CP&DR
CALIFORNIA PLANNING & DEVELOPMENT REPORT
Vol. 12, No. 11 — November 1997

Inside

CP&DR
is published monthly by
Torf Fulton Associates
1275 Sunnycrest Avenue
Ventura, CA 93003-1212
805/642-7838

William Fulton,
Editor & Publisher
Morris Newman,
Senior Editor
Stephen Svete,
Larry Sokoloff,
Contributing Editors

Subscription Price:
$215 per year

ISSN No. 0891-382X

We may be reached via e-mail at CALPLAN@AOL.COM

Copyright ©1997 Torf Fulton Associates.
All rights reserved.
This publication may not be reproduced in any form without the express written consent of Torf Fulton Associates.

Wilson Vetoes Several Bills On Planning

Reject Legislation Tying CEQA To Environmental Justice

By William Fulton

Gov. Pete Wilson has used his veto power five times this fall to strike down legislative bills affecting planning and development issues. The net effect is to largely neutralize efforts by the Democratic legislature to pursue state policy goals through local planning and development activity.

Wilson's most significant action was to veto — one a California Environmental Quality Act bill, the other a General Plan bill — that sought to reduce the impact of land-use planning decisions on low-income neighborhoods. Both bills were sponsored by female Democratic state legislators representing minority areas in Southern California.

Hilda Solis, a Latina representing the Eastside of Los Angeles, had pushed for SB 1113, which would have required CEQA actions to take impacts on low-income neighborhoods into account. Diane Watson, an African-American representing southern L.A. County, had introduced SB 451, which would have required a distribution of land uses that involve toxic substances so they are not concentrated.

Wilson was required to sign or veto bills by Oct. 12, one month after the end of the legislative session. He also vetoed bills that would have:

- Expanded redevelopment agencies' reporting requirements.
- Created a Southern California "wetlands clearinghouse".
- Given a new state gambling commission the power to overturn a decision by Colma voters to permit a new casino in their city.

Wilson signed approximately three out of every four bills the legislature passed in the planning and development arena, Among the most important bills he signed were:

Continued on page 12

Large Projects Move Forward In Central Valley

Grupe Plans Large Annexation To City of Tracy

By Morris Newman

New towns are making slow but tenacious progress in northern San Joaquin Valley, as developers bet that farmland can be converted into stand-alone communities or enormous urban developments.

With at least five such projects in various stages, San Joaquin County can claim to be the new town capital of California, and perhaps the western United States. Driving this development is the overheating of the housing market in both the Bay Area and South Bay, the ability to assemble large parcels of land, the expectation of commuter rail to serve the region, and a pro-growth attitude on the part of local governments.

In addition to the long-controversial Mountain House project near Tracy and Gold Rush City in Lathrop, San Joaquin County and Tracy are now jointly considering Tracy Hills, an enormous project being proposed by the Stockton-based Grupe Development Co.

But developing a new town is not easy. The approval process can take more than a decade and environmental and water demands are stringent. Not surprisingly, the attrition rate among such projects is high. And with none of the developments yet reaching the stage of actual homebuilding, the market is untested.

Barry Hand, community development director of the City of Livermore — who formerly held the same position for the City of Tracy — cited a number of factors for the new-town boom in San Joaquin County and environs. These include the junction of critical freeways and a strategic position close to the Bay Area, Sacramento, Stockton, and Modesto.

While not all major proposals will succeed in getting built, the onrush of huge projects is causing concern

Continued on page 2

Local Watch
Morris Newman

Large Projects Move Forward In Central Valley

Continued from page 1

about potential impacts about leap-frog development. If the three major new town projects in San Joaquin County are successful, "you are off the charts" in population growth, said Hand, who cited build-out projections that predict a total increase of about 80,000 people in San Joaquin County from those three projects alone.

The term "new towns" technically means stand-alone communities that are economically self-sufficient, at least in principle. Peggy Keranen, San Joaquin County's deputy director of community development, bristled at a reference to all major projects in the county as new towns. "There's a lot of misinformation going around," she said ruefully. While Keranen is correct, a number of other developments in San Joaquin County that are not technically new towns exhibit many of the same features as new towns, such as a range of different businesses and housing types.

"We are trying to be a community that provides jobs" says Norman Jarrett, the Stockton-based developer of the Gold Rush City project, a "master-planned resort community" that occupies the western half of the City of Lathrop. Similarly, Tracy Hills, a 2,000-acre subdivision just south of the City of Tracy, was originally proposed a decade ago as a new town, but now appears well on the way to being annexed to Tracy.

At least one local official doubted that the developer, Grupe Development of Stockton, ever fully intended Tracy Hills to be a self-contained city, in view of the high cost of creating an entirely new sewage district and other infrastructure. "Calling it a new town in the first place may just have been a way of getting leverage with the city," said the official who asked not to be named.

A partial list of new towns and developments of comparable scope includes:

• Mountain House. Located east of Tracy on the San Joaquin-Alameda-Contra Costa county line, this 4,800-acre project won approval from San Joaquin County Supervisors in January 1995. The developer, Trimark Communities of Tracy, a subsidiary of Sterling Pacific Assets of Roseville, hopes to attract 44,000 residents and 22,000 jobs.

A year ago, county supervisors approved the formation of a community services district for Mountain House. The developer is expected to file permits for a water treatment plant, and a public hearing process on the plant is expected next February, according to Keranen of San Joaquin County.

• New Jerusalem. With very little visible activity, this project narrowly survived a vote of the San Joaquin County Board of Supervisors to expunge the project from the county's general plan earlier this year. The county's planning commission has recommended an annual review on the progress of New Jerusalem for the next five years. If no substantial progress has been made on the project by that time, the commission recommends expunging the project from the county's general plan.

• Tracy Hills. This new town-turned-suburb appears to be on the fast track toward annexation to the City of Tracy, even though the project remains in preliminary planning and has yet to file a tentative tract map. The project is scheduled for a December 12 "workshop meeting" before the San Joaquin County Planning Commission, while a public hearing before the same body is scheduled for January 16. Meanwhile, the city's planning commission has recommended annexation, and a public hearing before the Tracy City Council on the matter was scheduled for late October.

If approved, Tracy Hills would contain up to 5,500 dwelling units and nearly 500 acres of commercial uses.

• Gold Rush City. This extravagant, 5,800-acre project, which includes two theme parks, nine "themed villages," a golf course, and a shopping district, is arguably the fastest-moving project in the region. The city council adopted both the specific plan and EIR in February 1996 and annexed the land later that year. In October, the Lathrop City Council approved the annexation of the project, which is nearly the size of the existing city. Project manager Jarrett claims the Gold Rush City will attract up to 8 million visitors annually and could create 15,000 to 20,000 new jobs in the county.

Currently, the city and the developer, Califia, are negotiating a package for the financing of infrastructure and public improvements that involve the use of revenue bonds. Developer Jarrett said the resort plans to create Mello-Roos districts to finance infrastructure.

• Diablo Grande is a proposal for a resort community in Stanislaus County, located in the hills west of Interstate 5. The project has been controversial because of concerns about its water supply. Currently, the project is in a "very preliminary" stage, and few details are available, according to Ron Freitas, planning director of Stanislaus County. The developers have proposed two golf courses, To date, only one golf course has received approvals.

The New Town boom crescendoed in the late 1980s, at the height of the previous home building cycle in the state. At that time, as many as nine new town projects had been proposed, according to Keranen of San Joaquin County. A number of those projects died for various reasons:

• Riverbrook. The project was recently taken off the San Joaquin County general plan. The project raised hackles in neighboring Stanislaus County, where residents of the City of Riverbank objected to an agreement to share sewage facilities. Some Riverbank residents believed that the new town across the Stanislaus River would hinder Riverbank's ability to grow. The developer, Ed Brown, is suing the county for decommissioning the project.

• Liberty. Located in north San Joaquin County along Highway 88 near the Amador County border, this project was never in the county's general plan, and was withdrawn from application to be included in the county's general plan update of 1992. The Liberty project also encountered well-organized opposition from residents who "did not want a new town in the northeastern part of the county," according to Keranen of San Joaquin County. ❑

■ Contacts:
Ron Freitas, director of planning and community development, Stanislaus County, (209) 525-7660.
Peggy Keranen, deputy planning director, San Joaquin County, (209)468-3146.
Allen Bell, senior planner, City of Tracy, (209) 831-4600.
Stacy Mortonson, planner, San Joaquin Rail Commission, (209) 468-3025.
Barry Hand, community development director, City of Livermore, (510) 373-5140.
Gerald Scott, San Joaquin County LAFCO, (209) 468-3198.
Don Cose, developer, New Jerusalem, (209) 836-0422.
Norman Jarrett, developer, Gold Rush City, (209) 983-1848.

California Planning & Development Report (ISSN No. 0891-382X) is published monthly by Torf Fulton Associates, 1275 Sunnycrest Avenue, Ventura, CA 93003. The subscription rate is $215.00 per year. Periodicals postage paid at Ventura, California. Postmaster: Send change of addresses to California Planning & Development Report, 1275 Sunnycrest Avenue, Ventura, CA 93003.

Environment Watch
Larry Sokoloff

Federal Species Bill Moves Forward

The U.S. Senate has broken a long-standing deadlock on reauthorizing the federal Endangered Species Act, with compromise legislation passing its first committee vote. The measure is expected to pass the Senate later this fall or early next year.

The new bill is considered a moderate approach to reauthorizing the act, which expired in 1992. It was crafted by both Republicans and Democrats, and has been endorsed by the Clinton Administration, which has seen many of its reforms codified in the measure. Environmentalists oppose the bill and are pushing a competing bill introduced by Rep. George Miller, a Democrat from Contra Costa County.

But the House Republican leadership appears to be waiting on the outcome of the Senate bill, introduced by Sen. Dirk Kempthorne, R-Idaho, and there is speculation that a companion measure will be introduced in the House if the Kempthorne bill clears the Senate. The bill passed the Senate's Environment and Public Works Committee on a 15-3 vote in late September. A full Senate vote may occur before the Senate adjourns for the year in mid-November.

S. 1180, called the Endangered Species Recovery Act of 1997, avoided some of the more controversial issues raised by the earlier bills regarding the act, such as compensation for lost use of land and water issues, according to Jack Mingus, director of communications for the National Endangered Species Act Reform Coalition, a business group which supports the new legislation. Instead, the bill is more focused on scientific issues, he said.

"It's better than other efforts we've seen," said Mary Minette, a staff attorney with the National Audubon Society, which opposes the bill. "We don't see it as a compromise. We see it as a weakening of the act."

The new legislation authorizes and encourages habitat conservation planning processes by creating multi-species conservation plans. It would be modeled after the Natural Communities Conservation Planning effort that was triggered by the proposed listing of the California gnatcatcher in Southern California in 1991.

The Senate measure adds peer review to listing decisions and new petition management guidelines, and increases information sharing with states, according to Jamie Rappaport Clark, director of the U.S. Fish and Wildlife Service.

Clark told the Environment and Public Works Committee at a September hearing that the bill also provides for increased federal, state, and public involvement in recovery planning and implementation; clarifies the role of federal agencies in species recovery efforts; and specifies deadlines for the completion of draft and final plans.

For newly listed species, a draft recovery plan must be submitted within 18 months of a final listing decision. A final plan must be published within 30 months of the listing decision. Plans for species already listed where plans have not been developed must be completed within five years.

Other recovery planning efforts under the bill include a provision that recovery plans be developed by broadly representative teams, as well as substantive requirements for the content of recovery plans.

Recovery plans must describe the economic effects of implementing the plan. Five public hearings on draft recovery plans must be held in affected states.

Other highlights of the bill include:

• A "no surprises" policy. Landowners who develop habitat conservation plans and receive incidental take permits will not be required to spend more money or set aside additional land for conservation of species covered by the plan.

• Authorizing "safe harbor" agreements. Landowners who enter into voluntary agreements with the Secretary of the Interior to conserve listed species will not face additional liability.

• Inventory of species. Each federal land management agency must develop an inventory of endangered, threatened, proposed, and candidate species on agency lands or waters, and update it every five years.

Minette of the National Audubon Society said that the Kempthorne bill weakens species protection on federal lands, and weakens the standards for activities by federal agencies. It also makes the listing process more "complicated and convoluted," she said.

The Senate measure includes increased funding for the Department of the Interior to carry out new responsibilities under the act. But environmental programs have often faced cuts when funded by the appropriations process, Minette said.

The Kempthorne bill includes one provision that appears to favor the logging industry in the West. It allows site-specific plans on national forests or Bureau of Land Management lands to proceed while consultation on forest or land management plans are underway. In the past, lawsuits have halted or threatened to halt site-specific activities that might affect newly listed species until formal consultation on land and resource management plans for the forests have been completed.

Miller's bill, H.R. 2351, has 72 co-sponsors. It is the only active bill in the House at this point. The bill differs from the Senate bill in two key ways, according to Karen Steuer, a legislative analyst on the House Resources Committee, of which Miller is the ranking minority member. First, it makes it harder for actions by the federal government to undermine the recovery of endangered species. And second, it provides more detailed requirements for the permitting process and habitat conservation plans.

"We would front-load the process with much more specific requirements than are currently being practiced by the administration so everybody knows exactly the obligations of the habitat conservation plan and what it will cost," Steuer said.

The Miller bill clarifies that there should be a standard of recovery for activities under the act. Currently, the federal government allows activities that may undermine recovery, but doesn't jeopardize the survival of a species. The new language would mean that the government could not do anything to undermine the recovery of an endangered species.

The Miller bill provides tax incentives for property owners who enter into conservation agreements. Landowners can write off management expenses under such agreements.

The House bill also requires bonds of landowners who enter into agreements with "no surprises" clauses in them. If the agreement falls apart, said Minette, "this will ensure the money is there when needed." ❑

■ Contacts:
Jack Mingus, National Endangered Species Act Reform Coalition, (202) 333-7481.
Steve Bentfield, press secretary for Sen. John Chafee, (202) 224-2921.
Neil Gaffney, National Association of Home Builders, (202) 822-0200.
Mary Minette, Staff Attorney, National Audubon Society, (202) 861-2242.
Karen Steuer, House Resources Committee, (202) 226-2311.

Economic Development
Morris Newman, J.D.

Burbank Continues Legal Wrangle Over Airport Expansion

The City of Burbank and the Burbank Airport Authority are digging in for what promises to be an entrenched legal fight regarding the city's ability to regulate the airport's proposed expansion. The suit hinges on the question of whether airport construction is ultimately governed by federal aviation law or state land-use law.

In the latest salvo, L.A. County Superior Court Judge Carl West ruled on October 31 that the airport authority can't expand the terminal without the city's permission. A n appellate court ruling in the case would have wide-ranging implications for all airports in California, and possibly the country, as well.

At issue is the city's right to block the airport's purchase of 130 acres of land (28 of which are in the City of Los Angeles) unless the airport obtains federal approval of a mandatory curfew on night flights. The city claims it has the jurisdiction under a state law (Public Utility Code Sect. 21661.6) that essentially says that airport construction projects must comply with local land-use regulations.

The Burbank Airport is located mostly in Burbank (with a tiny portion overlapping into the City of Los Angeles) and is operated by a joint-powers authority of three neighboring cities — Burbank, Glendale, and Pasadena. The small but conveniently located airport has seen its passenger traffic rise from 2.7 million people in 1989 to 4.8 people in 1996, although airport authorities say that growth is flattening out.

With only 14 gates, the airport is overtaxed. The airport wants to expand the number of terminals to 19, and eventually to 27. The airport is also a big moneymaker for the region; a 1995 report commissioned by the airport said the airport generates $878 million annually, and employs 17,000 people, both directly and indirectly.

Airport growth in Burbank is extremely contentious, however. The airport is surrounded by middle-class neighborhoods who are concerned about increases in noise. The city and the airport are involved in at least eight lawsuits, according to an airport spokesman. Adding to the confrontation is that Burbank's current mayor, Bob Kramer, and one council member, Dave Golonski, were both elected on anti-airport-expansion platforms.

Notably, lawyers representing both sides — Peter Kirsch of Colorado-based Cutler & Stanfield for the city, Richard Simon of L.A.'s McDermott Will & Emery — are nationally known for airport-related litigation. "This is a clash of the titans," said Anne Kohut, publisher of Airport Noise Report, a newsletter based in Ashburn, Va. "The attorneys are from the two major law firms in this area (of the law), and they are big guns. They are both experts, so they are pretty equally matched.

Airport officials say they are willing to apply to federal authorities for a mandatory curfew, but cannot guarantee the outcome. Simon characterized the impasse in this way: "The airport has said, ''Fine, we will seek FAA approval for a curfew, but we cannot predetermine the outcome,' and Burbank has said, 'You must be successful in getting FAA approval', Well, FAA approval is discretionary and is highly unlikely. That's the reality of it."

Indeed, getting FAA approval for a curfew appears extraordinarily difficult. Permission to impose a mandatory curfew requires a special exemption under the Airport Noise and Capacity Act of 1990, which gives airports a very free hand to increase air traffic, as long as all aircraft fall into the lowest noise category, known as Stage 3. Burbank is currently an "all-stage-3" airport. FAA spokesman Tim Pile said he was unaware of any airport that had successfully obtained such an exemption.

Those arguments, however, are beside the point, according to Simon. He maintains that federal law allows the airport to proceed with development without local approval for projects that involve safety or operations.

Kirsch, the city's lawyer, retorts this way: "The issue here has a lot more to do with planning and land use than federal aviation law." He asserts that California's Airport Land Use Law, which designates the L.A. County Regional Planning Commission as the Airport Land Use Commission for Burbank, is "designed so that the expansion of facilities that have tremendous economic benefits to the community is done with the deliberation of a general-purpose local government," he said. Under the law, the county planning commission must draw up and approve land-use plans near Burbank and other airports in L.A. County.

Kirsch acknowledged that federal statute allows airports to build safety facilities without local approvals. But he maintained that the airport was attempting to use that special case as a means to shield airports from any kind of local land-use control. Such a reading of the law would essentially allow airports to build whatever they wanted, according to Kirsch. In such a case, airports would become "super governments" operating almost independently of the community.

Gill, the airport spokesman, replied that the city is trying to prevent the purchase of the expansion land, because the city believes that "once the airport gets title to the land, it will be harder to prevent the airport from exercising property ownership rights over the land."

Kohut, the newsletter publisher, said that noise disputes were common among airports. The Burbank case was unusual, she added, "both because of the length of the dispute, and the unwillingness of either side to compromise."

Compromise is possible, at least in principle. The same federal statute that makes it so difficult to get FAA approval for a mandatory curfew law allows cities and airports to adopt voluntary curfews. In fact, the Burbank Airport has observed a voluntary curfew since 1981, which restricts takeoffs between 10 p.m. and 7 a.m.

Unlike an airport with a mandatory curfew, however, Burbank Airport allows exceptions in cases where planes have difficulty in making landings or have other technical difficulties. The unwillingness of city officials to accept a voluntary curfew is "purely political," according to Gill. The city council is trying to show constituents that is has power over the airport, according to Gill.

■ Contacts:
Peter Kirsch, Cutler & Stanfield, attorney for City of Burbank, (303) 825-7000.
Richard Simon, McDermott, Will & Emery, lawyer for Burbank Airport Authority, (310) 551-9331.
Victor Gill, spokesman, Burbank Airport, (818) 840-8840.
Anne Kohut, publisher, Airport Noise Report (703) 729-4867.
Tim Pile, spokesman, Federal Aviation Administration (206) 227- 2005.

CP&DR
LEGAL DIGEST

Access to U.S. Court Debated

Justices Hear Argument On Proper Venue for Takings

By Kenneth Jost

For the past two decades, landowners and developers have often tried to convert local land-use disputes into property rights cases in federal court, while state and local agencies have usually tried to keep the cases in state forums.

But the city of Chicago took a different tack in a protracted dispute with a property owner over plans to raze two historic lakeside mansions to make way for high-rise luxury condominiums. When the property owner filed a state court suit challenging the local landmark commission's decision aimed at preserving the mansions, the city's lawyers tried to execute an end-run around the state court and remove the case to federal court.

A federal appeals court said the maneuver was an illegal procedure. Now, the U.S. Supreme Court has to decide whether the suit — with a combination of state and federal law claims — belongs in state or federal court.

When the case was argued before the high court last month, several of the justices appeared deeply troubled that a ruling for the city could open federal courts to a flood of property rights disputes appealed from state and local agencies.

"I know of no precedent where a federal court sits as an appellate reviewer of a decision by a state agency," Justice Ruth Bader Ginsburg told a lawyer for the city during the Oct. 14 arguments.

"Isn't the implication of your argument," Ginsburg continued, "that every decision of every licensing board in every city and every state has a right of access to a federal forum?"

"Your Honor is correct," the city's lawyer, Benna Ruth Solomon, eventually agreed. "But we don't think that that opens up the floodgates. There has to be a substantial federal question in the case."

In his turn, the attorney representing the owner of the buildings — the International College of Surgeons, a medical association — was happy to encourage the justices' doubts about federal court jurisdiction over the case.

"There is no provision in the U.S. Code," attorney Richard J. Brennan argued, "which says or suggests, directly or indirectly, that federal courts have jurisdiction to review appeals of state administrative decisions."

The Supreme Court case produced unusual agreement from two outside groups that have traditionally opposed each other in property rights cases: Defenders of Property Rights and the National Trust for Historic Preservation. The two Washington-based groups filed separate friend-of-the-court briefs urging the justices to recognize federal court jurisdiction over the dispute.

The city gave no explanation in its briefs or arguments why it wanted to move the local dispute into federal courts. But in its brief, the historic preservation organization said federal courts may be less susceptible to political pressure in land-use cases from "powerful local real estate and development interests" and "political groups such as property rights organizations."

". . . There is a potential for a local elected judge to feel pressure to find a way to allow the project to go forward," the lawyers for the trust wrote in their brief. The federal court system, they said, "was designed to protect against just this kind of risk."

From its perspective, the property rights group said a ruling to deny federal court jurisdiction over such cases would add to what it called the "tremendous procedural hurdles" landowners face in getting into federal court with property rights claims. A ruling for the city, the Defenders brief argued, would force property owners to choose between having a state court rule on their federal constitutional claims or giving up any state law claims if they file a federal court suit.

The dispute involves two North Lake Shore Drive buildings owned by the surgeons group that were designated as historically significant by the Commission on Chicago Historical and Architectural Landmarks in July 1988. The surgeons group has a contract to sell the buildings to a construction company, which planned a 41-story luxury high-rise on the site. But the city council officially designated the building as an historical landmarks in June 1989, and the landmark commission then blocked the issuance of demolition or construction permits.

In its state court suit, the surgeons group claimed that the actions violated the city's landmarks ordinance, the Illinois constitution, and federal constitutional provisions — including the Fifth Amendment's takings clause, which prohibits governmental taking of private property without just compensation. After the city removed the case to a federal court, a judge ruled in its favor. But the Seventh U.S. Circuit Court of Appeals ruled in August 1996 that the federal courts had no power to hear the case.

The arguments before the Supreme Court were thick with statutes, procedural rules, and fine legal distinctions. The city contended that federal court jurisdiction over the case was established by two statutory provisions. The federal removal statute — 28 U.S.C. section 1441 — provides that a defendant in "any civil action" brought in a state court may remove the case to federal court if the federal court would have "original jurisdiction" over the matter. A second federal statute — 28 U.S.C. section 1367 — gives federal courts "supplemental jurisdiction" over any related state-law claims in a federal case.

Solomon, an assistant chief corporation counsel for the city of Chicago, repeatedly returned to the statutes during her argument before the justices. "The federal claims were within the [federal] district court's jurisdiction," Solomon said. "The state claims were within the district court's supplemental jurisdiction."

But Brennan insisted that federal courts have no power over appeals of decisions by state administrative agencies. "For us to have marched down to federal court and filed [the suit] in federal court, most judges in the Northern District of Illinois would have dismissed it *sua sponte*," he told the justices.

The Supreme Court's precedents in the area are ambiguous. The court held in a 1954 case that an appeal from a state or local administrative agency may be removed to federal court if state law permits *de novo* review of the decision — in essence, a retrial of the case (*Chicago, Rock Island & Pacific R.R. Co. v. Stude*). But Illinois law allows a more limited form of review of administrative decisions: so-called record review, in which a judge is supposed to defer to the agency's decision.

Ginsburg was one of several justices who appeared troubled by the possible expansion of federal court jurisdiction. Another was Justice Stephen G. Breyer, who remarked: "One of the problems is that this will lead to a flood of cases in federal court."

But other justices appeared uncertain how to bar federal court jurisdiction under the expansively phrased statutory provisions. "We have to squeeze this theory within the text of this statute," Justice Antonin Scalia told Brennan, the surgeons group's lawyer, "and you haven't given us a gimmick to do that."

Solomon suggested one possible way out for federal courts: they could take jurisdiction over such disputes, but "abstain" from deciding any state law issues. Brennan, however, said that

approach would simply produce more litigation. "The much better rule to adopt," he told the justices, "is to say that federal courts do not have jurisdiction to review state administrative agency decisions."

The case was argued in the second week of the court's new term, which began Oct. 6. A decision is due before summer, presumably much earlier. ❑

■ The Case:
City of Chicago v. International College of Surgeons, 96-910.
The Lawyers:
For the City of Chicago: Benna Ruth Solomon, chief assistant corporation counsel, City of Chicago, (312) 744-5337.
For the International College of Surgeons: Richard J. Brennan, Winston & Strawn, (312) 588-5600.

Kenneth Jost, formerly editor of The Los Angeles Daily Journal, *is a staff writer at* Congressional Quarterly *and author of* The Supreme Court Yearbook.

CEQA

Bodega Bay Analysis Passes Appellate Muster

In an unpublished ruling, the First District Court of Appeal has affirmed a trial judge's decision to reject a legal challenge to a housing project in Bodega Bay.

In making the ruling, the court relied heavily on the California Supreme Court's ruling in *Laurel Heights Improvement Association v. University of California*, 47 Cal.3d 376 (1988). The court concluded that the environmental impact report must include a "reasonably foreseeable" future phase of development — but also said that the information on the record was "quite comprehensive" and adequate in dealing with this question.

The case involves the proposed Harbor View Project, originally a residential and commercial project proposed by TFC Development Co. on a six-acre parcel in Bodega Bay. The project has been surrounded by public controversy.

In 1989, TFC proposed 119 residential units and 40,000 square feet of commercial space. Three years later, the company returned with a second proposal to develop 84 residential units and a 20,000-square-foot commercial development on 4.2 acres. The county denied the project based on traffic impacts, most of which were associated with the commercial development. Subsequently TFC eliminated the commercial component of the project and obtained approval only for the 84 residential units. Some relocation of access roads was also required by the redesign.

TFC then identified the property that had been designated for commercial development as a "remnant" parcel and claimed to have no development plans for the parcel, commercial or otherwise. The EIR stated that commercial development will not occur until a Highway 1 bypass is built or Bodega Bay residents alter their view about the desirability of more commercial development.

Bodega Bay Concerned Citizens challenged the EIR on a number of grounds, but their principal argument was that the commercial development that had been originally proposed was "reasonably foreseeable" and therefore should have been examined in detail in the EIR. In particular, the citizens complained that the cumulative traffic impact analysis — projecting a 31% increase in traffic over the next 10 years — was too low and didn't reflect the likely traffic impact of commercial development on the parcel in question.

The *Laurel Heights* case established that reasonably foreseeable future development must be included in an EIR's discussion of cumulative impacts. At the trial court, Judge Lawrence K. Sawyer concluded that commercial development on the parcel in question was reasonably foreseeable, then concluded that even though the EIR's discussion of the issue was quite general, it was still adequate under *Laurel Heights*. In particular, he accepted that the traffic forecasting methodology was consistent with Caltrans standards. (*CP&DR Legal Digest*, February 1996.)

On appeal, the First District, Division 3, agreed that the EIR was required to include discussion of the future commercial development of the remainder parcel. The court noted that the draft and final EIRs for Bodega Bay Village, the commercial proposal, were "incorporated by reference" in the draft and final EIRs for the Harbor View subdivision, and further noted that the traffic studies of the Bodega Bay Village EIR were "considered by the Board when it certified the Harbor View Subdivision EIR."

Wrote the court: "Thus, not only did BBCC and other members of the Bodega Bay community have a full and fair opportunity to analyze and comment on the environmental impacts of a combined commercial/residential development, they had two such opportunities. In addition, the Harbor View Subdivision EIR was itself revised in response to comments about 'piecemealing' to provide additional information about the 'cumulative impacts' of future commercial development of the remainder parcel. The combined analysis found in the two EIRs more than satisfies the minimum standards established by *Laurel Heights I* for treatment of 'future action related to the proposed project'."

The court also concluded that the county was not required to issue a statement of overriding considerations for the impacts of future commercial development on the remainder parcel, and that the cumulative traffic impact projecting a 31% increase in traffic was adequate. The court found that the citizen group's argument was a criticism of the methodology, which the court claimed is beyond its ability to consider. Quoting *Laurel Heights*, the court said: "It is not our function to perform a 'scientific critique' of technical traffic studies, or to pass on the validity of the conclusions reached in the EIR about traffic impacts." ❑

■ The Case:
Bodega Bay Concerned Citizens v. County of Sonoma, No. A073252 (September 1, 1997).
The Lawyers:
For Concerned Citizens: Susan Brandt-Hawley, (707) 938-3908.
For Sonoma County: Neal Baker, Deputy County Counsel, (707) 527-2421.
For TFC Development (Real Party in Interest): Judy Davidoff, Baker & McKenzie, (415) 576-5300.

Court Rejects Attempt By Surfrider to Strike Down EIR

In an unpublished ruling, the Fourth District Court of Appeal in San Diego has rejected the Surfrider Foundation's attempt to strike down the City of San Diego's environmental impact report on a sewer outfall project to deal with sewage from Mexico.

Surfrider argued that the administrative record contained insufficient evidence to support the city's conclusions. However, the Fourth District did not mince words in accepting the city's process as valid. Surfrider's argument, wrote Acting Presiding Justice Patricia Benke, amounts to "little more than a contention that although qualified oceanographers determined the characteristics of the currents in the area near the outfall, other environmental analysts and decisionmakers were not qualified to draw reasonable inferences from the work completed by the oceanographers." She added: "We reject this narrow view of what CEQA requires in the way of expert data and analysis."

The lawsuit emerged from a binational effort to deal with sewage treatment problems in San Diego and Tijuana. Under the guidance of the International Boundary and Water Commission, the United States and Mexico have agreed to construct an international sewage treatment facility and discharge the treated effluent through an "outfall" located just north of the border.

In the early 1990s, the international commission refined its outfall design based on a series of studies known as the Tijuana Oceanographic Engineering Studies. However, the city continued to pursue other alternatives for sewage disposal. Therefore, in 1994, the federal government issued a final environmental impact statement on the outfall that assumed the city's sewage would not be included.

However, in 1995 the city rejected its other alternatives and decided to participate in the international sewage treatment project. The city prepared a draft focused EIR for the outfall that discussed the impact of transporting sewage from the international treatment plant and from city-operated treatment facilities. The draft EIR assumed the outfall would be built whether or not the city contributed sewage, and also assumed that Mexico might not be successful in preventing toxic waste from entering the international treatment plant and being discharged throughout the outfall.

In commenting on the EIR, Surfrider criticized the methodology used in the engineering studies and said the city failed to consider the risk that treated sewage would be returned to the shore areas when a gyre or eddy-like flow was predominant in the San Diego Bight. The final EIR did not change its analysis but, rather, defended the methodology and the approach.

On appeal, Surfrider made two major arguments. First, Surfrider argued that the there is no scientific data in the EIR to support the conclusion that the environmental impact of the city's sewage in the outfall will be minimal. However, as Justice Benke noted, Surfrider accepted that the city's sewage will be treated to secondary level and disinfected.

"Although Surfrider contends that other computer modeling techniques should have been used, we are in no position to resolve the expert dispute between the drafters of [the engineering studies] and Surfrider with respect to what computer modeling programs should have been refused," she wrote. "It is sufficient that expert oceanographers at Engineering Science [who prepared the EIR] believed that the computer models it chose would accurately predict the dilution ratios of the various outfall designs and their far field impacts."

Surfrider further argued that the city's 1995 EIR should not have relied on earlier data developed in the federal government's 1991 and 1994 EIS's because the city's 1995 project was "materially different". The court rejected this argument as well. Among other things, the court said it was reasonable for the city to assume that its own sewage would be toxic-free (even if Mexico's was not), and noted that the volume of city sewage discharged through the outfall was actually less in the 1995 EIR than in the 1991 EIS.

The court also rejected a series of arguments made by Surfrider regarding procedural violations of the California Environmental Quality Act. The court rejected Surfrider's argument that disagreements over the validity of the scientific information had not been disclosed by noting that Surfrider itself disclosed the disagreements in its EIR comments.

The city also rejected Surfrider's challenges to project description, growth-inducing and cumulative impacts, and alternatives. Among other things, Surfrider had argued that there was a "fatal inconsistency" between the 1994 federal EIS, which concluded that toxic wastes would be adequately controlled by Mexico, and the 1995 city EIR, which considered the possibility that Mexico would not succeed at this task. "We find no inconsistency which threatens the integrity of the 1995 EIR," the court wrote. "Rather, as the city suggests, the 1995 EIR merely disagrees with the earlier conclusion and assists, rather than hinders, the decisionmaker in evaluating the effect of the project."

■ The Case:
Surfrider Foundation v. City of San Diego, No. D026312 (August 21, 1997).
The Lawyers:
For the City: Steve Kostka, McCutchen, Doyle, Brown, & Enersen, (510) 975-5312.
For Surfrider Foundation: Rory Wickes, (619) 238-3881.

San Jose Growth Boundary Subject to CEQA, Judge Says

By Larry Sokoloff

A trial judge has struck down San Jose's urban growth boundary, saying that insufficient environmental review was done before its approval. The ruling also found that the city didn't develop a record to show that the slow-growth measure would have no significant environmental impacts.

The setback for the city is not expected to doom the project. An environmental review of the project is expected to be completed next year.

Two groups sued over the UGBs, which were adopted by the City of San Jose in November 1996. The County of Santa Clara also adopted similar measures as the city. One group of plaintiffs, which includes a group of Hong Kong investors, wants to develop a golf course, convention center and hotel, and up to 2,450 homes, on a portion of their land, which lies outside the urban growth boundary.

Another lawsuit was filed by a group of residents opposed to the UGBs. The two lawsuits were combined into one.

The court found that the negative declaration for the project did not comply with the California Environmental Quality Act because the city failed to prepare the initial study in the manner required by law, and that the city's administrative record didn't include substantial credible evidence to support its finding that the UGB will have no significant environmental effects.

In the order granting a petition for a peremptory writ of mandate, Santa Clara County Superior Court Judge Leslie Nichols said that the UGB may have one or more significant environmental impacts.

The county of Santa Clara agreed to work with San Jose in creating the UGB, and was also named as a defendant in the case. Judge Nichols found that the county also did not present substantial evidence that the UGB project will have no significant environmental effects.

The city defines urban growth boundaries as areas where no city services will be made available. Some of the property owners who sued owned property adjacent to the UGB boundaries.

The growth boundaries in San Jose had advisory status in the city's general plan for more than a decade, but were not codified until the council enacted the UGBs in November 1996. ❑

■ The Case:
Naess v. San Jose, No. CV762931, Santa Clara County Superior Court (October 6, 1997).
The Lawyers:
For the plaintiffs: Renee Rubin, Theodore Russell and Jack Rubens, Sheppard, Mullin, Richter & Hampton, (415) 434-9100.
For the city: Joan Gallo, San Jose City Attorney, (408) 277-4454.

GENERAL PLANS

Shopping Center Not Consistent With General Plan, Judge Rules

A proposed shopping center with on-site wells and a sewage treatment plant is inconsistent with San Bernardino County's adopted planning policies, a San Bernardino Superior Court judge has ruled. The court also found that the county's supplemental environmental impact report was inadequate and a new ("subsequent") EIR is required.

The lawsuit is an outgrowth of a political tussle between the slow-growth city of Redlands and the more development-oriented San Bernardino County government, which together adopted a specific plan for the development of the so-called "East Valley Corridor".

The specific plan called for the creation of a "backbone infrastructure" for the East Valley Corridor by tying water and sewer systems into existing infrastructure contained in the City of Redlands. Much of the specific plan area was an unincorporated county "doughnut" surrounded by Redlands. (The specific plan area also included parts of Loma Linda.)

In 1994, long after the plan was adopted, Majestic Realty Co. approached Redlands about building a shopping mall in the East Valley Corridor and annexing the property into the city. However, Redlands soon became embroiled in a bitter political struggle over a slow-growth ballot measure and Majestic withdrew its application. As an alternative, the company submitted its application to San Bernardino County instead.

Early in 1996, after circulating an environmental impact report, the county approved the project under the condition that Majestic annex to Redlands and hook into its water and sewer systems. Subsequently, however, negotiations between Redlands and Majestic broke down, and Majestic went back to the county with a new proposal: Instead of hooking onto the city's infrastructure, Majestic would drill wells and build water storage and sewage treatment facilities on-site.

The county prepared a supplemental EIR and approved the Majestic development plans. Among other things, the county required that the water and sewer facilities be turned over to the county government and created a special improvement zone to own and operate them.

After the county approved the project, Redlands sued, challenging the project's consistency with San Bernardino County planning policies as well as the adequacy of the EIR. But Superior Court Judge James Edwards ruled that the project was inconsistent with the county's general plan and with the East Valley Corridor Specific Plan. Furthermore, Edwards found that because the project's approval represents a de facto policy change for both plans, additional environmental analysis of this change should have been required in a subsequent EIR.

Redlands based much of its legal argument on the fact that the Specific Plan — and, by extension, the county general plan — appeared to call for connection to Redlands water and sewer systems. Onsite alternatives were not discussed in those plans, meaning the proposed onsite facilities were inconsistent with this policy. Under state law, project approvals must be consistent with specific plans and general plans, and specific plans must be consistent with general plans.

In court, the county argued that Redlands had inhibited development of the site by adopting policies making it difficult to provide water and service to it. According to the county's argument, this entitled the county to look at alternatives. Furthermore, the county argued, the project is consistent with the specific and general plans because the county's improvement district, a public agency, will actually be the service provider.

But Judge Edwards found that the county's decisions were not backed up by substantial evidence. "As mentioned," he wrote, "the clear purpose and intent of the East Valley Corridor Specific Plan was for City to provide infrastructure services to the project site. The Plan does not discuss or contemplate the alternative that was proposed and approved in this case. County found in November, and argues now, that the EVCSP does not prohibit such alternative systems, therefore, it is not inconsistent with the Plan. However, this argument ignores the purpose of specific plans — namely, to establish in as much detail as possible, the land uses and means of implementing them within a given area. Simply because a plan does not exclude all possible alternatives does not negate its stated intent and allow an agency to proceed as it sees fit."

If the county does not want to be bound by the East Valley Corridor Specific Plan and the county general plan, the judge wrote, "then the remedy is to change them by amendment."

Judge Edwards used the inconsistency as the basis for his next finding — that the supplemental EIR is inadequate because it does not take into account the implicit policy change that the project's approval represented.

"County's apparent position throughout this modification process has been that if a city makes it unfeasible to provide services to projects within its sphere of influence, County is justified in deviating from the backbone infrastructure policy of the Plan and opting for an on-site package facility in order to save the project," the judge wrote. "If this is so, then switching from community-based services to stand-alone services for each development within the Plan area is clearly a policy change and would require County to revisit the environmental impacts associated therewith."

Judge Edwards concluded that the supplemental EIR did not adequately address issues associated with discharge of effluent into the Santa Ana River, but did deal adequately with odor issues. ❑

■ The Case:
City of Redlands v. County of San Bernardino, San Bernardino Superior Court No. SCV 34737 (August 21, 1997).
The Lawyers:
For Redlands: Stephen Kostka, McCutchen Doyle Brown & Enersen, (510) 937-8000.
For San Bernardino County: Paul Mordy, Deputy County Counsel, (909) 387-5455.
For Majestic Realty Co. (real party in interest): Thomas F. Winfield, Brown, Winfield & Canzoneri, (213) 687-2100.

FYI

The California Supreme Court has let stand a Fourth District decision to strike down the City of San Diego's housing element. The ruling has the effect of requiring the city to approve all pending conditional-use permits for homeless shelters and transitional housing until it repairs the legal defects in its housing element.

The city had asked the high court to hear or depublish *Hoffmaster v. City of San Diego*, 55 Cal.App.4th 1098, but the court declined.

In the *Hoffmaster* ruling, the Fourth District laid down a set of guidelines for local governments to follow in identifying sites for homeless facilities and other low-income housing. (*CP&DR Legal Digest*, August 1997.) The ruling is an important victory for housing advocates, who have long sought to use housing element law to overcome local opposition to homeless shelters and other low-income housing facilities.

In its opinion, the appellate court ruled that a housing element must identify specific sites immediately available for construction of low-income housing, rather than provide a broad survey of land available for housing use. ❑

Here They Are: The 1997 List of Bills

CEQA

AB 175 (Torlakson): Expands "affordable housing" exemption from 45-unit projects to 100-unit projects if they are located on five acres of land or less within an urbanized area. Chapter 415, Statutes of 1997.

SB 181 (Kopp): Exempts from CEQA certain activities associated with redeveloping the site on which the San Francisco Giants baseball stadium is to be located, but not the construction of the stadium itself. Chapter 4, Statutes of 1997.

SB 1113(Solis): Requires to incorporate consideration of disproportionate impact of projects on minority and low-income communities into analysis. Vetoed.

Coastal Act

SB 1048 (Sher): Establishes San Francisco Bay Area Conservancy Program to acquire property around the bay, similar to other state conservancies. Chapter 896, Statutes of 1997.

Endangered Species

AB 21 (Olberg): Permits landowners to use federal incidental take provisions to comply with California law. Chapter 508, Statutes of 1997.

SB 231 (Costa): Permits incidental take of endangered species in the course of routine agricultural operations. Chapter 528, Statutes of 1997.

SB 879 (Johnston): Creates overt "incidental take" permit process for Department of Fish & Game to use under the Endangered Species Act. Chapter 567, Statutes of 1997.

Gambling Establishments

AB 158 (Papan): Would have given state gaming commission power to overturn local initiative permitting gambling establishment to be constructed in a cemetery city- i.e. Colma. Vetoed.

Housing

AB 168 (Torlakson): Raises low-income housing tax credit limit from $35 million to $50 million per year. Pending in Senate Appropriations Committee.

SB 256 (Lee): Creates $200 million state bond to recapitalize six existing loan and grant programs for housing and the homeless. Pending in Senate Housing and Land Use Committee.

SB 487 (Lee): Converts an existing demonstration project into the "Families Moving to Work" program, making loans to housing developments for people moving from welfare to work. Funding is in '97-98 state budget. Pending in Assembly Appropriations Committee.

SB 1156 (Costa): Prohibits city and county regulations that make multifamily rental housing infeasible. Pending in Assembly Housing and Community Development Committee.

LAFCO

AB 62 (McClintock): Changes process by which city detachments occur by eliminating council veto and reinstituting double majority vote. Chapter 911, Statutes of 1997.

AB 466 (Rainey): Permits local governments to engage in fact-finding, arbitration, and mediation processes in annexation disputes. Chapter 692, Statutes of 1997.

Land Use Planning

AB 438 (Torlakson): Allows cities and counties to count rehabilitated units as part of the housing elements of their general plans. Pending in Senate Housing and Land Use Committee.

SB 320: Senate Housing & Land Use Committee's omnibus bill containing miscellaneous technical changes to land use, housing, and redevelopment laws. Chapter 580, Statutes of 1997.

SB 451 (Watson): Requires land use elements to distribute commercial and industrial uses that involve hazardous substances to avoid concentration. Vetoed.

SB 637 (Calderon): Allows local elected officials to amend land use plans adopted by initiative if needed to carry out the jurisdiction's housing element. Pending in Senate Housing and Land Use Committee.

SB 689 (Johnston): Prohibits cities and counties from limiting a restaurant's operating hours unless they pay compensation or allow an amortization period. Failed in Senate Housing and Land Use Committee.

SB 927 (Ayala): Allows a city or county to impose another development moratorium after an earlier moratorium expires. Chapter 129, Statutes of 1997.

SB 1182 (Costa): Allows landowners to convert their Williamson Act contracts into "farmland security zones". Senate Inactive File.

SB 1240 (Costa): Allows landowners to convert their Williamson Act contracts to agricultural conservation easements and eases rules for lot-line adjustments for Williamson Act lands. Chapter 495, Statutes of 1997.

Redevelopment

AB 639 (Alby): Allows redevelopment agencies near Travis Air Force Base to transfer their affordable housing funds. Pending in Senate Appropriations Committee.

AB 699 (Midgen): Creates procedure allowing San Francisco to take control of Treasure Island military base. Chapter 898, Statutes of 1997.

AB 941 (Miller): Allows redevelopment agencies to transfer their affordable housing funds to joint powers agencies. Pending in Senate Housing and Land Use Committee.

AB 1342 (Napolitano): Extends redevelopment agencies' statutory deadlines for various financial tasks. Pending in Senate Housing and Land Use Committee.

SB 71 (Kelley): Allows redevelopment agencies in the Coachella Valley to transfer their affordable housing funds. Pending in Assembly Housing and Community Development Committee.

SB 257 (Lee): Allows use of redevelopment funds for down-payments to police officers who buy houses in high crime neighborhoods. Chapter 42, Statutes of 1997.

SB 275 (Kopp): Requires agencies to report each year on progress in alleviating the blighted conditions which formed the basis for the redevelopment project area's creation. Chapter 565, Statutes of 1997.

SB 488 (Lee): Allows redevelopment agencies in metropolitan counties to transfer their affordable housing funds. Pending in Assembly Housing and Community Development Committee.

SB 576 (Lee): Expands the requirements for redevelopment agencies' housing reports. Vetoed.

School Facilities

SB 973 (Greene): Expresses legislative intent to restrict school developer fees. Senate Inactive File.

SB 1227 (Villaraigosa): Main vehicle for school facilities package that would limit Mira. Joined to SB 250, AB 755, and SCA 12, which would lower the passage rate for local school bonds, place a new set of state school bonds on the ballot, and make other changes to school facilities law. Pending in Conference Committee.

Subdivision Map Act

AB 996 (Sweeney): Exempts some on-site advertising displays from state Outdoor Advertising Act even when site is subdivided under the Subdivision Map Act. Chapter 471, Statutes of 1997.

AB 1527 (Brown): Permits Napa County to require substandard lot consolidation as a condition of tract map approval. Chapter 837, Statutes of 1997.

Taxation

ACA 10 (Runner): Permits local governments to share sales and use taxes without a vote. Pending in Assembly Local Government Committee.

Wetlands

AB 241 (Lempert) Southern California wetlands clearinghouse. Vetoed. ❑

Places

Morris Newman

The Tracy Hills Rohrschach test

Considered strictly as a graphic, the master plan of the Tracy Hills project provides a powerful image of development replacing farmland in the San Joaquin Valley.

Like a Rorschach test, the map of the community is likely to evoke different reactions among different people, depending on their feelings about large-scale urbanization in the Valley. Hostile observers might view the plan as an aggressive tumor metastasizing into previously inviolate green space. Boosters of homebuilding, on the other hand, may view the same project as an example of responsible planning that accommodates growth in a fast-growing region.

When I take this Rorschach test, I see something agricultural: a region that has long benefited from federal water projects is now blooming with residential subdivisions. The Cadillac Desert has sprouted its greatest cash crop yet — housing — even if that crop is not as sustainable as the cotton fields of Tulare or the rice paddies of Sacramento.

Currently, this proposal by Grupe Development appears to be the next big subdivision to be annexed by the fast-growing City of Tracy, which was scheduled to begin hearings on the matter in late October. The question here, at least for me, is: What kind of urbanism is Tracy getting here? And, assuming that the surrounding areas will all be developed eventually, what does the urban design of Tracy Hills portend for urban life of the city?

Far from "virgin" land, the site of Tracy Hills is surrounded and covered with infrastructure of different kinds — the railroad, the interstate, the California Aqueduct, the Delta Mendota Canal — all of which have strongly influenced the form and organization of this new community. Of course, land forms like freeways and aqueducts are so powerful that they would stand out in any plan for the area. What is disappointing about the plan for Tracy Hills, however, is how the developer has used the existing features, especially the interstate, as a way of separating land uses, and by doing so, arguably separating people of different income groups as well.

Observe how the master plan designers (from Pacific Mutual Consultants in Sacramento) shovel different types of land uses into areas defined by the interstate and the waterways: north of the aqueduct goes light industry and "medium-density residential," presumably townhomes and condominium complexes. The city's major urban zone is sandwiched tightly between the aqueduct on the north and the interstate on the south. Centered on the important intersection of Interstate 580 and Lammers Parkway, this central spine is the closest thing to an urban core for Tracy Hills.

The district contains office space, "high-density housing" (presumably apartment buildings) and "village centers" (presumably neighborhood-serving retail). Lammers Parkway appears to be the main drag, assuming that traffic is too fast on the freeway for it to function as anything but a high-speed strip.

What is lacking in this commercial zone, however, is open space. The commercial area lacks an area of urban focus, such as public courtyards or large parks that are designed to encourage activity by all people of all ages.

Like the railroad tracks in towns of an earlier era, the Interstate is the dividing line of class in Tracy Hills. The plan is interesting in the few attempts that the developer makes to bridge these boundaries, and provide further connections among different parts of the community, such as additional bridges or signalized intersections across the interstate and the waterways.

If business is relegated to the north of the highway, the Valhalla of single-family housing lies south of the interstate. Here, irregular clumps

plan, the golf course is located near to neighboring open space of protected grazing land.

This strategy makes the golf course seem an almost an extension of the open space, and provides a bonus viewshed for home buyers: the bucolic image of cattle grazing in open fields. As in the many suburban developments, the selling point is the illusion of exurbia. And, as with other suburban master plans, this strategy seems almost to guarantee urban problems down the road.

Amid this artful arrangement of open space, it seems jarring to acknowledge the plan's greatest weakness: its lack of genuine

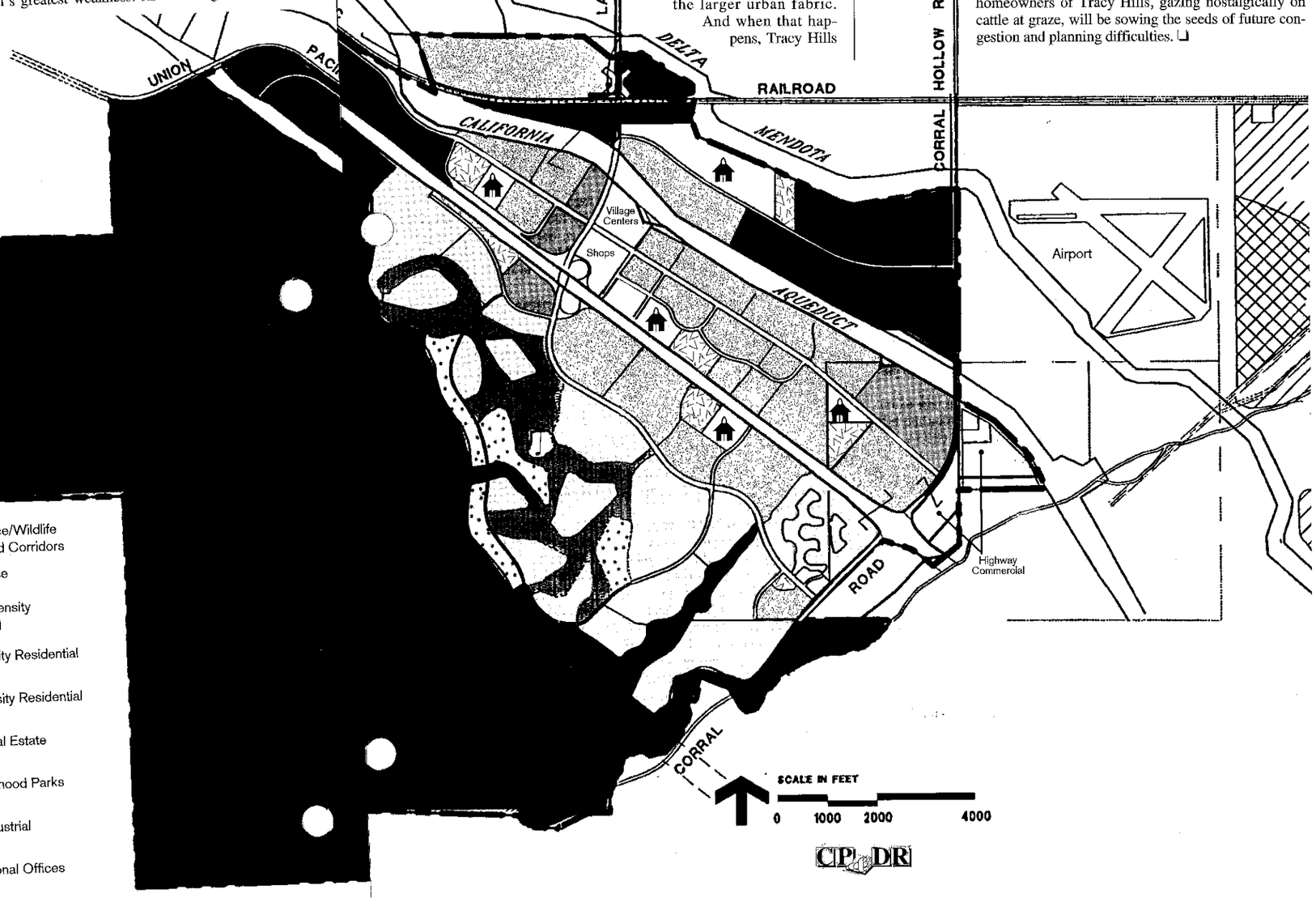
parkland and open space. Golf courses may be important to getting residential projects financed and sold, but a golf course does NOT count as open space in my book — it's not habitat and it's not an active park. Similarly, I see a wasted opportunity in the narrow green belt that lines the southern edge of the aqueduct, where there may have been an opportunity for a water-oriented linear park. Granted, the aqueduct is a tough-looking channelized waterway that would take plenty of landscaping to make inviting.

In most ways, Tracy Hills is a tried-and-true suburban formula — a golf course, maximized views, maximized dependence on regional arterials, internalized circulation systems — that has been "flowed into" the pre-existing land forms and infrastructure of the area. Most typical of Tracy Hills, however, is the illusion of perpetual suburbia. A glance at the growth of the City of Tracy in the past 20 years suggests that much of the undeveloped area surrounding Tracy Hills will eventually fill in. At that time, Tracy Hills becomes a part of the larger urban fabric. And when that happens, Tracy Hills will have some difficulty.

It looks hard to wend one's way through the lower half of Tracy Hills dominated by the golf course. Next door will be another community, with its own golf course and grid-less layout.

As in Orange County, the aggregation of many individual subdivisions turns into an anonymous, unintelligible landscape where you never know where you are or how to get anywhere else. The only way to get anywhere is to hop on the regional arterial, which in a few years promises to be clogged day and night.

We must accept the fact that the Valley is growing in population and that home building and urban encroachment are inevitable to some degree. If that is the case, then we should ask for a pleasant and orderly city, not an agglomeration of inward-looking suburbs. (The Village One project in the City of Modesto is an example of an urbane approach to expanding a city.) Tracy Hills is one more suburban project that rejects urban values because it refuses to envision any reality beyond its pleasant suburban borders. By doing so, the future homeowners of Tracy Hills, gazing nostalgically on cattle at graze, will be sowing the seeds of future congestion and planning difficulties. ❑



Wilson Vetoes Several Bills On Planning

Continued from page 1

• AB 62, which makes it easier for disgruntled communities to seek detachment from existing cities. The bill was promoted by a group of San Fernando Valley residents seeking to withdraw from the City of Los Angeles.

• Two controversial endangered species bills, AB 231 and SB 879, which passed in the final days of the legislative session over the vehement opposition of hard-line environmentalists.

• A bill expanding the existing exemption of high-density infill housing projects from CEQA analysis. The bill, AB 175 by Assemblyman Tom Torlakson, D-Walnut Creek, creates an exemption for affordable housing projects of 100 units or more located on parcels no more than five acres in size. It passed in spite of attempts by some legislative staffers to link it to the Solis bill by arguing that it violates principles of environmental justice.

• AB 699, which designates the City and County of San Francisco as the military base reuse authority for Treasure Island.

• SB 275, which requires redevelopment agencies to report each year on their progress in alleviating the blighted conditions that originally formed the basis for the project area's creation.

• SB 1048, which creates the San Francisco Bay Area Conservancy, similar to other state-chartered conservancies around the state, but does not provide funding for it.

Environmental Justice Bills

Solis's bill, SB 1113, was one of Wilson's most highly publicized vetoes. The bill would have made a statement of legislative intent that CEQA should incorporate "consideration of the disproportionate effects of projects on minority and low-income populations." In addition, it would have directed the state to change the CEQA Guidelines to require lead agencies to identify and mitigate the disproportionate impact. The bill also would have tied the low-income impact analysis to the standards contained in federal Executive Order 12898. This order, issued by President Clinton in 1994, makes environmental justice part of the mission of every federal agency.

Solis's bill did not have an easy time in the Legislature. For example, it passed the Senate by a vote of only 21-16. In vetoing the bill, Wilson emphasized his ongoing desire to streamline the CEQA process rather than load it down with more requirements.

In his veto message, Wilson complained that CEQA "is a cumbersome process, and any changes made to it should be to streamline the current process, not add new requirements that will only negatively affect the economy and the people of this state." Wilson has consistently sought CEQA streamlining during his administration. His attempt to devise a state growth management policy, beginning in 1991 and completed in 1993, focused heavily on CEQA streamlining.

He also said the act is already "colorblind" and "was not designed to be used as a tool for a social movement." Unlike similar laws in other states, especially New York, CEQA has generally not been called upon to deal with socioeconomic issues — partly because judges have not pushed CEQA in that direction and partly because the Legislature has sometimes specified that the law should not be used in that manner.

Wilson also vetoed Watson's SB 451, which would have amended General Plan law to require that the land-use eliminate designate the distribution, location, and extent of commercial and industrial land uses as a way of reducing exposures to hazardous substances in or near residential and school areas "regardless of race, culture, and income level". The bill would also have extended General Plan amendment notification requirements to include community groups that request notification.

In his veto message, Wilson claimed that the General Plan law "presently contains an abundance of planning requirements, including extensive public hearings to address environmental and other land use planning concerns that include and exceed those contained in this bill." He claimed that the Watson bill "will add nothing of practical value to the present extensive and rigorous protections and planning requirements demanded by existing law."

CEQA Exemption

The Torlakson bill, AB 175, expands the CEQA exemption on high-density infill housing that was first passed in 1994. The previous law exempted infill housing projects of 45 units or more on parcels of two acres of less. The Torlakson bill will expand the exemption to include affordable housing projects of 100 units or more on sites of five acres or less — retaining the exempted density of approximately 20 units per acre.

The Torlakson bill was originally proposed by the Bay Area Council as a more broad-ranging CEQA exemption covering mixed-use and transit-oriented development. As originally proposed, the bill also called upon EIR drafters to consider "previously completed local and regional planning documents, site availability, and jurisdictional boundaries".

The bill ran into some resistance, however, in the Senate Committee on Environmental Quality, chaired by longtime CEQA defender Byron Sher, D-Palo Alto. In their analysis, the committee's staffers flatly stated that the bill "is inconsistent with environmental justice," and alluded both to Solis's then-pending bill and to the federal executive order.

However, poverty advocates and some real estate groups supported the bill, while no lobbying group went on record as opposing it. Even Solis wound up voting for the bill on the Senate floor, though some liberal Democrats opposed it, including Sher, Watson, Senate Natural Resources Chair Tom Hayden, and Sen. Jack O'Connell of Carpinteria. The bill passed the Senate 24-9 and the Assembly 70-6.

Gambling and Land Use

One of the most colorful legislative efforts of the year was the persistent attempt by Assemblyman Lou Papan, D-Redwood City, to overturn two public votes in the City of Colma allowing construction of a card club.

Papan's bill, AB 158, was debated in the context of a high-stakes battle between the card club's owners and the club's opponents, which include the city's leading landowners and cemetery owners. Colma is a small city near San Francisco International Airport best known for its proliferation of cemeteries.

As originally written, Papan's bill would have specifically overturned Colma's voter approval. In the waning days of the legislative session, Papan had to dilute the bill, so that it merely gave a new state gambling commission (which is being formed anyway) power to pull the card club's license. The final language discouraged gambling license in "a city or town that is historically designated or dedicated as a city of repose, a necropolis, a cemetery city ..." This argument did not impress Wilson, who vetoed the bill anyway.

Wilson's veto almost coincided with an attempted recall election against the City Council. In a special election in which two-thirds of the city's 545 registered voters cast ballots, four council members survived the recall attempt, including the mayor and her husband. ❑