

Senate probes fallout from 'Nollan' case

By SIGRID BATHEN
Recorder Capital Correspondent

SACRAMENTO — The Senate Local Government Committee Thursday heard disparate testimony on the impact of recent U.S. Supreme Court land-use decisions to determine if legislative action is necessary to resolve confusion over those decisions.

Committee Chairwoman Marian Bergeson, R-Newport Beach, said she called the hearing because of concern over conflicting interpretations of the June decisions in *First English Evangelical Lutheran Church of Glendale* and *Nollan v. California Coastal Commission*.

California has "some of the most intricate and controversial land-use laws in the country," Bergeson said. Legislators need to know "how far these cases really go."

The answer is anything but clear.

Deputy Attorney General Richard Frank, who represented the state Coastal Commission in *Nollan*, said, "Land-use planning remains alive and well in California. Contrary to published reports, neither *First Lutheran* nor *Nollan* have made radical changes to the permissible scope of land-use regulation.

Timothy A. Bittle, attorney for the Pacific Legal Foundation which represented the Nollans — a Ventura County couple ordered by the California Coastal Commission to give unrestricted public access to beachfront property in return for a permit to remodel their home — said the court determined that uncompensated dedication requirements are unconstitutional.

8/14/87

"Since dedication requirements standing alone are unconstitutional, the owner has a right to resist the dedication condition," Bittle added. "When the agency has a lawful right to deny the owner's permit, then the owner and the agency may 'trade' their rights . . . Rather than referring to it as a 'trade,' the Supreme Court says that dedication requirements can be constitutional where they are merely a substitute for denial."

During the day-long hearing, testimony was heard from representatives of the business, real estate, planning and local government communities.

Don V. Collin of the California Building Industry Association said the effect of the decision on builders will be "more discipline in the process, the record will be better to support the result, and now that there are limits which may expose the public entity to monetary damages, there should be more concern about testing the line between a valid regulation and a taking."

At one point in the hearing, chairwoman Bergeson asked Jack Shelby of the California Association of Realtors if he thought the decisions would mean an increase in litigation. Shelby said it was "too early to tell."

"Property owners will think the millenium has arrived, and then they will talk to their lawyers and find out it hasn't," Shelby said.