CALIFORNIA PLANNING & DEVELOPMENT REPORT

June 1991 | William Fulton, Editor & Publisher | Vol. 6, No. 6

Counties Begin Work On Congestion Plans

Thirty-one counties in California are currently preparing "congestion management plans" in order to qualify for additional state funds under Proposition 111, the gas-tax increase passed by the state's voters last year. Together, the 31 CMPs will represent the largest vehicle-trip-reduction effort ever undertaken in the state and perhaps the country. But the true power of CMPs to alter land-use policies remains untested, and in some areas they may be on a collision course with air-quality plans, which have similar — though not identical — goals.

The CMP program was included in Proposition 111 at the insistence of Assembly Transportation Committee Chair Richard Katz, D-Sylmar. The measure calls for all "urbanized" counties to create trip-reduction plans plans by the end of this year; subsequently, cities will be required to adopt trip ordinances in conformance with county plans. Local governments whose CMPs do not meet approval of the California Transportation Commission face the loss of state transportation aid. In all, $5 billion of transportation funding hangs in the balance over the 10-year duration of the gas-tax increase. In Los Angeles County alone, $450 million is riding on the CMP.

CMPs represent a link between land-use and air-quality policies "never done before," according to Brad McAllister, a former Caltrans official now in charge of drafting the CMP for the Los Angeles County Transportation Commission.

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Orange County Tollway Faces Legal Attack

In a dispute that could have wide-ranging consequences, the San Joaquin Hills Transportation Corridor — one of three proposed tollways in Orange County — is under attack from environmentalists and two federal agencies, and construction seems likely to be delayed as a result.

In March, the Orange County Transportation Corridor Agencies certified the state-required environmental impact report for the tollway and predicted that construction could begin later this year. A few weeks later, however, a coalition of environmental groups filed suit in state court challenging the EIR's adequacy. Furthermore, the federal environmental impact statement — a virtually identical document, required because of federal involvement in the project — has yet to be certified, and both the Environmental Protection Agency and the U.S. Fish & Wildlife Service have criticized the document harshly. The court case over the EIR/EIS — environmentalists are expected to file a federal lawsuit as well — could raise many of the same issues that have been raised in a Bay Area lawsuit seeking to change the way that air quality implications of new highways are assessed. (*CP&DR*, February 1991.)

Beyond that, environmentalists are leaning on state officials to list the California gnatcatcher as an endangered species — a move that could halt development on some 250,000 acres of land in Orange, Riverside, and San Diego counties and would almost certainly stop the San Joaquin Hills project. (See accompanying story.) And the City of

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NEWS

Developer Wins $11.5 Million in Case Against City of San Bernardino

A Highland developer has won an $11.5-million verdict from a San Bernardino jury, which concluded that the City of San Bernardino's delays in approving an apartment project violated the developer's civil rights. The verdict is believed to be one of the largest awards ever received by a California developer in a lawsuit against a local government.

However, the city has asked for a new trial in the case, alleging that the jurors did not understand the law and made their decision based on their own experience and other evidence that was not presented in the courtroom.

The case arose from a series of events that began in 1986, when Stubblefield filed an application to build 492 apartments on a 30-acre hillside site in northeastern San Bernardino. At the time, the property was zoned to permit 630 units. However, when neighborhood homeowners objected to the projects, the city took a series of steps to delay the project's approval just prior to a three-year moratorium during which the city's general plan was revised. The new general plan restricted development on steep hillsides, and Stubblefield's allowable density was reduced from 630 units to only four units.

Stubblefield first filed suit after the project's delay in 1986, alleging a taking of property without compensation and a violation of the developer's civil rights under section 1983 of the U.S. Civil Rights Act. After the general plan revision in 1989, Stubblefield filed a second suit challenging its validity. The $11.5-million verdict came after a trial earlier this year on the first lawsuit. The general plan suit is scheduled to come to trial in July.

At the trial on the first lawsuit earlier this year, Stubblefield's lawyer, Darlene Phillips, argued that city officials "manipulated the law for their own purposes" during a two-month period in 1986. Despite a "history of assurances" that the apartment complex would be permitted, Phillips alleged, then-City Councilman Steve Marks — responding to neighborhood unrest about the project — bullied other city officials into delaying the project. Among others, former city planning director Frank Schuma testified that Marks threatened him with his job if the project were approved. As a result, Phillips alleged, the city took a series of stalling measures, including an urgency ordinance abandoning the city's longstanding policy that projects should be processed under the ordinances in effect at the time an application was filed. "We had some very good facts," Phillips said.

The jury returned the $11.5-million damage award on the civil rights claim, and Superior Court Judge Don A. Turner then dismissed the taking claim.

But Assistant City Attorney Henry Empeno said he had asked Turner to enter a "judgment notwithstanding the verdict" in favor of the city — in effect, overturning the jury's award — or else grant the city a new trial. Empeno claimed that Turner himself had misinterpreted the law in his jury instruction, perhaps because of unfamiliarity with the law. (In fact, federal civil rights claims in land-use cases are usually litigated in federal court.) He also claimed that the jurors had relied on personal experiences outside the courtroom in making their decision. He said the city had secured a declaration from at least one juror indicating jury misconduct.

The second lawsuit challenges both the land-use element and the housing element of the new general plan. It is scheduled to go to trial on July 16. City planners say Stubblefield's property was virtually the only parcel in the area zoned for high-density housing in 1986. In the subsequent general plan revision, the city adopted a "slope density formula" which restricted housing development on steep hillside areas. Under the new formula, property with a 0-15% slope was permitted 2 units per acre; property with a 15-25% slope was permitted 1 unit per acre; property with a 25-30% slop was permitted 0.5 units per acre; and property with a 30% slope or more was permitted only 0.1 units per acre. Stubblefield's property was so steep that under this formula, the developer was permitted only four units on 30 acres.

The two cases in question are both known as *Stubblefield Construction Co. v. City of San Bernardino*, San Bernardino Superior Court Case Nos. 242998 and 252058.

Contacts: Darlene Phillips, lawyer for Stubblefield, (213) 620-0460. Henry Empeno, lawyer for City of San Bernardino, (714) 384-5355.

Sutter County Rejects Competing Growth Initiatives

Sutter County residents have rejected competing proposals to deal with growth in the southern part of the county — apparently preferring to leave the fate of the area up to county planners and politicians.

In a special election on May 14, more than 60% of the voters cast ballots against both Measure C, a slow-growth measure, and Measure D, which was heavily supported by developers and the business community. Measure C would have required voter approval for all future general plan amendments, while Measure D, which would have encouraged new commercial and industrial development in the area (while protecting much agricultural land).

Measure C was a citizen measure drafted in response to the Sutter Bay "new town" proposed for the southern part of the county. Put forth by Ahmanson Development and lawyer/developers Jonathan Cohen and William Falik, Sutter Bay would cover 25,000 acres of land and could eventually reach a population of 200,000, or three times the current population of the entire county.

Faced with a countywide unemployment rate in excess of 20%, business and political leaders have looked favorably on the prospects of development in the southern part of the county. A citizen advisory committee has been drafting a plan for the area which would call for four major town centers, 10-12 village centers, and a "build-out" in the year 2030 of 142,000 people and 96,000 jobs. "The Board of Supervisors is concerned about the perception of this county being another bedroom community for Sacramento," says county planner Peter Bridges.

Measure C would have set aside 16,500 acres in the south county area for agriculture and stated that approval of any "New Towns or New Cities within the affected area" must be placed on the ballot. In response, business leaders drafted Measure D, known as the "controlled growth management initiative." Measure D would have limited non-agricultural land uses to 20% of the total county area, but also would have provided that "commercial and industrial centers" be developed throughout the county.

In the May 14 voting, both measures lost. Measure C received only 36% of the vote, while Measure D received about 39% of the vote. Development and business interests campaigned hard against Measure C. The initiative's backers raised less than $10,000, while opponents raised more than $200,000. Measure C proponents complained that Measure D's intent was merely to confuse the voters.

The defeat of both measures means the planning process for the area will continue as before, Bridges said.

Measure C (voter approval): No, 63.9%.
Measure D (economic development): No, 61.3%.
Contact: Peter Bridges, Sutter County planner, (916) 741-7400.

BRIEFS

Disney Announces Expansion in Anaheim

After months of speculation, the Walt Disney Co. has announced plans for a $3-billion EPCOT Center-style expansion of Disneyland in Anaheim. But it remains to be seen whether Disney decides to build WESTCOT Center instead of Port Disney, a proposed theme attraction of comparable scale in Long Beach.

The May 8 announcement of the WESTCOT project was accompanied by massive publicity. The new attraction would be built on Disneyland's 100-acre parking lot, while parking structures would be built on land provided by the city just off the Santa Ana Freeway (Interstate 5). Land acquisition for parking structures alone could cost the city $50 million.

The announcement may up the ante in Disney's attempt to play Anaheim and Long Beach off against each other in obtaining public subsidies for a new theme park. (*CP&DR "Deals,"* September 1990.) Disney is now trying to obtain special legislation that would permit the company to fill 250 acres of ocean in Long Beach.

Developer May Sell River Bottom in Fresno

Environmentalists in Fresno are negotiating with the Sienna Corp. for purchase of 400 acres along the San Joaquin River.

Fresno environmentalists have placed a high priority on acquisition of the river bottom land, which constitutes about two-thirds of the Ball Ranch property. However, it remains to be seen whether they can raise enough money to complete the deal.

Minneapolis-based Sienna has proposed a 600-home development on the property. According to the Ball family, which still holds title to the land, Sienna has agreed to sell the land for $9 million, while the San Joaquin River Parkway and Conservation Trust had estimated its value at about $4 million.

Just a few days after this discrepancy was made public, however, Nature Conservancy president John Sawhill toured the area and said the organization had a strong interest in assisting with the acquisition.

Riverside Regains Land in Sphere

A year after losing it, the City of Riverside has regained 60 square miles of land to the south within its sphere of influence.

The change came after residents in the area, which includes Lake Mathews, decided that Riverside's interest in them did not represent a threat of urbanization. The Riverside City Council agreed to abide by current community plans and use the city's own growth control ordinances to restrict development where applicable.

A year ago, area residents asked the county's Local Agency Formation Commission to remove them from Riverside's sphere. Now, however, the residents apparently prefer slow-growth Riverside to fast-growing Corona, which also has designs on some of their land. Corona is expected to come back to the LAFCO and ask that land owned by developer Allen Siegal be transferred from Riverside to Corona. Siegal has been talking to Corona about developing his property.

Blacks Attack S.F. Redevelopment Effort

More than 100 black citizens engaged in an angry protest against San Francisco's redevelopment efforts in mid-May, complaining that the agency has been racist in its assistance to businesses.

The protest was sparked by a leaked memo to Executive Director Edward Helfeld from Agency President Buck Bagot, a longtime San Francisco housing activist. In the memo, Bagot said he felt doubtful about the advisability of the agency lending money to start "new non-white businesses."

Black Chamber of Commerce President James Jefferson said Bagot's memo was racist because it suggested that "what African Americans need are jobs and not businesses."

The black protesters complained about a variety of redevelopment actions, including the fact that the largest economic development grant in the largely black Bayview District went to a white-owned supermarket. The blacks argued that a $2 million in earthquake relief to Chinatown revealed a pro-Asian bias and alleged that the agency has been slow to use a $5 million aid-to-business fund earmarked for mostly black neighborhoods.

Workers in Leisure World?

Residents of Orange County's Leisure World are split over plans to build a business park inside the retirement community.

Developer Ross Cortese and Rossmoor Partners are seeking a rezoning to build 1.4 million square feet of office and industrial space in Leisure World. Hoping to win the approval of Leisure World's residents, Cortese has offered $1 million and 10 acres of land, a new county-operated senior center in the business park, and $12 million in road improvements. He has also offered to leave 35% of the business park in open space.

This is the third time Cortese has tried to build the business park. Golden Rain Foundation, a coalition of homeowners associations in Leisure World, opposed the project in 1989 but supports it now. However, a new group called Community Association of Leisure World hopes to collect 10,000 signatures in opposition to the rezoning, which must be approved by the Orange County Planning Commission.

Roundup

League of California Cities and County Supervisors Association of California join forces to create **a tax-exempt bond pool for golf course construction**....The City of San Francisco is expected to **lay off 10% of its planning staff** because of budget cutbacks....State Bank Superintendent James Gilleran says **California avoided real estate overbuilding partly because of no-growth attitudes** around the state....Fair Political Practices Commission reopens a case against Brea Mayor Wayne Wedin, who is **accused of pushing a city contract** with Keith Cos. when he was working with the firm on a different project....Nature Conservancy **assumes control of an 18,000-acre ranch** along the Sacramento River near Chico.

CALIFORNIA PLANNING & DEVELOPMENT REPORT

is published monthly by

Torf Fulton Associates
1275 Sunnycrest Avenue
Ventura, CA 93003-1212
805/642-7838

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Subscription Price: $179 per year
ISSN No. 0891-382X

Seeking Gas-Tax Money, Counties Begin Work on Congestion Plans

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For both developers and local governments, CMPs will create a new layer of transportation planning. Although developers already prepare traffic-impact studies in EIRs, they may now be asked by cities to prove that their projects will not worsen the traffic regionally.

It remains to be seen, however, whether local governments can use CMPs to avoid suburban sprawl rather than encourage it. During negotiations last year, the building industry criticized the CMP plan, saying that it would permit sprawl by encouraging new development in outlying areas, where current traffic congestion is nil. More recently, Los Angeles Mayor Tom Bradley expressed the same fears. In a letter to LACTC executive director Neil Peterson, Bradley said the county's CMP would clash with the city's multi-center planning approach, and promote sprawl by discouraging more development in high-density centers. Despite those concerns, the statute does not provide different standards for urban and suburban areas.

Components of CMPs

Under the terms of Proposition 111, each CMP must contain five elements: standards for traffic levels on designated streets and highways; coordination of public transit, including routing and frequency; trip-reduction strategies, including transportation alternatives; a program to measure the regional impact of development; and a seven-year capital improvement program.

Counties and cities are asked to identify a standard "level of service" at key intersections, using the A to F traffic rating system. Freeways and major corridors are not to worsen beyond level E, except for those arterials already at F. That means cities and counties are under real pressure to find transportation alternatives and contain traffic, not just formulate plans. Low- and very low-income housing (defined as housing affordable to households with less than 80% of a community's median income) is exempt from congestion plans, however.

The CMPs are being drawn up by a variety of agencies depending on location. In Los Angeles County, the task has fallen to the LACTC, which also administers the county's one-cent local transportation sales tax and is building the county wide light-rail system. In Santa Clara County, a new agency, the Santa Clara County Congestion Management Agency, was set up to handle the CMP despite the existence of a similar agency. Yuba and Sutter counties, which are treated as a single CMP area, entrusted the chore to Omni Means of Roseville.

The agencies are to take yearly traffic readings and compare them to CMP standards; although the "trigger point" remains vague, transportation boards are to notify the state controller to cut off transportation funds from cities that show net increases in congestion.

In an acknowledgement of California's diverse growth patterns, local CMPs can choose whichever traffic-reducing means they wish: mass transit, buses, street widening, signalization, van pools, car pools, and "flex" employee working hours, among others. "We gave them the flexibility to meet the standard without dictating the strategy," says Katz.

A Katz aide hinted, however, that counties are not uniformly enthusiastic about creating CMPs. "Rather than providing a very specific approach to CMPs, we have created a terrible burden on them," says a waggish John Stevens, principal consultant to the Assembly Transportation Committee. But he added that "some local city and county people told us they have had to sit down with people to whom they had not spoken for years and create an admittedly complex program."

Although Katz and other proponents proclaim the CMP program as the marriage of land-use and transportation, the land-use powers of Proposition 111 are indirect at best. CMPs do not have the authority to kill projects that threaten to overload freeways, nor is there any development component in the plan; instead, congestion plans can only withhold funds from cities that allow such developments.

But at the same time that transportation boards boast of newfound power in the land-use arena, some officials are playing down the message. "As the CMP agency, (LACTC is) not taking local land use authority away — it remains the authority of the cities," said Bob Cashion, director of the South Bay region for LACTC, speaking at a Seattle conference in May.

Relationship to Air Quality

An inevitable question is whether CMPs will come into conflict with local air-quality plans, some of which now require trip-reduction plans. Lobbyist Don Collin of the California Building Industry Association says conflict is brewing between "single-issue" agencies. He foresees a "battle between transportation agencies and air boards to rule the roost." At issue, he says, is which agenda ultimately has the upper hand in land-use decisions.

Both Katz and his committee staffer, Stevens, see a neat fit between air quality and congestion management. "If you make better decisions on the jobs-housing balance, trip reductions, and in reducing congestion, air quality is going to improve," Katz said.

Adds Stevens, "We do not intend to CMPs as a completely separate layer of regulation. To the extent it is possible, we would like to consolidate air quality and CMP requirements in local general plans."

Air quality officials on the front lines, however, are less sanguine. Even with good intentions, making a match between air quality and congestion management "is perhaps more difficult to do" than first envisioned, said Claudia Keith, a spokeswoman for the South Coast Air Quality Management District, which covers the Los Angeles area. She observes that the same freedom extended to local government to choose their own way of traffic control could complicate regional planning, and noted that Proposition 111 is vague about the mitigation of trips that start in one place and end in another. She asks whether the same trip count twice for two separate CMPs.

Stevens countered that CMPs are to "talk" to one another. Neighboring counties considering the extension of rail lines or freeway widenings would be forced to confer with one another. This sort of uniform policy is designed to both to coordinate traffic and to prevent "hopscotching" of urban growth; otherwise, developers might otherwise be encouraged to avoid a strict jurisdiction and build in more lenient ones, promoting urban sprawl.

Air boards and transportation agencies are thrashing out their upcoming marriage. As mentioned above, the statute calls for CMPs to fall in line with existing air-quality plans. But who decides in the case of a dispute?

In Los Angeles County, a collision may occur if the South Coast Air Quality Management District picks a bone with LACTC, or vice versa, over which agency has the last word in what goes into congestion plans. According to Pat Leyden, AQMD deputy executive officer, the South Coast Air Quality Management Plan outlines "basic components" of any local trip-reduction ordinance. Pursued logically, that interpretation has the upper hand in CMPs. LACTC's McAllister, on the other hand, says the statute requires transportation agencies to consult with air boards. "The law requires that we consult with (AQMD and SCAG), send them a copy of the draft plan when available, and that they give us their recommendation, and that we consider it. They have no veto power." Following that logic, transportation agencies are free to consider — or disregard — input from other agencies. The role of air boards is limited to consultant only.

The statute also says CMPs in Southern California must be tailored to fit with the Regional Mobility Plan created by the Southern California Association of Governments (SCAG).

Morris Newman

Environmentalists Launch Attack on Orange County Tollway

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Laguna Beach is balking at whether to sell land to the county needed for the tollway.

The San Joaquin Hills project is one of three tollways in the works for Orange County. It would provide an alternative north-south route to from Newport Beach to Laguna Beach that would bypass the crowded I-405/I-5 interchange in Irvine. A second corridor, the Eastern tollway, would connect the job centers in central Orange County with the 91 Freeway, the major commuting route from Riverside, while the Foothill tollway would parallel I-5 to the east from the Eastern tollway to the San Diego County line. These roads would be the first tollways built in California in 50 years.

In November, the Foothill tollway's first section began construction, making it the first major expressway project to be built in Orange County since 1974. But environmentalists and the U.S. Fish & Wildlife Service are still resisting the alignment's later legs because it may harm both the gnatcatcher and Bell's vireos, which is already on the federal endangered species list.

Though the San Joaquin tollway has been in the planning stages for years, environmental and neighborhood groups have been gearing up in recent months to oppose it. Their cause got a big boost in January, when the EPA Region 9 office in San Francisco filed a surprisingly harsh set of comments attacking the draft EIR/EIS.

In particular, the EPA's letter attacked the document on its alternatives analysis and its growth-inducing impact analysis. The EIR/EIS, the EPA said, "does not consider in detail any alternative that would reduce congestion without construction of this corridor in this location." The document considers only two construction alternatives, but the EPA said it should also have considered some combination of "downzoning and other land use alternatives, transportation system management, mass transit, limited widenings of existing facilities, and other transportation demand management strategies" that might have provided a feasible alternative.

Rob Thornton, lawyer for the Transportation Corridor Agencies, argued that the EPA's discussion of this point is factually wrong. He said the project TCA approved — known in the EIR as the "demand management alternative" — contains fewer lanes and places more emphasis on high-occupancy vehicle lanes than would be called for under a traditional traffic engineering analysis.

The EPA's letter also hit the project hard for growth-inducing and cumulative impacts. "Although a substantial portion of the land in (this area) was committed to development based on construction of this corridor, the (EIR/EIS) concludes that growth in the area would occur in much the same manner with or without the corridor," the letter said. "This claim is not substantiated."

The EPA also attacked Orange County's assertion that the tollway would improve air quality by improving traffic flow. The EPA actually called on the Transportation Corridor Agencies to do a broad-based analysis of regional transportation needs before determining what type of project was needed — a suggestion that seemed to be a veiled criticism of the Regional Mobility Plan drawn up by the Southern California Association of Governments, which was used as part of the "needs" foundation for the tollway. But Thornton again called the EPA's criticism "just wrong," saying that SCAG had been "very aggressive" in steering the document away from recommended new construction.

The U.S. Fish & Wildlife Service also wrote a strong letter criticizing the EIR/EIS, but it dealt mostly with wildlife issues. The EPA letter was surprising because it addressed such a broad range of planning issues that have not been addressed in much detail through environmental review. The way the letter questions the EIR/EIS's conclusions about growth inducement, for example, could set the stage for a major showdown on that issue, which has been peripheral in the past. Also, the air issues may lead to a challenge to the widespread assumption that, in a congested area, the construction of more freeway lanes automatically means air quality will improve. (The Sierra Club has obtained an injunction against new highway construction in the Bay Area by challenging this same assumption.)

In short, the EPA letter deals with some basic questions about whether infrastructure development drives growth and, if so, what the impact on the environment is — questions that have not been addressed directly before. Though the EPA is not considered likely to sue over the project, the environmental lawsuit is likely to raise similar concerns.

According to Joel Reynolds, a lawyer for the Natural Resources Defense Council, the environmentalist lawsuit addresses the wildlife, air quality, and growth inducement issues directly. He criticized the Transportation Corridor Agencies for certifying the state EIR before the federal EIS was approved by the Federal Highway Administration — a move which, he said, forced his organization to file a suit in state court now. He said NRDC would also sue in federal court.

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Protection Sought for Gnatcatcher

In a move that potentially could stop development in fast-growing areas of Southern California, environmentalists have asked state and federal officials to list the California gnatcatcher as endangered.

Hoping to forestall such problems, however, The Irvine Co. has proposed creating a "habitat conservation plan" to maintain a limited amount of the coastal-scrub environment on which the small bird thrives. Though environmentalists are skeptical of the plan, they have agreed to meet with developers and state officials.

Under both state and federal law, the presence of endangered species can halt new development, and most other human activities, because "taking" (i.e., killing) them is a crime. However, both state and federal officials are reluctant to act against development plans, even if a species is rare, until after the species has been listed as endangered. The listing of a species — or the sudden discovery of a species on new land — can cause a sudden halt to long-planned development projects.

Because of both rapid growth and an unusual biological diversity, California has been the battleground for most endangered species fights in the last 10 years. Most recently, in Riverside County, the presence of the endangered Stephens' kangaroo rat forced developers and county officials to halt development until they worked out a temporary solution that would permit the preservation of some K-rat habitat. developers paid a $1,950-per-acre fee to fund the habitat. (*CP&DR Special Report: Federal Environmental Laws*, June 1990.)

If the gnatcatcher is listed as endangered, however, it could have a much broader impact than the K-rat. The bird has a range of some 250,000 acres in Riverside, Orange, and San Diego counties, meaning that if it is listed, development could stop in the fastest-growing part of the state. The listing of the gnatcatcher could also bolster environmentalists' legal case against the San Joaquin Hills Transportation Corridor, which would cut through much of the gnatcatcher's habitat.

Although federal protection for endangered species is considered stronger, environmentalists are pursuing a state listing because it would provide protection earlier. Federal protection begins only when a species is actually listed. State protection begins as soon as state Fish & Game Department officials agree to consider listing the species. The Natural Resources Defense Council has secured a Fish & Game hearing on the gnatcatcher for August 1.

COURT CASES

Court Upholds Schools' Independent Power to Impose Fees

In an important follow-up to last month's Murrietta Valley ruling, a Court of Appeal panel in San Bernardino has upheld a school district's power to impose fees on new development without relying on the state's 1986 School Facilities Act.

The appellate court found that the Cucamonga School District had the power to impose development fees based on Article IX, Section 14, of the California Constitution, which was enacted by initiative in 1972. Among the purposes of that initiative was to permit school boards to carry out any school-related activity that is not prohibited by state law. The Court of Appeal found that the state legislature has interpreted the constitutional section broadly, and that case law in this area had created "the general principle that courts permit flexibility in local governments' responses to school overcrowding caused by new development. Such responses may include school districts' imposition of fees as a condition to issuance of a building permit."

The ruling could be significant to school districts, which are engaged in a fierce litigation campaign to free themselves from the constraints of the '86 school finance law. In an important ruling last month, the same Court of Appeal panel ruled that the '86 law does not prohibit Riverside County from imposing higher fees or taking other mitigation measures to avoid school crowding in the fast-growing Murrieta Valley. (See *CP&DR*, May 1991.) As a result of that ruling, the Riverside County Planning Commission is now investigating the possibility of levying higher school fees as a condition of approval. The 1986 law sought to limit local school fees to $1.50 per square foot for residential development and 25 cents per square foot for commercial development. (Inflation formulas have now driven the caps up to $1.58 and 26 cents.) In exchange for the cap, the state promised to provide all additional school facilities funding. However, the state's school bond issues have not been sufficient to keep up with demand, and local districts are seeking alternative sources of funds.

The case from Rancho Cucamonga actually pre-dates the School Facilities Act. In 1985, Lincoln Property Co. paid almost $1 million in school fees in order to obtain building permits for Alta Park, a 376-unit apartment complex. School fees of $2,633 per unit had been imposed by the school district two months after Lincoln received final approval for the project. Lincoln then sued, claiming that the school district lacked the authority to impose the fee and also arguing that the city could not impose such a fee at the building permit stage.

San Bernardino County Superior Court Judge Kenneth G. Ziebarth Jr. ruled against Lincoln, saying the city had the authority to impose the fee at the building permit stage and, therefore, he did not need to address the question of whether the school district had the authority to impose the fee. The Court of Appeal also ruled against Lincoln, but said Ziebarth had erred in his ruling and took the opportunity to make a broader ruling.

In addition to dealing with the question of the school district's powers, the appellate court struck down the trial court's finding that the fee had been imposed by the City of Rancho Cucamonga, not by the Cucamonga School District. "The evidence was undisputed," the court wrote, "that the district directly imposed and collected the fee."

The full text of Lincoln Property Co. v. Cucamonga School District, No. E007754, appeared in the Los Angeles Daily Journal Daily Appellate Report on April 19, beginning on page 4384.

Sacramento Convention Center EIR Upheld

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fewer people traveling by car, and constructing additional parking. The EIR was certified by the city council by a 5-4 vote in October of 1988.

In its lawsuit, the Sacramento Old City Association made two major claims. First, it said that by leaving the parking solution so vague, the city had not dealt fully with foreseeable environmental effects. And second, the organization claimed that the EIR did not deal with the cumulative parking and traffic impacts, as required under the California Environmental Quality Act. But Superior Court Judge Michael Virga ruled in the city's favor, and the appellate court panel affirmed Virga's decision.

The Old City Association claimed that by deferring specific parking solutions into the future, the city ran afoul of the CEQA rule against truncating development projects in order to avoid environmental scrutiny. In so doing, the organization cited the California Supreme Court ruling in *Laurel Heights Improvement Association v. Regents of the University of California*, 47 Cal.3d 376 (1988). In that case, the court struck down UC's environmental impact report for medical lab facilities in San Francisco because the EIR examined the impact of just the first phase of the project, not all future phases. The court ruled that an EIR must include analysis of future expansion if that expansion is "reasonably foreseeable" and the expansion "will likely change the scope or nature of the initial project or its environmental effects." (*CP&DR*, December 1988.)

However, in the case from Sacramento, the Court of Appeal took pains to distinguish the case from Laurel Heights. "Unlike the situation in Laurel Heights, where the University knew it would be expanding in the immediate future, and knew exactly how many square feet the expansion would be, the city in this case knows only that it will have to mitigate parking, probably by implementing some or all of the potential mitigation measures listed in the EIR," Justice Anthony DeChristoforo Jr. wrote for the two-judge majority in the case. "These potential mitigation measures may, in certain combinations, greatly expand the scope and nature of the project's environmental consequences. However, until these specific measures are adopted and more fully fleshed out, their effects remain abstract and speculative."

As to cumulative impact, the Old City Association argued that the 2,600-car parking deficit would inevitably lead to construction of more parking facilities, which would in turn lead to additional environmental effects that should have been examined in the EIR. But the two-judge majority said this would have amounted to discussing cumulative effects of projects which have not yet been approved — an approach that the majority claimed was rejected by the Supreme Court in the *Laurel Heights* case.

The court also rejected the Old City Association's argument that the EIR failed to adequately discuss the possible loss of the Merrium Apartments, an historic building which may be moved or razed to make room for the convention center. The EIR called for replacing the lost housing if the Merrium is razed.

In dissent, Justice Sims agreed with the Old City Association's claim that the parking problem would inevitably lead to the construction of more parking facilities, which should have been examined in the EIR.

The full text of Sacramento Old City Association v. City Council of Sacramento appeared in the Los Angeles Daily Journal Daily Appellate Report on May 3, beginning on page 5120.

COURT CASES

San Diego Reopens Road After Appellate Court Ruling

The City of San Diego must keep a road of regional importance open even if the action conflicts with the city's general plan, a Fourth District Court of Appeal panel in San Diego has ruled. The decision motivated San Diego to settle a longstanding dispute with the neighboring City of Poway and reopen an important arterial road connecting Poway with Interstate 15.

The appellate ruling in City of Poway v. City of San Diego is the first significant ruling under a Vehicle Code section passed in 1982 that was designed to give local governments more leeway in managing traffic flows. Although the fact situation in the case is not likely to be repeated, the ruling could be important, because it states clearly that the Vehicle Code can override the supremacy of a local general plan if regional highway interests are at stake.

San Diego closed Pomerado Road for expansion in 1988, after it decided to annex unincorporated territory for part of the Scripps Ranch development project. Although the expansion was complete last year, San Diego continued to keep Pomerado Road closed, saying that its community plan for the toney Scripps Ranch area prohibited reopening of the road until after the opening of an alternative route known as Alternative 8-A, which is still construction.

According to Deputy City Attorney Leslie Girard, the two-lane Pomerado Road often backed up near I-15 and many motorists chose to cut through residential streets in Scripps Ranch. Thus, the community plan — which San Diego considers part of its citywide general plan — called for Pomerado Road to remain closed until the 8-A expressway was built, which would presumably give motorists a more attractive alternative in driving between Poway and I-15. Alternative 8-A is not expected to be open until mid-1992.

However, the closure of Pomerado Road threw a great deal of traffic onto Poway Road, a major arterial in Poway which is currently the only alternative route to I-15. After its requests to reopen Pomerado Road were ignored, Poway sued and won in the appellate court, motivating San Diego to reopen the road.

In court, Poway argued that Pomerado Road is a road of regional significance and therefore, under the state Vehicle Code, no city can close it unilaterally. San Diego argued that the Vehicle Code allows a city to prohibit entry to a road in order to implement the circulation element of its general plan. However, the appellate court disagreed.

The case turned on the court's interpretation of Vehicle Code Section 21101, subdivision (f). The court acknowledged that this section does, in fact, permit cities to adopt regulations prohibiting entry to or exit from streets or highways, by means of specified roadway design features, to implement the circulation element of a local general plan.

The court concluded that section 21101, subdivision (f), was not meant to "create broad new powers in local authorities to close roadways." "Regionally significant streets and highways perform a regional, not a municipal function," the court wrote. "The fact that some hardship is created by the intensive use of a road upon those whose homes or businesses are located along the roadway is not dispositive in light of these well-established principles. A parochial decision that goes beyond the scope of section 21101 to close part of a functional regional road that crosses two or more jurisdictions, by means of a general plan or its amendment, is inconsistent with settled law."

The court also found the street closure to be inconsistent with the general plan's goal of facilitating mobility "between San Diego and other cities in the metropolitan area." The court also concluded that the resolution which amended the community plan to call for closure of the road was not self-executing and required a citywide general plan amendment.

The court issued its ruling on April 26. Although San Diego asked for a rehearing (which was denied), within three weeks city officials had resolved the two-year-old dispute and reached an agreement with Poway on reopening the road. The two cities decided to work jointly to deal with traffic and transit problems in the area, and the road was reopened on May 15. Signalization on Pomerado Road will limit its capacity and also favor local Scripps Ranch traffic. In addition, the two cities will negotiate a common name for Alternative 8-A. San Diego calls the road Scripps North Parkway and Poway calls it Poway South Expressway.

The Vehicle Code section in question was passed by the state legislature in 1983 in response to a California Supreme Court ruling in *Rumford v. City of Berkeley*, 31 Cal.3d 545 (1982). In that case, the Supreme Court ruled that the Vehicle Code pre-empted Berkeley's ability to close certain streets within the city. Subsequently, the Vehicle Code was amended to give cities more leeway in routing traffic. No appellate court had ever interpreted the 1983 Vehicle Code amendments until last February, when, in a case from Encinitas, a different Court of Appeal panel ruled that Section 21101, subdivision (f), was not self-executing and required city enabling legislation to be applied. (*Uhler v. City of Encinitas*, 227 Cal.App.3d 795; see *CP&DR*, April 1991.) The appellate court in the Poway case relied on this ruling, for part of its reasoning.

The full text of City of Poway v. City of San Diego, No. D013680, appeared in the Los Angeles Daily Journal Daily Appellate Report on May 1, beginning on page 4880.

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Sacramento Convention Center EIR Upheld

In a split decision, a three-judge panel of the Third District Court of Appeal in Sacramento has affirmed the City of Sacramento's environmental analysis on a proposed convention center expansion.

The Sacramento Old City Association had challenged the project's environmental impact report as inadequate, especially with regard to parking issues. The organization's most important claim was that the EIR did not deal with all "reasonably foreseeable" parking problems created by the convention center's expansion, and that the proposed list of parking mitigation measures was inadequate as well.

The Court of Appeal majority rejected all of the organization's claims, saying the EIR met legal standards. In a dissent, Justice Richard M. Sims III claimed that the construction of additional parking facilities would be the "direct, inevitable result of the project," and faulted Sacramento for not discussing the environmental impact of such facilities.

Sacramento had proposed adding 140,000 square feet of space to the convention center complex. The EIR's worst-case scenario concluded that the project would fill all available parking spaces within three blocks and still require 2,621 more parking spaces. As mitigation, the EIR recommended that the city require the preparing of a transportation management plan and also recommended seven additional measures, including limiting the size of short-term weekday events, promoting regional and national conventions which would draw

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DEALS

Lukenbill's Troubles Mean Bad News for Sacramento Too

Poor Gregg Lukenbill. He and his partners are having a hard time finding the money to complete their ambitious Arco Stadium in Sacramento. If Lukenbill were an ordinary developer, with an ordinary relationship with the city, his problems would belong to him — and his lenders — alone. But Lukenbill has created a planning muddle that extends far beyond the property lines of his $130 million sports complex.

To build his stadium, he persuaded the city to open the floodgates of development onto North Natomas, a 7,800-acre area near the intersection of I-5 and I-80 between downtown and the Sacramento airport which is the city's last undeveloped area. But a 1986 plan for the region he championed is already described as inadequate. And no development can currently go forward in the area, because the city foolishly tied all future development in the area to the completion of the Arco Stadium.

The question is who is more to blame. An overreaching developer? Or a city that keeps changing its mind about what to do?

North Natomas is part of the 55,000-acre Natomas Valley, an area with chronic flooding problems and important wildlife resources. But it's also tantalizingly close to both downtown and the airport, which has always made it an attractive piece of real estate. The story of North Natomas seem destined to go down as a cautionary tale about rudderless public policy.

Even before Gregg Lukenbill arrived on the scene a decade ago, the city had flip-flopped on the area's future. In 1962, the city drew up plan for a regional mall and commercial development in the area, which is between downtown Sacramento and the municipal airport. But in 1974, an environmentalist city council did an about face, banning all development in the area. That's how it stayed until Lukenbill showed up before the City Council, wanting to develop North Natomas and toting the dream of big-league sports franchises as an inducement.

Still in his 30s, Lukenbill's determination and salesmanship have made him the city's best-known businessman. He has already convinced the city on several occasions to entrust him with big projects; five years ago, he and partner Joe Benvenuti built the Hyatt Regency, the only luxury hotel in Sacramento, as part of a downtown redevelopment project.

Lukenbill thinks big; he envisions Sacramento as the diadem of California cities and himself as its builder. In 1979, he sponsored an unsuccessful ballot measure to open North Natomas to development. When that gambit failed, Lukenbill decided to combine his desire to open North Natomas to development with his boyhood dream of bringing back professional sports to Sacramento. Knowing he needed a sports team to win support for a stadium, he bought the Kansas City Kings basketball franchise in 1983 for $10.4 million.

With the Hyatt hotel, a sports team in town, and assorted real estate deals with Benvenuti, the city's wealthiest developer, young Lukenbill was gaining acceptance. In 1986, much to the displeasure of environmentalists and slow-growth advocates, including then-Councilwoman (and now Mayor) Ann Rudin, the City Council approved a new North Natomas plan, which called for widespread home construction and high-tech industrial development.

City officials saw Lukenbill as the Pandora of North Natomas; the moment he opened the door to development, home builders would to pile onto the marshlands the way college boys used to jam themselves into telephone booths. To satisfy themselves that Lukenbill was not using the stadium as a Trojan horse for home builders, the council made future development in the area contingent upon 50 percent completion of the stadium.

With a $35 million contribution from Arco, in exchange for its name on the project and other privileges, Lukenbill and his partners completed Arco Arena in 1988; the Kings have been playing there ever since. But without a team — and with Lukenbill stretched to the limit financially — the construction of Arco Stadium never got beyond the foundation. Meanwhile, homebuilders, who own at least 2,700 acres in the region, are forced to sit on their hands and wait.

With much of their money tied up in a partially built stadium with no team, Lukenbill and Benvenuti have begun to feel the strain on their real estate and sports holdings. The pair put the Hyatt up for sale, although the $85 million asking price is likely too high in a weak market; some observers say the hotel cannot fetch the $62 million construction cost. (The hotel is also encumbered with $2.3 million in delinquent taxes.)

Then, earlier this year, Sanwa Bank began foreclosure proceedings on a 200-acre portion of the stadium property. To raise money, Benvenuti sold 7% of his interest in the stadium-and-sports partnership, Sacramento Sports Association, to Fred Anderson, a local businessman who owns a majority interest in a football team, the Sacramento Surge. (The Surge wants to join the NFL but believes it needs a stadium to be taken seriously.) Anderson wants to buy Lukenbill's 28% interest; at last report, the two remain in negotiations.

Even though the 1986 plan has yet to be built, its flaws were obvious by 1991. Despite the likely arrival of light-rail lines, the plan made no provision for mass-transit, and environmentalists now want to concentrate home building in a smaller area along proposed rail lines. Industrial areas have attracted little interest because high-tech tenants never materialized. And, most importantly, developers are paralyzed because Arco Stadium is unfinished. Now the City Council, which has flipped three times in the last 30 years on the question of developing North Natomas, is contemplating changes to the North Natomas plan, but that may may be difficult or impossible, since some developers have already obtained development agreements.

North Natomas had other problems as well. The area is a flood plain, and new flood prevention could cost $128 million, pushing Mello-Roos assessments to developers up to $182 million. On top of that, the U.S. Fish & Wildlife Service wants to set aside 12,500 acres for habitat within the 55,000-acre Natomas Valley.

Cities, as well as developers, can do foolish things, especially where sports are concerned; witness the competition to build arenas in Orange County, or the campaign to build Al Davis a stadium in a gravel pit in Irwindale. Yet those cities have recourse when developers or sports teams fail to perform. Sacramento, on the other, can only watch passively as Lukenbill sinks under the weight of his own ambition.

Rudin, a longtime opponent of Lukenbill who voted against the 1986 plan, said she has "mixed feelings" about the stadium. "Now I am in a position of having to support it, even though it's not going anywhere." She seemed to have equally mixed feelings about North Natomas. The 1986 plan "was a political decision; it was not based on any sound planning policies or demonstrated need." Still, she says the area was to be developed eventually. "We did not flip-flop in public policy. Our policy has always been to hold off on urbanization until we had developed other areas."

Rudin opposes any city bailout of Lukenbill. Earlier this year, the stadium partnership asked the city to pay for a $32 million freeway overpass, a cost identified as the developer's in the stadium development agreement. The city declined.

"I don't know how they can hang on to it," Rudin says ruefully of the Lukenbill, Benvenuti and their private stadium with the big public impact. But she quickly adds, "that's their problem to solve." Until they do, the rest of Sacramento can look forward to an absurd drama of public and private forces cancelling each other out.

Morris Newman