Thorpe. Diane

From: Bill Kutzer
Sent: Thursday, February 26, 2009 9:12 AM

Subject: letter from Wilton Action Group

Not sure if you had a chance to send a copy of this letter to all of the commissioners so I am re-sending it to you. I would appreciate it if you could forward the letter and please let me know that you were able to do so. Also, I will forward a flyer regarding a meeting in Elk Grove that some of the commissioners might be interested in knowing about as it pertains directly to the City of Elk Grove SOI and the meeting is being sponsored by an Elk Grove citizen organization.

Thanks for your help.

February 24, 2009

Dear Ms. Gill,

I am writing to thank you and Pat Blacklock for coming to the Wilton Action Group (WAG) meeting at the Firehouse last week to hear the concerns of our community regarding the Elk Grove SOI application. We are hopeful that the meeting will be the start of a dialogue with the City that will lead to a productive discussion and resolution of the issues in a way that is agreeable to all of us. The discussion clarified many issues surrounding Elk Grove's current effort to extend the SOI. There seemed to be broad agreement that the land outside the floodplain between Grantline Road and Deer Creek could be considered for development while the land inside the floodplains of Deer Creek and the Cosumnes River should be preserved as open space and managed for its habitat and water resources values. You and Pat suggested that passive recreational opportunities within the open space area would be desirable. Many Wiltonites thought that creating public access to this area would be very problematic.

More importantly, Wilton community members and Elk Grove were at odds over how the open space area should be governed. You offered two rationales for annexing this area into the City: (1) the affected landowners in the area strongly favor annexation because they don't want their land to be separated into two jurisdictions, and (2) the City is interested in providing open space opportunities to its citizens. Wiltonites observed that a handful of landowners should not define the City's interest. Some pointed out that the City's interest in development north of Deer Creek and its interest in open space preservation south of Deer Creek might be more effectively pursued by leaving the preserved area in the County. This would help to clear up lingering mistrust about the City's intentions. On the other hand, you and Pat seemed to think that leaving the open space area in the County would undermine the City's ability to contribute to the acquisition process or to enjoy its benefits.

In this regard, you might consider what is happening in the Natomas Basin. There the County has entered into a Memorandum of Understanding with the City of Sacramento under which they have agreed to a set of principles to guide future land use planning in Natomas. The MOU makes it clear that "the City rather than the County is the appropriate agent for planning new growth and can better provide a full range of municipal services. The County is the appropriate agent for preserving open space, agricultural and rural land uses." This document is posted at: http://www.cityofsacramento.org/planning/projects/natomas-joint-vision, see link to Memorandum of Understanding. Under this arrangement, Sacramento City and the County are working together to identify the areas of the Natomas that could reasonably support urban development and

the areas that should be preserved as open space/agriculture. The areas to be developed will be annexed into the City. The areas to be preserved will remain in the County. As development occurs in the City, land will be protected and development impact fees will be collected to preserve open space in the areas administered by the County.

It seems to us that this would be a good model for the area between Grant Line Road and the Cosumnes River. Elk Grove and the County could enter into an MOU that recognizes the City's appropriate role as the agent for developing the land outside the Cosumnes River/Deer Creek floodplain and the County's appropriate role as the agent for preserving open space in the floodplain. The parties could agree to cooperate in protecting the land in the floodplain area as part of the County's Habitat Conservation Plan using tools similar to those currently employed by the City's Swainson's hawk mitigation program. Landowners outside the floodplain area would pay mitigation fees for the right to develop. These fees would be used to acquire conservation easements from willing owners of land within the floodplain area.

Depending on the extent of their holdings and their preferences, landowners in the Cosumnes River to Grantline area would have a broad range of the options as to the future of their land. They could accept cash payments for recording conservation easements on the portion of their land in the floodplain; they could opt to record conservation easements on the floodplain portion in exchange for the right to develop the portion outside the floodplain; or they could transfer the floodplain portion to a third party conservation organization in exchange for the right to develop the portion outside the floodplain. This last option is the one being employed in Natomas where The Natomas Basin Conservancy has been created to receive and manage the land in the open space area. In each case, the goal would be to preserve continued farming and ranching of the land in a habitat friendly manner. In those cases where ownership is transferred to the conservation organization, the preservation plan could allow limited public access similar to what is occurring at Deer Creek Hills (www.sacramentovalleyconservancy.org) where members of the public can appreciate the protected landscape on docent-led tours.

We would welcome the opportunity to discuss these ideas with the City, the County, and other stakeholders. Members of WAG are available to work with the City and the County on these issues in the hopes that a constructive dialogue can lead to a solution that addresses the interests of Elk Grove, Wilton residents, the County and protects the environment.

Thanks again for your time and willingness to meet with Wilton residents.

Sincerely,

Bill Kutzer
Chair, Wilton Action Group

www.wiltonactiongroup.org
916-687-7542

WHERE → Elk Grove City Council Chambers
8400 Laguna Palms Way
Elk Grove, CA 95758

Elk Grove Community Connection
Sphere of Influence Summit

Host/Facilitator:
Elk Grove Mayor Pat Hume
Presentations include:
Peter Brundage, Executive Director
Sacramento Local Agency Formation Commission

DATE → Wednesday, March 18, 2009

TIME → 6:30 PM

PURPOSE →

An educational forum with elected officials and residents to network, exchange information and to discuss issues relating to the city of Elk Grove's Sphere of Influence application.

Bringing all stakeholders together to discuss:

Our Future!!

Special Guest: Sacramento County Board of Supervisor Don Nottoli

Hosted by the Elk Grove Community Connection

For more information, please contact: Linda Ford at atthefords@frontiernet.net or
Connie Conley at connie4eg@frontiernet.net

CP&DR

CALIFORNIA PLANNING & DEVELOPMENT REPORT VOL. 24, NO.2 – FEBRUARY 2009

inbrief

Plans for a controversial liquid national gas (LNG) terminal off the coast of Long Beach have been scrapped by Woodside Petroleum of Australia, which announced that market conditions no longer support the project.

In 2007, a different Australian company, BHB Billiton, announced it was canceling a proposed LNG terminal off the coast of Malibu. That announcement followed votes by the State Lands Commission and the Coastal Commission against the project.

As recently as 2006, there were at least half a dozen LNG terminals – at a cost of roughly $1 billion apiece – proposed off the California coast to accommodate giant tankers hauling the super-refrigerated gas from Australia, Indonesia and the Middle East. Gov. Schwarzenegger endorsed LNG as a "bridge" to renewable energy, and both the Public Utilities Commission (PUC) and the California Energy Commission predicted the state would need the new source of energy. But the projects encountered major opposition from members of the public and government officials, who said the projects presented grave public safety and environmental concerns (see *CP&DR Environment Watch*, September 2005).

The Woodside announcement reflects the natural gas market crash. The PUC and Energy Commission now predict that natural gas demand will remain flat in California for the next 20 years. Meanwhile, exploitation of this country's natural gas resources is expected to increase dramatically, thanks to Bush administration decisions to open up federal lands to drilling. It now appears unlikely any of the LNG terminal proposals off California's coast will advance.

Voters in the City of Industry approved $500 million worth of bonds to fund infrastructure improvements, including at least $160 million worth of projects in the area where developer Ed Roski, Jr. has proposed a football stadium and retail center (see *CP&DR Places*, June 2008).

Industry is mostly a collection of business parks and has only 82 registered voters. They approved the bonds on a vote of 60 to 1 during a special election in January. By similar margins, they also approved imposition of local taxes on entertainment tickets and parking, created an electric utility to serve part of the city, authorized the City Council to approve contracts without soliciting bids, and approved – CONTINUED ON PAGE 2

Decision Time On The Delta

Resource, Governance And Safety Issues Create Dire Situation

BY PAUL SHIGLEY

Pressure is rising to "solve" the problems plaguing the Sacramento-San Joaquin River Delta, and there are indications that state officials may start making difficult choices during 2009.

The Governor's Delta Vision Committee issued a report in January that contains an ambitious schedule for setting policy and beginning on-the-ground improvements to the plumbing system and environment. Only a few days after the Delta Vision Committee report came out, The Nature Conservancy became the first large environmental organization to endorse a peripheral canal (or "isolated conveyance facility"), signaling a potential shift in Delta politics. State lawmakers have begun introducing bills that would implement the Delta Vision report, create a Delta Conservancy, and establish a new governance structure.

One question is whether the ongoing state budget problem will prevent lawmakers and the Schwarzenegger administration from focusing on the Delta.

"I don't know if there is going to be space and policy energy for anything else," Public Policy Institute of California (PPIC) Director of Research Ellen Hanak said of the state budget. "That would be a shame because you have a lot of people motivated right now. There's a real panic about the Delta. Sometimes those kinds of crises can motivate people to – CONTINUED ON PAGE 13

Is Obama's Big Tent Expansive Enough For All Land Use Interests?

insight WILLIAM FULTON

Not since Lyndon Johnson more than 40 years ago has any president come into office with anything like the sky-high expectations about reforming urban policy that Barack Obama brings. But the various federal policies related to growth and development have many constituencies – urban, suburban, and rural – and it is not yet clear that Obama can meld them in a meaningful way.

Whether and how he does meld all these policies is of the utmost importance to California. Unlike the Northeastern and Midwestern states – such as Illinois, where the new president is from – California is not generally a state dominated by urban constituencies. Yes, there are some poor urban areas. But overall – CONTINUED ON PAGE 16

inbrief

– CONTINUED FROM PAGE 1

a measure excluding transients and people who live in hotels or commercial areas from voting in Industry.

Meanwhile, the City Council in neighboring Walnut has voted to oppose the 560-acre stadium and commercial project because of concerns about traffic, crime and decreased property values. The City of Diamond Bar submitted 102 pages of comments on the project EIR, which the city argues is deficient in numerous areas.

A proposed private university and housing development that won approval from Placer County supervisors in December is now the subject of two California Environmental Quality Act lawsuits. The Sierra Club and a group called Placer Citizens Against Gridlock filed separate suits in January over the project's environmental impact report. The project opponents say the analysis does not adequately address traffic congestion, greenhouse gas emissions and loss of farmland.

The county approved the regional university specific plan, as well as a development agreement, a general plan amendment, rezoning and a public facilities financing plan, for 1,157 acres of farmland west of Roseville. The decision permits Drexel University of Philadelphia and local landowners to move forward with a deal in which the landowners would donate the acreage to Drexel, which would fund construction of a 600-acre campus for 6,000-students by selling the remaining 557 acres for development of 3,200 housing units and commercial uses. Among the land donors is developer Angelo Tsakopolous. The county's project website: http://www.placer.ca.gov/Departments/CommunityDevelopment/EnvCoordSvcs/EIR/RegionalUniversity.aspx

The lead developer of a controversial proposed housing development in San Pedro has been replaced and the project is getting reworked in advance of a public hearing scheduled for April. Investors in the Ponte Vista project replaced Bob Bisno, a longtime Southern California developer, with Ted Fentin of Credit Suisse, who has indicated he is willing to scale back the project.

Ponte Vista dem- – CONTINUED ON PAGE 12

from www.cp-dr.com

We have not yet changed the name of the blog on www.cp-dr.com to "The Climate Change and Greenhouse Gas Emissions Reductions Blog." But such a title would be a fair reflection of the blog in recent months. We urge you to check our blog several times a week to get the latest updates. Here's a sampling:

• **Climate Change Mandates Won't Go Away.** The Governor's Office of Planning and Research has issued draft guidelines for incorporating greenhouse gas emissions analyses into California Environmental Quality Act reviews, and the California Air Resources Board has proposed thresholds of significance for CEQA reviews. These guidance documents, which should be finalized later this year, could have major implications for anyone involved in land use planning, real estate development and economic development. From now on, it appears that environmental impact reports are going to need robust discussions of greenhouse gas emissions.

• **Implementing SB 375.** Talk to enough practitioners, consultants and decision-makers, and it's easy to reach the conclusion that passage of SB 375 has set in motion a very complicated process. It's also easy to see that SB 375 is a work in progress and that numerous interests are likely to press for amendments this year. Among the first amendments could be clarification of the rules for jurisdictions whose housing elements come due before SB 375 takes full effect in late 2011.

• **The Sacramento's Dwindling Salmon.** It wasn't long ago that the Sacramento River below Shasta Dam was teeming with salmon, especially in the fall and early winter. Tens of thousands of the charismatic fish returned to spawn. This past fall, very few salmon were seen in the river around Redding and Red Bluff. The low fish count should not be a surprise in light of a National Marine Fisheries Service report that says salmon and steelhead cannot survive in a California water system managed primarily for the benefit of cities and farms.

• **The State Budget and Redevelopment.** A proposal to extend the lifespan of local redevelopment projects by up to 40 years in exchange for an infusion of cash to the state's general fund continues to circulate in Sacramento. Although the proposal, strongly backed by the City of Industry, has not yet appeared in written budget plans, numerous other items affecting land use and planning have shown up. Among the most interesting items that we run down: A near elimination of funding for transit, the end of Williamson Act subventions to counties, a quicker ramp up of engineering and design work for the high-speed rail system, and a cut of more than 50% in state funding for firefighting. ■

CP DR

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REDEVELOPMENT WATCH

JOSH STEPHENS

Economic Woes May Capsize Ambitious Plan For Queen Mary

After 76 years afloat, the RMS Queen Mary surely still draws stares from the cargo ship crews that call at the Port of Long Beach, where the Queen remains one of Southern California's more incongruous tourist attractions. Having sailed the North Atlantic under the Cunard flag, the ship has, since 1968, served simultaneously as a hotel, museum, event venue, and elegant icon for an otherwise working-class Southern California port city.

For all its high-class connotations, the Queen Mary is docked unceremoniously in a forlorn corner of the harbor. The ship and its surroundings have been the object of countless proposed redevelopment schemes, the latest of which comes courtesy of a new lessor with ambitions of turning the ship and her surroundings into a regional entertainment and tourism destination.

"It's an icon with a long established association with the city," said Joseph Magaddino, chair of the economics department at California State University, Long Beach. "More importantly, it's one of the elements that fits into the overall tourist destination economy that Long Beach is trying to create."

That effort now hinges on investment group Save the Queen (STQ), led by Orange County developer Jeff Klein, which submitted the winning bid to purchase the operating and development rights for $43 million in a bankruptcy court auction in November 2007. Though the previous operator had gone bankrupt in 2005, just seven years into a 66-year lease with the city, STQ pledged to bring the ship back to its art deco splendor while exploring development options for its 45-acre dockside parking lot. The plan, however, may have washed away in the current wave of economic uncertainty.

The Queen Mary currently attracts captive audiences who attend conventions at the downtown Long Beach Convention Center. But to become a major regional attraction, it would likely require the complement of a Universal CityWalk-style destination that plays into the area's maritime tradition while softening its industrial image.

"The efforts of the Save the Queen group are to allow the ship to be a significant attraction as part of the overall development of the site, not to preclude the ship but to make sure the ship is an active part of development," said historian John Thomas, who sits on the board of the Long Beach Redevelopment Agency and has consulted with STQ on the ship's restoration.

Save the Queen has already invested a reported $6 million in aesthetic and functional improvements to the hotel, restaurants and ventilation systems. It has upgraded hotel rooms and has taken on a subcontractor to manage hospitality and retail operations. But restoring the ship may merely be prelude to something much bigger.

As recently as August, reports and statements indicated that STQ was considering everything from a marina, to an amusement park, to hotels, residences and retail, all of which may have been developed in partnership with Carnival Cruise Lines. However, no dollar figure was ever attached to these proposals – though presumably it would range into the hundreds of millions – and promised renderings and specifics have yet to materialize.

"I hope to see the Queen restored to its historic splendor," said Long Beach City Councilmember Suja Lowenthal, whose 2nd District includes the Queen Mary. "And I expect a proposal for a project with international level architecture and vision."

The redevelopment of the Queen Mary would likely fit in with Long Beach's ongoing efforts to upgrade and market itself.

"The city of Long Beach and the people in the region would like to see that site developed," said Professor Magaddino.

Bob Maguglin, spokesman for the Long Beach Convention and Visitors Bureau, said that a revitalized Queen Mary would be "a regional draw." However, STQ, after initial pronouncement and promises, has refused to make any further statements concerning its plans, financing or deal with the city. In fact, the developer has hinted that it may jump ship entirely.

"Due to potential changes in ownership we are holding off on all media inquiries related to entitlement discussions or status of STQ," STQ spokesman Mike Murchison wrote in an e-mail message.

Likewise, representatives of the Long Beach Planning Department and Redevelopment Agency refused repeated request for interviews.

"As far as I know, this deal is going forward," said Lowenthal. "I haven't been advised otherwise."

Afloat but permanently moored, the Queen Mary faces little danger of going the way of her big sister Titanic. Yet a cavalcade of operators, including Hyatt and Disney, have tried to make a go of the Queen Mary. Ultimately the lease has been batted about among several operators whose resources and commitment were not strong enough to realize a comprehensive development plan.

"The real potential is to take the property adjacent to the Queen Mary to see how that can be developed to provide shopping and entertainment," said Magaddino.

The seagoing monarch therefore represents an enormous land-use challenge – to whomever develops it. Long Beach has revitalized its shoreline with The Pike entertainment and retail complex, an aquarium and parks, to which the Queen Mary provides a handsome backdrop. But the ship sits across the harbor, with poor road, pedestrian and transit connections, and its immediate surroundings have all the charm of a cargo dock.

"I'm hoping for an urban planning component to it. Right now it's somewhat detached from downtown and the rest of the city," said Lowenthal, who has commissioned a study for a streetcar line. "One of the greatest hopes I have for it is for it to be woven into the fabric of our city."

Save the Queen had contracted with a transportation consultant and planned to partner with the city to request federal funding to improve access and develop mass-transit service. Meanwhile, construction of a hotel, retail, or any other land-side buildings would also require approval of the California Coastal Commission as well as meet California Tidelands Trust restrictions. Ultimately, though, surmounting regulatory hurdles may be nothing compared with the challenge of raising capital.

"The fact that we've had a worldwide economic collapse has put a kink in the timeline, but the developer is still investigating options," said Lowenthal. "I look forward to them presenting preliminary concepts to the city within the next few months. At that point, the entitlement process would begin." ■

■ Contacts:

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Mike Murchison, Save the Queen, (562) 596-5835.
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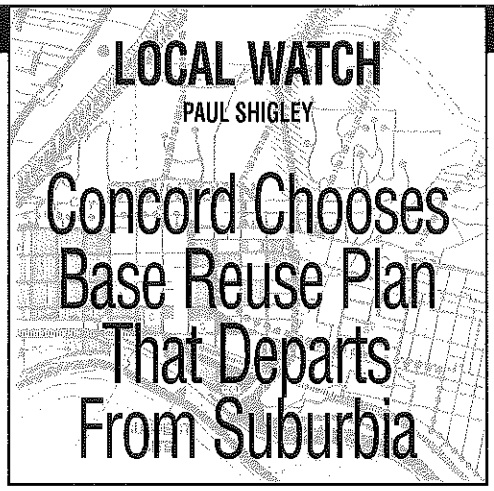
The Queen Mary: www.queenmary.com



LOCAL WATCH

PAUL SHIGLEY

Concord Chooses Base Reuse Plan That Departs From Suburbia

The City of Concord has chosen a preferred alternative plan for reuse of the shuttered Concord Naval Weapon Station that emphasizes transit-oriented development and job growth while designating 65% of the 5,000-acre site for open space and parks.

Base reuse planning still has a long way to go, but the City Council's selection of a preferred plan provides a milestone in a process that began in late 2006 (see *CP&DR Local Watch*, January 2007). The plan calls for approximately 12,300 dwelling units, 6.2 million square feet of commercial space, 710 acres of developed parks and a state university campus while leaving about half the site as open space that provides habitat and public recreation. The "clustered villages alternative" chosen by the City Council would center development around an existing BART station and four other nodes along a new transportation corridor.

"It isn't every day that you have a real blank slate that has an underutilized rapid transit station right adjacent to the site," said Michael Wright, Concord's community reuse planning director. The plan tries to capitalize on that asset with dense, mixed-use development that would provide workplaces for more than 20,000 people, as well as homes for many of those employees.

Although the preferred alternative has proponents inside and outside of City Hall – and the City Council voted 5-0 for the plan – there is opposition. Some environmental groups and the Concord Naval Weapons Station Citizen Alliance have advocated for designating 80% of the site as open space and decreasing the number of potential homes and office buildings. The City Council-appointed Citizens Advisory Committee supported the clustered villages plan with only a 10-7 vote, as the dissenters voiced concerns about traffic congestion. Meanwhile, Councilwoman Helen Allen has argued for less open space and a plan that reflects Concord's current land use pattern of single-family homes on large lots.

Allen said she voted for the clustered villages plan simply to keep the process moving forward. She called the plan uncreative, too urban and unrealistic.

"We are not truly urban, we are *suburban*. The rest of the city map that surrounds all of that [base] is single-family residential, median- and low-density," Allen said. "They want to stuff all these people into these high rises and force them to use BART. This transit-oriented development is something that exists in New York and Chicago and all the big cities that people want to escape when they come to California."

Beverly Lane, an East Bay Regional Park District director and member of the Citizens Advisory Committee, said she voted against the preferred alternative because it would permit too much development. Highway 4 and Ignacio Valley Road (a major thoroughfare from Walnut Creek to Pittsburg) are already jammed at peak hours, and the dense housing and office development would further clog roads, she said.

"The major issue that is out there is the density. Having an approval for potentially 28,000 more people is huge," Lane said. "For some of us, that density is unrealistic."

The Navy stopped using the inland 5,000 acres of the 12,600-acre weapons storage and maintenance facility in 1999. The Base Realignment and Closure Commission in 2005 recommended closing the inland portion of the base, and the Navy declared the property surplus in 2007. The Navy transferred a deep water port and the adjacent 7,600 acres to the Army. The surplus property lies within the Concord City limits, and the city three years ago proposed a general plan update that called for 13,000 housing and 15,000 jobs on half of the site, with the remainder used for parks and open space. When opposition arose, the city dropped the property from the general plan update and began a separate base reuse planning process in late 2006.

Environmentalists appear to be divided on the reuse plan. The group Save Mt. Diablo continues to press for designating 80% of the 5,028-acre site for open space and parks, and contends the proposed development "could create a traffic nightmare from East County to the Bay Bridge." However, Greenbelt Alliance Field Representative Christina Wong called the council's selection of the clustered villages plan "a good step forward." The plan, she said, "has the potential to be a model for smart growth development."

The plan appears mostly to satisfy the park district, which would get about 2,400 acres for a regional park, and California State University, East Bay, which is in line for 150 acres for an educational complex. The plan also calls for assessing developers a total of $38 million to fund housing, transitional facilities and services for homeless people – an aspect of the plan that Allen voted against.

The City Council chose the clustered villages approach over a "concentration and conservation alternative" that would have designated 64% of the site as open space and another 9% for parks and recreation. The rejected alternative would have permitted about 2,000 fewer housing units and 1.5 million fewer square feet of commercial development. The clustered villages plan's extensive developed parkland and potentially greater fiscal feasibility won favor with the council.

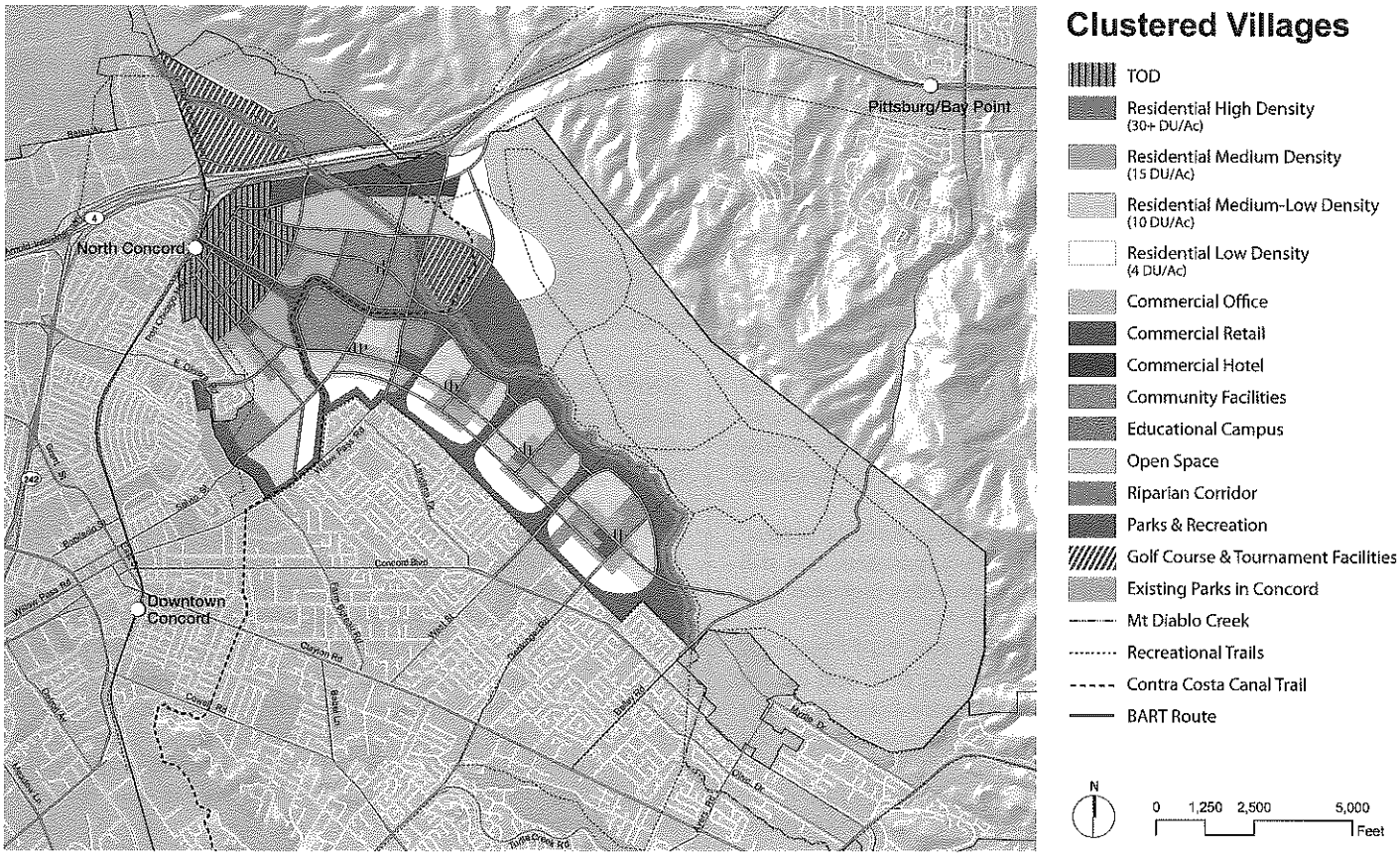
City Manager Daniel Keen, who has been with Concord for less than a year, said he sees broad community support for the clustered villages alternative. "There were an awful lot of interests that got involved early on, and that influenced the preferred alternative," he said.

Keen previously worked in Seaside, which is helping redevelop Fort Ord, and in Novato, where the former Hamilton Air Force Base is located. Both the Fort Ord and Hamilton reuse plans placed regional need ahead of local fiscal realities, he said. That is not the case with the Concord reuse, which the city is trying to make revenue-neutral, he said.

The plan does depart from existing development patterns in the Contra Costa County city of 125,000 people. Wright said the departure is the result of wanting to capitalize on the BART station, a desire to limit the development's carbon footprint, and advocacy by the attorney general's office. Indeed, a detailed letter from Deputy Attorney General Sandra Goldberg urged the city "to create a model mixed-use, transit-oriented community that provides a substantial contribution to achieving the state's GHG [greenhouse gas] reduction goals."

"It is going to be something new, and it is going to be something different," Wright said of the proposed transit-oriented development and villages. "You want to do that or you are not going to be able to attract the kind of jobs that you want."

Plus, he said, because part of the base will eventually lie in a redevelopment project area, the city could pool tax increment and use the funds to enhance older parts of town and to create good road and bus connections between the newly developed base property and adjacent neighborhoods.



The "clustered villages alternative" calls for transit-oriented development to the south and east of the North Concord BART station, development of compact villages along a new transportation corridor, and designating the eastern half of the former weapons station as open space. (See www.cp-dr.com for a color version of this map.)

The city's priority for the next several months will be completing a revised draft EIR that focuses on the preferred alternative, said Wright. The City Council will likely vote on a final reuse plan in June or July, he said.

"We'll be preparing some more detailed planning studies that focus on the transit-related proposals on the site," Wright said. "We'll be putting together design principles that will help the council guide developers toward sustainable buildings, green buildings, a reduced carbon impact."

The city will also draft a preferred disposition strategy for the Navy to review. Two years ago, the Navy strongly considered handing the Concord base property to Shaw Environmental & Infrastructure, Inc., a Virginia-based military contractor, in exchange for construction of military housing and infrastructure elsewhere. Under pressure from members of Congress, the Navy backed away from the Shaw offer but it has never announced exactly how it will dispose of the property. The city's plan assumes that the Navy will give 60% to 65% of the site to the city or other public agencies, primarily for parks and open space. The remaining acreage would be auctioned to developers in a process that could generate more than $1 billion for the Pentagon.

The Navy needs to adopt an environmental impact statement and complete endangered species act consultations with federal agencies before making any conveyance decisions – a process that could easily take more than a year. The Navy also needs to address the level of cleanup that will be necessary to convert the former weapons storage facility to civilian uses. Only then could auctions begin. At that point, having a good plan with strong community backing becomes even more important, said Keen.

"When you get to the stage where you are ready to sell property to developers, that's when you really get pressure to change the plan," Keen said.

Which is exactly what Allen, a plan opponent, is counting on. "The market is what really drives this," she said. "It's not going to end up like the plan shows now, so why fight it?" ■

■ Contacts:

Michael Wright, City of Concord, (925) 671-3019.
Concord City Councilwoman Helen Allen, (925) 671-3158.
Beverly Lane, East Bay Regional Park District, (510) 569-4319.
Christina Wong, Greenbelt Alliance, (925) 932-7776.
Community Reuse Project: www.concordreuseproject.org

ECONOMIC DEVELOPMENT

PAUL SHIGLEY

Bell's $35 Million Railroad Yard Expansion Plan Gets Off Track

The City of Bell's plan to purchase property from the federal government and lease it to a railroad for use as a truck yard has been stalled and possibly killed by an environmental justice organization's successful California Environmental Quality Act lawsuit. The litigation has also raised questions about $35 million in bonds that the city issued in 2007 to fund property acquisition and improvements.

Last summer, a Los Angeles County Superior Court judge invalidated a 30-year option to lease between Bell and Burlington Northern Santa Fe (BNSF) Railway for a 15-acre site because the city had performed no environmental review prior to signing the agreement. Judge James Chalfant also blocked a 45-year extension of an existing lease that permitted BNSF to continue using 14 acres of city-owned property. The city did not appeal the ruling.

Since then, BNSF appears to have backed away from the project. Railway spokeswoman Lena Kent said project managers "are still evaluating their options." She was unable to provide a timetable for a decision.

Attorney Gideon Kracov, who represented East Yard Communities for Environmental Justice in the suit against Bell, said he was unaware of any activity regarding the project since Judge Chalfant's decision, which also forced a halt to the city's destruction of old buildings on the property.

"My client would like the city to make productive use of the land," Kracov said. But, he added, "The expansion of the railroad facilities raises very important public health issues."

"Study after study has demonstrated a clear connection between expansion of the rail yards and pollution. The typically low-income communities near the rail yards suffer the highest rate of air pollution in the state," Kracov said.

Bell city officials did not respond to *CP&DR* inquiries. Bell City Attorney Ed Lee, of Best, Best & Krieger, told the *Los Angeles Daily Journal* in October that the city had made no decision on whether to conduct environmental review or drop the project. As of the end of January, Bell had filed no CEQA notices with the State Clearinghouse.

Like many of the "Gateway Cities" in southern Los Angeles County, Bell is a center of the logistics industry that moves freight in and out of the ports of Los Angeles and Long Beach. For some time, BNSF has leased 14 acres of city-owned land in Bell on which the railroad stacks empty intermodal shipping containers. The Bell Yard site is within one mile of BNSF's giant Hobart rail yard, where freight is transferred between trucks and intercontinental trains.

In November 2006, the Bell Public Financing Authority – a joint powers entity created by the City of Bell and the Bell Community Redevelopment Agency and all controlled by the City Council – issued $26.3 million in bonds to fund the purchase of the 25.3-acre Bell Federal Service Center, which once served as a military barracks. The property is located on Rickenbacker Road, adjacent to the land already leased by BNSF and just off the Long Beach Freeway. In October 2007, the Authority issued $35 million in lease revenue bonds to pay off the original debt and to reimburse the city $6.1 million for capital improvement and other costs related to the property. Those bonds come due November 1 of this year, although the city may extend the maturity date to November 1, 2010.

The city's original plan was to retire the debt with BNSF lease payments of about $142,000 per month. The railroad intended to use the property for parking up to 700 trucks. BNSF executed an option to lease 15 acres from the city in September 2007.

The city has apparently been using its own money to fund the debt payments. The official statement for the 2006 debt issuance said that the city "may elect to hold the property for redevelopment" if agreement with BNSF falls through. The property does lie within the city's redevelopment project area. According to the state controller's office report for 2006-07 (the most recent available), Bell's redevelopment agency had $51.5 million in debt and the 670-acre project area generated $4 million in tax increment, of which the agency retained $3.1 million.

The East Yard environmental justice group filed its suit against the city on October 26, 2007, the same day the lease revenue bonds "financial facility agreement" was finalized. In that document, the city stated there was no litigation pending that could affect the validity of the agreement or the BNSF lease. Pointing to the potential for increased air pollution from trucks at the expanded BNSF site, East Yard said the city had to complete an environmental review of the project. The city and the railroad's primary argument in the litigation was that the Interstate Commerce Commission Termination Act exempted the railroad from CEQA because the state law could restrict the railroad's ability to operate.

Judge Chalfant did not buy the argument. "[T]his action concerns the city's decision to lease city-owned land, not BNSF's activities on its own land. Federal law does not preempt environmental review under CEQA of the city's lease of its own land," he ruled in *East Yard Communities for Environmental Justice v. Bell Public Financing Authority*, Los Angeles County Superior Court case No. BS 111726.

Development Initiatives Director Named

Gov. Schwarzenegger has appointed former Assemblywoman Nicole Parra to the new position of director of the Governor's Regional Development Initiatives within the Business Transportation and Housing Agency. The position is intended to promote public-private partnerships in poor regions.

Although Parra will have responsibility over the entire state, she is likely to focus her attention on the Central Valley. She will be charged with convening regional job growth summits and working with the California Partnership for the San Joaquin Valley (see *CP&DR*, February 2006).

A Democrat from Hanford, Parra was termed out of the Assembly last fall. She has been involved in several bitter political fights recently. She endorsed Republican Danny Gilmore in the race to succeed her, rather than Democrat Fran Florez, who is mother of state Sen. Dean Florez (D-Shafter). Parra and the younger Florez have fought a number of battles. Gilmore won the election. Parra lost her office in the state Capitol toward the end of the 2007-08 legislative session because she refused to vote for a Democratic-drafted budget. Throughout, Parra has remained close to the Schwarzenegger administration. ■

CP&DR Legaldigest

Landowner May Challenge Morgan Hill Growth Control

Sunset Date Extension Opens New Legal Avenue, Court Rules

BY PAUL SHIGLEY

A state appellate court has cleared the way for a property owner to challenge an extension of a Morgan Hill growth control ordinance. The court ruled that the 10-year extension of an ordinance that was scheduled to sunset in 2010 could be contested even if the ordinance was unchanged from the original.

Importantly, the Sixth District Court of Appeal refused to apply the federal court precedent from *De Anza Properties X, Ltd. v. County of Santa Cruz*, 936 F. 2d 1084 (1991), in which the Ninth Circuit Court of Appeals ruled that a property owner could not challenge the county's decision to delete a sunset provision in a mobile home rent control ordinance. The Ninth Circuit said the property owner could contest the ordinance only when it was first passed.

In the Morgan Hill case, the court said *De Anza* did not apply "because it arose in a different legal context." At the time, a rent control ordinance was considered a physical taking of property; the Morgan Hill ordinance is being challenged as a regulatory taking, the court noted. The court made no ruling on the merits of the lawsuit and returned it to Santa Clara County Superior Court for trial.

Attorney Diana Hanna, who represents property owner Arcadia Development Company in the case, said the decision provides an important precedent.

"It's the first published decision in California that specifically acknowledges that when a local agency extends a land use regulation, even if there was no change in the regulation, it creates a new cause of action, a new harm," Hanna said. "I think cities and counties have been using the *De Anza* decision as a shield to prevent review of an ordinance extension."

But attorney Ellison Folk, Morgan Hill's legal counsel, insisted *De Anza* is directly on point and has been relied upon by federal courts for years.

"The court had a hard time with the idea that the city could extend the term of an ordinance and a limitation on the development of property without an opportunity for challenge," Folk said.

At issue is Morgan Hill's scheme for regulating housing development. In the late 1970s, city voters approved Measure E, which imposed a residential development control system (RDCS) that limited the number of housing allotments the city could grant in a year. In 1990, voters approved Measure P, which continued the RDCS and imposed new restrictions to prevent outward growth that would strain city services. Measure P prohibited the city from adding land to its urban service area except for "desirable infill," until a time when the city has less than five years of land inventory for residential growth.

Several property owners – including Arcadia – beat Measure P by applying for annexation prior to the ballot measure's December 8, 1990, effective date. In 1991, the city awarded Arcadia an allotment for an 11-acre housing subdivision but the city said further subdivision of Arcadia's remaining 69 acres would have to comply with the city's growth regulations. Barring annexation, Arcadia would be limited to development based on county zoning regulations, which would permit four new houses.

In 2002, city officials began considering amendments to Measure P. The city made a few refinements but the most important change was an extension of the sunset date from 2010 to 2020. Voters approved the restrictions in March 2004 as Measure C. Arcadia sued the city shortly after the election, arguing that the density restriction is arbitrary and unreasonable, amounts to inverse condemnation and violates the property owner's equal protection rights. Essentially, Arcadia argued the density restriction applied only to its property and no one else's property, which was unfair.

Arcadia and the city commenced a trial nearly two years ago, but Superior Court Judge Marc Poché halted the proceedings after one day to consider the statute of limitations issue raised by the city. He then ruled that the 90-day statute of limitations for challenging a zoning ordinance began to run on December 8, 1990 – the day Measure P took effect. Arcadia appealed that ruling to the Sixth District.

The city argued that because Measure C merely extended an existing ordinance, the time had long passed for Arcadia to sue. The city also contended that Arcadia's consent to the 1991 subdivision approval conditions – which specify that no further subdivision would be permitted except as allowed by the RDCS – barred the landowner's legal challenge. The appellate court focused on the first argument.

In finding that Arcadia could sue over Measure C, the court cited *Barratt American, Inc. v. City of Rancho Cucamonga*, (2005) 37 Cal.4th 685 (see *CP&DR Legal Digest*, January 2006). In that case, the state Supreme Court ruled a homebuilder could sue over the city's reenactment of development and building fees, even though the fees were unchanged. Morgan Hill argued that the statutory requirements in *Barratt* were different than those at issue here, but the Sixth District found that *Barratt's* "reasoning is applicable" in that reenactments should not escape judicial review.

Morgan Hill "did not intend for the 1990 density restriction to be permanent," Justice Eugene Premo wrote for the court. "The temporary nature of the original restriction meant that any decision extending the density restriction would have to be based upon then-existing circumstances such as the amount and location of the intervening growth."

"The temporary nature of the 1990 restriction also means that extending it for 10 additional years was a new burden upon the Arcadia property, triggering a new inverse condemnation claim," Premo wrote.

Toward the end of the opinion, Premo attempted to clarify the court's decision: "Our decision should not be read as holding that any renewal of an existing ordinance

gives rise to a new cause of action. Our decision is based upon the facts of this case, which show that City recognized that the density restriction, as originally enacted, was intended to be temporary and that it would be lifted when circumstances changed. City's 2004 decision changed the impact of the restriction upon Arcadia's property based upon circumstances that existed in 2004. That impact and the 2004 circumstances must be considered in assessing the validity of the density restriction under the equal protection and takings theories of this case. Measure C's 10-year extension of the density restriction was a substantive change, which City and its voters considered and decided anew when Measure C was approved in 2004. It follows that Arcadia may challenge the 10-year extension of the density restriction, even though Arcadia is barred from challenging the original 20-year restriction."

The court further ruled that the development restriction that Arcadia accepted in 1991 had similarly changed because Measure C altered the sunset date.

The lawyers differed on the meaning of the decision for the case once it returns to Superior Court for a trial on the merits.

"I think the appellate court decision accepts the underlying premise of the city's decision," said Folk, the city's attorney. Namely, the court recognized that limiting outward growth and promoting infill are legitimate government interests, she said.

Hanna said Arcadia's case is helped by the court's insistence that the date for analysis of impacts is 2004, and not 1990. Circumstances did change, and the renewed regulation prevents only one property owner – Arcadia – from participating in the city's housing allocation process, she said. There is no justification for that exclusion, she said.

The litigation is likely to resume in Santa Clara County Superior Court this spring. ■

■ The Case:
Arcadia Development Company v. City of Morgan Hill, No. H032201, 08 C.D.O.S. 15174, 2008 DJDAR 18369. Filed December 16, 2008.

■ The Lawyers:
For Arcadia: Diane Hanna, Ellman, Burke, Hoffman & Johnson, (415) 777-2727.
For the city: Ellison Folk, Shute, Mihaly & Weinberger, (415) 552-7272.

signs and billboards

L.A. Regulatory, Contractual Scheme Upheld By 9th Circuit

A 7-year-old City of Los Angeles ordinance prohibiting new off-site signs has been upheld by the Ninth U.S. Circuit Court of Appeals, which rejected the argument that the ban combined with a city contract permitting advertising at city-owned bus stops violated the First Amendment.

In overturning a District Court ruling, the Ninth Circuit determined that the Los Angeles ordinance is "essentially indistinguishable" from a San Diego ordinance the Supreme Court upheld in the pivotal 1980 billboard case *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490. The fact that Los Angeles signed a contract permitting one company to sell advertising at bus and transit stops does not make the city's off-site billboard prohibition unconstitutional, because the ban still advances the goal of decreasing visual clutter and motorist distractions, the court determined.

The decision is an important one for the assailed Los Angeles law and for a similar regulatory scheme in San Francisco. Still, the Los Angeles law remains unenforceable because of a 2008 federal judge's ruling in a different case that the law's exceptions for certain zoning districts make the law unconstitutional.

Paul Fisher, the attorney for plaintiff Metro Lights, said the Ninth Circuit's ruling ignores the evolution in case law since *Metromedia* as well as the city's overall scheme of favoring commercial speech that generates municipal revenue. The fact that some signs make the city money is not a "cognizable interest" in a First Amendment case, he said.

"The court has gone back to 1981. It said we're not going to look at bus shelters and news racks, and we'll go back to a case involving only billboards," Fisher said of the court's reliance on *Metromedia*.

Attorney Laura Brill – who represented CBS-Decaux, which has the contract for bus stop signs, and the League of California Cities – said the Ninth Circuit decision comports with U.S. Supreme Court precedent. The Ninth Circuit decision "restores the balance" after the district court judge struck down the Los Angeles ordinance, added Brill, who said she was not speaking as a CBS-Decaux representative.

Since 1987, Los Angeles has had agreements that provide private companies exclusive advertising rights on bus shelters in exchange for the installation of shelters and annual payments. After an open bidding process, the city in 2001 signed an agreement with CBS-Decaux (then Viacom Decaux) that covered not only bus shelters, but also public toilets, trash bins, kiosks and news racks. Under the "street furniture agreement" (SFA), CBS installs the facilities, sells advertising on them and makes annual payments to the city, which assumes ownership of the facilities.

Four months after signing the contract with CBS, the city adopted a sign ordinance that prohibits the installation of new off-site signs. The ordinance provides exceptions for signs in the public right-of-way (such as CBS's street furniture advertising), and signs permitted by variance, a specific plan, a supplement use zoning district or a development agreement. Essentially, the city sought to outlaw new billboards except in certain areas, such as around Staples Center at the southern end of downtown.

Billboard companies began suing immediately. Metro Lights did not file suit until December 2003, after the city had issued the company numerous citations for installing new off-site signs. In 2006, District Court Judge Gary Feess ruled for Metro Lights. The city could not prohibit Metro Lights from displaying messages while it allowed CBS to erect off-site signs in the public right-of-way, Feess determined. The city appealed the ruling, while Metro Lights appealed Feess' refusal to award damages.

For a law that regulates commercial speech to be constitutional, it must "directly advance" a legitimate government interest. In *Metromedia*, the Supreme Court ruled that traffic safety and esthetics are legitimate interests. Metro Lights argued the *Metromedia* decision was not applicable here because the city's street furniture agreement permits advertising in the public right-of-way that is at least as distracting as billboards on private property. Taken together, the sign ordinance and the street furniture agreement could not directly advance the government's interest in traffic safety and aesthetics, Metro Lights argued. Rather, the city was essentially auctioning off First Amendment rights, the company argued.

But the Ninth Circuit pointed out that the San Diego ordinance in *Metromedia* also provided an exception for bus stops. More importantly, the *Metromedia* court's "deference to legislative judgment resounds quite clearly in this case," Judge Diarmuid O'Scannlain wrote for the unanimous three-judge panel. "Los Angeles, just like San Diego, 'has obvi-

ously chosen to value one kind of commercial speech' – controlled offsite advertising on public transit facilities – 'more than another kind of commercial speech' – uncontrolled offsite advertising spread willy-nilly about the streets."

"Although the SFA permits some advertising," O'Scannlain continued, "a regime that combines the sign ordinance and the SFA still arrests the uncontrolled proliferation of signage and thereby goes a long way toward cleaning up the clutter, which the city believed to be a worthy legislative goal.

O'Scannlain called the auctioning First Amendment rights argument "little more than a canard." He continued, "[E]ven if there were no SFA but only the sign ordinance, the city would still exercise proprietary control over who gets to advertise on its transit facilities."

Metro Lights attorney Fisher said he will ask a full panel of Ninth Circuit judges to re-hear the case. Meanwhile, at least half a dozen lawsuits over the sign ordinance are pending somewhere in the legal system. One of those cases is *World Wide Rush, LLC v. City of Los Angeles,* No. 08-56062, in which the city has asked the Ninth Circuit to overturn a district court judge's order blocking enforcement of the sign ordinance.

The city has settled other lawsuits. For instance, the city settled one suit by permitting CBS Outdoor and Clear Channel Outdoor to convert 840 billboards from standard signs to digital format. Although the agreement ended litigation, it has been sharply criticized by some neighborhood groups and residents who live near converted signs, which flash brightly lit messages 24 hours a day. ■

■ The Case:
Metro Lights, LLC, v. City of Los Angeles, No. 07-55179, 09 C.D.O.S. 113, 2009 DJDAR 205. Filed January 6, 2009.

■ The Lawyers:
For Metro Lights: Paul Fisher, (949) 675-5619.
For the city: Kenneth Fong, cit attorney's office, (213) 978-8064.
For CBS-Decaux: Laura Brill, Irell & Manella, (310) 277-1010.

coastal commission

Rulings Issued On Proposed Houses, Beach Fence Repair

State appellate courts have issued three rulings involving the Coastal Commission. One court ruled the Commission did not make proper findings for approving a house in an environmentally sensitive area on Big Sur. A different court ruled the Commission correctly refused to consider an appeal of a proposed beachfront house in Malibu. Another panel ruled the Commission had no jurisdiction over a fence along a beach in Torrance.

The decisions were based on the facts and details of the individual cases. All-in-all, the Commission's won-loss record was 1-2.

Big Sur House Battle

In the latest installment in a feud between neighboring Big Sur property owners, the Sixth District Court of Appeal ruled that the Coastal Commission did not make the proper findings for approving a house in an environmentally sensitive area.

The Coastal Commission said it approved a coastal development permit for the proposed house to avoid an unconstitutional taking of private property. But the court determined the Commission never considered the taking issue and instead approved the project as being consistent with habitat protection policies. The property owners maintained that the project was indeed consistent with habitat policies, but the court rejected that contention and instead sent the project back to the Commission for a new hearing.

Since at least 2001, Dr. Hugh McAllister has fought plans by neighboring property owners Sheldon Laube and Dr. Nancy Engel to build a single house on two 2-acre parcels on Kasler Point. In considering McAllister's appeal, the Monterey County Board of Supervisors approved the project and a lot merger in early 2004. McAllister appealed that decision to the Coastal Commission and sued the county over its environmental study of the project. Two years ago, the Sixth District ruled that McAllister could not challenge the county's environmental review because the Coastal Commission had the ultimate authority (*McAllister v. County of Monterey*, 147 Cal.App.4th 253; see *CP&DR Legal Digest*, April 2007).

The Coastal Commission considered McAllister's appeal but approved a modified version of the project in 2005. McAllister sued the Commission, arguing the project did not conform to policies protecting environmentally sensitive habitat areas, visual resources and water resources. He also argued the Commission violated the California Environmental Quality Act (CEQA). Monterey County Superior Court Judge Robert O'Farrell ruled for the Commission.

In a 51-page opinion written by Presiding Justice Conrad Rushing, a three-judge panel of the Sixth District Court Appeal addressed numerous contentions raised by McAllister, the property owners and the Commission. First, the court determined that the site qualifies as an environmentally sensitive habitat area (ESHA) for coastal sage scrub and the Smith's blue butterfly. Under the Coastal Act and the Monterey County local coastal program, development within an ESHA is restricted to resource-dependent uses that do not significantly disrupt habitat values. A new house would not be dependent on the natural resources, the court found. Although the property owners disagreed with this analysis, the Commission was willing to accept it.

The Commission instead argued that sections of the Coastal Act (specifically, Public Resources Code § 30010) and the county's coastal zoning ordinance permitted the approval of non-resource-dependent uses in a protected habitat area to avoid an unconstitutional taking of private property. The court acknowledged the legal framework and conceded that denial of a permit for Laube and Engel might effect a taking. But the court found that the Commission never considered the taking issue.

"Given the significance of relaxing a fundamental restriction on development in declared habitat areas and allowing a non-resource-dependent use, one would expect the record to reflect some discussion of both the restriction and the taking issue," Justice Rushing wrote. "Here, however, the record is silent."

Instead, the Commission actually found the project, with mitigation measures, would conform to habitat protection policies. Although the Commission did not defend this position before the Sixth District, the administrative record reflected the abandoned position, and not the approval-in-lieu-of-taking proposition.

"Clearly, the Commission had a duty to make express findings that it was excusing strict compliance with the development restrictions to avoid a taking if that had been its reason for approving the project," Rushing wrote.

The appellate court directed the Commission to conduct "a new hearing at which it can consider the taking issue and make appropriate findings." ■

■ The Case:
McAllister v. California Coastal Commission, No. H031283, 09 C.D.O.S. 26, 2009 DJDAR 26. Filed December 30, 2008.
■ The Lawyers:
For McAllister: John Bridges, Fenton & Keller, (831) 373-1241.
For the Commission: Patricia Sheehan Peterson, (510) 622-2152.
For Monterey County: Frank Tiesen, county counsel's office, (831) 755-5045.
For Sheldon Laube and Nancy Engel: Sheri Damon, Lombardo & Gilles, (831) 754-2444.

On The Beach In Malibu

A decision by the Coastal Commission not to intervene in a dispute between Malibu property owners was upheld by the Second District Court of Appeal.

The court affirmed the Commission's refusal to conduct a hearing on a proposed beachfront house that was approved by the City of Malibu but opposed by the next door neighbors. The court also found that a State Lands Commission failure to investigate the project's potential impact on public tidelands was not enough to disturb the city's approval.

In 2004, property owner Jeff Stibel applied for a permit to construct a 3,500-square-foot house and 450-square-foot garage on beachfront property on Escondido Beach Road in Malibu. The project would also include an on-site septic system and a bulkhead on the adjacent sandy beach, as well as the merger of two existing lots.

Daniel Alberstone and Lisa Ogawa, who own a house next to Stibel's property, fought the proposal. They argued the project would violate Malibu's local coastal program (LCP) because it would require construction of a protective device (the bulkhead) and other shoreline stabilization during the 100-year life of the project, and because the merged lot would be smaller than zoning allowed.

The City Council approved Stibel's application in May 2006. Alberstone and Ogawa appealed to the Coastal Commission, but the Commission determined the appeal did not raise a "substantial issue" and refused to hear the matter. Alberstone and Ogawa then sued to compel the Commission to conduct a hearing on Stibel's application. Los Angeles County Superior Court Judge David Yaffe ruled against the neighbors, who then appealed.

Alberstone and Ogawa argued that Yaffe made a number of errors and his ruling was not supported by the evidence. The Second District, however, declined to consider the argument because the appellate court's role in the case was to review the administrative record, not the trial court's conclusions. The court then turned to the merits.

Under the Coastal Act, the Commission must hear an appeal unless it determines the appeal does not present a substantial issue, which is defined as significant question about conformity with a local coastal program. Alberstone and Ogawa argued that the project conflicted with the LCP because it prohibits "land divisions" that could require shoreline protection or bluff stabilization structures. They said the term "land divisions" included lot mergers, and they noted the project included a proposed bulkhead.

The Commission determined that the specific provisions of the LCP in question excluded lot mergers. The Commission – which essentially drafted and adopted the LCP on Malibu's behalf – had excluded mergers in order to encourage lot consolidation.

"We are inclined to defer to the Commission's interpretation," Justice Patricia Bigelow wrote for the unanimous appellate panel, "because it presents a reasonable interpretation that is in keeping with the purposes of the LCP."

Alberstone and Ogawa further argued the small size of the lot resulting from the merger conflicted with the LCP. The Commission conceded the lot would be of substandard size but concluded the lot size standards do not apply to mergers. Besides, the city had concluded it could not deny economic use of the residentially zoned property. The Commission and city's reasoning was good enough for the court, which determined the Commission had met the intent of the LCP.

The Malibu LCP also requires the State Lands Commission to determine whether a proposed development on the beach or along the shoreline would encroach on tidelands or other public trust interests. When asked for a determination, the State Lands Commission said it did not have time or resources to investigate and instead stated that it "presently asserts no claims that the project intrudes onto sovereign lands or that it would lie in an area that is subject to the public easement."

Alberstone and Ogawa argued the Lands Commission's failure to make the required finding required the rejection of Stibel's application. But the court said that striking the Coastal Commission's approval based on the Lands Commission's response "would be a tremendous waste of time and resources." ■

■ The Case:
Alberstone v. California Coastal Commission, No. B202008, 08 C.D.O.S. 15636, 2008 DJDAR 18887. Filed December 29, 2008.
■ The Lawyers:
For Alberstone: Roland Tellis, Bingham McCutchen, (310) 907-1000.
For the Commission: Hayley Peterson, attorney general's office (619) 645-2540.
For Jeff Stibel: Alan Robert Block, Block & Block, (310) 552-3336.

Fenced Out In Torrance

The Coastal Commission has no jurisdiction over a fence at the base of a coastal bluff in Torrance because a 1988 boundary agreement among state entities and landowners authorized the fence, the Second District Court of Appeal ruled.

The court said it did not matter that the Coastal Commission was not party to the 1988 agreement, and the court rejected the Commission's argument that an exception in the Coastal Act for boundary settlements did not apply to physical activities that could impact the environment.

Located at the back of a public beach, the fence has a long history. After two people fell to their deaths while climbing on the unstable bluffs behind the beach, a chain link fence was erected during the late 1960s. The fence was apparently destroyed by a storm and rebuilt in the early 1970s. Property owner Martin Burke, who has represented homeowners on the bluff top, said the fence was in place when he moved there in 1972. The fence was on private property, as the homeowners' properties extend to the mean high tide line on the beach.

Burke obtained a permit from the city to rebuild the fence on his property in 1974, and a permit to replace the fence in 1981. Property owners to the north and south of Burke received permits from the predecessor to the Coastal Commission in 1973 and 1975 to extend the chain link fence so that it was about 1,000 feet long.

Meanwhile, a dispute over public access to the beach at the base of the bluffs simmered until September 1988, when Paseo de lay Playa Drive homeowners, the State Lands Commission, the attorney general's office and Gov. Deukmejian signed a formal boundary agreement. That agreement established a public easement over a strip of private sandy beach at the bottom of the bluffs, and it allowed owners to maintain an eight-foot-tall chain link along the edge of the easement.

In 2005, Burke sought to repair the fence on his behalf and that of 14 other property owners. At the Coastal Commission's insistence, Burke filed an application for an after-the-fact approval and replacement of 930 feet of eight-foot-tall fence. In July 2006, the Commission rejected the application, finding the fence would change the view of the bluffs from the beach and could result in homeowners intensifying uses of the properties along the bluff face and at the toe of the bluff.

Burke sued the Commission, arguing, among other things, that the Commission had no jurisdiction under the 1988 boundary agreement to reject the fence. Los Angeles County Superior Court Judge David Yaffe ruled for the Commission. However, a unanimous three-judge panel of the Second District Court of Appeal, Division Two, said it was clear the 1988 agreement precluded Coastal Commission regulation of the fence.

A provision in the Coastal Act (specifically, Public Resources Code § 30416, subdivision (c)) states, "Boundary settlements between the State Lands Commission and other parties and any exchanges of land in connection therewith" shall not be considered a "development" requiring Coastal Commission review.

"Thus," wrote Presiding Justice Roger Boren, "to the extent the erection or reconstruction of the fence is a 'boundary settlement,' the Coastal Commission has no authority to require a permit and thus lacks jurisdiction over the fence."

The Coastal Commission argued § 30416, subdivision (c), applied only to "the setting of boundaries, and not to physical development in the coastal zone," and the Commission noted it was not a party to the 1988 agreement.

But the Second District maintained the fence merely was part of the boundary settlement, and, "The Coastal Commission has no statutory authority over the 'setting of a boundary' or settling boundary disputes." Justice Boren continued, "[T]he Legislature has specifically carved out § 30416, subdivision (c), as an exception from the otherwise expansive coverage of the Coastal Act."

The appellate panel ordered the Coastal Commission to vacate its permit denial and declared the Commission lacks jurisdiction. ■

■ The Case:
Burke v. California Coastal Commission, No. B207188, 08 C.D.O.S. 14666. Filed December 1, 2008.

■ The Lawyers:
For Burke: J. David Breemer, Pacific Legal Foundation, (916) 419-7111.
For the Commission: John Saurenman, (213) 897-2000.

clean air act

Riverside County Project Opponents Kicked Out Of 'Inappropriate Forum'

A challenge to a large power plant in western Riverside County has been rejected by the Ninth U.S. Circuit Court of Appeals, which ruled that the plaintiffs could not contest the project in federal district court.

Romoland School District, two environmental justice groups, a collection of labor unions and two residents sued the Inland Empire Energy Center (a subsidiary of General Electric) and the South Coast Air Quality Management District to block the 810-megawatt, gas-fired power plant in an unincorporated area south of Perris. The project won approval as a 670-megawatt plant from the air district and the California Energy Commission in 2003. The Commission in 2005 approved a modified project that increased power output to 810 megawatts through the use of better turbines.

In April 2006, the school district and other project proponents filed suit in U.S. District Court for the Central District of California. They argued the power plant violated the Clean Air Act's "new source review" provisions because the project received emissions credits for which it was not eligible, and because the plant would emit more fine particulate matter than permitted by an air district rule. Their concern was that air pollution from the power plant could harm the health of children at Romoland Elementary School, located 1,100 feet from the project site. They sought an injunction to halt the project and civil penalties from Inland Empire Energy Center (IEEC) and the air district.

District Court Judge Ronald Lew rejected the requested preliminary injunction and in August 2006 dismissed the two causes of action against the IEEC. Later that year, District Judge Andrew Guilford dismissed the two causes of action against the air district at the request of the plaintiffs, who wanted to move to the appellate court level.

The primary issue at the Ninth Circuit was whether the district court could consider the legal challenge, as Judge Lew dismissed the case for lack of jurisdiction. The plaintiffs argued their suit was brought under the citizen suit provisions of the Clean Air Act's Title I, which concerns new source reviews and other preconstruction requirements. However, the IEEC and South Coast argued the suit was really a challenge under Title V, which concerns permitting schemes such as the one the air district employed here. The two different portions of the Clean Air Act provide different avenues to court. Challenging a permit issued according to Title V requires an appeal to the Environmental Protection Agency administrator, and then judicial review beginning at the circuit court level. The plaintiffs in this case had a Title V challenge that the district court properly dismissed, the Ninth Circuit determined.

"We do not opine upon the general contours or scope of the citizen suit provision of 42 U.S.C. 7604," Judge Ronald Gould wrote for the three-judge Ninth Circuit panel, referring to a portion of the Clean Air Act. "We hold only that where a state or local air pollution control district has integrated preconstruction requirements of Title I within the permitting requirements of Title V and a permit is issued under that integrated system, a claim that the terms of that permit are inconsistent with other requirements of the Clean Air Act may only be brought in accordance with the judicial review procedures authorized by Title V of that Act, 42 U.S.C. § 7661-7661f, and may not be brought in federal district court under the Act's citizen suit provisions, 42 U.S.C. § 7604. Because plaintiffs' action was brought in an inappropriate forum under an inapplicable CAA [Clean Air Act] provision in an untimely avenue of protest, the district court was without jurisdiction to hear it."

In a concurring opinion, Judge J. Clifford Wallace wrote that he agreed with the outcome of the case but said the Ninth Circuit should not have considered the appeal because the plaintiffs voluntarily dismissed their case against the air district.

Construction of the power plant finished last year and the plant is now in the testing stage. ■

■ The Case:
Romoland School District v. Inland Empire Energy Center, LLC, No. 08 C.D.O.S. 14167, 2008 DJDAR 17047. Filed November 18, 2008.

■ The Lawyers:
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central valley

Air District's Dairy Rules Rejected For Lack Of Public Health Analysis

A San Joaquin Valley Unified Air Pollution Control District permitting process for dairies has been rejected by the Fifth District Court of Appeal because the district did not conduct an adequate assessment of public health impacts.

The decision marks a significant victory for environmental justice advocates and clean air supporters in the San Joaquin Valley who argue the air district has not done enough to regulate air pollution from the region's large-scale dairies. They insist dairy operators should alter feed, better manage animal waste and even house livestock indoors so that emissions may be captured.

In 2003, state lawmakers approved a series of bills intended to force improvements to the San Joaquin Valley's deteriorating air quality. Specifically, SB 700 (Florez) eliminated agriculture's exemption from air quality regulations and required the air district to adopt and implement a rule requiring confined animal facilities to reduce the emission of air contaminants. The district followed up by adopting Rule 4570, which established a permitting process for large confined animal facilities – essentially dairies. The rule called for controlling emission of volatile organic compounds (VOCs), a precursor to ozone, with various management practices.

The group Association of Irritated Residents (AIR) sued, arguing the district failed to perform a health effects analysis of the permitting process, failed to address ammonia and other air pollutants, and failed to adopt a rule actually reducing VOC emissions. Several large dairy organizations intervened in the lawsuit on behalf of the air district, and Fresno County Superior Court Judge D. Tyler Tharpe ruled against AIR. The Fifth District overturned the ruling, finding a necessary public health assessment to be completely missing.

The air district and dairy organizations pointed to a district staff report and estimates of how many tons per year of VOC the permitting process would reduce. The court was unmoved.

"If the goal is healthier air, the district has not shown whether it has taken steps toward reaching that goal," Acting Presiding Justice Rebecca Wiseman wrote for the unanimous three-judge panel of the Fifth District. "For example, the district claims that rule 4570 will reduce VOCs by 7,563 tons per year; however, it makes no statement about how this will impact public health concerns.

"The report discusses how much the changes in feed and waste management will cost facilities and identifies a number of possible controls which have been rejected because of higher cost. If costs are going to justify mandating lesser controls instead of tougher ones, the public is entitled to know what the cost of this decision will be to public health," Wiseman continued. "If the available science is insufficient to justify more expensive, tougher environmental controls, the public is entitled to know this as well."

The court rejected AIR's other contentions, including the argument that the district must regulate dairy ammonia emissions. The 2003 legislation was intended to address ozone and ozone precursors and not all air pollutants from agriculture, the court ruled. ■

- The Case:
  Association of Irritated Residents v. San Joaquin Valley Unified Air Pollution Control District, No. F053956, 08 C.D.O.S. 14250, 2008 DJDAR 17107. Filed November 19, 2008.
- The Lawyers:
  For AIR: Luke Cole, Center on Race, Poverty & the Environment, (415) 346-4179.
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  For the dairies: David Cranston, Greenberg, Glusker, Fields, Claman & Machtinger, (310) 553-3610.

inbrief

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onstrates the tension between regional needs and local desires. The site is 61.5 acres formerly owned by the Navy and currently zoned by the City of Los Angeles for single-family houses. But the Southern California Association of Governments, the local Chamber of Commerce and other groups have backed the much more intensive development sought by Bisno, who proposed 1,950 condominiums and townhouses and a smattering of retail uses (see *CP&DR Local Watch*, October 2007). Backers say building single-family homes would waste an infill development opportunity within two miles of the Port of Los Angeles, the region's largest job center.

Still, the project hit a buzz-saw of opposition from local residents complaining about the already congested conditions along the adjacent South Western Avenue and from Councilwoman Janice Hahn. The new development team intends to conduct focus groups to determine what level of development the community might accept.

Madera County has been slammed with multiple lawsuits after approving two large projects in Rio Mesa, a designated growth area north of Fresno.

Fresno County, two environmental groups and the San Joaquin River Parkway and Conservation Trust filed a total of three lawsuits over a 3,000-unit development to the north and west of Millerton Lake. Fresno County's concern is traffic, while the other organizations say Madera County has not done enough to protect the San Joaquin River and endangered species habitat.

Meanwhile, the Chawanakee Unified School District sued over the 5,200-unit Tesoro Viejo project along Highway 41. The district argues the project violates the Rio Mesa area plan because the county did not ensure developers provide adequate money to fund new schools. The district contends it needs an additional $100 million to build schools.

Madera County has tried to encourage growth in the 15,000-acre Rio Mesa area since the 1990s, but financing problems, environmental concerns and water issues have so far prevented most development (see *CP&DR In Brief*, August 2006; *Local Watch*, May 2004). ■

Peripheral Canal Returns From Political Graveyard

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move more and be willing to look at options."

The reasons for panic are plentiful:

• In December, the U.S. Fish & Wildlife Service enacted new rules to protect the endangered Delta smelt. The complex web of rules would maintain the 25% to 30% reduction in water pumping from the Delta that was originally ordered in 2007 by federal District Court Oliver Wanger, who rejected the Service's 2005 biological opinion that State Water Project (SWP) and Central Valley Project (CVP) pumping from the Delta does not harm the endangered fish. The new rules could impose even greater cutbacks during drought years.

• The chances of catastrophic and multiple levee failures caused by flooding, earthquake or rising sea level appear greater than estimated only a few years ago. According to the PPIC, an island in the heart of the Delta has a 99% chance of inundation by 2100. Catastrophic levee failures could halt pumping from the Delta for months or even years.

• In January, the National Marine Fisheries Service unveiled a draft report that concludes salmon, steelhead and sturgeon cannot survive current water management conditions. When the report becomes final in March, it could force major changes in Delta water management based on Endangered Species Act mandates.

• Although late season rain and snow could still fall, it appears California is in the midst of its third consecutive drought year. Reservoirs are only one-third full. The SWP and CVP may provide as little as 10% to 15% of allocations this year. Such low deliveries could cost the Central Valley tens of thousands of jobs. The Metropolitan Water District of Southern California has announced there is a 50% chance it will ration water this year.

"There is no time to waste," concluded the Delta Vision Committee, "and we must accelerate implementation of near-term fundamental actions. Additional delay will only compound the risk to the state and its citizens."

Assemblyman Jared Huffman (D-San Rafael), chairman of the Assembly Water, Parks and Wildlife Committee, said the Delta Vision implementation report has teed up the issues that lawmakers must decide. "I don't know if it will happen this year, but this is the two-year-long session to get it done. This issue is here and now," said Huffman, whose AB 39 would implement the Delta Vision report.

The Delta Vision report was prepared by five cabinet secretaries. It followed up on a governor's blue ribbon task force that examined the issues for two years and made a series of recommendations. Initially, Resources Agency Secretary Mike Chrisman said the administration could implement the report's recommendations – including construction of a peripheral canal – without the Legislature's consent. Chrisman appears to have since backed away from that position.

"In the real world," responded Huffman, "all the things that are going to have to happen for a canal to work are going to require broad consensus."

Reaching consensus on the peripheral canal has proven impossible. In 1982, 62.7% of voters rejected Proposition 9, which proposed construction of a canal from the Sacramento River to the California Aqueduct south of the Delta. Voters in Northern California saw the peripheral canal as an evil attempt to take "their" water and ruin the Delta, while Southern California voters saw a way to provide water reliability. About 60% of Southern California voters backed Proposition 9, which was not enough to offset the 90% to 95% of voters in most Northern California counties who said no, according to Wesley Hussey, assistant professor of government at California State University, Sacramento.

"The politics need to remove the mostly north-versus-south connotations of the canal," Hussey said. "The whole state needs to have some change."

The Nature Conservancy's endorsement of a peripheral canal could help turn the political tide. Anthony Saracino, California water program director for The Nature Conservancy, said nearly everyone's understanding of the Delta ecosystem has evolved since 1982. Saracino noted that his organization has not received substantial criticism since it issued a Delta conservation strategy endorsing a canal.

"Moving water through the Delta for export is not only not a natural situation, it is one of the reasons the ecosystem is failing," Saracino said. "We need to do something to restore more natural flows."

The peripheral canal "for 20 years was off the table," said PPIC's Hanak. "It stayed off the table until we started to talk about two years ago in our report." She agreed with Saracino that a canal could be beneficial to the Delta's troubled fish because no longer would giant pumps alter the Delta's natural flows. But even without considering the fish, the current system of unstable levees poses significant water supply reliability problems, she said.

The Delta Vision Committee recommended a dual water conveyance system. One canal would bypass the Delta entirely, while the other would run through the Delta, providing water for environmental purposes at important times for wildlife and fish.

Not everyone is on board. In a commentary for the *Sacramento Bee*, Pacific Institute President Peter Gleick, one of the state's leading water policy analysts, wrote: "Given the enormous unknowns about the actual costs, benefits, design, rules for operation and impacts, it is grossly premature to take a position either in favor of or in opposition to, the peripheral canal."

Delta farmers oppose a peripheral canal because they fear it would doom their way of life. Others have criticized the Delta Vision Committee for backing a canal while delaying a recommendation on exactly who should operate the canal. Indeed, the governance question may be the stickiest of all.

"Anytime you work on water issues, on any big issues, there has be some element of trust," said Rita Schmidt Sudman, who heads the Water Education Foundation. "If we did have some kind of conveyance facility, how would it be governed? Whose hand would be on the tiller?" Until those questions are answered, it may be difficult to get consensus for a peripheral canal, she observed.

Hanak pointed to PPIC reports urging the state to first establish a governance and financing system, and then to begin making broad decisions. But one of those decisions, she said, should be to build a peripheral canal with flexible operating abilities.

"You can't know everything before you make a strategic decision on this," Hanak said. "It's our feeling that we have enough information to make decisions about water policy." ■

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Delta Vision: http://deltavision.ca.gov/
PPIC water reports: www.ppic.org/main/policyarea.asp?i=15

places

MORRIS NEWMAN

Uptown Oakland Plan More Interesting Than You Think

Should housing be exciting? Before I answer, let me tell a little story…

"I've heard that one before," interrupts my wife gently but firmly enough to imply, "once was enough, dear." As my middle-aged ego shakes off this dousing in cold water, I wonder if, indeed, I have become a teensy bit, well, you know, dull. Despite all my good qualities – my avuncular personality, my eagerness to talk about the Golden Age of Television, my collection of old cardigans – I suspect people have begun to think me a trifle tedious.

In contrast, there is nothing dull, at least to me, about Uptown Oakland, a 2,600-unit housing development filling 14 acres in the East Bay city. The rentals include lofts, student units and affordable apartments in mostly low-rise units. Market-rate condos, meanwhile, await construction in mid- to high-rise towers. The master plan, designed by MVE & Partners in association with Calthorpe Associates, is highly sensitive to the site.

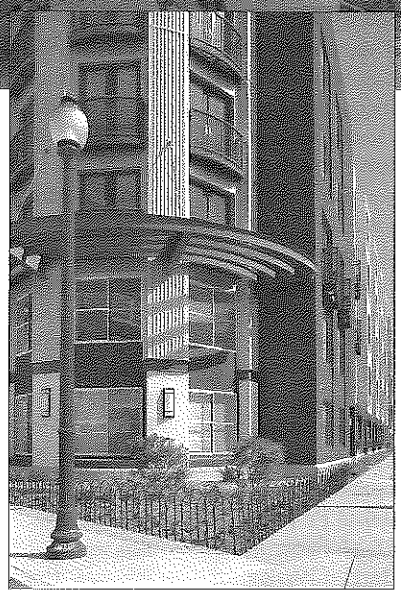
An under-used area of parking lots and light industrial buildings becomes a coherent and walkable residential district with this plan. The low-rise context of the apartment buildings makes the new neighborhood match the low-rise scale of surrounding buildings; the planners concentrated the high-rise part of the plan in the northeast corner, along Telegraph Avenue, where new tall buildings will harmonize with those of nearby high-rise office buildings. A $75 million subsidy from the City of Oakland helped make the project feasible for the developers, the California office of New York's Forest City Development and MacFarlane Partners of San Francisco. (To date, three buildings, or less than half the full project, have reached completion.)

Still, for a non-housing-enthusiast, this plan may not seem that exciting. It is not as exhilarating as something cooked up by architects like Zaha Hadid or (heaven forbid) Daniel Libeskind. Maybe housing is not supposed to be exciting in such an extroverted way. I mean, do you really want to come home after a long day of work in the federal center in Oakland to a giant piece of origami?

So what could be exciting here? For impatient readers, here's the big takeaway: Uptown Oakland is innovative, in large part, for using courtyard housing to fill most of an urban district. The use of courtyards has at least two big benefits. Although this type of unit is still rare in the multifamily industry, courtyard buildings provide arguably the most desirable form of rental housing. The individual units are essentially townhouses, each with its own front and back door. Those doors open the dwelling to far more natural light and breezes than are available in the dormitory-like slabs that we have come to accept as housing in our society. In those dreary units, natural light comes from a single wall, unless you are lucky enough to get a corner unit with two window walls. The units are hot, claustrophobia-inducing, poorly ventilated, dark and depressing. Architects call these kinds of units "stacked flats," a name that evokes the industrial soullessness of this manner of warehousing human beings. "Hey, this land is valuable! Stack up the folks like cordwood." (Indescribably boring.)

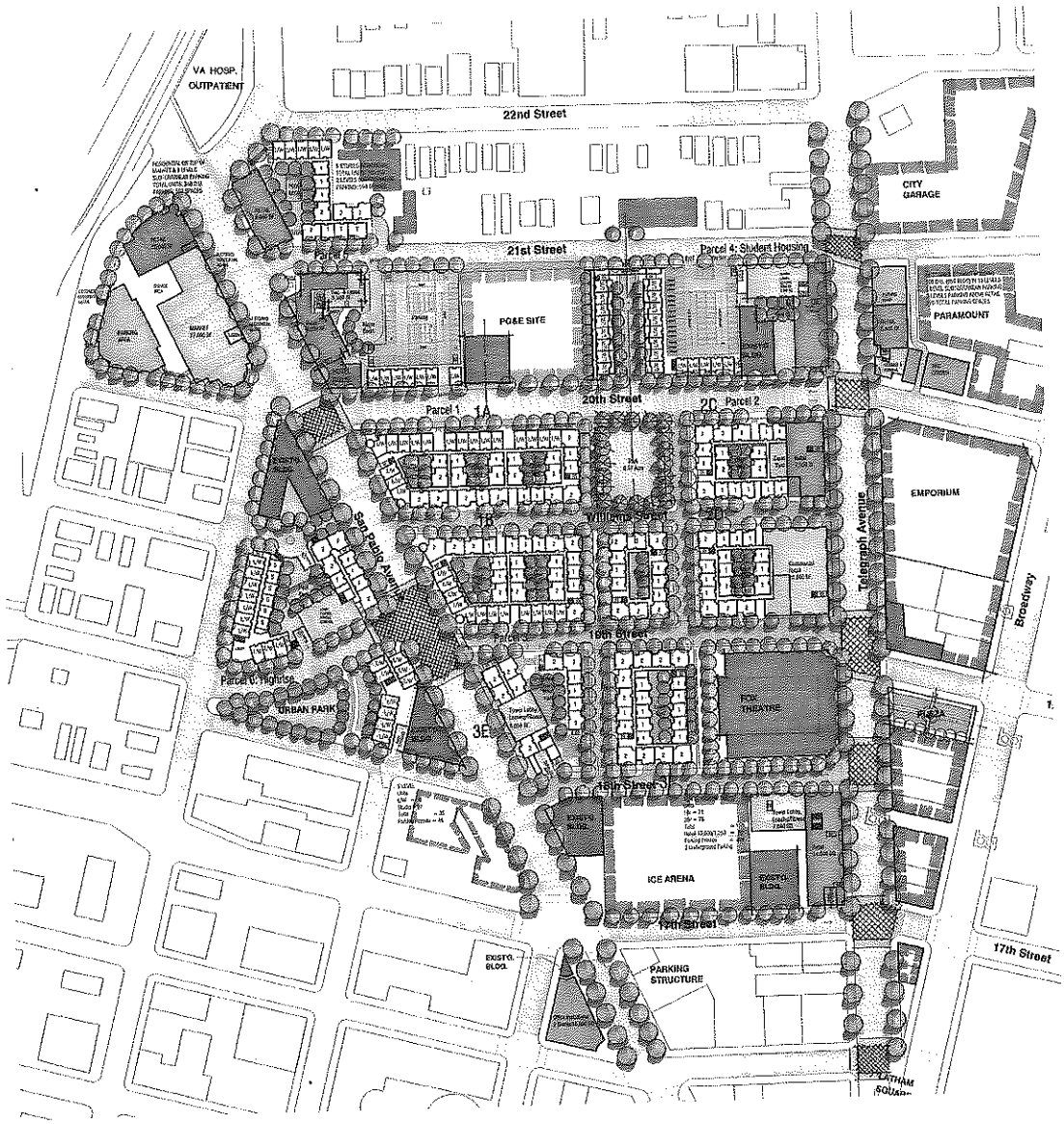
Courtyards add a further advantage to townhouses, which is the garden-like area in the center, typically fitted with a fountain. It is a protective space that adds both to sociability and defensibility. The planned, landscaped courtyard is the opposite, philosophically and socially, of the dead, concrete center of the square housing doughnuts that some developers have the nerve to call courtyards. This is where swimming pools are located in many apartment complexes, unless the housing is affordable, in which case there is nothing but two or three dying trees in planters and some plastic furniture. (Not so exciting.)

SOURCE: MVE & PARTNERS, AND CALTHORPE ASSOCIATES



The plan for Uptown Oakland fills the site with dense housing (above) and some classic Bay Area touches (left).

Courtyards are also great tools in urban design, a topic that non-experts consider just slightly more interesting than cleaning fish. Stay with me on this one: In redeveloping a somewhat featureless section of downtown Oakland, courtyards



The Uptown Oakland master plan attempts to bring a coherent street scene and connectivity to a long-neglected part of town.

organize and unify the site by creating coherent street fronts. When completed, courtyard buildings will help establish a coherent urban scene around the historic Fox Theater on Telegraph Avenue, which is finally slated for renovation.

I like courtyards so much, in fact, that I wish that some other fragmentary clumps of rentals units on the plan could be rearranged in doughnut form. At 18th and San Pablo Avenue, on the lower left-hand side of the plan, some units that stand on a triangular block would be vastly improved by becoming a courtyard in the shape of a wedge-like "flatiron" building. Beyond its dramatic shape, this building would mark the meeting of two different downtown grids. (Flatiron buildings: Definitely not boring.)

The Oakland Uptown plan also rates high for integrating the streets into the pedestrian life of the city, while providing east-west connections between the two main corridors in the area: Telegraph and San Pablo avenues.

One question mark, however, is the square public plaza, proposed in the upper center of the plan. While open space is clearly welcome amid the dense forest of housing (and required by the city, in this case), the plaza looks a little large for the site. Large, flat plazas are rarely attractive. Time will tell whether this mid-block location will attract the kind of foot traffic needed to fill up the plaza with enough people, the one indispensable type of park furniture, to make the open space seem safe and comfortable. So this park is neither boring nor exciting – yet.

With two BART stations nearby, Uptown Oakland looks like an attractive place to live and commute in the Bay Area. It may not have enough sizzle to make it into Wallpaper or Dwell or some other trend-mongering magazine. A lack of external excitement does not always mean that you are boring, however. As I was telling my wife the other day, when putting on my newest cardigan – the nice maroon one, you know, from Sweden… ■

Insight

WILLIAM FULTON

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California is a state filled with overgrown suburban development that is struggling with how to become more urban in a good way without falling into the trap of urban decay that befell so many other states.

The Obama approach to transportation is especially important to California because of the state's own fiscal crisis. Gov. Arnold Schwarzenegger has halted virtually all capital projects, including transportation projects (though he is simultaneously seeking to streamline environmental review on several big projects).

In the short term, the state's politicians are lobbying hard for some of Obama's federal stimulus money to pay for these transportation projects. But in the long run, Obama will have to decide how he wants to reshape federal transportation policy, especially in light of the climate change issue. And California will have to decide whether to simply go for the pork or try to use the transportation money to leverage a lot of change in the state's growth patterns. Congress will be reauthorizing the transportation bill this year, and Obama will face tough decisions about where future funding will come from and whether to cave in to the pavement crowd.

Obama is a deft big-tent politician who knows how to appeal to vastly different constituencies. He's from the South Side of Chicago, but he's vastly popular in California among environmentalists, social liberals, and other typical Blue State types. His ambition appears to be to bridge traditional divides among housing and urban policy, transportation, and environmental protection – all of which play an important role in shaping California's growth patterns.

Urban policy, focused around the Department of Housing & Urban Development (HUD), has traditionally had a largely African-American constituency. Indeed, up until the 1990s HUD was usually the Cabinet slot occupied by an African-American. Obama is clearly comfortable in this world. Both affordable housing and market-rate development – whether created by nonprofits or for-profit developers – has been a stable of political power on the South Side for decades.

By contrast, the Department of Transportation has traditionally served a largely suburban and rural constituency, driven by pork-barrel politics and the need to spread around vast transportation dollars. And environmental protection – split between the Environmental Protection Agency, the Interior Department, and a few other agencies – catered to a largely suburban, white, middle-class constituency interested in clean air, clean water, and open spaces. Obama does not connect as easily to such constituencies, but his appeal among liberal suburbanites is very strong. In the election, he polled surprisingly well among moderate Democratic voters in Western states such as Montana.

Obama has made several moves that would suggest he is serious about integrating all these areas of policy – but it's not clear whether he can really do it. Perhaps the most significant move was creating a White House Office of Urban Policy, designed to coordinate all federal policy associated with cities. The question is whether the White House will view urban policy only in terms of central cities – the traditional "HUD cities model" so deeply embedded on the South Side – or whether Obama's administration will take a more expansive view and include cities, suburbs, and large-scale metropolitan issues in this mix.

At HUD, Obama – who has a unique luxury in this regard – has followed recent practice and appointed somebody who is not African-American, Shaun Donovan, as secretary. Donovan has an impressive pedigree (he completed the Kennedy School/Graduate School of Design master's combo at Harvard) as well as a stellar record as housing director in New York City. He's also eloquent and even moving on big-picture urban issues, such as equal opportunity for all segments of society. The question is whether Donovan can marry HUD's traditional agenda – housing for the poor and some aspects of housing finance – with larger issues associated with growth and development.

On many garden-variety environmental issues, such as air, water, and open space, Obama can probably be relied upon to follow a traditional Democratic line. It is not clear whether his interior secretary, Ken Salazar of Colorado, or his agriculture secretary, Tom Vlasick of Iowa, grasp the significance of federal landholdings in shaping metropolitan growth, especially in the West.

But the Department of Transportation likely holds the key to the Obama metropolitan growth strategy. Nothing the federal government does affects overall growth patterns more than how and where transportation money is spent. Highway funds can be used for greenfield projects or vital urban connectors; overall, money can be spent on highways or transit or other things.

Obama surprised everybody by appointing Ray LaHood, a Republican congressman from downstate Illinois, as Transportation Secretary. The conventional wisdom is that LaHood is not good news for smart growth, especially when compared with candidates such as U.S. Rep. Earl Blumenauer of Portland and Steve Heminger, head of the Metropolitan Transportation Commission in the Bay Area, whose names were being bandied about until the last minute.

On the stimulus package, smart growth advocates are arguing that the money will generate more prosperity if it is targeted to support compact urban development patterns (see Smart Growth America's "Transportation for America" campaign. http://www.smartgrowthamerica.org/transportation.html) They're likely to lose that battle, because Obama has already promised money for "shovel-ready" projects – and any attempt to deny or slow down those funds based on smart growth criteria is likely to be met with a lot of opposition, given the state of the economy.

In the long run, however, Obama's probably going to have to come up with federal transportation formulas that jibe more than ever with environmental, as well as economic, policy. Current policies requiring conformity with the Clean Air Act have not been of great significance – but if Obama pushes for a climate change bill that restricts greenhouse gas emissions, then he'll have to move past pork and use at least some smart growth criteria to dole out federal funds.

That is, of course, if any federal funds are available. The Highway Trust Fund is virtually broke, and one of the tasks of the new administration is to figure out a way to fund it in the future – an increased gas tax, a vehicle miles traveled tax, a tax related to carbon emissions, or something. The betting here is that Obama will be bold: He'll go for a whole new kind of tax that will drive more transportation dollars into smart growth and infill projects. At that point, California will have a choice: keep pushing for pork, or lead the way on growth in the same way that the state is leading the way on climate change. ■