CALIFORNIA PLANNING & DEVELOPMENT REPORT

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Landfill Proposals Lead to Disputes Around State

Riverside County Approves Eagle Mountain But Lawsuit May Challenge Project

By Morris Newman

The approval of two bitterly disputed landfills throughout the state — the controversial Eagle Mountain facility in Riverside County and Keller Canyon in Contra Costa County — has reignited the shouting match about one of the least popular of land uses. Local officials often oppose such facilities, but county supervisors, with their eyes trained on a fast-disappearing landfill capacity, booming population, and new sources of revenue, are often willing to approve them. Predictably, environmentalists are strongly opposed to the landfills, and call for alternative waste-disposal technologies, but both landfill operators and state officials say such technology is either unavailable or won't do the job.

The controversial Eagle Mountain project, located near Joshua Tree National Monument in the Coachella Valley, was approved early in October on a 3-2 vote by the Riverside County Board of Supervisors. *Continued on page 10*

New S.F. Policies More Friendly To Developers

Commission's Use of Discretionary Review Cut Back Dramatically Under Jordan

By Mark Blackburn

The planning process in San Francisco has become a lot friendlier to developers since Mayor Frank Jordan, a conservative Democrat, took office earlier this year. The changes are semi-revolutionary in a city where citizen resistance to growth has traditionally been extremely high.

Under president Sidney Unobskey, a former real estate executive, the seven-member commission has adopted a policy of "strict construction" of the San Francisco planning code. Although the commission's power of discretionary review over development projects was liberally used in the past, not one request for discretionary review has been granted since the new commission was sworn in at the end of March. With development activity low, however, the commission has yet to confront a major new project that would test the new strategy.

And in the face of budget cuts, the planning department, under new director Lucian Blazej, has made faster processing of applications its top priority. *Continued on page 4*

Delta, Housing Bills Highlight Legislative Year

The Legislature may not have passed any growth management bills, but the 1992 session did yield a considerable crop of new legislation on a variety of land-use planning topics.

Among the most important were first-ever bills permitting the transfer of redevelopment housing money from one jurisdiction to another; a bill overturning court cases giving school districts more latitude in imposing development fees; and a new regional planning commission for the Sacramento-San Joaquin Delta area. And while redevelopment opponents killed a bill to permit the City of Los Angeles to expedite creation of new redevelopment zones in riot-torn areas of the city (AB 394), a similar bill for Long Beach and Signal Hill (SB 598) was signed into law.

Perhaps the most surprising action was the passage of SB 1866, a bill establishing the Delta Protection Commission, in a year when the state did not otherwise act on regional growth management questions. The bill creates the *Continued on page 8*

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In Brief

The City of Modesto has followed the lead of several California cities **in lowering its developer fees by about 30%.** City officials say the cost reduction resulted from a regular overhaul in the fee structure that occurs every five years, although this cut occurred a year early. "We accelerated it because of the economic crunch," says a planning official.

A third of the fee cut reflects a lowering in the administrative costs of project evaluation, the cancellation of some city projects, and the availability of new funding sources, particularly ISTEA, the federal transportation bill. The remaining two-thirds of the cut reflects the "depressed bid climate" among contractors due to the recession, according to the Modesto official.

A four-agency revitalization strategy for Los Angeles has been presented to the L.A. City Council by Planning Director Con Howe. The strategy represents City Hall's first formal attempt to change city policy in the wake of last spring's civil unrest — and the first attempt by several agencies within City Hall to work together on planning issues.

The revitalization strategy contains three elements:

1. More inter-agency cooperation to overcome the diffuse nature of power in the L.A. city government.

2. A policy of targeting city resources to minority neighborhoods where they are truly needed, rather than distributing them equally among all 15 council districts.

3. Joint development of neighborhood plans in the targeted areas by city agencies, community-based organizations and non-profit developers, and Rebuild L.A.

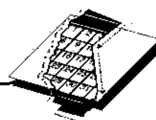
"The diffuse nature of city government makes it difficult to respond in any cohesive or unified fashion," said Howe. "We made a compact among ourselves that because of ineffectiveness singly, we would work together."

The San Joaquin County LAFCO **decided a sphere-of-influence dispute on October 23 between the cities of Lathrop and Manteca** in favor of Lathrop. Lathrop was allowed to add another 7,000 acres to its sphere of influence, while Manteca lost its bid to include under its own sphere a 500-acre area that has long been part of the Lathrop planning area. LAFCO executive director Gerald Scott said the decision was the most recent, and possibly the last, attempt by Manteca to bring under its sphere of influence land included in the Lathrop General Plan.

The Los Angeles County Board of Supervisors has **approved the controversial 272-home La Vina development project** in Altadena by a vote of 4-1.

The La Vina project had been the subject of extended litigation over the question of whether draft environmental impact reports may be prepared by developers' consultants, as is the practice in L.A. County, or must be prepared by cities and counties.

The board vote overturned the decision of the L.A. County Regional Planning Commission, which had approved a smaller development. Only Supervisor Gloria Molina voted for the smaller project, however. ❑



Calendar

November

- **18: EIR/EIS Preparation and Review.** Davis. Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **20: Exactions, Dedications, and Vested Rights.** Ventura. Sponsor: UC Santa Barbara Extension. Call: (805) 893-4200.
- **20: Subdivision Map Act: An Advanced Seminar.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.

December

- **3: After Lucas: Private Property Rights v. Governmental Land Use Regulation.** Los Angeles. Sponsor: UCLA Extension. Call: (310) 825-7885.
- **3: CEQA: A Step-by-Step Approach.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **4: Small Town Planning.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **4: Planning and Zoning Clinic.** Los Angeles. Sponsor: UCLA Extension. Call: (310) 825-7885.
- **11: GIS: An Introduction.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.

January

- **13: CEQA. A Step-By-Step Approach.** Fresno. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **15: Dispute Resolution: Negotiating Land-Use Disputes.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **20: CEQA: A Step-by-Step Approach.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **22: Annual Land Use Law Review and Update.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **29: Mitigation Measure Development and Monitoring.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.

February

- **5: Subdivision Map Act.** Redding. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **17: Redevelopment Update.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **19: Designing Communities of Place: Sensible Approaches to Neo-Traditional Planning.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.

March

- **17: CEQA: An Update.** Fresno. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **18-21: Association of Environmental Professionals** Conference. Yosemite National Park. Sponsor: AEP.
- **19: Subdivision Map Act.** Fresno. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **19: Councils of Governments: Regulations, Programs, and Pending Legislation.** Davis. Sponsor: UC Davis Extension. Call: (916) 757-8887.
- **24: CEQA: An Update.** Redding. Sponsor: UC Davis Extension. Call: (916) 757-8887.

Localities Confront State Water Conservation Law

By Morris Newman

Only a small number of cities and counties appear to have created water-efficiency plans in anticipation of a January 1, 1993, deadline for compliance with AB 235, the state Water Conservation in Landscaping Act of 1990. Introduced by Assemblyman Steve Clute, D-Riverside, the bill requires municipalities to adopt water-efficiency plans by the January deadline. Cities that fail to comply are automatically saddled with a model ordinance created by the Department of Water Resources.

The new law represents an attempt to both limit and monitor water usage in new or rehabbed development projects at a time when water supplies in California are still low. Some cities are expressing confusion about methodology, however. And some giant loopholes in the law call into question how much the bill can actually achieve in water conservation.

As of late October, 15 counties and 82 cities had created ordinances, although Marsha Prillwitz, landscape program manager for the Water Resources department, said she had received 250 telephone calls in the previous month regarding AB 235, which suggests that many localities are trying to come to terms with the bill.

The law does not set goals or require any particular methodology. Prillwitz said the lack of specific goals is appropriate in a state with vast differences in climate and aridity. She added that officials of the League of California Cities had said they would not support the bill if it held to specific goals. Consequently, the bill simply requires cities and counties to "consider" the state's own water-efficiency model when drafting their own ordinances. The Department of Water Resources has the responsibility of reviewing all water-efficiency plans, although enforcement is apparently up to local water authorities.

Cities seem to tend toward one of two water-efficiency methods — a water allowance method, which limits water based on the water needs of particular landcaping schemes, or a "turf limits" method, which restricts the percentage of landscaping that may be devoted to grass. The DWR model ordinance uses the water allowance method, but in the recent drought, most communities that pursued water-conservation ordinances used the turf limits method.

The water allowance method establishes a water allowance for each project based on 80% of the evapotranspiration rate (ETo) of any particular site. In essence, the water allowance method identifies the water use of a particular site, given its landscaping, and sets that need as the upper limit of water that a site may use (although the 80% figure is somewhat arbitrary and can be moved up or down).

In some jurisdictions, excess water use may result in fines; in others, water districts may allocate only the predetermined water allowance and no more. Ventura County and the cities of Los Angeles, Sacramento, and Hayward as well as the Otay Water District and the East Bay Municipal Utility District (supplying Berkeley, Oakland, and Alameda) all have adopted the water allowance method.

By contrast, the turf limits method, which is more familiar to many planners, prescribes the types of plants and the desirable ratios in which to plant variously high-water, medium-water and drought-resistant types of foliage. Jurisdictions adopting the turf limits method have typically restricted grass between 15% and 40% of the square area. Pat Marion of the California Landscape Architects Association said either method of measuring water efficiency can satisfy the requirements of the state law, although he claims that only the water allowance method gives both officials and landscape managers a quantifiable method for water efficiency. ❑

■ Contacts:
Pat Marion, California Landscape Contractors Association, (916) 649-6331.
Marsha Prillwitz, Department of Water Resources, (916) 653-7366.

Kern County Approves San Emidio Ranch Project

By Morris Newman

The Kern County Board of Supervisors approved the vast San Emidio development in October, less than a week after the board rejected the idea of reviving the county's planning commission. Critics of the 9,4000-acre project, where 63,000 people are eventually expected to live on what is presently agricultural land north of Grapevine, said the project represents "leapfrog" development and presents environmental problems. The San Emidio Ranch, which comprises 109,000 acres in total, lies 25 miles south of Bakersfield, the area's largest city.

Despite protests from environmentalists, the Kern County supervisors approved the massive new development 4-0 on October 7. The fifth member of the commission, Karl Hettinger, abstained, as he had promised in January. Hettinger has been the target of a conflict-of-interest accusations following press reports that he and Randall Abbott, former resources director for the county, had spent a Mexican fishing trip in the company of executives of San Emidio's developer, the Dale Poe Co. (*CP&DR*, May 1992.) Whether the project goes forward or not hinges on the on the developer's ability to demonstrate the site has adequate water for a new city. Bruce Nybo, a civil engineer hired by Poe, assured county supervisors that "the water is in the ground."

Compared to projects of comparable size elsewhere in the state, Poe seems to have gotten off lightly in mitigations. The developer agreed to pay $75 per housing unit to buy pre-1976 cars, as a air-quality measure, and to use "low density" lights to avoid glare. In addition, experts in archaeology and American Indian artifacts will be on hand during excavation. The developer had an ally in Tejon School District trustee Bob Connor, who told supervisors that the developer had a "legally binding agreement" to give $85 million to the school district. Connor called the arrangement "unique," though apparently the district could have received roughly the same amount through a routine school fee.

To advise the supervisors on planning matters associated with San Emidio, the board created a special seven-person planning advisory board, with five members appointed directly by each supervisor and two appointed at large. The board appears to have little authority.

The project's size and impact had motivated environmentalists to ask the Kern supervisors to reconvene the county's planning commission. The supervisors dismantled the commission in 1981, saying it was redundant and a waste of money. Kern is the only county in the state without a permanent planning commission. But in October, the supervisors made themselves the official planning agency. ❑

San Francisco Becomes More Developer-Friendly Under Jordan

Continued from page 1

The initial filing process has been speeded up by as much as two months as a result. At the same time Blazej is preparing to seek minor changes in state guidelines for exemption from the California Environmental Quality Act.

The main beneficiaries so far have been homeowners and small builders, whose complaints about delay were often heard during the campaign that preceded Mayor Jordan's election last fall. But lobbyists and lawyers who represent big developers anticipate that their clients will receive similar treatment as the economy recovers and they come forward with their projects.

"There's excitement in the development community," said Debra Stein, whose GCA Group specializes in creating voter and media support for big projects.

There has been less excitement among neighborhood activists, who initially feared that the so-called streamlining of the process would lead to indiscriminate development. "The kinds of streamlining these folks are talking about is shutting out the public," Jake McGoldrick, president of a Richmond District community association, told the San Francisco Chronicle in September.

Now, however, there are signs that the hostility of the neighborhood groups is yielding to a recognition that the shift in emphasis does not mean an end to San Francisco as they have known it. "We are trying to rethink a lot of things," said Margaret Sigel, a representative of the Coalition of San Francisco Neighborhoods, after a recent commission meeting.

> *"The new department and the new commission have yet to be tested by the submission of a major new project."*

Some planners suggest that, to forestall future conflict over individual projects, the city should pursue the creation of neighborhood plans with neighborhood participation. Planner Bruce Race of ELS/Elbassani & Logan Architects observed that strong neighborhood plans could permit the city to establish guidelines recognized by all sides.

A long-range planning effort is unlikely, however, given the current budget situation. Blazej, who took over as acting director in March and became permanent director in August, now has 85 planners on his staff — 14 fewer than his predecessor, longtime planning director Dean Macris. Although he has raised all fees by a flat $125 each — hoping to increase revenues by $460,000 — his department's share of the city's slumping sales-tax revenue has simultaneously been reduced by $300,000. "It will hurt long-range planning," he said.

Blazej is focusing on immediate concerns, such as how to replace elevated roadways taken down since the 1989 earthquake and keeping the University of California's UCSF medical complex from leaving the city. The waterfront roadway issue includes deciding what to do with an area in front of the waterfront's center point, the Ferry Building, where the now-demolished Embarcadero Freeway used to run.

To expedite processing, Blazej has created an initial applications office that groups representatives of all the relevant city departments in one place. As a result an applicant can find out within days or weeks what additional documents he has to supply, rather than waiting months while the initial file travels from department to department. The proposed changes in the CEQA guidelines aim at complete exemption from CEQA for residential projects of fewer than six units. Although modest in themselves, the proposals coincide with efforts by other organizations to reduce CEQA-caused delays without changing the environmental safeguards it provides.

Meanwhile, the planning commission has discouraged discretionary review of projects. Instead, project opponents and project sponsors have been sent off to negotiate their differences with assistance from the local American Institute of Architects' chapter's design review board. If they can't resolve them, the commission makes a decision according to the letter of the code.

But the new department and the new commission have yet to be tested by the submission of a major new project. In past years such tests have often been provided by the so-called beauty contest, a competition for the right to build some part of the 475,000 square feet of high-rise office space allocated annually under Proposition M to buildings of more than 50,000 square feet.

This year, however, the beauty contest drew only one entry — the first building in Catellus Development Corp.'s Mission Bay project — meaning that there was, effectively, no contest. The commission unanimously awarded Catellus the right to build 363,000 square feet with only one condition, that no permit be issued "until the design has been refined to a higher level." But it wasn't clear whether this meant anything beyond a gesture of courtesy to consulting architects who told the commission they felt the existing design was "suburban." But the commissioners did not repeat the bidding war their predecessors instigated last year, when the contestant that offered the biggest mitigation package won the allocation.

These steps could mean that the commission will act as "strict constructionists" in future contests, limiting mitigation to the $15 a square foot called for in the downtown plan. This would be in accord with their handling of smaller projects to date.

On the other hand, the commission's handling of the beauty contest could simply be a market response: demand was down for what the commissioners sell — entitlements — and no price increase was conceivable. Six previous beauty-contest winners, including Bechtel, retain their allocations but have yet to build.

In addition, much of what the commission does is dictated by community reaction, meaning that its decisions in future major cases are likely to depend on the political climate at the time.

The only other case approximating a major test of the commission besides the Mission Bay building was an application by Costco to build its first urban store at 11th and Harrison streets. The previous commission had won the company's commitment to make a contribution to low-cost housing but hadn't pinned down the details. The housing commitment was not required under the code, and the previous commission was responding to community pressure.

Unobskey, the new commission president, negotiated a deal for Costco to give Catholic Charities $80,000 a year for 50 years to fulfill the housing requirement. Observers suggested that Unobskey was merely completing unfinished commission business that he might not have initiated himself.

He declined to make such a statement. Nonetheless, he has left the impression in the development community that, under his presidency, projects will be handled faster and within the letter of the code. ❑

CP&DR LEGAL DIGEST

Adult Zoning Ordinance Upheld

State Supreme Court Expands Power To Separate Adult Stores

The California Supreme Court has expanded a city's right to restrict adult businesses, overturning a Court of Appeal ruling that National City's adult-business zoning ordinance violated First Amendment rights to free speech.

By a 5-2 vote, the state's highest court affirmed the constitutionality of National City's ordinance, which prohibits adult businesses within 1,500 feet of another adult business or any school or public park, and within 1,000 feet of any residential area. The ordinance does permit adult businesses in shopping malls.

The Supreme Court's ruling is important because it expands a city's power to regulate the location of adult businesses beyond that granted by the U.S. Supreme Court in the landmark case *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986). In that case, the high court upheld the constitutionality of an ordinance prohibiting adult businesses within a certain distance of churches, schools, playgrounds, residential areas, and other incompatible uses.

The National City case, however, also upholds a city's right impose a minimum distance — 1,500 feet, in National City's case — between different adult businesses. In National City and many other California cities, the result of this additional restriction has been to dramatically reduce the locations available to adult businesses within a given community. (*CP&DR*, March 1989.)

The National City ordinance was aimed at Chuck's Bookstore, a bookstore and picture arcade that National City has been trying to close down for years. Chuck's is located close to both an adult theater and a residential area. Chuck's lawyers argued that the zoning ordinance limited the business to just 4.5 acres of land in a city of 8.6 square miles, and that shopping mall owners would not rent to the bookstore.

But Supreme Court Justice Armand Arabian, who wrote the court's opinion, said: "The Constitution does not saddle municipalities with the task of ensuring either the popularity of economic success of adult businesses." Lawyers for Chuck's Bookstore said they would probably seek a review by the U.S. Supreme Court.

In March 1991, the Fourth District Court of Appeal in San Diego struck down the ordinance, saying that the law was too restrictive and failed to allow for a reasonable number of alternative sites for Chuck's. But the Supreme Court reversed, saying the ordinance was not aimed at zoning adult bookstores out of existence but, rather, designed to curb the secondary effects of adult businesses, such as crime. In the majority opinion Arabian concluded that the ordinance is "content-neutral." Furthermore, he said, Chuck's had failed to prove that the malls won't rent to adult businesses.

"While a city may not suppress protected speech, neither is it compelled to act as a broker or leasing agent for those engaged in the sale of it," he wrote. "We decline to hold local governments responsible for the business decisions of private individuals who act for their own economic concerns without any reference to the First Amendment."

The two dissenting votes on the court came from Justices Stanley Mosk and Joyce Kennard. In a concurring and dissenting opinion joined by Kennard, Mosk agreed that the appellate court had erred, but concluded that the ordinance is unconstitutional because it imposes a de facto ban on adult businesses. He argued that the provisions permitting adult bookstores to locate in malls are "illusory" protections under the First Amendment, since in fact no shopping mall would rent space to such businesses. ❑

- **The Case:**
  City of National City v. Wiener, No. S020887, 92 Daily Journal D.A.R. 14709 (November 2, 1992).
- **The Lawyers**
  For Chuck's Bookstore: John Weston, Weston & Sarno, (310) 272-4221.
  For the City of National City: Assistant City Attorney Linda Kaye Harter, (619) 336-4220.

TAKINGS

Fresno Property Owners Awarded $6.4 Million in Taking Case

A Fresno property owner has been awarded a $6.4 million judgment against the City of Fresno in a taking case involving land designated as a "clear zone" for a private airport.

Fresno Superior Court Judge Stephen Kane concluded that keeping the nine-acre clear zone free of development had resulted in a total taking of all value from the 20-acre property. City officials said they will appeal, though both sides say they are pursuing a settlement.

The case arose when Donald Blosser and his sister, Jill Robinson, sought to rezone a 20-acre parcel of land from agricultural to commercial and residential. The property is located in the flight path of the Sierra Sky Park Airport, a private airport attached to a subdivision of homes for airplane owners. The city agreed to a rezoning, but as a condition required that a nine-acre approach path to the runway remain clear. The approach path split the usable portions of the site into a small parcel on one side of the path, and a larger (10 acre) parcel on the other side. Blosser filed a suit alleging a taking under the Fifth Amendment of the U.S. Constitution.

In an unpublished ruling last year, the Fifth District Court of Appeal in Fresno ruled that a taking had occurred and referred the case back to the Superior Court to determine damages. (*CP&DR*, August 1991.) In October, Judge Kane awarded Blosser and Robinson $6.3 million — $3.4 million as the total value of the property, $1.35 million for a loss of financial return on the property itself, another $1.35 million in interest charges and other financial losses incurred while the property was tied up in litigation, and $180,000 in mental anguish damages for the two plaintiffs.

Chief Deputy City Attorney Robert Gabriele called the decision "outrageous," saying that a total taking should not have been declared because the Blossers still have use of half their land. The Blossers' lawyer, Joseph Gughemetti, said he cited "30 years of case law" in support of his contention of a total taking.

Gughemetti said the Blossers have declared bankruptcy because of their inability to sell the parcel and pay off loans that were taken out with the land as security. He said that a federal bankruptcy judge had placed a stay on bankruptcy proceedings while the taking lawsuit was resolved.

Gabrielle said Fresno has filed a countersuit against the owners of the Sierra Sky Park airport, seeking to recoup the $6.4 million from them, and that the airport

owners, in turn, have sued the homeowners who use the airport. ❑

■ The Case:
Blosser v. City of Fresno, Fresno County Superior Court No. 375627-7

■ The Lawyers:
For the city: Robert Gabriele, Assistant City Attorney, (209) 488-1326.
For the landowner: Joseph Gughemetti, (415) 592-3153.

GENERAL PLANS

Appellate Court Drops Contempt Accusation Against Planning

Madera city planning commissioners were threatened with a contempt of court charge a few weeks ago when they conducted a commission meeting after a Superior Court judge had ordered them not to. However, in quick action, the Fifth District Court of Appeal in Fresno concluded that the judge did not have the authority to issue a temporary restraining order blocking the meeting.

The contempt action was brought by attorneys for Ronald and Jasmine Cloud, whose property just outside Madera was under discussion as part of Madera's general plan update. In the midst of the general plan process, the Clouds sued the city, claiming, among other things, that a joint planning commission-city council meeting robbed the planning commission of its ability to make an independent judgment about what the land-use designation for the Cloud property should be.

The Clouds disliked the planning staff's recommendation that their 625-acre parcel of land — located outside the city but partly within the city's sphere of influence — be designated for agriculture and open space use. After the lawsuit was dismissed, the planning commission decided to impose no land-use designation the site — essentially leaving future development plans up to Madera County rather than the city.

On September 15, Judge Paul Martin of the Madera County Superior Court issued a temporary restraining order preventing the Madera Planning Commission from holding any meetings pertaining to the general plan amendment until minutes of prior meetings, which were in arrears at the time, had been prepared, and until the proposed amendment had been circulated for comment. The TRO also prevented the city council and planning commission from holding joint meetings.

The planning commission had scheduled a meeting that night, at which the commission planned to close a public hearing on the general plan amendment. On the advice of its lawyers, the planning commission decided to go ahead with the meeting. Subsequently, Cloud's lawyers filed a contempt action against the planning commissioners individually. A contempt hearing was scheduled for September 29, and the commissioners were ordered to appear at the hearing or face arrest.

With another planning commission meeting scheduled for September 22, Madera sought emergency action from the Court of Appeal to dissolve the stay. That afternoon — just a few hours before the scheduled planning commission hearing — a three-judge panel of the appellate court ruled in the city's favor.

In an unpublished opinion, the court ruled that Judge Martin should not have interfered with the legislative activities of the planning commission "unless the remedy at law is inadequate or there is irreparable injury."

First, the court ruled, "there is nothing in the record which demonstrates legal action after adoption of the plan amendment would be an inadequate remedy." And second, the court added: "The city's asserted failure to comply with procedural requirements is not in and of itself irreparable harm." In short, the court stated, "the trial court's issuance of a temporary restraining order and alternative writ of mandate is without legal or factual basis."

Mitchell Rigby, the Clouds' lawyer, said the crux of his complaint was his belief that the city council had infringed on the planning commission's freedom during the joint meeting. "The planning commission wasn't being given the opportunity to express its independent judgment," he said. "They got some very specific instructions from the city council: 'Here's what we want.' We were not pleased with that approach to the problem." ❑

■ The Case:
City of Madera v. Superior Court, No. F018467

■ The Lawyers:
For Ronald and Jasmine Cloud: Mitchell Rigby, Green, Green & Rigby, (209) 674-5656.
For City of Madera: Dan Curtin, McCutchen Doyle Brown & Enersen, (510) 937-8000.

SLAPP SUITS

Environmentalists Win $205,100 In Bay Area Counter-SLAPP Suit

An environmental activist has won a $205,100 judgment against the West Contra Costa County Sanitary District in a SLAPP case.

A federal jury in San Francisco made the award to Alan LaPointe after finding that the sanitary district violated his civil rights by bringing a $42 million lawsuit against him for opposing a waste-burning plant. Such lawsuits are sometimes called "SLAPP" suits, or Strategic Lawsuits Against Public Participation.

The award is the latest chapter in a long-running dispute between LaPointe and the sanitary district over the proposed waste-burning plant in Richmond. The trail of litigation began when LaPointe filed a taxpayers' suit against the sanitary district, claiming that the district had misused $5.9 million in bond proceeds by applying it to the cost of feasibility studies and other costs associated with the Richmond plant.

LaPointe eventually lost the case, but in the meantime the sanitary district filed a countersuit, claiming that he and other unnamed environmental activists engaged in a conspiracy to rob the sanitary district of its economic advantage. The sanitary district had a contract to provide Pacific Gas & Electric with power if the waste-burning plant could be built within five years — a schedule that was threatened by LaPointe's lawsuit. The sanitary district sought $42 million in damages from LaPointe as the potential amount lost from the contract with PG&E as the result of LaPointe's interference.

That case was eventually dismissed, but in response to it LaPointe filed the civil rights action in federal court in San Francisco, saying the sanitary district's countersuit had violated his civil rights. A jury found in LaPointe's favor. The $205,100 in damages was based on $100 in medical fees, $5,000 in lost wages, and $200,000 in emotional distress. ❑

■ The Case:
LaPointe v. West Contra Costa Sanitary District, No. C89-0710DLJ.

■ The Lawyers:
For Alan LaPointe: Margaret A. Corrigan, Rogers, Joseph, O'Donnell & Quinn, (415) 956-2828.
For West Contra Costa Sanitary District: Joyce Cram, Low, Ball & Lynch, (510) 935-5050.

CEQA

Alternative Sites Analysis Upheld On Residential Care Project

An environmental impact report on a residential project in West Hollywood does not require an alternative sites analysis because no feasible alternative sites exist in the tiny, densely built city, a Court of Appeal has ruled. The ruling also appears to give considerable deference to a city's general plan in determining the bounds of alternative site analysis.

The case involved a five-story residential care facility proposed by Rossmoor Enterprises Inc.; the project corresponded to a provision of the city's general plan calling for housing designed to meet the special needs of the elderly. A citizen group, Save Our Residential Environment (SORE), challenged the project in court, saying alternative sites should have been analyzed in the EIR.

L.A. Superior Court Judge John Zebrowski ruled in favor of SORE, saying that the EIR should have considered alternative sites outside the boundaries of the city, and also awarding SORE $70,000 in attorney fees. But the appellate court reversed, relying heavily on the fact that no feasible alternatives exist inside West Hollywood's boundaries.

The EIR concluded that "city staff could not identify a single site where a project of this type and size could be constructed without demolishing a significant number of existing housing units" — an action discouraged by the city's general plan.

In *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553 (1990), often known as *Goleta II*, the California Supreme Court indicated that alternative sites outside jurisdictional boundaries may not be required. On the appeal, however, SORE relied on two other rulings: *Citizens of Goleta Valley v. Board of Supervisors*, 197 Cal.App.3d 197 (1988), a Court of Appeal ruling often known as *Goleta I*, and the Supreme Court's ruling in *Laurel Heights Improvement Association v. Regents of the University of California*, 47 Cal.3d 376 (1988).

In *Goleta I*, the appellate court concluded that a Santa Barbara County EIR should have considered alternative sites that met the county's general plan objective. But the court pointed out that West Hollywood, with 1.9 square miles, is not as spacious as Santa Barbara County: "(T)o meet the objectives of the General Plan, the project was required to be located within a very limited geographical area, which was already fully developed."

In *Laurel Heights*, the Supreme Court took the University of California to task for not providing a detailed discussion of why alternative sites were not feasible. In the West Hollywood case, however, the court found the EIR's reasoning acceptable. "There is no other space available unless the city demolishes existing residential units," the court wrote. "This is a statement of fact, Although we recognize the burden is not on SORE to identify alternatives if this factual conclusion were unfounded, surely SORE would have identified the alternative sites meriting analysis. Its failure to do so points up the futility of requiring alternative site analysis in this case." ❑

■ The Case:
Save Our Residential Environment v. City of West Hollywood, No. B058602, 92 Daily Journal D.A.R. 13567 (October 6, 1992).

■ The Lawyers:
For SORE: Benjamin Reznik, Reznik & Reznik, (818) 907-9898.
For City of West Hollywood: Michael Jenkins, Richards, Watson & Gershon, (213) 626-8484.
For Rossmoor Enterprises: Robert S. Bower, Rutan & Tucker, (714) 641-5100.

San Diego Didn't Split Highway Into Impermissible Segments

The Fourth District Court of Appeal has rejected arguments that the City of San Diego and Caltrans impermissibly split a highway project into small segments to avoid broad-based environmental review.

The case involved a challenge to the EIR prepared in connection with the State Route 56 West project. The city and Caltrans have been planning the construction of State Route 56 between Interstate 5 in La Jolla and Interstate 15 in Poway. However, to make this connection, the highway must run through a portion of San Diego's so-called "urban reserve," an area afforded special protection by two city ballot measures. One such measure prohibits development in the area without a vote, while another prohibits the use of transportation sales-tax funds in the urban reserve. (See related story, page 10.)

For these reasons, the urban reserve does not have a land-use plan, and therefore San Diego and Caltrans cannot draw up an alignment for the entire road. Instead, the two agencies drew up plans for two segments — an western segment running from I-5 to the urban reserve, and an eastern segment running from the urban reserve to I-15. The State Route 56 West plan involved converting a 1.8-mile section of Carmel Valley Road into a four-lane freeway with the possibility of expanding to six lanes. As part of the same project, Caltrans and the city planned to build a drainage and sediment control channel called the Carmel Valley Restoration Enhancement Project.

During hearings on the project and its environmental impact report, the Del Mar Terrace Conservancy had proposed an alternative route, which the city rejected. Subsequently the conservancy sued, but San Diego Superior Court Judge Barbara T. Gamer ruled in favor of the city. On appeal, the conservancy made a series of arguments about the adequacy of the EIR, but the three-judge appellate panel affirmed Judge Gamer's ruling.

Relying on the California Supreme Court's ruling in Laurel Heights Improvement Association v. Regents of the University of California, 59 Cal.App.3d 376 (1988), the Del Mar conservancy had argued that the EIR should have considered the entire State Route 56 project, since the entire project was "reasonably foreseeable." But the appellate court distinguished this situation from Laurel Heights because "it is unclear whether and when the SR 56 West project will be allowed to be connected to the SR 56 East project and their respective freeway connections."

The court also concluded that the EIR dealt with alternatives, mitigation measures, and cumulative impacts in adequate fashion ❑

■ The Case:
Del Mar Terrace Conservancy v. City Council, No. D015851, 92 Daily Journal D.A.R. 14459 (October 27, 1992)

■ The Lawyers:
For the city: John Witt, City Attorney, (619) 236-6220.
For Del Mar Terrace Conservancy: John H. Reaves, Mulvaney, Kahan & Barry, (619) 238-1010.

LEGAL FYI

Mobile-home park owners have lost another rent-control-as-taking case, this time from Carpinteria. The Second District Court of Appeal rejected all of the Sandpiper Mobile Village's arguments, even though Sandpiper was allowed to file an additional brief after the Supreme Court decided the *Yee v. Escondido* case in favor of the city. Sandpiper's lawyer, Robert Jagiello, who was the losing lawyer in Yee, vows an appeal. *Sandpiper Mobile Village v. City of Carpinteria*, No. B058435, 92 Daily Journal D.A.R. 14162 (October 19, 1992)....

In an unpublished opinion, the Fourth District Court of Appeal has rejected an environmentalists' challenge to the environmental impact report on the Santa Margarita Co.'s 2,500-home Las Flores project in Orange County. *Sea and Sage Audubon Society v. Orange County Board of Supervisors*, No. G011607....

A pre-emptive strike against environmentalists by the San Joaquin Hills Transportation Corridor Agency has been thrown out by a federal judge in Los Angeles. The Orange County transportation agency had hoped to speed up expected litigation over the San Joaquin Hills toll road by filing a request for a declaratory judgment in federal court. *San Joaquin Hills Transportation Corridor Agency v. Laguna Greenbelt et. al.*, CV92-4156. ❑

Delta, Housing Bills Highlight Legislative Year

Continued from page 1

first regional resource-protection agency in 20 years, since the coastal initiative passed in 1972.

The bill establishes a 19-member Delta Protection Commission, consisting of representatives of cities and counties in the delta area, as well as relevant state agencies. The commission must draw up a comprehensive resources management regional plan by 1994. Those involved with the bill said its passage was largely because of the personal lobbying of its sponsor, Sen. Patrick Johnston, D-Stockton, who met with local governments and other interest groups in order to hammer out an agreement.

Housing

Several housing bills broke new ground by allowing cities to transfer redevelopment housing monies from one jurisdiction to other. The major bill was SB 1711, introduced by Senate Local Government Committee Chair Marian Bergeson, R-Newport Beach. Under the Bergeson bill, such transfers would only be lawful if the city has met at least 50% of its "fair share" of affordable housing goals, as identified by the local council of governments. Also signed into law were bills that extended similar privileges to particular local governments: AB 2038 permits the transfer of some redevelopment housing funds from the City of Cerritos to the City of Artesia. SB 1718 allows the City of Industry to transfer redevelopment housing money to other communities, under certain circumstances. Bergeson and the local bills are the first of their kind to be passed by the Legislature since 1987, when the lawmakers authorized the City of Indian Wells to transfer some of its housing money outside the city. That bill, however, was vetoed by Gov. George Deukmejian.

But if Gov. Pete Wilson, who signed the three housing bills, appears comfortable with transferring of redevelopment housing funds, that's not the case with the transfer of affordable housing requirements. The governor vetoed AB 3330 (Costa) and SB 2037 (Boatwright); both would have allowed local governments to transfer their redevelopment housing funds to other communities; the Costa bill would have also permitted transfer of general plan housing allocations. Tim Coyle, director of the state Department of Housing and Community Development (HCD), said he had "intense discussions" with the governor on the bills, and that both Wilson's signings and vetoes reflect a unified philosophy on housing issues. Coyle added, however, that the administration may not be opposed in principle to the transfer of fair-share credits, but said the Costa bill was "flawed."

School Fees

SB 1287 (no author) represents an ambitious attempt by the homebuilding lobby to reformulate the financing of school construction. The bill is tied to a proposed constitutional amendment, ACA 6, scheduled for the June 1994 ballot, which would allow communities to raise school fees by a majority vote, rather than the current two-thirds required. The intent of the bill, according to Dwight Hansen, a lobbyist with the California Building Industry Association, is to encourage local funding of school construction, and to provide state funding only in cases where local programs cannot obtain further funds.

The bill has three major parts:

1. It repeals the current school-construction-aid program. If voters approve ACA 6, the repeal of the aid package would not take effect until July 1, 1995.

2. The bill effectively suspends the application of key court rulings affecting school fees, which more or less eliminated the $1.65 cap on school fees imposed under the 1986 school facilities law. The suspension of the court rulings takes effect on January 1, 1993. If ACA 6 fails with voters, the precedential rulings go back into effect in July '95.

3. The bill also allows school districts to increase developments fees by $1 a square foot on residential construction, starting January 1, 1993. That increase stays in effect if ACA 6 is approved by voters, but ends if the constitutional amendment fails.

The governor vetoed a different school fees bill, AB 2345 (Tucker) which would have allowed the assessment districts to benefit schools. ❑

Bill-By-Bill Summary of the 1992 Legislation Action

Enacted

Budget

SB 617 (No Author): Part of budget package that permanently shifts $1.1 billion in property tax revenue from cities, counties, and special districts to school districts. *Chapter 699, Statutes of 1992.*

SB 844 (No Author): Part of budget package that orders redevelopment agencies to transfer $205 million in property tax revenues to school districts in the 1992-93 fiscal year. *Chapter 700, Statutes of 1992.*

Development Fees

AB 2953 (Ferguson): Revises development fee requirements by allowing interested persons to receive notice regarding the hearing on unexpended or uncommitted revenues. *Chapter 169, Statutes of 1992.*

AB 2945 (Brulte): Revises fee and exaction refund procedures by requiring to direct local agency to refund unlawful portion of exaction to applicants who filed protests. *Chapter 605, Statutes of 1992.*

Environment

AB 337 (Bates): Requires state and local officials to identify fire hazard zones, inside which local governments must take preventative measures. *Chapter 337, Statutes of 1992.*

SB 1449 (Rosenthal): Triples the fines on illegal coastal development from $5,000 to $15,000 a day. *Chapter 955, Statutes of 1992.*

SB 1866 (Johnston): Creates the Delta Protection Commission to adopt a comprehensive resource management plan by 1994. *Chapter 898, Statutes of 1992.*

General Plan

AB 455 (Cortese): Requires cities and counties to consult with public water system operators before adopting or amending general plans. *Chapter 631, Statutes of 1992.*

AB 908 (Farr): Requires general plan safety element to consider seismic hazards, especially liquefaction, identified by the state under the Seismic Hazards Safety Act. *Chapter 823, Statutes of 1992.*

AB 1246 (Katz): Allows Los Angeles city taxpayers to choose a $1 checkoff on property tax bills to pay Continued on page 9

Bill-By-Bill Summary of the 1992 Legislation

Continued from page 8

for long-term planning and general plan amendments. *Chapter 937, Statutes of 1992.*

AB 2797 (Chandler): Extends time period for a general plan extension by OPR from one year to two years. *Chapter 837, Statutes of 1992.*

SB 1807 (Bergeson): Revises local general plan housing element (e.g. annual report, statement of financial resources) and California Statewide Housing Plan requirements. *Chapter 1030, Statutes of 1992.*

Historic Preservation

AB 2881 (Frazee): Establishes a California Register of Historic Resources. States that buildings on the register are presumed to be culturally or historically significant. *Chapter 1075, Statutes of 1992.*

Housing

AB 1262 (Chacon): Narrows local government's ability to adopt or extend interim moratoriums in instances when public health is threatened. *Chapter 231, Statutes of 1992.*

AB 2707 (Hunter): Codifies acceptable housing strategies now permitted by state in reviewing housing elements. *Chapter 1074, Statutes of 1992.*

AB 3208 (Epple): Permits transfer of some redevelopment housing money from Cerritos to Artesia. *Chapter 1362, Statutes of 1992.*

AB 3325 (Tucker): Authorizes El Segundo and neighboring jurisdictions to spend tax-increment money outside of their jurisdiction to build housing that will help retain the Los Angeles Air Force Base. *Chapter 1108, Statutes of 1992.*

SB 1711 (Bergeson): Permit some transfer of redevelopment housing funds across jurisdictional boundaries; and vests the Attorney General with power to enforce the law against redevelopment agencies. *Chapter 1356, Statutes of 1992.*

SB 1718 (Hill): Permits City of Industry to transfer redevelopment housing setaside to other communities under certain circumstances. *Chapter 1139, Statutes of 1992.*

SB 1807 (Bergeson): Revises local general plan housing element (e.g. annual report, statement of financial resources) and California Statewide Housing Plan requirements. *Chapter 1030, Statutes of 1992.*

LAFCO

AB 3060 (Gotch): Originally required LAFCOs to update spheres of influence every five years and limited sphere changes in the interim. This language was removed and the bill became a technical cleanup bill. *Chapter 491, Statutes of 1992.*

SB 1406 (Davis): Clarifies how property-tax allocation is calculated after city incorporations. *Chapter 365, Statutes of 1992.*

SB 1559 (No Author): Requires city incorporations to be revenue neutral. *Chapter 697, Statutes of 1992.*

Land Conservation

AB 2452 (Costa): Establishes the San Joaquin River Parkway Conservancy. *Chapter 1012, Statutes of 1992.*

SB 1306 (Thompson): Creates special procedures for forming Napa County Open Space District. *Chapter 74, Statutes of 1992.*

SB 2027 (Mello): Creates special procedures and limited powers for new Santa Clara County Open Space Authority. *Chapter 822, Statutes of 1992.*

Public Finance

ACA 6 (O'Connell): Would reduce vote requirement for school districts' general obligation bonds from 2/3 to simple majority. *Qualified for June 1994 ballot.*

SB 773 (Bergeson): Prevents a city council from overriding a protest from a majority of property owners in creation of an assessment district. Grew out of Port Hueneme "view tax" situation. *Chapter 963, Statutes of 1992.*

SB 1464 (Mello): Mello-Roos cleanup bill. Requires issuing agencies to establish maximum tax obligation, as well as local policies for use of Mello-Roos funds. Discourages developers from "shopping around" among potential bond issuers. *Chapter 772, Statutes of 1992.*

Redevelopment

AB 598 (Elder): Permits expedited creation of new redevelopment areas in riot-torn sections of Long Beach and Signal Hill. *Chapter 1253, Statutes of 1992.*

AB 2707 (Hunter): Codifies acceptable housing strategies now permitted by state in reviewing housing elements. *Chapter 1074, Statutes of 1992.*

AB 3208 (Epple): Permits transfer of some redevelopment housing money from Cerritos to Artesia. *Chapter 1362, Statutes of 1992*

AB 3325 (Tucker): Authorizes El Segundo and neighboring jurisdictions to spend tax-increment money outside of their jurisdiction to build housing that will help retain the Los Angeles Air Force Base. *Chapter 1108, Statutes of 1992*

SB 844 (No Author): Part of budget package that orders redevelopment agencies to transfer $205 million in property tax revenues to school districts in the 1992-93 fiscal year. *Chapter 700, Statutes of 1992.*

SB 1711 (Bergeson): Permits some transfer of redevelopment housing funds across jurisdictional boundaries; and vests the Attorney General with power to enforce the law against redevelopment agencies. *Chapter 1356, Statutes of 1992*

SB 1718 (Hill): Permits City of Industry to transfer redevelopment housing setaside to other communities under certain circumstances. *Chapter 1139, Statutes of 1992.*

Regional Planning

SB 1866 (Johnston): Creates the Delta Protection Commission to adopt a comprehensive resource management plan by 1992. *Chapter 898, Statutes of 1992.*

School Facilities

ACA 6 (O'Connell): Would reduce vote requirement for school districts' general obligation bonds from 2/3 to simple majority. *Qualified for June 1994 ballot.*

SB 1287 (No Author): Raises limit on school development fees, prohibits local officials from denying building permits based on inadequate schools, and repeals school lease-purchase law. *Chapter 1354, Statutes of 1992.*

SLAPP

SB 1264 (Lockyer): Restricts ability of developers and others to file so-called "SLAPP" suits against project critics. Wilson vetoed a similar bill last year. *Chapter 726, Statutes of 1992.*

Taxation

AB 1246 (Katz): Allows Los Angeles city taxpayers to choose a $1 checkoff on property tax bills to pay for long-term planning and general plan amendments. *Chapter 937, Statutes of 1992.*

Zoning

SB 1390 (Alquist): Exempts certain structures in Berkeley and Oakland from Alquist-Priolo Special Studies Zones Act requirements. *Chapter 506, Statutes of 1992.* ❑

Landfill Proposals Spark Local Disputes Around State

Continued from page 1

It is expected to receive 20,000 tons a day from the Greater Los Angeles region. The Keller Canyon facility, near Pittsburg, opened for business in May after a long dispute. And according to the state Integrated Waste Management Board, about 20 to 30 applications for landfills across the state are currently pending, mostly in expansions of existing dumps.

California's solid-waste situation reveals an infrastructure crisis on par, at least, with the state's sewage and traffic problems. Statistics in last April's Draft Interim Statewide Landfill Capacity Report, prepared for the state waste board, are gruesome: The average Californian generates 7.9 pounds of trash a day (up from 7.5 pounds daily in 1985). As of 1990, Californians generated 42.5 million tons of trash annually, an increase of 5.5 million tons in three years and 9% more than officials had expected. Currently, 10 counties have five years or less of landfill capacity, including Los Angeles and Contra Costa. About 40% of the state's population live in those 10 counties.

Some relief is promised by the AB 939, the California Integrated Waste Management Act of 1989, which requires local governments to "divert" 25% of their solid waste by 1995 and 50% by 2000. Acceptable diversions include source reduction, recycling and composting. Under SB 939, each city and county is required to prepare a waste-disposal siting element; those elements are then combined by county officials into county-wide waste-disposal master plans.

Ironically, this progressive law also appears to be an engine of landfill creation: Under AB 939, California counties must provide at least 15 years of landfill capacity. Currently, only half of the state's 58 counties meet this requirement.

The Eagle Mountain proposal in Riverside County has been perhaps the most controversial single proposal in Southern California. On October 7, the Riverside County Board of Supervisors approved Eagle Mountain by 3-2, with supervisors Patricia "Corky" Larson, Walt Abraham and Norton Younglove supporting the landfill and Kay Ceniceros and Melba Dunlap dissenting. The landfill is proposed by Mining Reclamation Corp. on land owned by the bankrupt Kaiser Steel Co.

Supervisor Larson defended her vote for the landfill, saying the permit is reviewed automatically every five years. Additionally, local air or water boards can review their approvals at any time, as can the state waste board. The county also has the power to revoke unilaterally its agreement with the landfill operator, if officials believe the landfill is being run unacceptably. "The burden of proof is on the company and our decision is final," she said.

In the typical landfill approval process, however, board approval, however, is only one step in a process requiring many further approvals. The landfill operator must prepare a state EIR and a federal EIS for the project. (The state EIR has been approved in the Eagle Mountain situation.) After obtaining approval from county supervisors, landfills on federal lands, or rail routes to landfills that cross federal property, must be reviewed by appropriate agencies. (The U.S. Bureau of Land Management is reviewing Eagle Mountain.) The landfill must then be certified by local water-quality boards and the South Coast Air Quality Management District. At that point, the project is forwarded to the state waste board.

But in an interview, State Sen. Steve Clute, D-Riverside, said that the facility was inappropriate for the Coachella Valley, which already has marginal air quality. He hinted that the project would be challenged in court. And Eagle Mountain isn't the end of the trash problem in the Inland Empire. Two other waste-by-rail projects are being proposed there.

Meanwhile, in the L.A. area, a group of sanitation districts are proposing a $100 million expansion of the Puente Hills landfill in east Los Angeles County. And in San Diego, environmentalists have squared off against the medical establishment and local bio-medical companies over the creation of a low-level radioactive waste-disposal site at Ward Valley in the Mojave Desert. The site had been chosen after a six-year search and has been endorsed by the Sierra Club. ❑

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Tom Estes, Integrated Waste Management Board, (916) 255-2291
Peter Block, Browning Ferris Industries, (408) 298-1112

San Diego Places Development of Urban Reserve on Ballot

The San Diego City Council has approved a ballot measure that, if approved, would result in the rezoning of 12,000 acres of agricultural land. The area, known as the North City Future Urbanizing Area, is the last undeveloped area of the city.

While environmental groups are opposed to approval of the referendum, expected for the June 1994 election, planners say the opening up of the urban reserve represents an opportunity to put in practice a progressive, transit-oriented development that reflects the urban-design ideas of Peter Calthorpe. The ballot measure, however, is likely to generate a divisive public debate. Proposition A of 1985 requires a vote on any change to the city's general plan in the future urbanizing area.

Homebuilders already control much of the acreage; Potomac Investment Associates of San Diego has 4,600 acres and plans 1,120 luxury homes, while Los Angeles-based Pardee Construction Co. has 2,000 acres and plans 5,000 homes.

The area has been earmarked for residential use since 1979, when it was set aside as the "urban reserve" under the city's growth-management program done under then-Mayor Pete Wilson, which was one of the earliest such plans completed in the state. The area is currently zoned for agriculture, with two very-low density designations, one allowing a single home in 10 acres and four acres, respectively.

Yet this zoning, intended to preserve agricultural land, appears to have backfired. According to associate planner Andy Watson, "it appeared that the one-per-four zoning became viable as estate housing, and we had development pressure in the area." In the 1980's, approval of such large projects as the 1,200-home Black Mountain Ranch led to a slow-growth backlash and voter approval of Proposition A.

The council's approval has already led to marketing blitz by the developers and urbanizing-area landowners that the plan change would represent "controlled growth." The approach apparently intends to convince San Diegans that orderly, low-density development with plentiful open space is preferable to piece-meal, disorderly encroachment. ❑

■ Contacts:
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NUMBERS

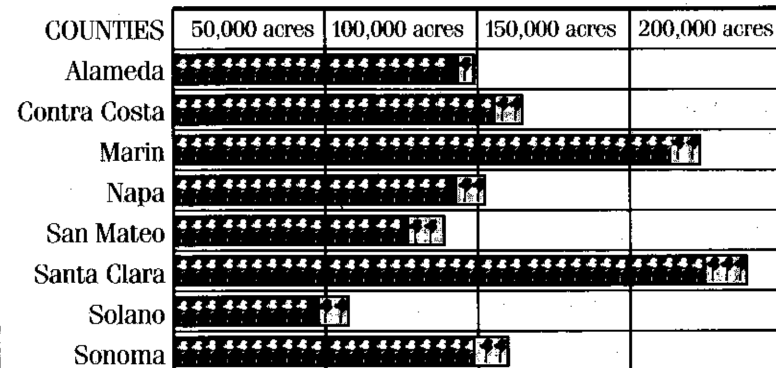
Stephen Svete

Bay Area Open Space Continues to Grow

"The San Francisco Bay Region," wrote architecture historian David Gebhard in 1985, "displays regional emphasis in planning and development quite unique among the major American metropolitan areas." Gebhard was referring to the geographic unity, the regional land-use balance, and the transbay transportation network. A look at a recent report produced by a San Francisco open space non-profit advances the thesis that the Bay Area's is a regional planning leader in another area: open space.

The Greenbelt Alliance, a non-profit conservation group founded in 1958, combines grassroots activism with regional policy development to pursue the goal of protecting the nine-county Bay Area's greenbelt. Now the Greenbelt Alliance has updated its impressive database of the region's open space and public lands, and the result is a snapshot of open space in the region. Among the highlights are the following findings:

- 858,000 acres of parks and other open space are spread across the nine-county region — one acre for every seven residents.
- 169 federal, state, regional, county, city, and non-profit agencies work to secure and manage Bay Area public lands.
- 80,648 new acres of public open space were acquired between 1988 and 1992, an 11%.
- Land trusts are booming, accounting for 56% of the new acreage.



Not including San Francisco, which has less than 7,000 acres of open space.
Source: Greenbelt Alliance

Open space counted in the survey wears several hats. Aside from public park land, nearly half of the inventory has some other primary use. Extensive holdings by water agencies to ensure safe drinking water top the list, followed by holdings designed to protect biological habitat areas. And though its total in acreage is still modest, a rapidly growing subgroup is land reserved for agriculture.

Santa Clara County led the pack of Bay counties in new acreage of open space land acquired between 1988 and 1992, adding 13,802 acres. San Mateo followed closely, with 11,910 acres. San Mateo also gained through a 2,900 expansion of the elephant seal breeding grounds at the Ano Nuevo State Preserve. San Francisco added the least amount of new acreage, at 18 acres. Aside from San Francisco, each of the Bay Area counties added at least 5,342 acres of new land to their open space inventories, with percentage increases from 1988 ranging from Alameda's 6% to Solano's 22%.

Federal agencies are the largest acreage holders of public lands, with 12 departments (led by the National Park Service, the BLM, and the Bureau of Reclamation) holding 249,877 acres, or 29% of the total. However the single largest open space landholder in the Bay Area is the state's Department of Parks and Recreation, with 152,944 acres, or 18% of the total.

But local agencies and private organizations are adding most of the new land. Six of the nine counties have special districts organized with the purpose of open-space acquisition. Sonoma formed such a district in 1990 and Napa and Santa Clara are actively pursuing this mechanism now, meaning only Solano County may lack such a mechanism. And local entities are adding a lot of acreage. The ever-effective Midpeninsula Regional Open Space District led the way by adding a total of 12,122 acres in the two counties it serves (San Mateo and Santa Clara), a 58% increase. The City of Fairfield, in Solano County, was the largest percentage gainer, adding 2,911 acres for a whopping 501% increase in the City's open space holdings. In all, 53 of the region's 99 cities increased open-space acreage in the four-year period, with 11 of them more than doubling their holdings.

As public funding declines, however, there's been a shift toward more activity from the non-profit sector, especially land trusts. Non-profits made the most substantial gains in their inventories, increasing their holdings or easements by more than 80%. By comparison, special districts and counties, known to be strapped by evolving budgetary shifts, increased holdings by less than 10%.

The efforts of the Greenbelt Alliance and the 162 land-conserving entities in the Bay Area have combined to create an impressive public good. In the process, they have illustrated a knack for transcending the fractured local-political arena typically encountered in most planning enterprises. Their growing legacy has endowed the Bay Area another public resource that is overwhelmingly place-defining. And their work is far from over. The Alliance points out that more than 600,000 acres of open lands (six San Joses) are at risk of suburban sprawl in the next 30 years. ❑

Deals

Morris Newman

Planning, Law, and Dealmaking on Warner Ridge

This column is normally about deals that cities enter into voluntarily, with the hope of making money or advancing public policy or both. This month's "deal," however, is a settlement forced by unfavorable court rulings that put the City of Los Angeles largely at the mercy of a developer. Facing potentially enormous damages that it could not afford, the city found itself across the table from a developer who could ask for pretty much whatever he wanted. But in the end, the city found a way to settle without taking money out of its pocket, at least in cash, and even managed to advance, however modestly, some of its planning goals.

The celebrated Warner Ridge, scandalized the City Council, shook the city's planning establishment and, in all likelihood, changed the way the city makes land-use decisions. A series of court rulings held the city had, in effect, improperly deprived developers of the value of their property, and challenged the city's method of interpreting its own zoning code. After three years of litigation, the developers won big; a Superior Court judge said he thought the city faced a possible damages of up to $50 million.

> *"Closed-door negotiations, with the city's arms pinned behind its back, is a hell of a way to do planning."*

Warner Ridge is the name of a suburban office park proposed for a corner of Warner Center, a popular office center in L.A.'s west San Fernando Valley. Zoned for agriculture and high-density residential, the site borders single-family homes to the south and commercial-industrial uses to the west. A partnership of Spound Development of Los Angeles and Johnson Wax bought the site in the mid-1980s and planned 950,000 square feet of office space. The area had been zoned residential for decades, but a community plan, dating from 1984, designated the site as NOC, or neighborhood-oriented commercial. Under another court order, the city had downzoned hundreds of thousands of parcels so they conformed with the general plan. However, the city elected not to "up-zone" parcels whose zoning was less intense than the general plan — as with the Warner Ridge property — and argued that under a "hierarchical" zoning theory, the zoning designation could involve any use less intense than called for in the community plan.

The local councilwoman, Joy Picus, appointed a citizen advisory committee group, at whose request the developer scaled back the project to 810,000 square feet and agreed to leave half the site as open space. The developer applied for a zoning change to C4 (commercial) so the site would conform to the new specific plan, and Picus's support seemed assured. But in 1988, the Woodland Hills Homeowners Organization said it opposed the project, and Picus reversed her earlier support for the project. Then Picus went even further: she rallied the council in January 1990 to rezone the land to estate residential (RS), which would have allowed 65 large-lot homes on the site — but without changing the community plan.

Spound filed a $100 million lawsuit against the city the following April, charging that the zoning was illegal under the zoning-general plan conformity law, and further charging that the rezoning constituted an illegal taking of property. In June, a Los Angeles Superior Court judge ordered the city to rezone the site to commercial. Particularly damaging to Picus were the depositions in which the councilwoman departed from typical practice and, goaded by the plaintiffs' lawyers, made no bones about the tit-for-tat way that councilmembers make land-use decisions.

Meanwhile, the court case and the political struggle moved ahead. Spound proposed scaling the project down to 690,000 square feet, but the council rejected him. Then the Court of Appeals upheld the lower court's decision on the zoning inconsistency, and a Superior Court judge ruled that a "taking" had occurred, suggesting the damages could run as high as $50 million. Already facing a budget deficit of about $350 million, the city knew it had no choice but to settle. But by this time the city had very few cards to play.

Lawyer Carlyle Hall, who served as an outside counsel to the city in secret, closed-door negotiations with the developers, acknowledges that the city's position was weak. Despite a softened office market, Spound held out for his original prize: a building permit for the 810,000-square-foot project. And the developer demanded to be made whole for about $4 million in legal fees and other costs incurred as part of the litigation against the city. The city found an inventive solution by waiving $4 million in administrative fees, and by persuading the developer to build the smaller, 690,000-square-foot version of the project, which would further lower city fees on the project. The developer replaced the "lost" square footage with 125 condominium units.

By doing this, the city was able to create a mixed-use project, which has been one of the Mayor Tom Bradley's planning priorities. Additionally, the inclusion of housing also reduces the number of peak-hour automobile trips, since housing generates fewer trips than office buildings. Not that those trips would matter financially; the city also waived trip fees of about $4,900 apiece, although there is some disagreement between L.A.'s Hall and Robert McMurry, the developer's attorney, whether such fees were applicable to the project. (The Woodland Hills Homeowners Association has sued the new deal in court on environmental grounds.)

Attorney McMurry says the big message of Warner Ridge is that "land-use decisions will be at least a little bit less politicized" in Los Angeles. Prior to the decision, he says, the city council "thought they had the right to do anything they wanted" in the area of land use. Indeed, we confess an impish delight to see the city pinned like a butterfly by a developer it had attempted to destroy. We also admire the cleverness of the city in settling Warner Ridge, even if it only agreed to do so after being dangled over an abyss. But planning is not ultimately well served by the developer beating up the city, any more than it is served by the council members making chopped liver out of developers. Not to mention that closed-door negotiations, with the city's arms pinned behind its back, is a hell of a way to do planning. But the most startling thing is to realize that's what it took make the L.A. City Council abide by its own general plan. ❑