strategy for compensating for those impacts.

The concept was grounded in the belief that better planning creates common expectations and reduces confrontation: "Citizen involvement ahead of crisis, in the planning and design of the community's future (a fearful prospect for some elected officials), has been shown to produce positive results, including a reduction in NIMBY-ism."<sup>112</sup>

By "front loading" the development process with better planning and coordinated mitigation, more certainty would be provided to developers and environmentalists. Projects that are proposed after a Master EIR is completed do not have to study cumulative impacts, growth inducing impacts and irreversible significant impacts, if the project impacts fit within those anticipated in the Master EIR.<sup>113</sup>

### *Planning Led to Approval, Support*

Playa Vista was endorsed by both the Southern California Association of Governments and the South Coast Air Quality Management District. Design elements that encourage pedestrian and transit use, and provide for a mix of housing types and jobs, are what regional planners see as elements that can help the region accommodate more people on less land, while minimizing economic and environmental costs. Despite the size of the project, air pollution officials believe that it will not increase carbon monoxide violations.

Similarly, the project's habitat restoration plan won Playa Vista both the approval and support of wildlife agencies and advocates. The project's plans not only promised to protect what was left of wetlands, but to improve the marsh and the creek feeding them.

"If this ambitious project can be done successfully," the National Audubon Society wrote, "it can serve as a model for others."

While some planners believe the merits of Master EIRs have been overstated, still others maintain that time will give a clearer picture of their effectiveness. SCAG, for instance, has adopted a Master EIR for the Southern California region that is expected to minimize the analysis that individual communities will have to do in their own specific plans. Success, SCAG hopes, will breed success. Similarly, the city of Lancaster completed a Master Environmental Impact Report as part of its last general plan update and is "tiering" studies off of that analysis.

If there is agreement it is that detailed up-front planning and analysis is still a good idea, but not one that many communities can afford or are willing to pioneer. There are several ways that the State could encourage communities to do broader planning of growth issues, under Master EIRs or some other strategy that relieves individual projects of costly controversies without relieving them of their responsibility to resolve growth-related problems. Among them:

- **More incentives.** Some reformers believe that more large-scale planning will be accomplished if communities realize it would save them resources, time and controversy when projects are proposed. The Association of Bay Area Governments advocates limiting environmental reviews on projects in urbanized areas, or when communities or even groups of communities have completed detailed land-use strategies complete with mitigation plans for environmental impacts. Similarly, communities could be relieved of their obligation to complete elements of their general plans if they join with neighboring communities to develop plans for housing, transportation or any of the other elements on a regional basis.

The CEQA Review Committee of the State Bar of California recommended that lead agencies be allowed to certify a project as having satisfied the cumulative impact analysis if it could show those concerns had been addressed in another regulatory venue. Similarly, the California Policy Seminar recommended that the cumulative impact analysis be waived for projects complying with a larger air, water or habitat conservation plan.

In addition to regulatory relief, incentives could be financial. One lesson of the fiscalization of land use is that incentives, even relatively small ones, work.<sup>114</sup> If communities will lure regional malls for a 1 percent tax, what will they do for matching planning grants from the State? Some researchers have urged the State to promote consistency between CEQA and long-term planning by increasing incentives for conducting specific plans and requiring consistency between general plan and CEQA guidelines.

- **Standardize thresholds.** How a project complies with CEQA is shaped in large measure by the "significance" of its impacts. This "threshold of significance" determines whether a project may comply using a Negative Declaration or a full EIR. Thresholds

determine which impacts must be mitigated. And thresholds determine whether a project has avoided or reduced its impacts.

About 13 percent of the agencies that regularly conduct CEQA reviews have standardized those thresholds to ensure consistency and add some certainty to the process.<sup>115</sup> Santa Barbara County, for instance, has standardized when EIRs will be required, and what mitigation measures will be required for common impacts. San Diego County and the South Coast Air Quality Management District also have standardized thresholds.

Researchers believe such reforms make the process more predictable and encourage architects and planners to avoid problems in the first place or design mitigation into plans. The State Bar review of CEQA indicated that formal thresholds would assist both the public and project proponents to understand the relativity of project's impacts. And the American Planning Association advocates that agencies conducting CEQA reviews establish quantifiable thresholds.

One Southern California planner who was negotiating the paperwork maze for a paging system said virtually every city he approached had a different CEQA threshold for the project -- a 10-foot by 10-foot box placed on top of existing buildings of at least four stories in height. Some said CEQA did not apply, while others required full initial studies.<sup>116</sup>

The Los Angeles Development Reform Committee recommended that the city standardize review thresholds. One university study concluded: "Even those planners who doubted the internal value of standardized thresholds in the CEQA review process believed that such thresholds would bring greater fairness and consistency to that process."<sup>117</sup>

Standardized thresholds also could prevent some lawsuits or negate the need to do studies as a defense against lawsuits. Many projects that would seem to satisfy the law with negative declarations end up completing full EIRs because the uncertainty in thresholds provides challengers whose real goal is to stop projects with the opportunity to attack them. Said one CEQA

### *When are Impacts Significant?*

Jack Broadbent, planning chief for the South Coast Air Quality Management District, believes the Playa Vista case shows the benefits of coordinating government reviews, and the potential for the State to facilitate communication between various agencies.

For starters, Broadbent believes the State could help local agencies develop more consistent procedures for gauging the environmental impacts a project will have, for determining what degree of environmental review is necessary, and for prescribing mitigation to make up for a project's impacts.

"This is an area that is very problematic," Broadbent said. "There is no place to go to determine significance of environmental issues. We think the state should be a better clearing house for this kind of information."

lawyer: "Standardizing thresholds could narrow the uncertain middle ground."<sup>118</sup>

- **Regional cooperation.** The desire for wider analysis and resolution of cumulative impacts necessitates regional cooperation. When the growth management debate got bogged down over proposals for regional governments, many reformers realized that what they were talking about was regional governance. Often subregional, and usually temporary, and always within the framework of existing government agencies, these regional alliances could form to solve specific problems.

The Southern California Association of Governments has developed a bottoms-up decision-making process by creating 13 subregions to coordinate issues among cities, counties and special districts that may be grappling with the same problem. The Executive Director of the agency said the local officials decided to cooperate out of fear that the State would impose a regional structure:

*They know they have problems. They know this region is in trouble. They know their communities are in trouble and they are trying to find a way collaboratively to solve their problems. They are not willing to equivocate on the environmental goals and the quality of life issues, but they know we have to have a more streamlined and effective way of making these decisions.*

SCAG has set regional goals of increasing real per capita income, achieving quality of life objectives in state law, and ensuring that everyone in the region can participate in the first two goals. A key part of its strategy is to "make sense out of the development process." What SCAG members are looking for from the State, the executive director said, is integration of governmental requirements, coordinated permitting, and the flexibility to find better ways of implementing laws before those changes are put in statutes.

The Association of Bay Area Governments has offered \$50,000 in seed money to subregional planning efforts -- bordering communities with a shared future willing to plan that future together.

One such "subregion" -- the cities of Benicia, Fairfield and Vallejo and Solano County -- approved a joint powers agreement in 1994 that established a uniform farmland and open space preservation policy. The governments hope to protect ridge lines, recreational opportunities and a core of their traditional agricultural economy by designating such lands ahead of land speculators and development pressures. Ultimately, some lands may be purchased by a foundation and a system of trails established. In

the long-term, the uniform policy also is expected to create more certainty in the development process while preventing developers from "playing" one city against another in development negotiations.<sup>119</sup>

A research project that analyzed efforts to resolve large-scale disputes with consensus-based negotiations concluded that this kind of regional cooperation was essential to breaking deadlocks:

*The state should create strong incentives for regions to organize and for localities to join regional coordinating bodies and reach agreements. A primary incentive would be the requirement that state agencies follow regionally developed strategies that are consistent with the state goals, priorities and performance standards. Local governments could be offered at least two powerful incentives to cooperate with each other in the region. The State should make infrastructure funding contingent upon cooperation. It should also offer regions where there is cooperation the chance to influence state investment and regulatory decisions.*<sup>120</sup>

- **Broad-scale permitting.** Some laws have allowed for general permits for diffuse problems. Currently the state issues such permits to cities and counties for controlling polluted runoff, rather than controlling every business, house or shopping center. Similarly, some proposals for amending the federal Clean Water Act call for bolstering "watershed" management approaches. Under such a plan every community within a drainage could share in cleaning up the worst polluters rather than requiring everyone to clean up pollution to a certain degree. Such plans are thought to increase the amount of pollution that can be cleaned up for a given amount of money, as well as reduce the compliance cost of regulating each pollution source. On the habitat side, the State has been pioneering Natural Community Conservation Plans, designed to protect the habitat of a wide variety of plants and animals before they are individually protected by the rigid state and federal endangered species acts.

The Southern California Association of Governments also is moving toward broader habitat planning. The association hopes that better planning will more effectively protect threatened species, shielding the region from still tighter regulatory controls. It also hopes the approach will clarify the costs to developers, creating more certainty in the development process.

All of these broad-scale planning efforts are intended to more effectively protect resources while reducing the conflict and regulatory burden on individual projects.

The common ground that planners, environmentalist and developers are looking for is certainty. Given the complexities of current growth patterns, competing regulations and fiscal realities, the general plan process cannot deliver that certainty. While cities have turned to CEQA to fill the void, there is growing agreement that some of the issues cannot be adequately solved at the project level. The costs, delays and ineffectiveness of project-by-project review of large-scale issues presents a powerful reason for all sides to search for a more efficient and effective way of resolving these issues.

***Recommendation 2: 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.***

The State should create incentives and provide technical assistance to communities that perform the kind of big-picture planning called for in existing laws and policies. This approach would provide significant regulatory relief to cities and counties that for the most part now coordinate and consider cumulative impacts on a project-by-project basis.

This approach would allow for more creativity and efficiency in satisfying environmental regulations -- and therefore increase the chances those goals will be met and money will be saved. It also promises to reduce conflicts over individual projects and between cities and counties.

The Governor and the Legislature can accomplish this goal by:

1. ***Creating a revolving fund.*** Legislation should be enacted to provide grants and loans that help communities pay for Master Environmental Impact Reports, watershed-wide water quality plans, regional habitat conservation plans or similar documents. Communities could repay the fund as they receive existing fees collected at the time of development.
2. ***Requiring local agencies to standardize CEQA thresholds.*** CEQA should be amended to require lead agencies to establish thresholds that would more consistently determine when different levels of environmental review would be required and how impacts can be mitigated. The thresholds for conducting environmental impact reports for most infill and for small compact development projects should be raised to require EIRs only in cases when there is substantial evidence that the environment

may be harmed. Regional planning agencies should coordinate the standardization process to encourage regional standards where most appropriate.

**3. *Rewarding regional cooperation.*** Legislation should be enacted creating incentives -- including a priority system for funding from the state infrastructure bank -- that reward communities that prepare regional plans for transportation, open space, habitat, air and water quality. Through an executive order, the Governor should direct the Resource Agency, Environmental Protection Agency and Office of Planning and Research to provide technical assistance and regulatory flexibility to communities that want to experiment with market-based or performance-oriented regulatory compliance.



# Necessary Groundwork

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- *The failure to invest in infrastructure has increased housing prices and added to growth-related conflicts by leaving many transportation, recreation and other needs unmet.*
- *The lack of funding mechanisms is particularly troubling to compact developments, which often must repair or upgrade existing infrastructure that is inadequate or poorly maintained.*
- *Researchers are identifying ways to use pricing and other management tools to reduce peak demands, but local agencies need help knowing when and how such mechanisms can be implemented.*
- *A shortage of infrastructure money makes it an imperative that all of the State's projects are being coordinated and supported by local growth plans.*



# Necessary Groundwork

**Finding 3: The State's failure to invest in infrastructure has increased housing prices, aggravated growth-related disputes and diminished California's economic potential.**

Over the last 15 years, the provision for infrastructure has become a significant factor in California's land-use controversies. A coordinated state infrastructure policy has the potential of reducing a major source of controversy, while helping to pioneer new solutions to problems such as transportation, habitat protection, air and water pollution.

This chapter looks at the state's historic policies, how those policies are failing, what has been tried to correct these problems and what more could be done.

## *The Devolution of Infrastructure Policy*

During three decades of tremendous modern growth, California's infrastructure policy was well-defined. The State financed and built the major capital infrastructure that tied cities and counties into regions, tied regions together as a state, and linked California with the world. The State financed universities and colleges. It spearheaded the State

Water Project, capitalized on federal highway dollars to champion freeway construction, build sewer plants, and develop airports and shipping facilities.

Cities, counties and special districts used the expanding property tax base and their ability to increase property tax rates to fund local capital improvements -- roads and sewers, parks and libraries, fire stations and schools.

Beginning in the mid-1970s: Federal and state support for local government in general, and infrastructure in particular, began to decline. Proposition 13 virtually eliminated the ability of local governments to spread throughout their communities the costs associated with development. And population growth began to accelerate. The ability of local government to keep pace with the physical needs of modern California was crippled at precisely the time when those needs were increasing exponentially.<sup>121</sup>

The Executive Director of the Southern California Association of Governments testified:

*While we have the authority and tools to finance local infrastructure, we do not have the authority and tools to finance subregional and regional infrastructure. Rather, over the past decades, we have relied primarily on federal and state sources to fund these transportation, flood control, open space, endangered species and air quality requirements, all of which are declining. More recently, we have been using linkage fees on project development which have tended either to make project costs uncompetitively high or have discouraged projects.*

California is not alone, just a standout. A congressional joint economic committee estimates that the failure to maintain infrastructure nationally will create a \$450 million backlog of unmet needs by the year 2000. Some \$50 billion of that deficit will be in California.<sup>122</sup>

About 5 percent of the state budget is spent on capital improvements, with most of that money going to pay debt service on bonds used to finance improvements. Thirty years ago, 20 percent of the State budget was spent on infrastructure, with most of those funds paying directly for construction of roads, bridges, universities and other capital improvements. Similarly, on a per capita basis, California's infrastructure spending has declined, and is now among the lowest in the nation.

In recent years, the State has started to spend more on school facilities, highways, prisons and other capital projects. But the spending has not nearly caught up with the demands created by a period of underinvestment, a growing population and changing societal needs. According to the Department of Finance, state agencies identify \$83.5 billion worth of capital improvements that will be needed in the next 10 years. From that list, the Department of Finance estimated the need at

\$74.4 billion. But assuming no new revenue sources -- or any additional natural disasters -- the department estimates that the State will only have \$46.8 billion to invest in the highest priorities.<sup>123</sup> The largest need will be transportation; and the \$23.2 billion that finance officials estimate will be available for capital projects will not reduce current congestion. The second largest category is school construction. The \$13.54 billion that officials say will be needed over the next decade assumes all enrollment growth will be in year-round programs and that schools will operate at 120 percent of capacity.

These trends create different problems for different regions. For the San Joaquin Valley, for instance, where one in five new Californians are expected to make their home in the next 45 years, officials say investments in transportation are falling far short of growing demands. The highway system, which has exceeded its 20-year design life and was built for inter-regional commerce, is becoming increasingly jammed with local traffic -- creating costly delays, compromising public safety and hindering commerce.<sup>124</sup>

## *The Consequences*

The consequences of this realigned infrastructure policy can be seen in at least three areas: higher housing prices; diminished services that contribute to anti-growth sentiments; and a decline in the State's economic potential. Collectively, these problems discourage innovation in planning and development.

### ■ *Higher Housing Costs*

In the post-Proposition 13 era, new development has had to "pay its way." In addition to providing local streets and sewer extensions, which many communities required before the tax laws were changed, developers have been required to provide community infrastructure like schools, fire stations and parks. New projects also have had to pick up much of the costs of protecting wildlife habitat and wetlands, and in some places farmland and open space, which are increasingly considered to be part of the physical infrastructure.

The first response by local governments to Proposition 13 restraints was to increase fees charged as a condition of approval. But as the financial demand on new development increased, the State created mechanisms allowing those costs to be spread over time. The most popular vehicle, the Mello-Roos Community Facilities District, was created by a 1982 law allowing districts to form, sell bonds and assess an annual parcel fee to repay the debt. By the time the law was 10 years old, \$3.25 billion worth of bonds had been sold by cities, counties, school districts and redevelopment and other public agencies.<sup>125</sup> The Legislature also has created other mechanisms, including Marks-Roos pooled financing, infrastructure and integrated financing districts that are less well known and less popular.

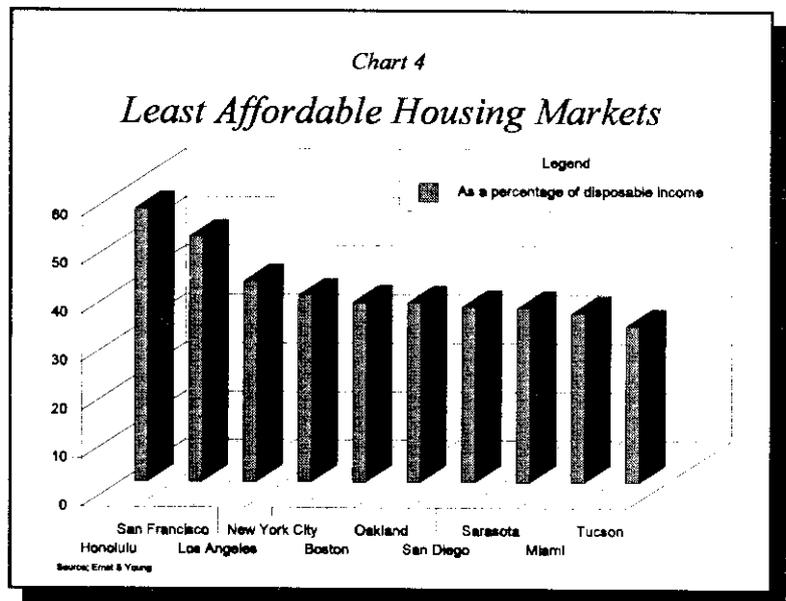
School impact fees also have become common ways for extracting infrastructure costs from new development. Since their creation in 1977, on the eve of Proposition 13, the role of impact fees has grown quickly. In 1989, on the eve of the recession, \$531 million was collected for school housing, mostly from new residential construction.<sup>126</sup>

Whether infrastructure has been financed with one-time fees or spread out over time, the shift has had the effect of raising housing prices. Embedded in the sales prices of a home are fees typically in the range of \$15,000 to \$20,000. An analysis by the Bay Area Council found that in the mid-1980s alone, building related fees increased an average of 126 percent.<sup>127</sup> In addition, property developed since 1980, because of the addition of special taxes, assessments and fees to finance public facilities, has an annual property tax payment that approaches or exceeds pre-Proposition 13 levels. A typical \$160,000 home can have a combined annual tax of \$4,000.<sup>128</sup>

The Southern California Association of Governments (SCAG) believes that concentrating the community's capital costs of growth on to new construction is a primary factor in that region's inability to provide affordable housing. Chart 4 displays the 10 least affordable housing markets in the United States, four of which are in California.

Chart 4 shows that California continues to dominate the list of states with high housing costs. In San Francisco, more than 50 percent of the median household's income goes for housing. And even in Oakland and San Diego, approximately 36 percent of the median disposable income goes to housing.

Perhaps equally important, of the 70 metropolitan areas included in the survey, none of the 10 most affordable cities were in California. The research, conducted by Ernst & Young and the National Real Estate Index, found that even interior cities such as Sacramento, Fresno, Bakersfield and Riverside have housing costs above the national average.<sup>129</sup>



Some economists and policy makers argue that it is appropriate to internalize the costs of growth on to new construction, providing the market with a truer sense of the costs that development imposes on society.

Others argue that the policy unfairly charges occupants of new homes -- not necessarily newcomers. Higher home prices also have social and economic consequences, including less home ownership. And increasingly, new development is asked to pick up costs for facilities that have widespread community benefits, such as open space and parks. In large measure, those needs are either financed with fees, exactions on new development, or left unmet -- aggravating traffic, limiting recreational opportunity and diminishing community aesthetics.

One of the State's leading infrastructure experts writes:

*There are now many demonstrably effective financing devices that work by squeezing money out of current development projects, or at least out of their subsequent occupants. That is probably fair enough if the financed facilities will serve mostly the residents and businesses in the new development. Local streets, sewers, street lights and perhaps fire stations, libraries and parks may well fall into this clean category. Things get murky when development projects are required to finance facilities that provide some benefits to new inhabitants and some benefits to residents of future developments yet to be formulated or proposed or residents and businesses of the existing community. In both cases, it seems sensible to try and find ways to spread the burden of financing more wisely.<sup>130</sup>*

On the southern edge of Sacramento, a steady stream of planners, architects and academicians have come to see the new suburbia rising from low-lying grasslands. The Laguna West project, designed by Peter Calthorpe, received national publicity for mixing housing and jobs, encouraging community involvement with narrow streets and front porches, a town hall and recreational facilities.

But for all of the attention, and all of the efforts to build quality of life into the project, the houses have sold slowly. Certainly the recession had a major impact. But the project also was saddled with constructing a \$12 million freeway interchange -- funded by Mello Roos bonds that increased annual costs of Laguna West residents -- that is used by thousands of other commuters in the region.

## ■ ***Growth-Related Disputes***

The provision of infrastructure -- who pays for it and who suffers when it is not provided -- has become a significant factor in growth-related conflicts. While longtime residents get frustrated with crowded streets, crowded parks, lost open space and water shortages, some communities have been willing to push costs on to new developments as a way of curbing growth.

One analysis in a national trade publication predicted that the issue of financing growth will be increasingly used as a weapon in the State's growth wars:

*At issue is whether citizens groups and local governments will allow developers to build the number of units demanded in the marketplace, and at what costs. Opposition to new residential development has not declined during the recession. Local governments across California are under severe financial stress and they are looking for ways to raise revenues while externalizing costs. Residential development will continue to be a target for such efforts through impact fees, increased infrastructure service costs and expanded environmental regulation. These costs will in turn be passed on to buyers and renters -- thereby raising the cost of housing.<sup>131</sup>*

Some communities, however, also see the provision of infrastructure as a way to reduce conflicts by encouraging growth without sacrificing quality of life. Some communities are considering open space, recreational areas, wildlife habitat and agricultural preserves as part of the infrastructure that needs to be provided or protected over the long run. By thinking about these resources as infrastructure, planners hope to satisfy regulatory needs more efficiently and avoid regulatory gridlock, as well as quell concerns of existing residents that every square inch is going to be developed.

## ■ *Changing Economics*

There is significant evidence, and it is a widely held perception, that California's underinvestment in infrastructure is dulling its economic edge. Infrastructure investment traditionally focuses on land-related improvements, such bridges, highways and sewers, and social-related issues such as education. Investments in both areas attract companies looking for places to locate or expand -- by providing the work force to produce goods and the physical improvements to provide for those people, as well as the movement of ingredients and products. Service-oriented businesses may be less interested in the physical movement of goods. But in large metropolises, providing the physical needs of a work force increases in importance.

The role of infrastructure investment as an economic stimulant is controversial. The latest debate sprung from assertions made during the late 1980s -- and fueled by the recession and politics of the 1992 presidential campaign -- that declining public investment in infrastructure was largely responsible for declining productivity in private industry.

That argument was countered by economists who believed the nation would benefit more if that same capital were invested in private ventures. Infrastructure demand, they argued, was inflated because it was "priced" too low. That is, that fees, tolls and taxes didn't cover the

true cost of providing the roads, water, sewers and airports, encouraging the demand for infrastructure to exceed supply.<sup>132</sup>

The debate yielded some conclusions that are important policy considerations for California. Among them is that different projects can yield vastly different economic benefits. The first road into a region, for instance, is economically critical, while the fourth or fifth road will be economically marginal. Similarly, providing critical links can be better for maintaining the integrity of a transportation or water system facing increasing demands than entirely new highways. And finally, that managing demand for public goods can be more beneficial economically than trying to provide unlimited supply.

In California, those lessons may prove critical as the State tries to provide for a growing population, a dynamic economy, increasingly global trade and rapidly evolving technologies. In Los Angeles alone, planners do not expect housing development to keep pace with job growth, requiring more workers to commute from outlying cities: "This could severely impact the transportation system, leading to excessive congestion, increased fuel consumption and higher levels of air pollution." This, in a region where transportation officials say the freeway system is nearing completion, yet where stretches of highway are congested for three hours on a typical week day.<sup>133</sup>

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***"The challenges are about the inability, to date, of California to develop a strategy for economic competitiveness for the 1990s. While there is a broad agreement that education, infrastructure, quality of life and business costs and regulations are key locational determinants, there is no agreement on priorities."***

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The Center for the Continuing Study of the California Economy believes that California's economic growth is restrained by underinvestment in public services, primarily because local governments have few options for making those investments.<sup>134</sup>

In a recent evaluation of the California economy, the center reported:

***The challenges are about the inability, to date, of California to develop a strategy for economic competitiveness for the 1990s. While there is a broad agreement that education, infrastructure, quality of life and business costs and regulations are key locational determinants, there is no agreement on priorities. Despite numerous studies urging more investment in education and infrastructure, there is no agreement on a funding plan.***

An important element of infrastructure is the transportation system, particularly in regions involved in trade. Chart 5 shows traffic congestion as measured in time and dollars in several western U.S. cities.

Chart 5 shows that traffic exacts formidable costs in major California cities, particularly when compared with cities in states competing for California jobs.

The same trends hold true on a per capita basis, as well. Traffic congestion costs the typical Los Angeles resident \$670 a year, compared to \$80 in annual costs to the typical resident of Salt Lake City.

The California Council for Environmental and Economic Balance believes the infrastructure deficit has caused the State to lose its economic edge, has increased social tensions and has resulted in more environmental damage:

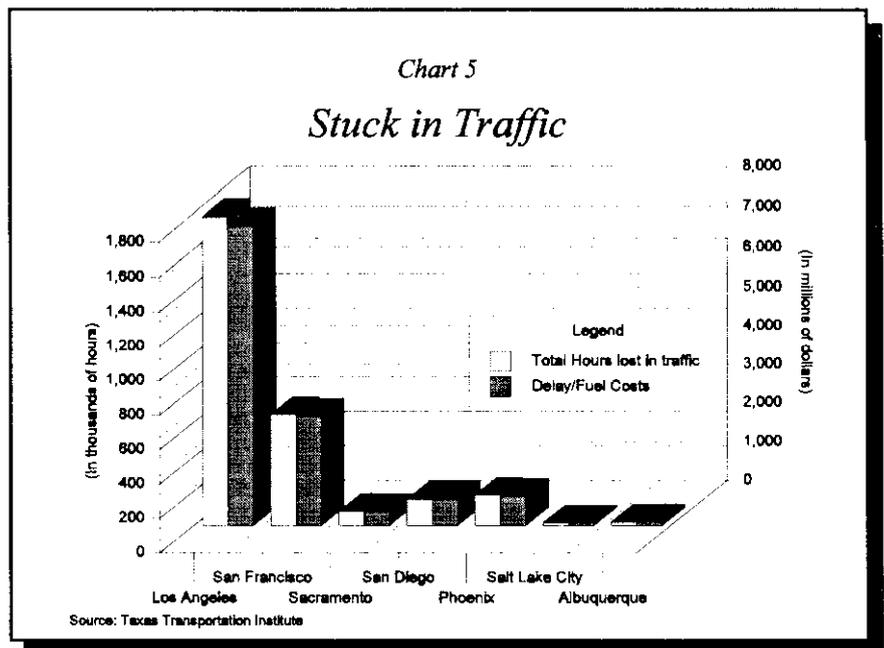
*No conscientious homeowner would let a house deteriorate to the current shape of our California home. Our State's infrastructure has been the solid foundation of California's economic miracle. The decline of that infrastructure is the most serious crisis we face, and is an important factor underlying the economic malaise California faces in the 1990s and beyond.*

Fortune Magazine, when it assesses cities that are best for business looks at transportation, airports, roads and seaports; research universities that create spinoff businesses and a high-caliber labor pool; a network of high quality business services, and a good quality of life, including cultural and recreational amenities.

### ■ ***Infrastructure Deficit and Innovation***

The Commission also heard evidence that infrastructure neglect is discouraging innovation in development -- different housing types, mixes of residential and commercial, higher densities, clustered projects around transit sites. In addition, the mechanisms that have been enacted since Proposition 13 for funding local infrastructure do not work as well for infill development as they do for urbanizing open lands.

From the developers' perspective, higher building costs reduce the amount of risk that they are willing to take -- risks associated with proposals that are different than public officials, neighbors and consumers have accepted in the past. From the public perspective,



without investment infrastructure, the best laid plans may never leave paper.

Sacramento County's 1992 general plan update has received national attention for trying to preserve recreation and habitat corridors, while planning for large population increases. The plan has been viewed as putting into practice much of what has been learned about urban systems during the last 30 years. The Sacramento County staff has traveled throughout the nation to explain both the mechanics of the plan and how the county managed to get it done.

A linchpin of the plan is higher density homes clustered around light rail lines to allow continued development of suburban areas without adding to traffic congestion and air pollution. The area already has some of the worst air quality in the nation. And transportation plans show that if something is not done differently, the amount of traffic on the road is expected to double in the next 20 years and the time lost to delays will increase by more than 4,000 percent.<sup>135</sup> The county's general plan calls for overall housing densities to increase slightly in new neighborhoods. But more significantly, it calls for clustering higher-density housing around transit stops to increase the number of affordable homes and put enough people within walking distance of transit stops to make transit feasible.

The plan included an urban service boundary, a physical limit where it anticipates development will stop. The boundary is expected to save money by allowing infrastructure to be sized accordingly the first time, discourage land speculation, and hopefully reduce the political pressure to rezone land from agriculture to urban.

But the plan is already unraveling because the region does not have the money to expand the transit system. And without the transit system, the higher density homes are without reason. Policy makers are having a hard time defending the cluster projects against neighborhood complaints -- people who bought pastoral and want pastoral, but are willing to be surrounded by low-density suburbia.

As a result, land that had been set aside around an existing railroad easement may be downzoned to accommodate neighborhood concerns. But downzoning will mean the area set aside for development will not be able to accommodate the expected population growth, increasing the chances that development will encroach into areas the plan earmarked for recreational open space and wildlife habitat. And without the higher densities, it is unlikely that even when money becomes available to expand the rail system, there will be the ridership to support transit.<sup>136</sup>

Infill projects also are disadvantaged by current infrastructure schemes. Funding mechanisms that have become popular since Proposition 13 function best when the costs can be spread over several hundred homes and special taxes can be approved before anyone is around to protest.

A Mello-Roos tax assessment requires approval of two-thirds of the voters in a district. If there are fewer than 12 registered voters in the district, the vote is held among the landowners, one vote per acre.<sup>137</sup> Most often the districts are set up for a large parcel of land before it is developed, and so the approval is accomplished with a landowner vote, with most of the votes held by the developers.

A 1992 study by the California Debt Advisory Commission reported that the vast majority of the districts had approved their assessments with landowner votes. Most of the bonds also were sold to finance improvements in counties where large tracts of land were being converted from non-urban uses.

In turn, Mello-Roos is less likely to win broad support if it is to be used to modernize infrastructure in an older neighborhood to accommodate an infill project, even if existing residents will benefit from the new interchange, the park, the school or sewer line.

### *New Projects in Old Neighborhoods*

Projects in the interiors of cities, such as Playa Vista, must pay for infrastructure, just as development on the fringe.

But replacing or upgrading existing infrastructure can add additional costs, and the process of knowing exactly what will be required can be more difficult in old cities than new suburbs.

Councilwoman Ruth Galanter testified:

"Local governments are in a terrible pickle. We are stuck without ways to pay for regional infrastructure and neighborhood improvements.

"And as a result we have this patchwork of fees that make the process more complicated. We do not have a way to weigh all of the costs and all of the benefits and say to the developer, 'Here is what it will cost you.'"

Maguire Thomas Partners' Douglas Gardner said that uncertainty is magnified by the fact that many cities have not properly maintained or improved infrastructure, and look to new developments to provide the infusion of capital.

"Under such circumstances, developers are asked to provide mitigations which address not only project impacts, but which inevitably seek in at least some measure to remediate inherited infrastructure systems deficit," Gardner said.

As one municipal attorney observed:

*If a group of cooperating landowners wants to fund infrastructure for their project by imposing a special tax on their areas, they can do so, even over the objections of a number of local residents. This cooperation is more likely to occur in a rural than an urban setting, because with larger rural parcels, there are fewer owners whose cooperation is necessary and fewer potential opponents.*<sup>138</sup>

The academic director at the Streisand Center for Conservancy Studies testified that the inability of cities to improve infrastructure in existing areas can undermine otherwise sound plans to accommodate growth:

*In the most recent plan, the City of Los Angeles could not allocate development to the communities that had the most infrastructure capacity first because most areas are deficient in infrastructure and require huge investments just to replace failing systems communitywide. And second, because most*

*infrastructure capacity that did exist was in low density, higher income neighborhoods that would most strongly resist densification and mixed use.*<sup>139</sup>

In addition to discouraging solutions, the Streisand Center's director believes the deteriorating infrastructure contributes to the spiraling decline of inner cities and the continued pressure on natural resources in rural areas. Without significant investment, she testified:

*It is hard to see how the population growth will be absorbed other than through more homelessness, more overcrowding, more middle class exodus from Los Angeles, decreasing serviceability of existing infrastructure and decreasing quality of life. If we are to avoid this Blade Runner future, ways to finance major regional improvements to infrastructure must be developed.*

## ***Restoring a State Role***

State policy makers have struggled with this problem because as California's capital needs continue to grow, public support for general obligation bonds and special fees continues to wane. Those who have sought solutions to California's growth wars and those who have sought to restore the State's economic reputation have all identified the need for infrastructure investment, but few have crafted a strategy for winning voter approval for the additional revenue that would be needed for substantial expenditures.

One consensus solution was the creation of a State Infrastructure Bank, which was approved by the Legislature and the Governor in 1994. The bank, fashioned after similar entities in more than 20 other states, would attempt to use a minimal amount of state resources to leverage a significantly larger amount of investment by local agencies. Its creators believe that a state investment of \$200 million could yield \$5 billion worth of investment. The bank, however, has not been funded and exists only on paper. The bank would work by using tools at the State's disposal to lower borrowing costs or enable local agencies to finance projects in markets they might not otherwise be able to tap. Among the tools the bank could use to encourage investment:

- ***Create a guarantee trust fund.*** With bond proceeds, the bank could set up a reserve fund equal to the maximum annual debt of all of its bonds. The State also would pledge its "moral obligation" to restore the fund if it is ever drawn upon. Such trust funds enhance the credit rating of the bonds and lower borrowing costs.
- ***Create a state aid intercept program.*** This program would allow the bank to intercept payments of state funds to local agencies if that local agency were to default on a bond. The program can improve bond ratings and lower costs. The law currently allows

cities and counties to designate motor vehicle license fee as a revenue stream for guaranteeing funds and reducing borrowing costs.

- ***Create a state appropriation backing program.*** Under this program, the bonds could technically be repaid by the State, with the local agencies making lease payments for facilities constructed from bond revenues. This strategy also can lower the borrowing costs.

The law grants the bank the authority to issue bonds, provide guarantees and leverage other public investments. It can invest in streets, highways, parking, bridges, sewage treatment, flood control, libraries, parks, port facilities, railroad facilities, airports, environmental mitigation and defense conversion projects.

A significant portion of the debate over the bank was whether it should be used as a way to encourage local agencies to engage in planning and development strategies adopted at the state level. The law contains a requirement that the agency applying for assistance from the bank make a self-determined finding that the capital improvement project is consistent with the State's Environmental Goals and Policies Report.

## ***Redefining Infrastructure***

**B**eyond the issue of funding the bank, California still faces the question of making sure that additional investments are made wisely. The interest in redefining infrastructure is driven by three factors: 1) Fewer resources are available to meet increasing demands. 2) Some traditional infrastructure solutions may not be as effective in providing for 40 million people as they did 20 million people. 3) Regulations and public demands are expanding the public goods that a community must provide to grow without conflict.

### ■ ***Fewer Resources***

While some agencies talk about ways to increase public support for infrastructure investment, few believe that at any time in the near future the State will return to making substantial investment from the general fund.

The Southern California Association of Governments believes that educating business leaders and the public is necessary to increase revenues for investment. But the association also advocates more fundamental changes to the State/local fiscal relationship to restore accountability and realign the ability to raise funds with the ability to spend funds: "Serious investigation is needed to find ways to assist local government in financing the enormously expensive cost of region-serving infrastructure."<sup>140</sup>

SCAG also believes that a coherent statewide investment policy is needed if the region is going to solve the problem created by years of declining investment. The association is particularly concerned about its ability to capture its share of increasing global trade without the physical improvements needed to efficiently move goods through the clogged region. SCAG is not alone in believing that large infrastructure needs and limited revenues increases the need for California to set priorities and coordinate investments to insure they are compatible.

The Center for the Continuing Study of the California Economy has noted: "California doesn't have a long-term public investment strategy." The State does not know which projects it should fund, how it will fund them, or how it will link those investments with better management tools such as congestion pricing.

Some researchers believe that failing to use infrastructure more efficiently places "an invisible but powerful drag on productivity, profitability, household standard of living and human welfare." For example, American households spend 15 to 22 percent of their income on transportation, compared to Japanese, who spend 9.4 percent of their income on transportation.<sup>141</sup>

Planner Peter Calthorpe believes state infrastructure funds can be a powerful incentive to encourage local government to pursue more efficient land-use patterns and to do better community planning: "Regions which optimize those dollars on coherent regional and community plans should be rewarded. Regions which squander them on sprawl should suffer the same disinvestment that any poorly planned business would."

## ■ *Old Problems Needing New Solutions*

Scarcity is widening the support for efficiency strategies that a decade ago would have been too flammable to discuss.

The Southern California Association of Governments urges the exploration of such market-based solutions as scaled-back parking subsidies, deregulation of transit and congestion pricing, which would charge drivers a toll (or a higher toll where one exists) to drive during commute times. A similar plan is being considered for Bay Area bridges. Raising the peak-time toll on the Bay Bridge from \$1 to \$3 would reduce the delay by 10 minutes and result in an annual net savings of \$3.5 million. Even considering the higher toll, every commuter would save \$100 a year in time and fuel.<sup>142</sup> National studies have suggested that daily roundtrip "congestion fees" between \$2 and \$3 may reduce peak traffic by 10 percent to 15 percent.<sup>143</sup>

Traditionally, infrastructure policies have not even required consideration of strategies to reduce peak demands. Instead, policies encouraged transportation, water suppliers and others to satisfy peak demands. And

in many cases demand has grown faster than it might otherwise have because usage is not linked to price.<sup>144</sup> But just as power, telephone and other utilities have reduced capital costs with time-sensitive pricing, other infrastructure suppliers are looking for pricing and other market-based mechanisms to control demand.<sup>145</sup>

The federal Intermodal Surface Transportation Efficiency Act of 1991 has helped to redefine planning -- putting a greater emphasis on alternative transportation modes and maximizing the use of existing transportation facilities. The act also encouraged better linkages between land-use, transportation and air quality planning.

California Transportation Directions, a project that involved state, regional and local officials, advocated better links between transportation and land planning, and better coordination between various transportation planning agencies. A primary goal of the strategy, the group concluded, should be to design new neighborhoods to encourage alternatives to single-occupancy vehicle use, to make better use of existing infrastructure, and to coordinate future investments to ensure efficiency.<sup>146</sup>

### ***Can Design Reduce Infrastructure Needs?***

While community activists and city officials have been concerned about Playa Vista's impacts on regional infrastructure, the project hopes to reduce the impacts that might come from a traditional high-density project.

Alternative transportation systems, mixed land-uses and a pedestrian environment are all intended to reduce dependency on the automobile. The same narrower streets that are intended to encourage walking will also take up less valuable land. The more walking people do to neighborhood stores, the less parking that is necessary.

"This more efficient development pattern, accompanied by a critical mass of mixed-uses, creates more self-sufficient communities which can accommodate more growth with less per capita infrastructure costs," project officials believe.

Some experts believe that infrastructure projects should have to pass more rigid analysis of economic efficiency and cost-effectiveness. User fees and bond votes not only create revenue streams, but provide clear signals to just how much citizens are willing to pay for the improvements.

The Mojave Desert city of Lancaster is looking to pricing to create more efficiency in sewer pipes and asphalt. After a decade of intense growth, the city adopted a new infrastructure plan in 1993 that sets developer fees closer to the actual cost of providing service. The farther the project is from existing development, the more expensive the fees. City officials tried a more traditional urban limit line to encourage concentric growth, but no matter where they drew the line a landowner looking to develop was on the outside. So city officials then calculated a multiplier to reflect the higher costs of serving distant areas. To simplify implementation they used the formula to establish fee zones. Building a project adjacent to existing neighborhoods can save the developer and future homeowner \$2,200 a house over a home built in the next tier out.<sup>147</sup>

Planners are looking for economic solutions, not only because funding is scarce, but because from an engineering standpoint there is doubt that traditional solutions can keep pace with modern demands. The General Accounting Office estimates that Americans spend 1,252 billion hours a year stuck in traffic at a cost of \$168 billion. Assuming the trends continue, congestion will increase 452 percent to 6,906 billion hours by 2005.<sup>148</sup>

### ■ *New Infrastructure Needs*

Not only is there not enough money to provide public facilities as they were provided in the past, but some communities are adding more "goods" onto their shopping list. As growth continues, parks become crowded, open space diminishes and wildlife habitat comes into conflict with the path of progress. In many cases, either communities or the law require developers to take these less-traditional infrastructure needs into account.

The Governor's Strategic Growth team concluded that the failure to plan for infrastructure and the piecemeal approach to environmental protection were both contributing to growth-related conflicts. It advocated more unified approaches to meeting both needs as a remedy.

Similarly, the Peace-Bergeson Act creating the state infrastructure bank states that investment policies "should be coordinated with any future legislative plan involving growth management strategies designed to make economic growth compatible with environmental protections."<sup>149</sup> The law allows the bank to participate in projects intended to satisfy the needs of growing regions for coordinated habitat preservation, open space and recreational facilities.

Broad consensus has developed that the State has failed to adequately invest in infrastructure. But at issue is more than the need for new revenues. California must better manage existing infrastructure, find new solutions to its infrastructure needs, and redefine infrastructure to include all of a community's growth-related needs -- in some places that will be concrete and in some places that will be wetlands.

### ***Recommendation 3: The State must invest in well-planned and efficient infrastructure to accommodate a growing population and capture economic opportunity.***

California must coordinate its investments. It also must better manage the demands on existing resources to stay economically competitive while preserving quality of life of its residents. A coordinated state infrastructure policy has the potential of reducing a major source of controversy, while helping to pioneer new solutions to perennial growth-related problems.

The Governor and the Legislature can accomplish this recommendation by:

1. ***Establishing an infrastructure task force.*** The Governor should create the task force through executive order. It should include transportation, water supply, air and water quality, conservation, agriculture and commerce officials. The task force should review the State's existing infrastructure programs for consistency and compatibility. It should provide technical assistance to local and regional officials with infrastructure planning problems. And it should recommend policy and legislative changes to enable better management of the State's infrastructure.
2. ***Funding the State Infrastructure Bank.*** The Legislature and Governor created the bank in 1994, but it has never been funded. Funding the bank will not only help California communities to begin building for their future, but provide them a valuable incentive to do better planning. The state task force should set up guidelines and review applications for funding from the state infrastructure bank to provide funding priority to those communities that have done planning that will reduce growth-related conflicts and enable streamlined project approval procedures.
3. ***Requiring local agencies to complete infrastructure plans.*** The guidelines established for participation in the state infrastructure bank should include the requirement that participating communities have completed an infrastructure plan. The plan should show how the community will accommodate the development projected in comprehensive general plans and consider market mechanisms, such as rush hour toll pricing and other demand-reducing tools, to encourage efficiency.

# State Leadership

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- *Housing, economic development, farm land preservation and environmental goals are being undermined by obsolete ordinances that discourage innovation.*
- *Obsolete zoning, parking and other local ordinances are a burden on compact developments because they prevent mixed uses, encourage solo automobile use and discourage neighborhoods designed to accommodate pedestrians.*
- *Builders, designers and lenders have a variety of concerns about investing in innovative development and even traditional attached housing projects. Those concerns need to be resolved if California is to provide affordable housing to its growing and changing population.*
- *The State can fill a leadership role by bringing together researchers, planners, lenders, designers and community leaders to create model ordinances that would encourage innovation in development.*



# State Leadership

**Finding 4: The State's long-held policies encouraging orderly growth are being undermined by the failure to address private sector concerns and reform obsolete local ordinances.**

The State has longstanding policies that local governments must encourage housing for all income types. State policies encourage redevelopment of blighted areas, conservation of open space, higher residential densities -- all the ingredients of compact development that have been advocated by a wide variety of reformers. But these policies are routinely undermined by a lack of effective planning and by a variety of policies and regulations that do as much to limit the variety in development as to limit development itself. The compounding affect of these problems is more of the same growth patterns and more of the same growth-related conflicts.

Research, innovation, experimentation and practical experience are yielding answers to some of California's most intractable land-use problems. But the State lacks the mechanisms for recasting this knowledge as policy.

This chapter looks at some of the existing policies and how they are undermined or are otherwise ineffective. And it looks at ways the State can go about encouraging changes at the local level.

## ***Existing Policies Aim High***

California has long recognized the need to provide for a variety of housing, revitalize inner city areas, encourage the efficiencies that come with concentric growth and a variety of transportation modes, and preserve the opportunities of future generations by safeguarding recreational and open spaces and agricultural lands. Similarly, the State provides for local ordinances to regulate development: to insure the compatibility of neighboring land uses, to accommodate traffic and parking, to ensure that communities balance social, economic and environmental needs. It expressed that intention specifically when it created the Office of Planning and Research in 1976:

*The Legislature finds and declares that California's land is an exhaustible resource, not just a commodity, and is essential to the economy, environment and general well-being of the people of California. It is the policy of the state and the intent of the Legislature to protect California's land resource, to insure its preservation and use in ways which are economically and socially desirable in an attempt to improve the quality of life in California.*<sup>150</sup>

Existing state policies:

- Encourage consideration of long-term fiscal and environmental costs and benefits of a development project in addition to short term costs and benefits.<sup>151</sup>
- Encourage adequate planning for a variety of housing styles and price ranges to provide for all segments of the population.<sup>152</sup> And encourage higher densities in housing projects in order to provide affordable housing.<sup>153</sup>
- Encourage preservation of open space and discourage the premature and unnecessary conversion of agricultural lands. The law states that protecting farmland benefits urban dwellers by discouraging "discontiguous urban development patterns which unnecessarily increase the costs of community services to community residents."<sup>154</sup>
- Provide for transportation of all segments of the population in ways that do not risk public safety, pollute the environment or disrupt communities.<sup>155</sup>

## ***Current Realities Undermine Policies***

Despite the policies, most analysis of California's land-use patterns identify the need for more affordable housing, more concentric development and streamline approval procedures. The Commission was told that some of the policies are unfulfilled because of a variety of

private sector concerns, chief among them the concern lenders have about innovative development patterns. Others believe the goals are being undermined by other policies that regulate the market in ways perverse to the State's goals of orderly development.

## ■ *Private Sector Concerns*

The lesson of the last 20 years in California is that declaring the importance of rational land planning does not ensure it. Even enacting ordinances that try to negate broad social, political and economic forces can have little affect on the outcomes of development.

From the developer's perspective, those forces are measured in the costs of getting a project approved, including: the chances that the project will be delayed because of opposition by existing neighbors or environmental groups; the costs of having to buy political peace, either by reducing the project's size or increasing contributions to community projects; and the potential costs of litigation if the efforts to appease local concerns are unsuccessful.

Over time, as markets have become more competitive and buyers more concerned about long-term economic trends, developers have increasingly tried to avoid those costs rather than trying to pass those costs on to consumers. The Commission was told that the easiest way for developers to avoid these costs is to go to the edge of development -- where infrastructure and land costs are often less, where roads are less crowded, where city halls are less bureaucratic, and where neighbors tend to be newcomers themselves and for the most part will tolerate more single-family homes such as their own. And there, they propose projects that local officials are most likely to accept -- larger, upscale, property tax revenue-producing, single-family homes.

John Landis, who teaches a class at UC Berkeley on how to develop land, testified:

*The effect of our cumulative ramping-up of development requirements, environmental regulations and fees has been to massively increase up-front entitlement risks and costs... The easiest way for builders and developers to respond to risk is to build only those types of products which they know will sell. That is, to avoid innovation, to avoid variety, and instead, to compete head-on for the exact center of the marketplace.*

Communities constructed during the 1960s -- largely before anti-sprawl ordinances, open space preservation ordinances and fair-share housing ordinances -- often contained higher densities, greater design and housing variety that those constructed during 1980s, Landis said. "We must begin thinking about how to simplify the regulatory process so as to encourage choice. And one of the choices that some households will make will be for greater densities."

The factors of controversy and risk go beyond developers. Controversy influences local politicians, who must answer to neighborhood activists, who may oppose growth. And controversy influences lenders, who have seen public opposition to even routine projects translate into losses. Landis observed: "It is safer to invest in what has sold before than to help revitalize cities through development of innovative and attractive high density mixed-use development, which may or may not have a market. No mid-level loan officer ever lost his or her job by saying no to a nontraditional project."

From that point on, other analysts believe, Californian workers and businesses get locked into higher transportation costs, more traffic congestion and air pollution levels, which increase compliance costs for businesses. Studies also have concluded that low density development essentially precludes the options of effective, market-based mass transportation projects in the future.<sup>156</sup>

In addition to the factors previously discussed, there is evidence that a variety of other less obvious and less-known factors have influenced the market in other ways. Policy analysts are just beginning to fully understand the negative impact that 1986 tax reform laws have had on the construction of apartments. From a peak of 168,000 units in 1986, construction of multifamily housing in California fell to 15,000 units in 1993. While some of that decline has been attributed to the national credit crunch, analysts also blame the federal tax code changes that reduced the profitability of investing in rental housing by as much as one-third.<sup>157</sup>

Similarly, controversies over the defect liability laws as they apply to condominium projects is having a chilling effect throughout the design and construction industry. Current law holds builders responsible for construction defects for 10 years after construction. Increasingly, homeowner associations have pursued lawsuits against builders on the eve of the 10-year liability window, seeking repairs of what homeowners argue is faulty construction and what builders consider routine wear and

### *Public Policies, Private Concerns*

Playa Vista's developers said that for several reasons private companies involved in the construction industry -- from lending industries to insurance companies -- are concerned about backing mixed-use, higher density and infill development projects. The project developers also believe the State's role is to help identify those concerns and find solutions.

Project Manager Douglas Gardner said some lenders do not believe there is a market for Playa Vista-type developments, while the market cannot be tested until successful projects are built. "Unfortunately, the lending community is more prone to consider what happened yesterday for its 'comparables,' as opposed to what might make more sense today or tomorrow."

Gardner also said developers, including Maguire Thomas Partners, are leery about the liability issues associated with higher density development, as an increasing number of condominium homeowner associations bring lawsuits for construction defects on the eve of the 10-year liability window.

"It is not sufficient to proclaim the endorsement of new land-use planning models, however obvious their benefits may be, without mechanisms which insure that the private sector will be encouraged to pursue them," Gardner said. "At this juncture, the risks appear to outweigh the benefits for much of the development community, which is a primary reason why much development, particularly badly needed housing, continues to be built in outlying areas rather than within urban boundaries. Unless proper economic incentives are established for the accommodation of growth within our urban areas, it is unlikely that this pattern will be reversed."

tear. While the law applies evenly to all types of home construction, most of the disputes have arisen with homeowner's associations, who have the ability to spread the risks of filing lawsuits over their entire memberships. The trend is discouraging reputable builders and associated industries from venturing into the attached home market. So even if builders are willing to assume the risk of being sued over a leaky roof 10 years after a project is complete, architects are increasingly reluctant to have their names attached to the drawings.<sup>158</sup>

## ■ *Obsolete Ordinances*

California's zoning law, along with zoning laws in most states, was based on the Standard State Zoning Enabling Act promulgated by the U.S. Department of Commerce in 1926. The state code allows cities and counties to regulate land and buildings to control how they physically appear and how they are used. The codes may establish broad zones for various uses, such as residential, commercial and industrial. They also can regulate the size of lots, how much of those lots can be occupied by buildings, driveways, setbacks and signs.<sup>159</sup>

As planning, construction technology, and the interplay between land use patterns and social costs have become better known, the State and cities also have adopted statutes intended to create minimum standards: to keep buildings from falling down or quickly burning down; to accommodate traffic and vehicle parking in commercial districts; and to ensure access for emergency vehicles.

Over time, research also has shown that while such standards may have accomplished what they set out to, they have had other undesirable consequences, as well. The most simple example is the segregation through zoning ordinances of housing and commercial uses. The complete separation has encouraged automobile use for the most simple of errands.<sup>160</sup> Now on Sunday evenings, thousands of Californians climb

### *Obstacles to Change*

Playa Vista Project Manager Douglas Gardner said the volumes of local codes -- all of them well intended and many of them out of date -- can create a large burden for any developer who tries to do something different than what has been done in the past.

"A significant obstacle to the implementation of progressive land use planning lies in the existing regulatory framework, which is often comprised of zoning regulations and codes which simply do not permit, much less encourage experimentation," Gardner said. "A good deal of post-war planning is based on restrictive zoning, which discourages mixed uses and can promote economic and social segregation.

"It is difficult, for example, to design a pedestrian-oriented public street after DOT (Department of Transportation), the Fire Department, the Bureau of Engineering, the Bureau of Street Lighting and the Street Tree Division have all weighed in with their requirements."

For instance, to maximize urban space and encourage community gatherings, many planners are calling for small neighborhood parks. But the city will not accept them because they cost too much to maintain.

"The implementation of progressive development plans, therefore, requires the dedication of the developer's time and resources to the negotiation of project features, which in fact should be encouraged," Gardner said. "Most developers simply cannot afford this, especially if they are not motivated in any way to do so, such as with accelerated processing times."

into their cars to drive several blocks to return the weekend's rented videos.

In reviewing California's land-use ordinances, a variety of experts have identified regulations that may be discouraging more efficient land patterns.

A UC Berkeley study found that state law requires that any variation from existing zoning ordinances is subject to environmental studies, which for some projects could be a large deterrent from straying from strictly defined norms.<sup>161</sup>

Zoning laws are frequently blamed for encouraging development at densities less than the market would dictate. Those concerns become even more important as research shows that small to moderate density increases would significantly reduce the land consumed by urban development. An analysis of projected growth in the Bay Area, for instance, showed that by increasing density from 17.3 persons per acre to 26.9 persons per acre would reduce land consumption by nearly 50 percent -- from an additional 103,000 acres urbanized by 2010 to 66,445 acres urbanized under a "compact" model.<sup>162</sup>

Planner Elizabeth Plater-Zyberk, who has worked nationwide to encourage innovation in development types, believes local ordinances have resulted in requirements that increase building costs while discouraging higher uses of scarce land resources: "Existing zoning ordinances, often outdated, over-complicated and more often than not circumvented in the political process, continue to produce bad results, including the isolation of housing types by income."<sup>163</sup>

James Howard Kunstler, author of "The Geography of Nowhere: The Rise and Decline of America's Man-Made Landscape," writes that zoning laws were enacted with the noble intention of separating obnoxious industry from homes:

*"After World War II, we took that idea to absurd extremes. We decided that shopping, too, was an obnoxious activity and that people should not dwell anywhere near it. That is why so many strip malls are one-story high. (It is also why there are no corner stores in suburban housing subdivisions.) The fact that we have built so few apartments over stores in the last 50 years is one reason the country has a crisis in affordable housing."<sup>164</sup>*

The Legislature recognized that some of these ordinances can go too far and regulate uses out of existence when in 1986 it amended state zoning laws to allow for second units or "granny flats."<sup>165</sup> Such additions can provide significant housing at affordable prices without significantly changing the character of a neighborhood. Other experts believe the state law is still too restrictive, and advocate that secondary units be allowed as a right, provided there is adequate parking.<sup>166</sup> A

national study found deregulating granny flats would result in 3 million more affordable housing units.<sup>167</sup>

Similarly, local street standards are often based on state and federal models that were developed to maximize traffic flow, often at the expense of a variety of other urban considerations. Increasingly, planners are looking for variances from those standards to implement designs that encourage pedestrian, bicycle travel, and transit use. Writes one planner: "Since federal agencies have not advocated changes, lesser agencies are reluctant to do so.... Consequently, local planners and citizen groups rarely challenge existing street standards. Unconventional approaches to suburban layout face a nearly impossible barrier to approval."<sup>168</sup>

### *Toward Reality-Based Ordinances*

The planning director for the city of Los Angeles believes most of regulatory problems associated with land-use are at the local level. However, he said, the State shares some responsibility for the problems, as well as the responsibility to attempt reforms.<sup>169</sup>

The Commission was told that the State, in considering reforms, should consider how laws directly or indirectly shape the market, by encouraging consumers to spend their money in certain ways or encouraging producers to provide certain products. The research director of the Reason Foundation offers this advice to reformers:

*In examining the prospects for reforming state land-use policies, it is important to retain the focus on decision-making processes and how they relate to incentives of individuals, developers and public agents to make choices about where to live and work and what goods to consume.*<sup>170</sup>

Current policies often fail, the research director believes, because they attempt to prescribe outcomes and have a tendency to distort market signals and push decisions upward: "All three characteristics of current planning have the effect of limiting flexibility, limiting dynamic adjustments in a changing world, and de-linking decisions from clear signals about the costs of those decisions."

Similarly, other analysts believe the best way that policy makers could encourage innovation, density and variation in housing styles is to provide more flexibility in regulations: "We need to promote a much wider degree of choice for our residents: choices in housing styles and living arrangements, choices in densities, choices in neighborhoods, and choices in transportation modes. Choice cannot be regulated into existence. Indeed, regulation stifles choice."<sup>171</sup>

Some analysts advocate a wholesale review of policies and ordinances that have been layered page by page into regulatory stacks: to determine which are still effective; which can be made more flexible; which have

outlived their usefulness and should be abolished; and in particular, which are creating incentives to do things that existing policies are trying to counteract.

### ■ ***Easing Private Sector Concerns***

The Bank of America, in its assessment of California's sprawling development patterns, called for a legal framework that would provide certainty about where development would be encouraged, where it would be allowed, and where it would be discouraged. Such a system, the Bank believes, would be the first step toward sending "the right economic signals to investors."

The bank also advocated streamlining permitting procedures in inner cities, while requiring exurban development to pay the full marginal costs of providing urban services to distant areas.

Inner-city developers say it is harder to get financing for mixed-use projects because of the risks involved. Planners told the Commission that the preferences of a secondary financing market can greatly influence the viability of innovative residential projects.

As part of housing elements, local agencies are suppose to assess available financing and secondary financing to determine if there are nongovernmental obstacles.<sup>172</sup> So while the Legislature has recognized at times the need to work with the financing industry to encourage investments in housing, the dialogue is not complete.

Some cities, such as Tucson, have recognized the additional regulatory burden of infill development and have counteracted it by reducing or waiving development fees. In the Arizona town, the program is credited with increasing housing starts within the city limits to twice the housing starts outside the city -- benefiting city coffers as well by increasing the tax assessments to formerly vacant land.

### ■ ***Creating Model Zoning Ordinances***

Just as researchers have found that communities lack the resources to update general plans, it is reasonable to assume that they lack the resources to review their ordinances for efficacy and cull the nation for innovative ideas and proven models. Yet that is what is needed.

The extensive review of Los Angeles' land-use regulations found numerous cases where the zoning ordinance restricted common practices or duplicated regulations. Current practices required a conditional use permit over child care facilities and restaurants in manufacturing zones, outdoor eating areas for ground floor restaurants and the sales of alcoholic beverages by large supermarkets and hotels. The panel recommended that such uses could be more efficiently regulated with development standards than with a permit process.<sup>173</sup>

To help implement the city's plan to encourage higher density and mixed-use infill projects, the city is modifying its rules for implementing the State's density bonus law. Rather than requiring a conditional use permit, the city is setting performance standards. When the standards are met, the developer can build the additional units. On related issues, the city is reducing its parking requirement for projects near transit stations or main bus routes, and changing its regulations for mixed-use projects to allow their approval "by right" rather than the current discretionary ordinance.<sup>174</sup>

Among the outcomes at a 1993 housing conference co-sponsored by the Claremont Institute and the state Department of Housing and Community Development was a growing recognition that minimum-density standards should be established to prevent downzoning.<sup>175</sup>

San Jose has recently created a land-use designation around light rail stations that contains no density limits and makes it easier for landowners to rezone their land to residential units. The innovation could be a good test of reducing regulations in order to encourage greater densities and redevelopment around transit lines.<sup>176</sup>

On more theoretical level, planning experts have long grocery lists of ways to reform zoning and related ordinances. Some of them have worked in other states. Some of them may only work in some communities. But many of them are worthy of a closer look by the State's best planners. Among them:

- Creating density floors rather than just density ceilings to ensure that land fulfills its potential to accommodate growth needs.
- Creating priorities of which lands should be developed first, effectively creating degrees of certainty that will help developers negotiate the process.
- Revising building codes that currently set higher standards for mixed-use projects.

The "Ahwanhee Principles," a land-use strategy derived by the nonprofit Local Government Commission, suggests six revisions to zoning codes that it believes would encourage development of more efficient land-use patterns: Eliminate prescribed street widths and setbacks that preclude pedestrian-oriented neighborhoods. Eliminate single-use zones that separate residential and commercial uses. Create flexible zoning that allows a variety of uses that satisfy certain performance goals. Allow for landowners to sell or swap development rights as an economic incentive for compacting development. Create regulatory incentives for housing in commercial areas. Create design standards to prescribe desired characteristics, such as pedestrian-friendly developments.<sup>177</sup>

Some cities have experimented with performance-based zoning, which allows developers to pursue any project on any parcel of land provided

they can satisfy traditional community concerns such as traffic, noise and safety. Fort Collins, Colorado, for instance, has 44 criteria that it uses to judge development proposals, including such standard factors as landscaping and parking. For each planning criteria, the project is awarded positive or negative points, and in some cases the criteria are weighted to encourage compliance with a unique concern of a given area. The Urban Land Institute believes the system has encouraged a greater mix of uses and higher residential densities, essentially by allowing market demands to have a greater influence over development.<sup>178</sup>

The academic director for the Streisand Conservancy said the State has the opportunity to help communities revamp local ordinances that can have profound effects on what gets built where:

*The State ought to lead the way in modernizing building, plumbing and electric codes to encourage conservation, shared use and multi-use buildings.... The State ought to look at encouraging private land readjustment and development rights pooling by landowners who want to recycle their land into development that meets modern market needs and provides adequate infrastructure and amenities.*<sup>179</sup>

Some of the best ideas may be homegrown. The city of Lodi in 1981 established an ordinance intended to protect the area's farm economy by requiring all annexations to go before the electorate; of 23 proposals, only two were approved. Nevertheless, the community grew faster than San Joaquin County as a whole, because in addition to restricting outward growth the city encouraged inward growth by reducing fees and making it easier to get projects approved inside the city limits. Among the benefits of the strategy was a revitalized central commercial area. While the courts struck down the law in 1989, the experience offers valuable lessons about ways that local governments can encourage efficient growth patterns.<sup>180</sup>

## ■ ***Rethinking Parking Ordinances***

Research conducted in recent years on parking requirements is perhaps the best example of how well-intended laws make it nearly impossible for the State to meet its various growth needs.

Most local agencies have minimum parking requirements, many of them based on an off-the-shelf formula intended to satisfy a project's peak parking demands -- shopping centers on Christmas Eve. One study estimated that parking facilities on average are oversized by 20 percent.<sup>181</sup>

What the research shows is the ordinances add unnecessary costs to all projects, encourage suburban development and encourage all workers, irrespective of their destination, to individually drive their cars to work.<sup>182</sup>

The ordinances give suburban projects an advantage over urban sites because while parking places in downtown structures typically costs \$12,000 a piece, paved parking spaces at suburban office complexes typically costs \$6,000.

Suburban and downtown workers are both encouraged to drive because many employers provide free parking. A recent survey in Southern California found that 99 percent of all auto trips involved free parking; 93 percent of Southern California commuters park for free.<sup>183</sup> Researchers also have found that one of the best inducements to carpooling is the elimination of parking subsidies, which average \$79 a month. Requiring workers to pay for their parking has shown to reduce driving by 36 percent. That reduction can potentially reduce traffic, air pollution and the need for greater infrastructure investment, as a full one-third of the vehicles on the road during peak times are commuters.

The consequences of required parking facilities is particularly onerous considering many large employers in California are required under air pollution control regulations to implement programs aimed at encouraging carpooling.

The Legislature began to put this research to use -- and potentially create more efficient policy -- by passing a law in 1992 requiring California employers who now pay out money for employee parking to offer that subsidy in cash to employees. The law also allows parking requirements to be reduced when the cash-out is offered.<sup>184</sup> An urban planning professor at the University of California, Los Angeles, believes: "By shifting subsidies from parking to people, cashing out employer parking will encourage commuters to do what planners have long exhorted them to do: carpool, ride mass transit, bicycle or walk to work."<sup>185</sup>

Similarly, the chair of the urban and regional planning department at California Polytechnic State University, Pomona, believes it is time for a broad overhaul of parking policies to bring them in line with other policy goals. Among the reforms that should be explored are letting the market establish the full need for parking and reducing requirements to accommodate average rather than peak demands.<sup>186</sup>

As time passes, the full effect of regulations can be felt, and some of California's numerous land use regulations are working at cross purposes. In some cases, regulations directly discourage innovation, such as the zoning provisions that require special permits for mixed uses. Elsewhere, regulations increase risk, which discourages reinvestment in older neighborhoods and innovation in design.

***Recommendation 4: To equip California for a future that will look much different than today, the State must accelerate the land-use learning process. The State must help communities and regions learn from the mistakes and successes of others. And it must work with the private sector to encourage market-based solutions to innovation in development.***

The State should actively coordinate experts at California's universities, in local planning departments, private consulting services and elsewhere to create model zoning, parking and other land-use ordinances to eliminate the disincentives to redevelopment, infill and mixed-use projects. The state should work with lending and other financial institutions to identify concerns about mixed-use, higher density and infill development, and to craft market-based solutions to these concerns.

The Governor and the Legislature can fill this role by:

1. ***Directing the Business, Transportation and Housing Agency to resolve private-sector concerns about investing in innovative projects.*** The agency should work with lenders and other financial institutions to identify concerns about investing in higher density, infill and mixed-use projects. The agency should recommend regulatory or other policy changes that could ease those concerns and encourage investments in a greater variety of housing types.
2. ***Directing the Office of Planning and Research to develop model zoning and parking ordinances.*** The office should tap the resources of the State's planning agencies, private consultants and universities to craft model ordinances that would create more flexibility, prevent density downzoning, and reduce requirements that undermine housing and transportation goals.

# Conclusion

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# Conclusion

As long as the Pacific crashes into the California coast, there will be struggles about where to build and what to save. For the last 20 years, Californians have grappled with ways to make those choices rationally and deliberately. The next step in this evolution is to make these choices efficiently.

Californians must take a hard look at the procedures used to plan the future of its communities, to approve individual development projects, to finance and manage public works, and to protect the air and water and other environmental assets that residents depend on for their physical health and mental well-being.

Those policies must be reformed to reflect a maturing understanding that while public decisions need to be made carefully, they also need to be made expeditiously. There is no correlation between the length of the process and the soundness of the decision.

What California needs is a development approval process that allows for balancing what will always be competing needs of economic growth, social equity and environmental protection.

What California needs is a process that -- while it holds individual projects accountable for their contributions to large-scale problems -- regionally assesses and resolves these problems.

What California needs is a process for ensuring that existing infrastructure is used wisely, and that necessary investments are made.

What California needs is to learn from each others' mistakes and to share successes. Land-use is local, but it does not need to be parochial.

What California does not need to do is lower its sights.

Few issues have polarized Californians as have issues involving growth. There are those who see growth as destructive. There are those who see regulations as destructive. Both can be right. The challenge is to prove that both sides can be equally wrong.

Because California will continue to grow, all Californians share in common the need for these reforms. At issue is how healthy our cities will be and how productive of an economy those cities will sustain. At issue is whether Californians build communities, or just buildings. At this point in California's history, growth appears to be inevitable -- progress does not.

# Appendices

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**APPENDIX A**

**Participants at  
Little Hoover Commission  
Land-Use Round Table  
January 31, 1995, Sacramento**

Carol Whiteside  
Director  
Governor's Office of  
Intergovernmental Affairs

Frederick Cannon  
Vice President, Investor Relations  
Bank of America Corp.

Stephen Levy  
Director  
Center for the Continuing Study of  
the California Economy

Peter Calthorpe  
Calthorpe & Associates

James Thomas  
Managing Partner  
Maguire Thomas Partners

David Booher  
The Irvine Company

Tom Sargent  
Partner  
Equity Community Builders

Gary Binger  
Planning Director  
Association of Bay Area  
Governments

Thomas Wood  
Burke, Williams and Sorenson

John Kirlin  
Professor  
University of Southern California  
Sacramento Center

V. John White  
Environmental consultant



**APPENDIX B**

**Witnesses Appearing at  
Little Hoover Commission  
Land-Use Public Hearing  
April 26, 1995, Los Angeles**

Lynn Scarlett  
Vice President  
Reason Foundation

Madelyn Glickfeld  
Academic Director  
Streisand Center for Conservancy  
Studies

John Landis  
Professor, City & Regional Planning  
University of California, Berkeley

Benjamin Kaufman  
Freilich, Kaufman, Fox and Sohagi

Doug Gardner  
Playa Vista Project Manager  
Maguire Thomas Partners

David Vena  
Playa Vista Project Attorney  
Latham & Watkins

Ruth Galanter  
Councilwoman  
City of Los Angeles

Con Howe  
Planning Director  
City of Los Angeles

Charles Damm  
South Coast District Director  
California Coastal Commission

Mark Pisano  
Executive Director  
Southern California Association of  
Governments

Jack Broadbent  
Planning Chief  
South Coast Air Quality  
Management District

Paul Doeblor  
Representative  
Villa Marina East Homeowners



## APPENDIX C

### Persons Interviewed for this study

Mary Anderson  
California Business Roundtable

Ian Baird  
Duffel Financing and Construction

DeAnn Baker  
California State Association of  
Counties

Bob Berman  
Citizens Advisory Committee  
Solano County

Linda Best  
Hasseltine Best Consultants

Gary Binger  
Assn. of Bay Area Governments

David Booher  
California Council for  
Environmental and Economic  
Balance

Ray Brady  
Assn. of Bay Area Governments

Robert Burchell  
Rutgers University

James Burroughs  
Resources Agency

Fred Cannon  
Bank of America

Thomas Carey  
Towbes Group

Joe Caves  
Environmental consultant

Robert Cervantes  
Office of Planning and Research

Robert Cervero  
UC Berkeley

Joe Chinn  
Economic and Planning Systems

John Compaglia  
Bryan & Murphy Planners

Judy Corbett  
Local Government Commission

David Crow  
San Joaquin Air Pollution Control  
District

Charles Damm  
California Coastal Commission

Gary Dariing  
Resources Agency

Peter Detwiler  
Senate staff

Paul Doebler  
Villa Marina East Homeowners

Thomas Friery  
City of Sacramento

David A. Gold  
Morrison & Foerster

Douglas Gardner  
Maguire Thomas Partners

Madelyn Glickfeld  
Streisand Conservancy

Darrel Goering  
Sacramento County Planning

Art Goulet  
Ventura County

Stephen Graham  
S. California Planning Congress

Dwight Hansen  
Building Industry Association

Allan Hendrix  
Caltrans Deputy Director

Albert Herson  
Jones & Stokes Associates

Rex Hime  
California Business Properties  
Association

Stanley Hoffman  
Stanley Hoffman Associates

Victor Holanda  
Department of Permit Assistance

John Holtzclaw  
Sierra Club

Robert Johnston  
University of California, Davis.

Todd Kaufman  
Assembly Office of Research

David Kilby  
California Chamber of Commerce

John Kirlin  
University of Southern California

G.U. Kruger  
Construction Industry Research  
Board

John Landis  
UC Berkeley

Richard LaVergne  
California Housing Finance Agency

David Ledbetter  
City of Lancaster

Stephen Levy  
Center for the Continuing Study of  
the California Economy

Thomas Lindemuth  
Hydro Environmental technologies

Kip Lipper  
Assembly Natural Resources  
Committee

Carl Loeber  
New Directions for San Jose

Richard Lyon  
Building Industry Association

Michael Mantell  
Resources Agency

Robert McCleary  
Contra Costa Transportation  
Authority

Robert Merritt  
McCutchen, Doyle, Brown and  
Enersen

Dean Mischynski  
California Research Bureau

Peter Morrison  
Rand

Robert Olshansky  
University of Illinois

Randy Pestor  
Assembly Local Government  
Committee

Mark Pisano  
Southern California Association of  
Governments

Jan Pope  
LaSalle Partners

Tony Quinn  
Braun Ketchum

Eileen Reynolds  
California Association of Realtors

John Robertson  
Massachusetts Municipal League

Terry Rivasplata  
Office of Planning and Research

Janet Ruggiero  
City of Woodland

Steve Sanders  
Senate Office of Research

Lynn Scarlett  
Reason Foundation

Gary Schoennauer  
San Jose

Ernest Silva  
League of California Cities

Brian Smith  
Caltrans planning division

Margaret Sohagi  
Freilich, Kaufman, Fox & Sohagi

Howard Sarasohn  
Caltrans

Timothy Taylor  
DeCuir and Somach

Paul Thayer  
Assembly Natural Resources  
Committee

Tina Thomas  
Remy & Thomas, Sacramento

Kathryn Tobias  
California Integrated Waste  
Management Board

Steve Tracy  
Sacramento County Planning

David Vena  
Latham & Watkins

Rick Vossekuil  
Chicago Title

Carol Whiteside  
Governor's Office of Local  
Assistance

Pat Weston  
Caltrans

Tim Yoemans  
Economic and Planning Systems

Heleene Saleen-York  
Bay Area Council



# Endnotes

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## ENDNOTES

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