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Looking Back: Consistency in Interpretation Of and Response to the Consistency Requirement, A. B. 1301

JOSEPH F. DI MENTO*

Introduction

The California Environmental Quality Act1 and the Coastal Zone Conservation Act2 are the culmination of recent legislative action which may provide to the environmental planner the powers and tools to plan for, regulate and rationally develop the California urban and rural countryside.

Because of these legal innovations, California now has both an environmental impact review requirement for all public and publicly-permitted private actions3 which significantly affect the environment and an elaborate permit granting and long-range planning mechanism for protection of the coastal zone.4

The state also has a planning mandate, perhaps less generally well known than these nationally followed approaches to land planning, but one which is of central concern to members of the plan-

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2. California Coastal Zone Conservation Act of 1972, adding to and repealing CAL. PUB. RESOURCES CODE §§ 27000-27650, adding to and repealing § 11528.2 of the CAL. BUS. & PROF. CODE.

3. See Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972) where the California Supreme Court concluded that the California Environmental Quality Act applied to “private activities for which a permit, lease or other entitlement is necessary.”

4. The commissions established under the Coastal Zone Conservation Act of 1972 are to prepare “a comprehensive coordinated, enforceable plan for the orderly, long range conservation of the natural resources of the coastal zone,” (CAL. PUB. RESOURCES CODE § 27001(b)) and oversee a permit procedure “to insure that any development which occurs in the permit area during the study and planning period will be consistent with the objectives of this division.” (CAL. PUB. RESOURCES CODE § 27001(d) (West Supp. 1975)).
ning profession. The California legislature passed, and in 1971 Governor Reagan signed, Assembly Bill 1301 and amendments. The new provisions note in relevant part that:

County or city zoning ordinances shall be consistent with the general plan of the county or city by . . . January 1, 1974.

This Act (a similar version of which recently failed to pass the Florida Legislature culminates California’s attempts to establish a direct nexus between planning and the implementation of plans. By legislative mandate the state has attempted to tie the long-term statement of developmental policy, which the general plan represents, to the legal restriction on land use under the police power of the states, which the zoning ordinance represents.

This paper explores the impact of this legislative mandate on the behavior of one group it was intended to affect: the fifty-four counties of California. To do so, an attempt is made to determine the goals of the legislature in passing this landmark statute; and an assessment of the effects of the legislation on the planning process of county government is described. The aim is to provide an initial indication of the efficacy of this legislation.

5. A.B. 1301, 1971 Stats., ch. 1446 amends §§ 11510, 11511, 1526, 11535 and 1540.1 of the CAL. BUS. & PROF. CODE. It adds §§ 11526.1, 11549.5 and 11549.6 to that code, along with amending § 65860 adds §§ 65450.1, 65451 and 65452 and repeals § 65461 of the CAL. GOV’T CODE (West Supp. 1975). In addition to the consistency requirement discussed here, A.B. 1301 was addressed to other aspects of land planning in California. These include requirements for the content of subdivision maps and specific plans and procedures for securing governmental approval of subdivision maps. (Note: The old Subdivision Map Act, CAL. BUS. & PROF. CODE §§ 11500 et seq. as of March 1, 1975, has been replaced by the new Subdivision Map Act, CAL. GOV’T CODE §§ 66410 et seq. (West Supp. 1975)).

6. Consistency was defined in a 1972 amendment to CAL. GOV’T CODE § 65860 (West Supp. 1975). This amendment is also referred to in this article by its bill number, A.B. 1725. Consistency is stated as follows:

A zoning ordinance shall be consistent with a city or county general plan only if . . . the various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses and programs specified in such a plan.

7. Originally, the effective date was January 1, 1973, but two postponing amendments were enacted; the first extended the date to July 1, 1973, the second extended it to January 1, 1974.

8. 1971 Stats., ch. 1446, section 12; hereinafter this portion of the statute will be referred to as section 12.


9. See infra note 47.
The Necessity of Impact Analysis: An Aside

This work is based on the premise that enactment of legislation is only one indicator of legal efficacy. True success of legal reform attempts cannot be ascertained by counting legislative victories alone. Passage of statutes is not an end in itself. Neither are favorable court decisions. These are only first steps in an effort to reach the goals of the reformers. True legislative reform requires the translation of statutes into actual changes in behavior. There is a wide gap between the passage of a planning law and any substantial change in the management and use of land.

It unfortunately appears to be the case now, as it was seven years ago when the noted legal theorist Harry Jones delivered the Rosenthal lectures, that:

"Never look back" is the slogan of law reform; few law improvement organizations have the staying power to keep with a legislative reform until they have studied and verified its efficacy as a behavioral norm.10

Little really is known about the way statutes affect behavior or the factors at work in the impact of new law.

This often leads to ignoring new statutes and subsequent passage of redundant or superfluous legislation or the promulgation of similarly redundant rules. It leads, more seriously, to continued attempts at legal reformation without real knowledge of either the utility of legislative change or of the characteristics of those institutions and persons to be affected by the statutory innovation.11

Perhaps those familiar with the planning profession could determine the legislative intent behind a general plan-consistency statute merely by analyzing the various attitudes and trends within the profession. However, in order to be more consistent with a study of legislative efficacy, the approach used here is to present the goals of the legislature in passing the bill. Then an analysis can be made of whether or not the statute has been efficacious by exploring the extent to which these goals have been realized.

Problems arise in trying to piece together legislative intent leading to the passage of A.B. 1301.12 There is no written legislative record of the hearings in which the act was considered. Although

12. See supra, note 8.
there are tapes of the subcommittee hearings\textsuperscript{13} in which the statute was considered, these relate to a much broader concern than zoning-general plan consistency; they contain very little data relevant to the subject of interest in this project.\textsuperscript{14} A short word is given to the subcommittee hearings, however, as an introduction to the analysis of legislative intent.

The impetus for the hearings out of which the consistency requirement evolved was concern by conservationists and consumer groups over the second-home subdivision boom in the state. These interest groups asked Assemblyman Leo McCarthy\textsuperscript{15} to study the problem of recreational subdivisions. A joint subcommittee of the Local Government Committee and the Natural Resources Conservation Committee ("The Joint Assembly Subcommittees on Premature Subdivisions") conducted hearings on the problem after a resolution for a special legislative committee hearing died. These hearings were held in late 1970 and early 1971: out of them A.B. 1301 resulted.\textsuperscript{16}

Initial interest in the investigation thus was apparently not with consistency from a planning perspective but with control of subdivisions from a conservationist and consumer viewpoint.\textsuperscript{17}

McCarthy’s subcommittee\textsuperscript{18} did not limit itself to the subdivision issues in rural areas.\textsuperscript{19} Remote areas were only one source of the land use problem in the minds of some of the lawmakers. Distinguishing between urbanized areas and rural subdivision areas in the interests of solid planning should not be done. The feeling by

\textsuperscript{13} Hearings by the Joint Subcommittee of the Local Government Committee and the Natural Resources and Conservation Committee.

\textsuperscript{14} Interview with Thomas Willoughby, Chief Consultant to the California Assembly Local Government Committee, April 18, 1974. Appreciation is expressed for Mr. Willoughby’s kind cooperation in providing important information for this study.

\textsuperscript{15} 18th Assembly District.

\textsuperscript{16} See Comment, Birth Control for Premature Subdivisions—A Legislative Pill, 12 \textit{Santa Clara Lawyer} 523, 531 (1972).

\textsuperscript{17} A.B. 1303 also resulted from those hearings but was later vetoed by Governor Reagan. It provided that Highway User Tax Fund apportionments could not be transmitted to those counties and cities which did not comply with §§ 65300 and 65302 of the California Government Code.

\textsuperscript{18} The Joint Subcommittee of the Local Government Committee and the Natural Resources and Conservation Committee included: Leo T. McCarthy (A.D. 18); John T. Knox (A.D. 11); Alan Sieroty (A.D. 44), and Richard Barnes (A.D. 78, since defeated).

\textsuperscript{19} Interview with Thomas Willoughby, \textit{see supra}, note 14.
the subcommittee was that controls should not be limited "to the
dramatic rural scene." 20

A number of public agency interest groups, including the State
Water Resources Board and the State Resources Agency, appeared
before the subcommittee and presented testimony. Most spoke to
the subdivision issue and not the consistency requirement per se.

The State Water Resources Board suggested, in general terms,
that the legislature provide "new and improved mechanisms for
complete, direct, and prompt protection against the various undesir-
able and detrimental effects of premature subdivisions." 21 The
State Resources Agency submitted a statement which outlined some
of the detrimental effects on wildlife and natural resources which
have resulted from subdivision and ski area development and called
for a process whereby developers "should submit statements on the
environmental impact of their proposals to the state agencies hav-
ing a jurisdiction over the resources or land use planning." 22 The
State Resources Agency statement also called for standards, to be
spelled out by the legislature, as to "specific measures to be incorpo-
rated in 'land project' plans," etc. A July, 1971 letter 23 from the
Resources Agency urging favorable consideration of A.B. 1301 24 did
not even mention the consistency requirement of Section 12 25 but
expressed support for the expanded definition of "design" in the
subdivision map development process and the reasons for disap-
proving a subdivision.

Members of the Western Developers Council expressed approval
of the Bill 26 and the Farm Bureau, mentioning specifically the "lot
split" 27 provisions of A.B. 1301 supported it. The District Attor-
neys' Association of California, California Peace Officers' Associa-
tion approved of A.B. 1301 without mentioning "consistency" but
did not assign it highest priority; 28 the United States Department

20. Id.
21. Remarks by Kerry Mulligan for California State Water Resources
Control Board to Joint Subcommittee on Premature Subdivisions, Jan. 26,
1971.
22. Remarks by Larry H. Cloyd for California State Resources Agency
Department of Fish and Game to Joint Subcommittee on Premature Subdi-
23. Letter from Morton Livermore, Jr. to Milton Marks, chairman, Sen-
ate Committee on Local Government, July 13, 1971.
24. See supra, note 5.
26. See supra, note 5.
27. A lot split is a minor subdivision of land typically not covered by
subdivision controls.
28. Letter from D. Lowell Jenson, Chairman, District Attorneys' Associa-
tion of California, California Peace Officers' Association to Leo T. McCar-
of Agriculture, Forest Service supported legislation to “bring order to subdivision practices which frequently result in damage to the land and social harm.” The County Supervisors Association of California supported A.B. 1301 which “seeks to strengthen the law relating to land use and planning, in the public interest, and to the extent that it relies on local performance, will serve to energize, improve and preserve California city and county government.” The group urged, in the only reference to consistency,

an amendment to Section 12 which would allow counties until June 30, 1975, to enact zoning ordinances consistent with the general plan.

Resulting from this subcommittee’s activities were a series of amendments to, and additions and repeals of the various sections of the California Business and Professions Code and the California Government Code. In addition to Section 12, among the most significant changes was the provision which stated that:

No city or county shall approve a final subdivision map for any land project . . . unless a) the city has adopted a specific plan covering the area proposed to be included in the land project. b) the city or county finds that the proposed land project, together with the provisions for its design and improvement, is consistent with the specific plan for the area.

This short and no doubt incomplete chronicling suggests that little direct attention was given to Section 12.

Despite this absence of written legislative history on the specific aspect of A.B. 1301 of interest to this study, tapping of legislative intent is possible. Interviews with some of the subcommittee participants, the legislative consultant to the subcommittee in which A.B. 1301 was considered and other Sacramento knowledgeable give some insight into the understanding that the legislature had.

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30. Letter from Jack M. Merelman, General Counsel and Manager to Leo T. McCarthy, June 10, 1971. The letter further urged that “Sections 9, 10 and 11 be amended to leave the composition of specific plans to the discretion of local counties.”
31. Id.
32. See supra, note 5.
33. cal. bus. & prof. code § 11526.1 (West Supp. 1974), now cal. govt code § 66473.5 (West Supp. 1975). Specific plans are much more detailed than the general plan. Under this legislation they are now quite comprehensive and are to include statements regarding population density, implementation of the open space element, location of various land uses, location of streets and other transportation facilities and standards for conserving natural resources.
of this bill.\textsuperscript{34}

The following propositions are supported by the viewpoints of those interviewed.

The legislature believed that cities and counties to be affected would "in good faith try to comply" with the statute's consistency requirement. As one respondent stated: "We went blithely along,\textsuperscript{35}" indicating the view that the assumption was made that city and county planning departments supported and would react favorably to A.B. 1301. They would act to have zoning ordinances reflect their seriously thought out general plans.

The subcommittee did not feel that the "consistency" wording would cause much problem. Those consulted by the committees and their consultants, including planners and counsels, appeared to know what the word meant. The meaning was quite simple and those who tried to confuse the issue were acting in "bad faith."\textsuperscript{36}

What was that "common" meaning? Said one respondent:

We meant 'compatible.' Immediately after [it was] enacted there were some who felt it meant 'exact conformity' . . . [but] they realized this was not the intent. My feeling is that all people who complained were simply engaging in dilatory, delaying tactics. They wanted to discredit A.B. 1301 and this was a gesture of defiance.\textsuperscript{37}

The 1972 amendment to A.B. 1301 defining consistency in this view simply reflected what was clear from the legislative debates:

... the various land uses authorized by the ordinances are compatible with the objectives, policies, general land uses and programs specified in such a plan.\textsuperscript{38}

The aim of the statute was "to tie the general plan into those steps which might subsequently be taken to implement that plan." Indeed the subcommittee felt that the general plan "is a nice showpiece document, but there is no existing link between it and development."\textsuperscript{39} The subcommittee was trying to create such a link: to provide a means which would force counties to "follow through" on the provisions of the general plan.\textsuperscript{40}

\textsuperscript{34} Conversations were held with Mr. Willoughby; John T. Knox, Chairman of the Assembly Local Government Committee; Donald Benedict, Principal Program Analyst; Alan Post, Legislative Analyst. Interviews with Assemblymen McCarthy and Sieroty and ex-Assemblyman, Barnes, all members of the special subcommittee, were contemplated but the busy schedules of the Assemblymen did not allow for this aspect of the information gathering.

\textsuperscript{35} Interview with Thomas Willoughby, see supra, note 14.

\textsuperscript{36} Id. Willoughby stated that the phrase was used in the Open Space element for the General Plan. Thus, there allegedly was precedent for use of the phrase.

\textsuperscript{37} Id.

\textsuperscript{38} See supra, note 6.

\textsuperscript{39} Interview with Thomas Willoughby, see supra, note 14.

\textsuperscript{40} For a thorough consideration of the very distinct histories, meanings
Results

Introduction

The foregoing was an analysis of how A.B. 1301 was enacted. The balance of this study concerns itself with the response to this legislative creation by various local planning departments, who must make the statute work on an everyday basis. As one of the persons involved in the creation phase admits, "Personally, I don't have a feel for the day to day planning activities. I have to rely on responses of people who have to implement." Therefore, an attempt to compare the assumptions and understandings of the legislative participants with the actual first phase of implementation by local planning departments is the issue to be addressed in this empirical investigation.

In order to assess the initial response of counties to the consistency requirement, a questionnaire, attached as Appendix A, was sent to each county planning department, and documents generated in reaction to the requirement were requested. Analysis of this survey data and analysis of the documents followed. The conclusions below are based on the returns.

THE PROPOSITIONS INVESTIGATED

I. WAS THERE CONFUSION AS TO THE MEANING OF THE TERM CONSISTENCY?

Although it is possible that some have feigned confusion to avoid
and postpone the effects of the act, others seem to be truly confused about the definition of consistency. Indeed, possible ambiguities have been discovered and deficiencies do exist in official attempts at clarification. One legal commentator said of the definition supplied in the 1972 amendment: 45 It

does little to aid understanding; moreover, it is ambiguous . . . .

For example, a zoning ordinance may permit greater heights or densities than indicated in a plan yet be consistent with [it] if consistency is limited to uses.46

Nor did he find that the General Plan Guidelines supplied by the California Council on Intergovernmental Relation, General Plan Guidelines were particularly helpful. The Guidelines noted:

The zoning ordinance should be considered consistent with the general plan when the allowable uses and standards contained in the text of the zoning ordinance tend to further the policies in the general plan and do not inhibit or obstruct the attainment of the articulated policies. [emphasis added]47

Here the confusion potentially arises because, although the true policy of the general plan is set forth in the text, many planners may interpret achieving compatibility of zoning with the general plan map as the means of reaching accord with the statute.48

(This research was conducted prior to the discussion of consistency offered in a January 15, 1975 Opinion of the Attorney General. That opinion refers to the language of the 1972 amendment, a 1923 California case in which “consistent with” was defined; two dictionary definitions and a 1946 North Dakota case. The Attorney General’s Opinion endorses the approach of the Council on Intergovernmental Relations and concludes that

it is quite apparent that the ‘consistency’ or ‘conformity’ need not require an exact identity between the zoning ordinance and the general plan.

It is possible that this explication will affect the interpretation by counties; but, because of the lack of direction offered, it is doubtful that clarification has resulted.)49

Response by the Counties

Although interpretation of the term was not explicitly investi-

45. See supra, note 6.
46. D. Hagman, Public Control of California Land Development Sylla-
47. California Council on Intergovernmental Relations, General Plan
48. See supra, note 48. Hagman further notes that “[if] courts rigor-
ously review plan-zoning consistency requirements, a considerable amount
of judge-made law is in the offing.”
gated in the questionnaire, documents supplied by a number of the respondents indicate some initial concern and confusion over the meaning read into “consistency.” The legislative definition presented in A.B. 172550, although not completely satisfactory, did seem to give planning departments some appreciated direction as well as leeway.

Alameda county representatives felt the language used in the original bill “caused considerable confusion throughout the state, especially in view of the fact that the primary dictionary definition of “consistent” is “stationary, changeless and enduring.” Counsel interpreted the 1972 amendment to mean

 harmonious or steadily continuous co-existence; that is, if the general plan shows an area marked as open space, any subsequent change in zoning must be in harmony with the objectives and criteria of the open space element in the general plan.51

The amendment prevented a “strict application of the statute” which the Alameda County Counsel felt, as did other respondents,52 could result in:

1) the virtual elimination of all zoning ordinances since the general plan would be seemingly elevated to the level of legislation which would render a separate legislative tool meaningless since no zoning change could be granted if it conflicted with the general plan, and

2) that literally applied, a landowner could maintain a cause of action in inverse condemnation, alleging that the general plan which showed his land as open space required that it be zoned as such and that the effect of the plan was to take property without compensation.53

Other counties made similar general interpretations after the 1972 amendment54 was enacted:

A one to one correspondence between any given precise plan and the General Plan is neither required nor possible where the General Plan includes, in addition to diagrams, a text with objectives and policies. We recognize that the text, like life itself, may contain a certain number of contradictions. Nonetheless, the statutes make

50. Id. n.6 at 24.
52. See also A.B. 1301 and Local Land Use Decisions, prepared by County Counsel and the Planning Department for the County of San Diego Board of Supervisors. This is a thorough and comprehensive analysis of the Bill.
53. See supra, note 51.
54. See supra, note 6.
it clear that zoning and subdivision regulations must proceed from a general plan and not vice versa.55

II. HAVE COUNTIES CHANGED THEIR ZONING ORDINANCES TO REFLECT THEIR GENERAL PLANS IN ORDER TO ACHIEVE CONSISTENCY?

To determine whether the general intent of the legislature has been met or undermined by simply changing general plans to reflect existing and continuously amended zoning ordinances, county planners were asked a number of questions. Results are presented graphically in Figure I.

Figure I: Response to A.B. 1301 by Several Indicators

Question 5:
An important section of A.B. 1301 and amendments mandated that (a) "County or city zoning ordinances shall be consistent with the general plan of the county or city by ***January, 1971." Consistency was defined as follows:

"A zoning ordinance shall be consistent with a . . . general plan if the various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses and programs specified in such a plan."

Which of the following statements characterizes your department's response to A.B. 1301 once consistency was defined? (It is possible that more than one statement is applicable).

County Response: (Percentage of counties giving noted answer)

A. Did nothing differently. 25% (12/48)
B. Located the major areas of non-conformity between plans and zoning and amended the general plans. 17% (8/48)
C. . . . . (analyzed in Figure II)
D. Located the major areas of non-conformity between plans and zoning and amended the zoning ordinance to bring it into consistency with the general plan. 19% (9/48)

Question 6:
On balance would you say that the county since January 1, 1974

55. Orange County Counsel Memorandum (undated) to Board of Supervisors. A planning department working paper, however, noted, even after the amendment, that "[D]etermining consistency will be a problem whenever land-use proposals are presented to the County in the form of rezoning applications or in the form of a tentative or final map of a subdivision."

Santa Barbara County, after reviewing dictionary and quasi-legal meanings of consistency, determined that "consistent with" means in agreement with, harmonious with." Under this definition, interestingly, County Counsel recommended that:

the General Plan text be amended to provide that since the general plan is intended to provide for future growth, as well as present land use, the use of any land for agriculture and the zoning of such land for agricultural use is consistent with all the land use designations in the general plan.

(Letter to Board of Supervisors, County of Santa Barbara from Susan Trescher, Deputy County Counsel, May 5, 1972).
more often (1) amended the General Plan or (2) amended the zoning ordinance to comply with A.B. 1301?

County Response:
A. Amend the general plan — 6% (3/48)
B. Amended the zoning ordinance — 46% (22/48)
C. About the same — 31% (15/48)
D. Neither — 15% (7/48)

Question 4:
Since A.B. 1301 became law on January 1, 1974, would you say the number of changes of zone granted has increased, decreased or remained the same?

County Response:
A. Increased — 21% (10/48)
B. Decreased — 21% (10/48)
C. Remained the same — 56% (27/48)

These results, tentative because of the weaknesses of survey research in tapping reaction to a legal mandate, suggest that a fairly sizable portion of California counties is reacting initially to A.B. 1301 as its supporters had planned. One-fifth noted that—among other reactions—they had located “the major areas of nonconformity between plans and zoning and amended the zoning ordinance” to achieve consistency. This behavior was reported about as often as that which some critics of A.B. 1301 had feared: achieving consistency by amending the general plan where it was inconsistent with the zoning ordinance.

It is of course possible that a county could do both. In this case, the relevant question becomes: which behavior has been more common? Responses to Question 6 indicate that amending the zoning ordinance was done more often by a vast majority of the respondents.

(It is also possible, within this finding, that although not as frequent, the amendments to the general plan have been much more serious.)

Finally, response to Question 4 is of interest in assessing conformity with legislative goals. A full 80% of the counties responding have indicated that zoning changes have not increased since A.B. 1301 took effect on January 1, 1974.56 Although this data is on its face encouraging to those who supported the Act, it has been suggested that the decrease or lack of increase may be a reflection of regression toward the mean: a flurry of zoning change requests were made and granted in the period between enactment and the

56. See supra, note 5.
effective date of the Coastal Zone legislation. On the other hand, half of those who replied that zoning change grants had increased added that this change was not attributable to A.B. 1301.

III. HAS THERE BEEN AN INCREASE IN THE SIGNIFICANCE GIVEN THE GENERAL PLAN?

Other responses suggest that, statewide, there has been some attempt to strengthen the general plan as a planning document. Figure II summarizes the results on this question. Here trends are much less clear. Only one-fifth of the counties have taken steps to make the general plan an operational planning document in the long run, and few have performed the two other activities suggested as possible means of strengthening the general plan. Indeed approaches other than those enumerated to increasing significance of the plan are possible, but very few were volunteered.

Several counties which supplied documentary evidence of their reactions appear to have worked conscientiously to interpret A.B. 1301, attempting to turn its passage into an opportunity to re-evaluate and perfect the planning process. Orange County memoranda explained the meaning of and rationale for the General Plan; discussed the problem which the consistency requirement might represent; laid out a series of alternatives available to the County; and prepared a recommended program.

San Diego developed a County Counsel and Planning Department document which summarized the General Plan and zoning processes, struggled with the interpretation of "consistency"; summarized the practices which other counties had developed in initial response and outlined a series of possible alternative strategies—both recommendations for amending the general plan and recommendations for amending the zoning ordinance.

How much of this compliance with A.B. 1301 is attributable to "good faith" response to the goals of the legislature is difficult to

57. Interview with James L. White, then Acting Director, County of Riverside Planning Department, May 17, 1974.
58. See supra, note 2.
59. San Diego "amended the plan in some instances to conform to the Zoning and then identified areas where zone change is needed and then set forth a program to change the zoning [a two year program]." Other counties are reviewing and revising both the General Plan and the Zoning Ordinance. Eighty hearings have been scheduled by Los Angeles County to resolve inconsistencies. Butte county reported simply: "anarchy."
60. Id.
61. Although there were exceptions, as of the time of the San Diego inquiry (mid-1972) many of the counties reported taking a "no action-watch-and-wait" approach.

Other counties supplying documentation indicative of response are noted in Appendix B.
determine. The legislature’s “action forcing” 1973 statute makes this particularly true. Senate Bill 594\(^62\) introduced by Senator Marler\(^63\) mandated *inter alia* that mandatory elements of the general plan can be amended, at a maximum, three times per calendar year. It also prohibited public hearings on zoning ordinances or amendments for specified purposes from being held within two weeks of the date on which a general plan or element has been adopted or recommended for adoption. And a “reasonable time” was given for amending zoning ordinances to make them consistent with general plans recently amended.

**Figure II: Indicators of Effects on Significance Attributed to General Plan**

**Question 5 (continued):**
Which of the following statements characterizes your department’s response to A.B. 1301 once consistency was defined? (It is possible that more than one statement is applicable).

<table>
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<tr>
<th>County Response</th>
<th>Percentage of counties giving noted answer:</th>
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<tr>
<td>C. Developed a long range comprehensive planning program that had as its goal the creation of a fairly specific general plan which would become an operational planning document.</td>
<td>19% (9/48)</td>
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<tr>
<td>D. . . . . (analyzed in Figure I)</td>
<td></td>
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<tr>
<td>E. Prepared guidelines for interpreting the general plan.</td>
<td>10% (5/48)</td>
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<tr>
<td>F. Reviewed the zoning ordinance and general plan for amendments on density restrictions.</td>
<td>42% (20/48)</td>
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It is possible that such legislation, rather than forcing compliance with legislative intent—being “very restrictive” as one observer of the legislature’s action noted—could simply encourage different forms of avoidance behavior. Amendments could simply be clustered at various periods within the calendar year.

This study sought to assess the effect of S.B. 594. Respondents were fairly evenly split on the influence of the Bill (Question 7): thirty-one percent indicated that the bill was influential in the manner of response, but over half the counties (52\%) indicated it had no impact. A significant number indicated that amendments

\(^{62}\) 1973 *Stats.* ch. 120.
\(^{63}\) 2nd Senate District.
would be considered three times yearly. Some of the comments offered are illuminating:

We are doing more overall planning rather than reacting to individual requests.

Limit[ed] the flexibility of scheduling proposed amendments. May result . . . in fewer amendments.

Very poor law from constructive viewpoint, as we have a very active advance planning program, and this 3 times/yr. provision makes it difficult to proceed with the adoption of new amended plans.

We will slow proposed changes down so we do not exceed the three times provision.

No rezoning shall take place until the General Plan has been amended.

We have fewer requests for zone changes that are not in conformance with the General Plan because of the time consuming manner and other problems in changing the General Plan.

Generally screwed up the whole administrative process, created new enemies of the planning process, and damned near cost us our whole planning program.

The bill was also influential in the decision to pursue the possibility of establishing separate Planning Commissions for General Plan matters as compared to development or rezoning matters.

San Diego articulated a policy of opposition to “piecemeal” amendments: “The Director of Planning is hereby directed to inform all applicants that the Board [of Supervisors] is opposed to piecemeal amendments to the General Plan. . . .” An ordinance banning acceptance of applications for amendments to zone boundaries or for a zone reclassification which would conflict with the General Plan “until the Board of Supervisors has approved amendment of the General Plan so that the amendment to the zone boundaries or the zone reclassification would be in conformity therewith” was passed.

Because of this diversity in response, judgment must be reserved on the efficacy of this amendment. However, it certainly did alter the process of scheduling general plan and zoning ordinance amendment consideration as evidenced by some of the supplemental data supplied by respondents.

IV. WAS THE LEGISLATION VIEWED AS SOUND BY PLANNERS?

Figure III presents the results of a general attempt to tap county planners’ opinions of the Act. Especially in light of the variety

64. Although none of these counties indicated a desire to keep their responses anonymous, because of the candid replies offered, anonymity is maintained in this section. No county is represented more than once in this sample of quotations.

65. County of San Diego, Board of Supervisors. (Policy Action 12-18-73 (#97)) and Section 800-1 of the Zoning Ordinance.
of difficulties in attempting to legislate compliance, (as witnessed, for example, by reaction to the Marler Bill) receptivity by those who must implement the legislation may be an important intervening variable in efficacy investigations.

Figure III: Planners’ Opinions of A.B. 1301

Question 9:
Please indicate which of the following, if any, best reflect your opinion as a practicing planner, of A.B. 1301. (Check more than one if appropriate).

(Percentage of counties giving noted answer)

County Response:
A. It was good legislation because it added real regulatory power to the planning function: 52%
B. It will have little real impact on development in California: 5%
C. It was unrealistic because it requires already overworked local planning staffs to produce complex regulatory devices without adequate time or resources to develop prerequisite data: 13%
D. It was appropriate because most local planning staffs have the competence and prerequisite data to prepare sound general plan elements: 25%

The response—at least as operationalized crudely herein—has generally been favorable. Yet there are some major reservations: Thirteen percent of the respondents consider it “unrealistic” legislation. Also a number of counties considered the time frame for implementation unrealistic. Finally, summarized a spokesman for one influential planning department:

It turns plans into zoning maps. We have worked for 10 years educating the local people that they are different; now these people point the finger at us and say, ‘See we told you so zoning is planning is zoning. Too bad really.’

Citizen Response

Typically, in situations where laws are efficacious, there are identifiable groups of people who have it in their interest to insure that the Act is followed, that the legislative mandate is met. Even where language is considered “action forcing,” changes will not be dramatic unless some means of enforcement is encouraged. In the zoning-planning consistency situation the identification of “vigilante” groups is not easy. While some planning departments and
city and county governments may not be so affected by the variety of forces which push for zoning-planning inconsistency, most will be. The legislature, no doubt to some degree aware of this situation, included a citizen suit provision in Section 12:

Any resident or property owner within a city or county as the case may be, may bring an action in the superior court to enforce compliance with the provisions [of the zoning-general plan consistency requirement]. . . .66

One commentator in 1973 stated that "as long as the general plan can be amended to provide for desired zoning, citizen suits are futile. . . . Thus the threat of citizen suits appears slight except as a trigger to inverse condemnation suits. . . ."67

This prediction appears to be accurate in light of the history of suits in the first five months of the statute's existence. In response to Question 9 only two of the thirty counties indicated that there has been any use of the citizen suit provision; each noted there is one suit pending in the jurisdiction.68 Another indicated that the inconsistency attack was one count among several in a number of law suits.

Reasons for this absence of citizen involvement were not tapped by this survey. Lack of participation may, however, be explained by uncertainty as to the right to bring suit which the statute affects and more generally by the absence of incentives for citizen involvement.

SUMMARY AND CONCLUSION

Although little can be said definitively about the impact of the zoning ordinance-general plan consistency requirement of A.B. 1301 at this stage of the investigation, a few tentative findings are worth reporting.

First, California counties on the whole seem to be making a good faith effort to act in accordance with this planning mandate. There is confusion, however, as to what conformity with the consistency

66. See supra, note 8.
68. The counties are Mono and Butte. However, a potential landmark case has been filed against the city of Irvine, challenging the sufficiency of the city's housing element and the consistency of the Irvine Industrial Complex East zoning ordinance with the General Plan, specifically the Housing and Population/Economics Elements (Orange County Fair Housing Council et al. v. City of Irvine et al., Civil No. 225824, filed March 7, 1975.

For a discussion of the Irvine Industrial Complex East, see West, Luncheon Address: Planning Decision Making—Balancing Legislative Restrictions, Modern Technology, Community Input and Personal Objectives, supra at 101.
requirement entails and how to bring about "consistency" when it is in fact understood.

Most counties have taken a compromise position on the behavior required to realize consistency as it is presently understood (typically as "compatibility" in general terms—not direct one-to-one conformity). They have made some initial attempts to revise and develop their general plans; at the same time they have sought to effect some semblance of consistency in the short run by altering their existing general plans to reflect present zoning regulations.

This is not surprising in light of an understanding of the forces which have traditionally distinguished planning from zoning—forces which no simple legislative mandate, especially one with few incentives, can be expected to alter.

The great majority of the departments express approval of the statute because it adds to the regulatory power of the counties. But a significant minority oppose such legislation for a variety of reasons. Some feel that the time table for conformance was totally unrealistic. A few have more theoretical arguments with the legislation. In their view it actually threatens the planning function. It does so by transforming general plans into quasi-regulatory documents. By doing so it conflicts with a government's need to engage in long-range considerations of desirable alternative routes to development. It removes the activity of generating possible alternative futures to which citizens and planners can react.

Finally, very little citizen involvement to enforce the consistency requirement was detected. It is the author's opinion that four factors have brought about this lack. First, Government Code Section 65360 is relatively new, as is the general planning mandate in general. Second, the statute provides no incentive for filing suit such as might be provided by the allowance of costs to successful plaintiffs. Third, there has been confusion as to the meaning of the consistency requirement, and, fourth, the traditional concepts regarding taxpayer suits have made potential plaintiffs reluctant to believe that either residency or property ownership alone would grant standing.69

69. The language of the provision is clear. However, a traditional understanding of the capacity of California taxpayers to bring suit challenging municipal approval of plans may be serving as an obstacle to citizen recognition of powers under the Act. See Comment, Birth Control for Premature Subdivisions—A Legislative Pill, 12 SANTA CLARA LAWYER 523, 541 (1972).
This report would be incomplete without some comment on the legislative process in passing A.B. 1301. It appears in this case, as in many others where reform is contemplated, that the lawmakers had very little real knowledge of the setting in which the Bill would be implemented. This is not to say that legislative action should not have been taken on premature subdivisions and consistency. It is to say that a more action forcing bill might have resulted if the committee considering the bill attempted to understand the variety of philosophies in the planning field on the desirability of the consistency requirement and the variety and volume of constraints under which those who would implement the bill work.

Even if the committee had been aware of the myriad of complexities of implementation, similar legislation may well have resulted. This point notwithstanding, it is essential that legislation of this nature evolves from an educated understanding of how to lead planning departments, rather than from a misunderstanding of the planning profession and task in California. Were this lack of understanding and knowledge confronted, perhaps a more efficacious law would have resulted.
APPENDIX A

QUESTIONNAIRE

Please circle any questions which you would like to be reported anonymously or check here if all information is to remain anonymous: ______

1. Please indicate the sections of the General Plan that: (a) were adopted prior to January 1, 1971; (b) have been adopted since January 1, 1971; or (c) are in process.

<table>
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<tr>
<th>Element</th>
<th>Prior to 1/1/71</th>
<th>Since 1/1/71</th>
<th>In Process</th>
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<tbody>
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<td>a. Land Use Element</td>
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<td>b. Circulation Element</td>
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<td>c. Housing Element</td>
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<td>d. Open Space Element</td>
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<td>e. Conservation Element</td>
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<td>g. Safety Element</td>
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<td>h. Scenic Highways Plan</td>
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<td>i. Noise Element</td>
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2. Have there been changes in the General Plan since January 1, 1971?
   a. Yes ______
   b. No ______

If yes, please indicate the type of change and the approximate date of the change. (For example: “Agricultural zone proposed in area that was previously wilderness,” “June, 1971”).

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3. Have there been any changes in your Zoning Ordinance since January 1, 1971? (Please specify major changes here as contrasted with variances).
4. Since A.B. 1301 became law on January 1, 1974, would you say the number of changes of zone granted has increased, decreased or remained the same?
   a. Increased____
   b. Decreased____
   c. Remained the same____

Comments: ____________________________________________

5. An important section of A.B. 1301 and amendments mandated that (a) "County or city zoning ordinances shall be consistent with the general plan of the county or city by ***January 1, 1971." Consistency was defined as follows:

   "A zoning ordinance shall be consistent with a . . . general plan if the various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses and programs specified in such a plan."

Which of the following statements characterizes your department's response to A.B. 1301 once consistency was defined?

(It is possible that more than one statement is applicable)

   a. Did nothing differently.
   b. Located the major areas of non-conformity between plans and zoning and amended the general plans.
   c. Developed a long range comprehensive planning program that had as its goal the creation of a fairly specific general plan which would become an operational planning document.
   d. Located the major areas of non-conformity between plans and zoning and amended the zoning ordinance to bring it into consistency with the general plan.
   e. Prepared guidelines for interpreting the general plan.
   f. Reviewed the zoning ordinance and general plan and (i) changed the zoning if it allowed a higher density than the adopted plan indicates or (ii) amended the plan if it designated a higher density than the zoning allows.
g. Please briefly describe any other response. ________________________________

6. On balance would you say that the county since January 1, 1974 more often (1) amended the General Plan or (2) amended the zoning ordinance to comply with A.B. 1301?
   a. Amended the general plan _____
   b. Amended the zoning ordinance _____
   c. About the same _____

7. S.B. 594 (Ch. 120, St. of 1973) included a provision which set a maximum of three as the number of times the general plan can be amended per year. Has this statute influenced the manner that the county has responded to the zoning ordinance-general plan consistency provision of A.B. 1301?
   a. Yes _____
   b. No _____
   c. Don't know _____
   If yes, how? __________________________________________________________

8. To your knowledge, has there been any citizen use of the provision of A.B. 1301 which states "Any resident or property owner within a city or a county, as the case may be, may bring an action in the superior court to enforce compliance with the provisions of subdivision (a)."
   a. None at all _____
   b. Less than five instances _____
   c. Five to fifteen instances _____
   d. More than fifteen instances _____
   Comments: ____________________________________________________________

9. Please indicate which of the following, if any, best reflect your opinion, as a practicing planner, of A.B. 1301. (Check more than one if appropriate)
   a. It was good legislation because it added real regulatory power to the planning function _____
   b. It will have little real impact on development in California _____
c. It was unrealistic because it requires already overworked local planning staffs to produce complex regulatory devices without adequate time or resources to develop prerequisite data.

d. It was appropriate because most local planning staffs have the competence and prerequisite data to prepare sound general plan elements.

e. Other comments: ____________________________________________________________

10. Your agency's current fiscal year budget is:
   a. Total ______________. b. Local Share ______________.

   If possible, please enclose any in-house guidelines that were developed to clarify the intent of A.B. 1301 or to facilitate your county's compliance.

Appendix B

List of Counties Represented in Results

1. Alameda 25. Sacramento*
2. Amador 26. San Benito
3. Butte 27. San Bernardino
4. Calaveras 28. San Diego*
5. Contra Costa 29. San Joaquin*
6. Del Norte 30. San Luis Obispo
7. Fresno 31. San Mateo
8. Glenn 32. Santa Barbara*
9. Imperial* 33. Santa Clara
10. Kern 34. Santa Cruz*
11. Kings* 35. Shasta
12. Lassen 36. Sierra
13. Los Angeles* 37. Siskiyou
14. Madera 38. Solano
15. Marin 39. Sonoma
16. Mendocino 40. Stanislaus
17. Merced 41. Sutter*
18. Modoc 42. Tehama
19. Mono 43. Trinity
20. Monterey 44. Tulare
21. Nevada 45. Tuolumne
22. Placer 46. Ventura
23. Plumas 47. Yolo
24. Riverside 48. Yuba

*An asterisk indicates county also supplied documents descriptive of agency response.