

Northern News

NORTHERN SECTION, CALIFORNIA CHAPTER, AMERICAN PLANNING ASSOCIATION

APA Urges Defeat of Takings Bill, HR 1534

by Vivian Kahn, AICP

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DUNCAN P. JONES

DECEMBER 1997-JANUARY 1998

In the wake of the Supreme Court's *Suitum* decision granting a Tahoe landowner the right to have the State courts hear her takings claim, the House of Representatives has approved a bill that would allow appellants to bypass State courts and have their takings claims heard in the Federal courts after the rejection of a single application.

HR 1534 by Rep. Elton Gallegly (R-Oxnard/Simi Valley) was approved by the House on

October 22 by a vote of 248 to 178 with 55 Democrats joining 193 Republicans to pass the measure. Sen. Paul Coverdell (R-GA) introduced a companion bill, S. 1204, which was heard by the Senate

"If enacted, H.R. 1534 would seriously impair the ability of state and local agencies to protect public health, safety, and the environment."

— Al Gore

Judiciary Committee earlier in the month. Supporters failed to bring the matter to a vote by the full Senate before the first session of the 105th Congress ended in early November but are expected to renew efforts when Congress reconvenes at the end of January.

California Democrats Ellen Tauscher (D-Tassajara Valley) and George E. Brown Jr. (D-San Bernadino) who were among the Gallegly bill's original sponsors, voted against the bill. Representative Tauscher told House members that she believes reform was needed and that relief needs to be provided to property owners seeking finality to their land use plans but after hearing from opponents, including local elected officials from her

district, she felt that issues and concerns raised by opponents had to be resolved.

She said that she had urged House Judiciary Committee Chair Henry Hyde to postpone consideration of the bill by the full House.

"I want to see a more streamlined and fair process for property owners, and I wish that this body had taken the time necessary in developing a needed reform measure, without overburdening our cities and counties," said Tauscher. "It is my hope that we can continue to work on this issue in the future to develop a consensus bill that can be supported by a coalition of involved parties."

President Clinton has been urged to veto the bill by Attorney General Janet Reno, Interior Secretary Bruce Babbitt, EPA Administrator Carol Browner, the U.S. Justice Department, and a broad coalition of government and environmental groups including Republican and Democratic Attorneys General from 37 states.

The National Governors' Association, National League of Cities, U.S. Conference of Mayors, U.S. Judicial Conference, International Municipal Lawyers Association, California Association of Counties joined the American Planning Association (APA) and a broad coalition of conservation, labor, religious, planning and other groups in opposition to the bill. Vice President Albert Gore also urged members of Congress to oppose H.R. 1534 saying it would seriously weaken the control a community has over its future.

"This bill presents a threat of premature and inappropriate federal court interference with efforts to preserve the character of our communities," said the Vice President. "It

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By Wendy Cosin

Bay Area Futures, Where Will We Live and Work?, a new work commissioned by the Urban Land Institute and authored by ABAG was published this past November. The report, which examines how the region's land use patterns are evolving, reflects local government regulations as well as the results of projected economic and demographic conditions, transportation costs, and the availability of land. After mapping current land uses and identifying land designated for future development, the report forecasts future growth in the four quadrants of the Bay Area. The color coded mapping, which illustrates households, residential units, and nonresidential square footage per square mile, makes it easy to compare current and anticipated growth within and between subregions. Current conditions are reflected in maps showing existing (1995) households, median home sales prices (1997), the ratio of jobs to employed residents (1995), and 1996-1997 building permit activity. The report projects new households and nonresidential development to the year 2020.

The report shows that land use patterns that have been of concern to planners and Bay Area residents for many years are continuing. Jobs are growing faster than housing, contributing to more expensive housing and fewer choices for consumers. The areas of greatest activity for growth of jobs and growth of housing are not congruent, creating inevitable increased traffic.

Following a presentation of the plan at a ULI seminar, Claude Gruen raised the key question: how long can our inability to effectively deal with regional planning issues continue? How high can housing costs go and how bad can traffic become before the regional economy will fail? Gruen pointed out the irony that the future of one of the areas hardest hit by these land use trends, Silicon Valley, hinges on the people who made telecommuting possible, doing more of it themselves.

Some South Bay statistics:

- More housing units have been built in San Jose (5,710) between January 1996 and June 1997 than the combined total for all cities in Marin, San Francisco, and San Mateo Counties.
- South Bay jobs grew by 15.2% between 1995 and 1997 (126,000 jobs) while housing grew by 1.3% during the same period. ABAG projects the addition of 400,000 jobs between 1995 and 2020, an almost 50% increase, while a 20% increase in the number of households is anticipated.

The result? An increase in the net number of commuters into Santa Clara County from 40,000 in 1990 to 116,000 in the year 2000, to over 170,000 expected in 2020.

One positive factor is that these problems are recognized and taken seriously. The private sector has shown support for taxes that are meant to at least partially address the transportation and land use problems. Urban growth limits are often used to concentrate development, although the infill densities to support transit are rarely reached.

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The deadline for submitting materials for inclusion in the **Northern News** is the 16th day of the month prior to publication.

UCSC Extension Seminars

The University of California, Santa Cruz Extension, is offering a series of five one-day seminars in February and March.

Topics include a land use law review and update, a CEQA review and update, a Subdivision Map Act review and update, a NEPA seminar, and an introduction to GIS. Fees range from \$195 to \$225; classes will be held at the UCSC Extension in Santa Clara. For more information, visit the website at www.ucsc-extension.edu, or call Tanya Doyle at (408) 748-7380.

Wetland Restoration Course

The University of California, Berkeley Extension is offering a special four day seminar on wetland restoration design and techniques. The course introduces the major hydrological, soil science, and vegetation considerations essential to effectively developing wetland habitats.

Techniques for the preparation of water budgets, testing of soils for wetland use, and the use of various plant materials for restoration are discussed as well as the steps for developing specifications and bid documents. Examples of restoration plans are highlighted to focus on the successes and problems of habitat restoration. The course includes guest lecturers and field trips to Hayward Shoreline, Coyote Hills Regional Park, and the Golden Gate National Recreation Area. Enrollment is limited.

When: January 20-23, 1998, Tuesday-Friday, 8:30 a.m. - 5:00 p.m.

Where: UC Extension, South of Market: 150 Fourth Street, Suite 675

Fee: \$895 (EDP 251959), including field trips, morning and afternoon refreshments, and two lunches.

Instructor: Michael Josselyn, Ph.D., Professor of Biology and Senior Research Scientist, SFSU-Romberg Tiburon Center.

Information: 510-643-7590

Northern Section Planners: Congratulations!

by Tamara Campbell, AICP

The Monterey Conference was a great time. Not only was the opening reception at the Monterey Bay Aquarium outstanding, but the entire conference kept everyone in attendance well-entertained, well-educated, and well-fed. Those of us planning the 1998 conference hope we can do as well.

We hereby extend an official invitation to Northern Section members to join us in Orange County for the 1998 State APA Conference. Reserve the dates now—Wednesday, September 16 through Friday, September 18, 1998.

The Programs Subcommittee is currently soliciting speakers to complement the conference theme of “**Mirrors and Reflections.**” If you have any ideas for sessions or would like to participate, please contact Larry Yenglin, Programs Chair, at (714) 667-2724.

The conference will be held at the newly remodeled DoubleTree in Costa Mesa, where you will enjoy being close to the best Orange County has to offer—the ocean, numerous entertainment venues, natural attractions, and some of the country’s best shopping at South Coast Plaza.

If you didn’t see our booth at Monterey (we were giving away oranges), you can get more information from our constantly updated website, www.rain.org/~calapa, designed by Barbara Kennedy. Those of us on the 1998 CCAPA Conference Committee look forward to seeing you in September!

Conference Committee Members: Ted Commerdinger, AICP, Collette Morse, AICP, Michael Robinson, AICP, Linda Hale, AICP, Larry Yenglin, AICP, Tamara Campbell, AICP, Larry Lawrence, AICP, Mary Ann Chamberlain, Dan Fox, AICP, Glenn Lajoie, AICP.

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... HR 1534 *(continued from page 1)*

would radically change our tradition of working out land use disputes at a local level before hauling local officials into federal court. If enacted, H.R. 1534 would seriously impair the ability of state and local agencies to protect public health, safety, and the environment."

Reportedly written by the National Association of Homebuilders, Gallegly's bill would radically alter longstanding doctrines of ripeness and abstention, effectively shifting authority over land use decisions from local officials to federal courts.

It would encourage premature lawsuits against local officials by allowing claimants to sue in federal court upon the rejection of a single land use proposal, no matter how extreme or harmful to the local community, even where local officials would approve a less extensive proposal consistent with the public good.

The bill would allow claimants to sidestep local procedures and go directly to federal court simply by claiming that an appeal or variance would be "reasonably unlikely" to succeed. To decide whether the claimant is unlikely to succeed, the Federal court would need to decide the land use dispute itself and thus would be drawn into the dispute far earlier in the process at the expense of local decision making.

H.R. 1534 would also allow takings claimants to sue in federal court without seeking compensation in State court. The Supreme Court has ruled that State or local action does not violate the Fifth Amendment unless the claimant is denied compensation in State court. Opponents contend that if read as bill supporters intend, the bill would therefore violate the Constitution. By allowing claims to go forward even in the absence of an adequate factual record for the resolution of the claim, H.R. 1534 would result in poorly informed court decisions.

In a letter sent to all members of Congress, APA President Eric Damian Kelly wrote: "APA opposes H.R. 1534 for many reasons,

but chiefly because it is an unnecessary and inappropriate federal intervention in matters long handled, and best addressed, by local governments and the legislatures that define their powers.... APA opposes H.R. 1534 because its premature litigation will discourage the development, adoption, use, and effectiveness of local administrative mechanisms that are now in place to resolve land use disputes."

Vivian Kahn is a member of the National Board of the American Planning Association and chairs the APA Legislative and Policy Committee. She is a principal in Kahn/Mortimer/Associates, planning and architecture consultants in Oakland, CA.



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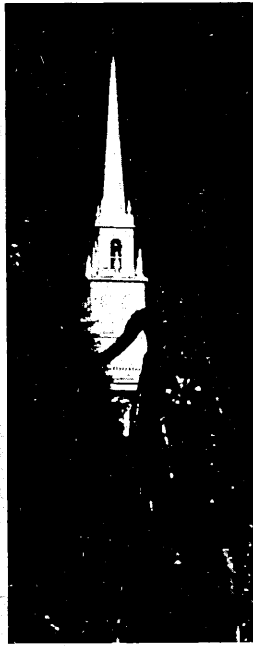
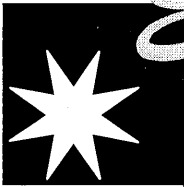
The West Bay (SF, San Mateo, and Marin Counties) has shown the least change of the four regions. The East Bay continues with the growth shift from the urban core to the outer suburbs. Southern Alameda county has grown in response to the tight market for space in Santa Clara County. In particular, Fremont accounted for one quarter of all recent industrial building permit activity in the entire Bay Area.

The North Bay is the area where character may change the most significantly. With only 9% of the land classified as urbanized (compared with 26% for the rest of the region), change will be the most noticeable. The projected number of new households (130,000 between 1995 and 2020) is second only to the South Bay. 50% growth in existing job centers is expected; however, projections for nonresidential development are much lower than in any of the other subregions.

Transit oriented development is not occurring in large enough numbers to make a difference and, unfortunately, ABAG projections show that a smaller percentage of the region's jobs and housing will be sited near transit lines in 2020 as compared to 1995. The numbers were small to start with—12.2% and 4% of jobs and housing respectively were within walking distance of fixed transit lines in 1995. It is going to take a lot of work on the part of planners and others to convince people that this has to change.

Positive movement is happening. The Santa Clara Valley Manufacturing Group (www.scvmg.com), which started 20 years ago, continues to do good work on housing and transportation issues and projects. Also, the Altamont Express commuter rail service is expected to begin operating next year. The 85-mile route will connect Stockton and San Jose, with anticipated congestion relief on the 580 and 680 corridors.

Copies of the report are available from ABAG for \$15; call (510) 464-7900.



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1998 Preliminary Programs detailing the conference program, housing options, and registration information will be mailed in December.

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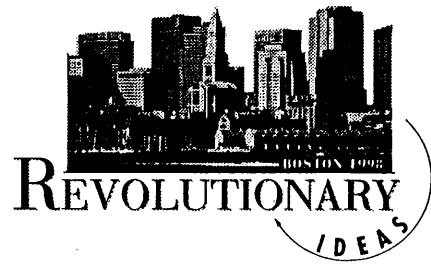
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For more information about these positions, contact CEDA at (510) 238-3941.

Planner III

Salary: \$4031 - \$4949/ month, 37.5 hours per week

This is an advanced journey level classification. The Planner III plans, organizes, reviews, and participates in complex strategic planning and major economic development projects. Under direction from senior staff and management, the incumbent's duties may include, but are not limited to, processing major development applications; preparing economic development and land use plans and studies; conducting design review; managing, monitoring, and responding to the preparation of EIRs; making presentations to community groups; writing reports and providing lead direction or supervision to staff. Qualifications: four years of urban planning experience; bachelor's degree from an accredited college or university in planning, architecture, landscape architecture, geography, or a related field. A master's degree from an accredited university in city or urban planning may be substituted for one year of work experience. Closing date: January 2, 1998.

Planner II

Salary: \$3,482 - \$4,275/month, 37.5 hours per week

This is a journey level classification. Incumbents conduct planning research and analysis on moderate to difficult projects; perform planning work involving current and advanced planning; review and implement zoning ordinances; conduct neighborhood and environmental impact studies; and provide information to home owners, developers, and the public. Qualifications: three years of urban planning experience; bachelor's degree from an accredited college or university in planning, architecture, landscape architecture, geography, or a related field. A master's degree from an accredited college or university in city or urban planning may be substituted for one year of experience. Closing date: January 2, 1998.

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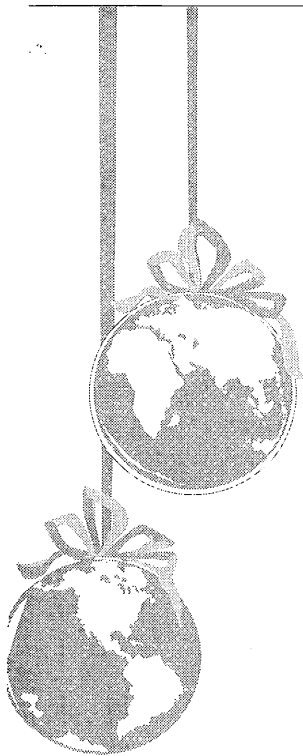


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NORTHERN SECTION CALENDAR

January

- 8 NSCCAPA Board Meeting, Berkeley
- 20-23 UC Berkeley Extension Wetlands Course

JANUARY						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

February

- 5 NSCCAPA Board Meeting, Berkeley

FEBRUARY						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

NSCCAPA Board Meetings are held on the first Thursday of the month at the Berkeley Permit Services Center, 2118 Milvia Street, one block west of the Berkeley BART. The Board welcomes your attendance and encourages your participation in the organization. For more information, contact Wendy Cosin at (510) 705-8108; (wec1@ci.berkeley.ca.us)

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