CP&DR

CALIFORNIA PLANNING & DEVELOPMENT REPORT VOL. 24, NO. 1 – JANUARY 2009

Proposals to extend the life of redevelopment project areas for as long as 40 years continue to float around the state Capitol as part of a budget-balancing package. Local redevelopment agencies or some other entity would issue tax-increment bonds based on future revenues, and the state would get a chunk of the proceeds to help offset the budget deficit. In exchange, redevelopment agencies could continue implementing redevelopment plans and receiving tax increment without having to make legal findings that blight still exists.

Although a detailed, written proposal for the redevelopment extension has not surfaced, the California State Association of Counties (CSAC) has already gone on the defensive. In a December 16 letter to Gov. Schwarzenegger, CSAC called the proposal both "legally questionable" and ineffective, because most tax increment is diverted from school districts and the state is obligated to backfill the lost revenue. "Counties simply cannot afford to continue involuntarily contributing to redevelopment activities beyond their statutory deadlines," the CSAC letter states.

in brief

One potential supporter of a redevelopment extension is the City of Industry, where developer Ed Roski Jr. has proposed a 560-acre project on city-owned land that would include a pro football stadium, a shopping mall and entertainment district, and 1.5 million square feet of offices (see *CP&DR Places*, June 2008). Last year, Industry sponsored legislation that would have allowed it to continue redevelopment activities for an additional 10 years without renewed blight findings (see *CP&DR In Brief*, May 2008). Although the city denied it, the bill was largely seen as a vehicle for football stadium financing. The bill died without a hearing.

Now, Industry has called a special election for January 20 at which the city's 82 registered voters will decide on a proposed $500 million general obligation bond that would provide the infrastructure for Roski's project. Also on the ballot are proposals to tax tickets and parking at entertainment venues, creation of a municipal electric utility, authorization for the city to award public works contracts without competitive bidding, and a measure that would prohibit people who live other than in permanent residences from voting in the city.

The Auburn Dam died an official death in December, – CONTINUED ON PAGE 2

Solar, Wind Proposals Proliferate

Counties, State Weigh Alternative Power Plant Plans

BY PAUL SHIGLEY

There is a new gold rush in California. Rather than extracting minerals from the ground, the new prospectors are hoping to exploit California's abundant sunshine and wind.

From the southern Cascade Mountains of far northern California to the desert along the Mexico border, utilities, start-up companies and entrepreneurs are proposing scores of large-scale solar thermal, photovoltaic and wind projects to generate electricity. So far, very little has actually gotten approved or built, but many projects are in the planning pipeline at the California Energy Commission, the Bureau of Land Management (BLM) and individual counties.

The projects come in response to concern over climate change and the long-term price of oil and natural gas, and in response to a state law that requires utilities to provide 20% of electricity from renewable sources by 2010, as well as Gov. Schwarzenegger's executive order demanding that one-third of electricity come from renewable sources by 2020. Currently, about 12% of the state's power comes from renewables.

While almost no one is questioning the push for renewable energy, questions have begun to arise about the projects. Large-scale solar projects require huge tracts of land – roughly 6 acres per megawatt – and solar thermal projects need approximately 1 acre-foot of water – CONTINUED ON PAGE 15

Air Board Decision Places Even More Focus On SB 375 Process and Appointments

insight WILLIAM FULTON

Five million metric tons of carbon dioxide equivalent.

This is the target – at least for now – that is likely to drive "smart growth"-style land use planning in California over the next few years. It's the tentative reduction target that the California Air Resources Board has assigned to the land use sector in order to help meet the state's greenhouse gas (GHG) emissions reduction goals by 2020.

CARB adopted the target in its AB 32 "Climate Change Scoping Plan" in mid-December.

First, it's not a very large percentage of the overall statewide reduction target of 174 million metric tons of carbon dioxide equivalent (MMTCO2E).

Second, it's not nearly what – CONTINUED ON PAGE 16

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inbrief

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when the State Water Resources Control Board revoked the U.S. Bureau of Reclamation's rights to 2.5 million acre-feet of water per year from the American River.

The board and state law require water rights holders to put water to beneficial use. But with the dam stalled since 1975 and no prospect for resuming construction, the board concluded it had little choice but to take back the water rights. The City of Sacramento and San Joaquin County have already filed applications to gain rights to the water.

Congress authorized the 680-foot-tall dam in 1965, and site work just south of Auburn began in 1967. An earthquake on a fault that runs directly under the dam site forced construction to a halt in 1975. As environmental concerns and estimated costs – they eventually approached $10 billion – rose, the project lost momentum and construction never resumed despite downstream flood concerns and the need for water (see *CP&DR Environment Watch*, August 2006, September 2002).

Also dying in December was a proposal to extend Orange County's Foothill South toll road through San Onofre State Beach.

In early 2008, the California Coastal Commission rejected the Orange County Transportation Corridor Agency's plan to build the freeway through the state park because of potential impacts to coastal resources and environmentally sensitive habitat. Using the federal Coastal Zone Management Act, the agency appealed that decision to the federal Commerce Department.

However, federal officials declined to override the Coastal Commission. A 28-page decision prepared by the National Oceanic and Atmospheric Administration found that there is at least one alternative route for the six-lane toll road and that the road is not necessary for national security. (The decision is available at www.noaanews.noaa.gov/stories2008/images/TCA%20decision.pdf.)

The transportation agency vowed to continue fighting for the toll road, likely in the courthouse.

A plan to remove hundreds of structures and rebuild 125 acres in the heart of Baldwin Park appears to have died with Bisno Development's announcement that it was pulling out of the project because of the sour economy.

The plan called for Bisno to fund the Baldwin Park Redevelopment Agency's acquisition of residential and commercial properties. The agency would then turn over the real estate to Bisno for development of up to 8,000 housing units, nearly 4 million square feet of commercial, retail and entertainment uses, and public projects such as a promenade, a lagoon and a fancy Metrolink station. The project was extremely controversial because of its potential to displace about 100 households and 300 businesses (see *CP&DR Redevelopment Watch*, May 2008). City officials say other developers are interested in a smaller version of the project. ■

from www.cp-dr.com

Implementation of AB 32 – California's greenhouse gas emissions reductions law – along with its progeny SB 375 is proceeding apace. The Air Resources Board recently adopted an AB 32 scoping plan that places even more importance on the SB 375 process of setting regional emissions reductions targets, as Bill Fulton reports in this month's *Insight* column.

We've been following all of this closely on our website, www.cp-dr.com, where we continue to provide breaking news coverage and analysis. Rest assured that we will follow the AB 32 and SB 375 processes in the printed pages of *CP&DR*. But consider this to be a reminder that you'll get information faster, and with easy to follow links, on our website. We've even set up an SB 375 roundup page at www.cp-dr.com/node/2185 so that you don't have to hunt around.

In our blog at www.cp-dr.com/blog, you'll also find the following stories:

• **Getting The Infrastructure Package Right.** There is a big rush to throw billions of federal dollars at roads, bridges, public buildings and other infrastructure, in part to put people to work. But we wonder if there is any real planning behind the proposed expenditures that could affect the built environment for decades to come.

• **Stories Of The Year.** We named the top 10 land use stories from 2008. See if you agree with our list. If you don't let us know.

• **Downtown Napa.** The very high profile, and very costly, food and wine center that had the endorsement of Robert Mondavi and Julia Child has declared bankruptcy and closed its doors. Copia never drew the expected crowds of wine lovers and foodies, but the $80 million development just might have provided enough momentum to keep downtown Napa's revitalization going.

• **Social Ills And Redevelopment.** Does a Starbucks packed with urban pioneers have a chance when angry vagrants demanding money loom in the parking lot? It's a difficult, touchy question in Riverside, where one has the sense that the downtown could still tip in either direction. ■

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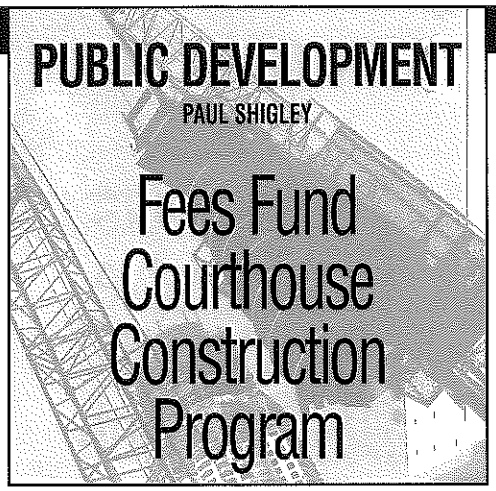
PUBLIC DEVELOPMENT

PAUL SHIGLEY

Fees Fund Courthouse Construction Program



Although gigantic state budget deficits are threatening to stall thousands of public works projects in California, one major effort appears to remain on track: Courthouse construction. The $5 billion program for replacing, rehabilitating or expanding 41 courthouses has its own funding source in the form of civil filing fees and criminal penalties.

Four projects – new courthouses in Los Angeles County, Chico, Red Bluff and Woodland – have been approved and authorized, and eight others have been approved by the state Judicial Council and await final Department of Finance authorization.

"California's courthouses are in a spiraling state of crisis," the state Judicial Council reported last year. "Many buildings which house California courts are in a critical state of disrepair and antiquated design. Inadequate security has created dangerous conditions that place children, jurors, witnesses, litigants, visitors and court employees at risk."

Legislation approved last year (SB 1407, Perata) authorized the issuance of $5 billion in lease-revenue bonds to be retired by new civil and criminal fees. The legislation increased numerous civil filing fees by $20 to $25, raised fees for motor vehicle license, registration or mechanical violations by $15, boosted traffic violator school fees $25, and imposed an assessment of $30 on each felony or misdemeanor conviction, and $35 on each infraction, including traffic offenses.

The construction program is a follow-up to the ongoing transfer of court facilities from counties to the state government. State lawmakers authorized the transfer in 2002, and court officials have been inspecting, reviewing and ranking the facilities for repair or replacement ever since, said Philip Carrizosa, a spokesman for the Administrative Office of the Courts.

"The counties are more than glad to get this off their budgets. As the counties had gotten more strapped financially, they had pretty much stopped taking care of the courthouses," Carrizosa said.

Although the state has taken possession of many of the 451 court facilities, it continues to negotiate with counties over some seismically questionable buildings. Essentially, the state is requiring the counties to accept liability should a future earthquake damage these facilities, Carrizosa explained. The state's negotiating position has eased, as several years ago it insisted counties bring facilities up to seismic safety standards before the state would accept the properties.

The Judicial Council estimates 90% of courthouse facilities need some level of improvement. The council and the Administrative Office of the Courts chose the 41 projects for the SB 1407 program based on security needs, the level of overcrowding, physical hazards and public access needs. After deciding on the projects, court officials prioritized them according to security needs, economic opportunity (such as low-cost land, contributions from local government and operational cost savings) and the need to replace or consolidate inefficient, disparate or small spaces.

In Red Bluff, for example, a new courthouse will replace five courtrooms that are spread out in four different buildings, a layout that is both inefficient and unsafe. In 1985, a judge was shot at, but not hit, while walking through an unsecured parking lot.

Red Bluff's five-courtroom, $78 million project is scheduled for completion by 2013, about the time the largest of the SB 1407 projects might get started – a $1.19 billion, 71-courtroom high rise in downtown San Diego. The new Central San Diego Courthouse will replace the existing courthouse and two other downtown facilities, said Ming Yim, director of court facilities for the San Diego County Superior Court.

Even though the existing downtown courthouse, which spans three blocks, is only 48 years old, it poses numerous security problems and is extremely expensive to maintain, Yim said. Because of asbestos in the ceiling, for example, jobs as minor as changing a light bulb require workers to don protective asbestos suits and block off areas with warning signs, he said. Plus, a fault runs right under the north tower of the existing building, which is likely to crumble in a large earthquake.

The new courthouse is proposed to fill a 200-foot-by-300-foot city block bordered by B and C streets to the north and south, and Front and Union streets to the east and west. The 17-story, 370-foot tall courthouse envisioned by Skidmore Owings & Merrill would replace a county building now located on the site. The Superior Court and the county continue to negotiate the transfer of the site, Yim said. The site is ideal because of its close proximity to the central jail, said Yim, who added, "The idea is that eventually we will tunnel [from the new courthouse] back to the central jail."

The Superior Court facility would connect via a new pedestrian plaza to a federal courthouse that is proposed only one block away (see *CP&DR Public Development*, December 2005). The $400 million federal courthouse project has been delayed several years, partly because contractors said the structure could not be built within the original $220 million budget. The new courthouses would be important parts of a downtown government district. Right across the street from the proposed state courthouse site, the City of San Diego is in the early planning stages for replacing its 1960's-era civic center.

Once the San Diego Superior Court gets the green light, construction of the new courthouse should take about seven years, Yim estimated. ■

SB 1407 Projects

Approved and Authorized

COURTHOUSE	$M
Woodland	173
Southeast Los Angeles	129
North Butte County	83
Red Bluff	78

Approved And Submitted to Department of Finance

COURTHOUSE	$M
Sacramento Criminal	549
Santa Rosa Criminal	240
Redding	212
Yuba City	105
Indio Juvenile and Family	84
El Centro Family	77
Lakeport	72
South Monterey County	66

■ Contacts:

Administrative Office of the Courts, Office of Court Construction and Management: http://www.courtinfo.ca.gov/programs/occm/

Ming Yim, San Diego County Superior Court, (619) 450-5700.

REDEVELOPMENT WATCH

PAUL SHIGLEY

Ins And Outs Of Affordable Residential Development

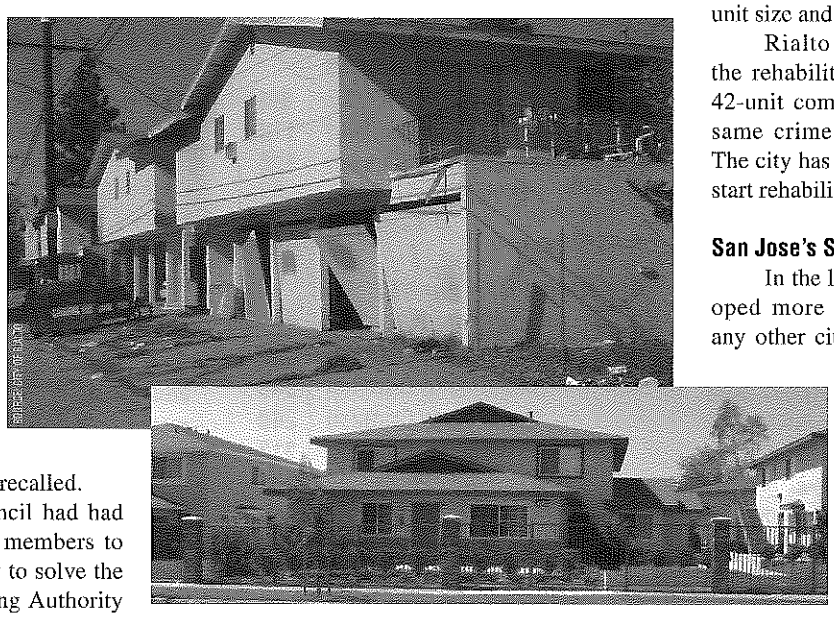
The development of affordable housing is inherently difficult. Projects typically require multiple funding sources, face neighborhood opposition, and are closely watched by both skeptics and state housing officials.

Yet California's need for additional affordable housing is undeniable, despite the crash in real estate prices. So *CP&DR* shares this look at three different projects to offer lessons for anyone involved in providing housing affordable to people of modest means: a crime-ridden, market-rate condominium complex that the Rialto Redevelopment Agency rehabilitated as affordable apartments; a new, eye-catching project in an industrial part of San Jose that serves 218 households making less than half of median income; and a project in Contra Costa County that overcame what appeared to be imminent failure.

Rialto Rehab

The Willow-Winchester condominiums were originally built during the late 1960s for first-time homebuyers. By the early 1990s, however, most of the 160 units had become rentals with absentee owners. Crime and drugs grew to be major problems, and the condo complex saw multiple homicides every year, said John Dutry, housing preservation specialist for the Rialto Redevelopment Agency.

"It was the worst crime area in Rialto. When we had calls for service, three police officers responded," Dutry recalled.



Rialto's troublesome Willow-Winchester condos (above) contrast with the rehabilitated units in Citrus Grove (below).

By 2004, the City Council had had enough and directed staff members to do whatever was necessary to solve the problem. The city's Housing Authority signed an agreement with the nonprofit National Community Renaissance (or National CORE) to revitalize Willow-Winchester, which would soon become Citrus Grove. At the time, about 120 of the 160 units were occupied, but only about 10 by condo owners. The Housing Authority began acquiring units quickly, as most owners were willing to sell. Acting as the Housing Authority board, the City Council approved use of eminent domain to acquire about a dozen units. All but two of the reluctant owners eventually settled and, by October 2005, the Housing Authority had control of all the units with National CORE as interim property manager.

The city then needed to empty the condo complex. The city evicted about 40 households because of nonpayment of rent or crime problems. The 10 owner-occupants were relocated, as were about seven renters. Everyone else vacated on their own terms, according to Dutry.

Construction started in the summer of 2006. Units were rehabilitated down to the studs, with the majority converted from two bedrooms and one bath, to three bedrooms and two baths. The city also demolished eight units to make space for a community learning center, which now houses a Head Start program, after school tutoring, day care, adult education and other services. Citrus Grove had its grand re-opening in October 2008.

"If you have the money and the will, you can make it happen. One of the secrets of the project was having the council 100% in support," said Dutry. He also credited National CORE for its expertise, as well the law firm of Stradling, Yocca, Carlson & Rauth for helping with rapid acquisition of units and the condemnation process.

The $37.6 million project had multiple funding sources: $7.8 million from the Proposition 48 housing bond, $8.2 million in tax credits, $14 million from the city redevelopment agency's affordable housing fund, $3 million from the HOME program, $2 million from the California Housing Finance Agency, and smaller contributions from other sources. Citrus Grove rents range from $351 to $864, depending on unit size and household income.

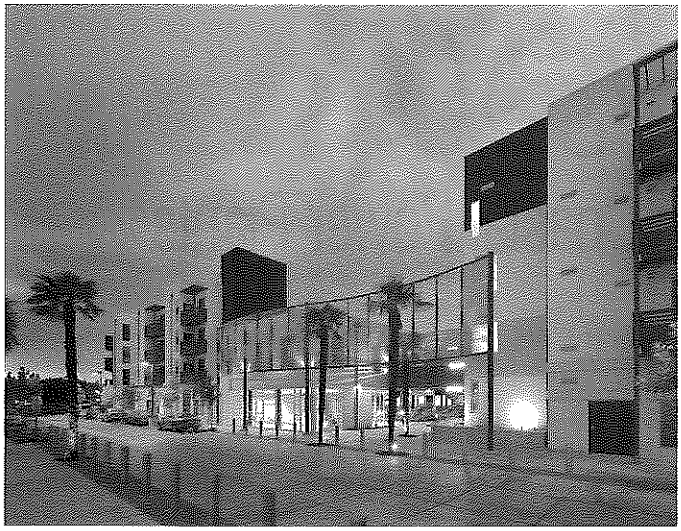
Rialto officials are now expanding the rehabilitation effort into a neighboring 42-unit complex that was slipping into the same crime trends as Willow-Winchester. The city has acquired the units and intends to start rehabilitation later this year.

San Jose's Senter

In the last 20 years, San Jose has developed more affordable housing units than any other city in the state, and possibly the country. The city's Housing Department has provided about 16,000 units since it was carved out of the San Jose Redevelopment Agency in 1988. Paseo Senter at Coyote Creek is one of the newest projects. Completed last summer, the project provides 66 units for households with incomes no more than 25% of median, and 152 units for households with incomes no more than 45% of median.

But the project, said San Jose Housing Director Leslye Krutko, has done more than simply provide shelter. The project has features that provide services to Paseo Senter tenants and neighboring residents, she said. Child care is offered on-site in addition to a Native American community and health center, a swimming pool and tot lot, and facilities for kin caregivers, after-school programs and educational classes.

In addition, the project was designed to link two disconnected sections of Wool Creek Drive. The new extension provides vehicular and pedestrian access to an elementary school. Previously, students had to walk along very busy Senter Road and through an industrial park to reach the school, explained Ron Eddow, a senior development officer with the Housing Department. The project also involved a land swap that resulted in creation of public open space along Coyote Creek.



SOURCE: VANTAGE POINT PHOTOGRAPHY, INC.

Paseo Senter provides a dramatic entrance.

Architects at David Baker + Partners gave Paseo Senter a modern design with apartments that wrap around a parking garage, shielding the parking facility from view and providing tenants with parking on the same floor as their unit. The project's bright, tropical colors and central walkway (or paseo) provide an atmosphere far from the drabness of many low-cost housing projects.

The city worked with Charities Housing Development Corporation and CORE Affordable Housing to develop the $80 million project. Financing sources numbered 13, including $32 million in low-income housing tax credits, $18.5 million from the Department of Housing and Community Development's multi-family housing program, $12.9 million from the Redevelopment Agency's housing fund, $1 million from a state fund for support services, and $1 million from the Santa Clara County Housing Trust Fund.

"This is very special about the project. This is a lot of different funding sources coming into one project," said Alina Kwak, an analyst with the Housing Department.

More than 3,000 people, including many Vietnamese families who already lived in the area, applied to live in Paseo Senter. Rents start at $260 a month, compared with an area median of about $1,500.

Bay Point Rescue

When the Contra Costa County Redevelopment Agency completed the 52-unit Bella Monte apartment complex in the fall of 2005, it was cause for celebration. Located on a former junk yard near Pittsburg in the poor, unincorporated community of Bay Point, Bella Monte was intended to bring decent housing and a measure of stability to a rough neighborhood.

The California Redevelopment Association named the North Broadway Neighborhood Revitalization Program – which includes the Bella Monte, 69 market-rate houses and infrastructure improvements – the winner of a 2007 award for community revitalization.

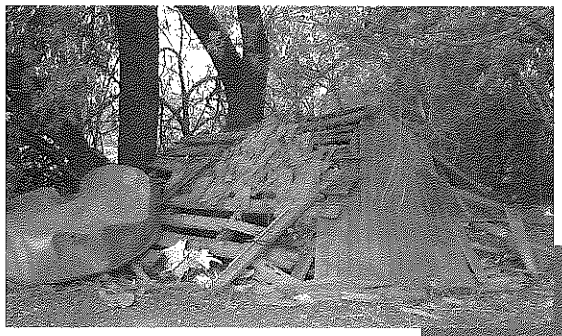
But things were going wrong. In less than a year's time, nearly half of Bella Monte's tenants moved out, most voluntarily. It was beginning to look like even an award-winning redevelopment project could not survive in Bay Point. The Redevelopment Agency was willing to do physical improvements to increase Bella Monte safety, but they were not going to improve the situation.

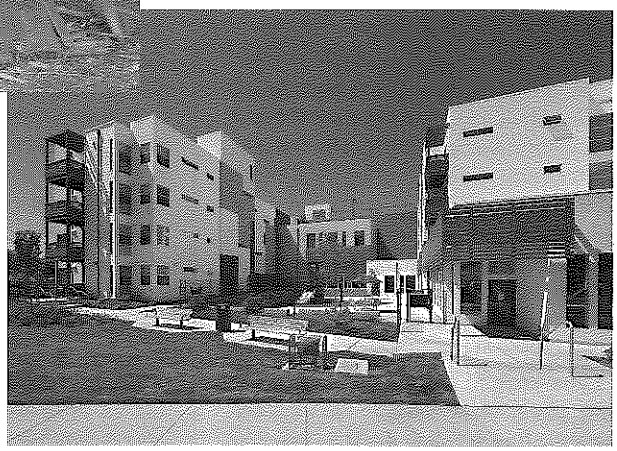
"The driver of our problem was a bar that was located across the street, and that had been both a code enforcement and law enforcement problem for many years," explained Jim Kennedy, the redevelopment agency's executive director. "It was bringing into the area a cast of characters that was spilling into the adjacent housing project."

The pool at Paseo Senter: Affordable housing or chic resort?

What the county and the Department of Alcoholic Beverage Control found, according to Kennedy, was that the owners of Grover's Bar were elderly people who seemed unaware that their establishment had become a haven for prostitution, drug-dealing and minors seeking easy access to booze. Facing stepped up enforcement, Grover's Bar closed in early 2008.

The bar's closure, plus a few Bella Monte property management improvements, have made all the difference, Kennedy said. The lesson is that ongoing management – which is easily overlooked – is probably the most important part of affordable housing development, he said. ■





Before and after: From a squatter's quarters to a four-story apartment complex at Paseo Senter.

CP&DR Legaldigest

Supreme Court Reviews Coastal Power Plants

Ruling Could Determine Whether Facilities Face Expensive Retooling

BY KENNETH JOST

WASHINGTON – Industry and environmental groups in California are awaiting a ruling from the U.S. Supreme Court that could determine how far the state's coastal power plants must go to reduce their fish-killing intake of ocean waters used to cool generating facilities.

The justices heard arguments on December 2 in the Bush administration's industry-backed effort to overturn a federal appeals court decision that bars the use of cost-benefit analysis to determine what power plants have to do to minimize their impact on fish and aquatic life. Environmentalists argue that a cost-benefit analysis violates the Clean Water Act's mandate that cooling-water intake structures employ the "best technology available" to reduce the fish-kills resulting from the use of river, bay or ocean waters for cooling purposes.

Environmental and industry groups in California filed friend-of-the-court briefs that took opposite sides on the legal question in the case: whether the Environmental Protection Agency (EPA) has discretion to use cost-benefit analysis in applying the statutory requirement contained in § 316(b) of the act. But the groups also disagree on the broader policy question whether the alternate cooling technologies available to minimize the collateral damage on aquatic life are needed at all and, if so, whether they are economically viable and logistically feasible.

The Supreme Court's ruling in *Entergy Corp. v. Riverkeeper, Inc.*, could have significant effects on the operations of the 19 electricity-generating plants that dot California's coastline and that environmentalists say take in 17 billion gallons of water a day. The California Supreme Court put on hold a challenge to operations of the Moss Landing power plant, sited at the midpoint of Monterey Bay, pending the U.S. Supreme Court's decision. (The California Supreme Court case is *Voices of the Wetlands v. State Water Resources Control Board*, No. H028021; see *CP&DR Legal Digest*, April, 2008, March 2008.)

The plants' use of water to cool generating facilities adversely affects the marine environment by killing fish and aquatic organisms in the water itself and then discharging the water as much as 40 degrees Fahrenheit hotter than the ambient water temperature. The existing "open cycle" or "once-through" cooling systems pass water through the facility once and then release most of it back to the body of water.

Environmentalists say the impact can be reduced by use of "closed cycle" systems that recirculate water through the facility several times or "dry cooling" systems that use air instead of water. Electric utilities say conversion to the alternate technologies is expensive – a particular problem for economically marginal, aging plants like many of those on California's coast that may be operated only for peak power demand instead of all the time.

The Supreme Court case stems from separate challenges filed by industry and environmental groups to rules adopted by the EPA in 2004 for existing power plants. "Phase I" rules adopted three years earlier generally require closed-cycle cooling systems for new plants. But the "Phase II" rules list closed-cycle systems only as one alternative for existing plants and allow permitting authorities to weigh costs and benefits in determining the system to be used.

Industry groups challenged the Phase II rules altogether, arguing that § 316(b) does not apply to existing power plants. At the same time, environmentalists – including the Hudson River advocacy group Riverkeeper – argued that the EPA had no discretion to use cost-benefit analysis in enforcing § 316(b).

The Second U.S. Circuit Court of Appeals rejected the industry's argument and agreed with environmentalists. The Supreme Court agreed to review the decision solely on the cost-benefit issue.

In urging the Supreme Court to reverse the decision, lawyers for the Bush administration and electric utilities argued that the "best technology available" requirement did not preclude the kind of cost-benefit analysis permitted by and routinely used to enforce other environmental statutes. "There is no reason to think Congress would want greater protection for fish through intake structures than for people through the discharge of pollutants," Deputy Solicitor General Daryl Joseffer told the justices.

Representing the environmental groups, Richard Lazarus, a Georgetown law professor currently visiting at Harvard Law School, said regulators could give some weight to costs in deciding what technology is "available" or in determining whether to grant a variance to a specific plant. But the statute prohibits the agency from making a direct cost-benefit comparison, he said. "It doesn't allow them to weigh one against the other," Lazarus said.

Lawyers for the administration encountered skeptical questioning from, among others, Justices David Souter and Anthony Kennedy. A cost-benefit analysis was inappropriate, Souter said, because "you're dealing with such incommensurables." Kennedy sharply challenged the government lawyer by depicting the "best available technology" requirement as "the most rigorous standard in the statute."

On his side, though, Lazarus had a difficult time fending off questions from, among others, Justices Stephen Breyer and Samuel Alito Jr., who both viewed it as difficult if not impossible to completely disregard costs in enforcing the law. "Of course, you take those things into account," Breyer said. Without some comparison, Breyer said, the law could lead to "insane results."

In California, Stanford law professor Deborah Sivas said the State Water Resources Control Board is considering rules to require closed cycle or other alternative cooling systems and some plants are moving to install alternate technologies. "Our fear is that even though you've started to see this trend on the California coast, it may reverse if the Supreme Court says you can use cost-

benefit analysis," she said. As director of Stanford's environmental law clinic, Sivas is representing the challengers in the Moss Landing case and filed an amicus brief in the *Riverkeeper* case.

But Robert Lucas, a consultant to the industry-backed California Council for Environmental and Economic Balance (CCEEB), said that the expense and practical difficulties of converting to closed-cycle cooling could force some plants either to close or go offline for long periods.

"If that financial viability test is not allowed and there is no other choice but to change over to closed cycle cooling, then people are playing a potentially reckless game with the stability of the California electrical grid," said Lucas, a Sacramento lawyer-lobbyist and onetime civil engineer.

A decision in the *Riverkeeper* case is due before the justices take their summer recess at the end of June. ■

- The Case:
  Entergy Corp. v. Riverkeeper, Inc., No. 07-588.
- The Lawyers:
  For the administration: Daryl Joseffer, Office of the Solicitor General, (202) 514-2217.
  For the industry: Maureen Mahoney, Latham & Watkins, (202) 637-2200.
  For the environmentalists: Richard Lazarus, Harvard Law School, (617) 495-1000.

Kenneth Jost, former editor of the Los Angeles Daily Journal, *is Supreme Court editor for* Congressional Quarterly *and* CQ Press.

water

Court Defers To City's Experts On SB 610 Study Methodology

BY PAUL SHIGLEY

Cities, counties and public water agencies have broad discretion over the way they conduct water supply assessments for development projects that rely on groundwater, the First District Court of Appeal has ruled.

The court upheld a water supply assessment (WSA) prepared by the City of Rohnert Park for a 1,000-acre area where 4,500 housing units and 5 million square feet of commercial space are planned. The unanimous appellate panel overturned a trial court judge, who rejected the WSA because the area studied was not entirely related to the relevant groundwater sub-basin.

The First District said that SB 610 – the 2001 law that clarified the need for water supply assessments – did not mandate a specific approach. "[T]he intent was to ensure that the local agencies take water supplies into account when considering new development. It was not to impose upon water suppliers the burden of undertaking a basin-wide analysis of past and future groundwater conditions every time a local agency proposes a new development project," the court ruled.

The decision is the first of its kind on how a government agency must prepare a water supply assessment under SB 610. The court's deferential approach is helpful to agencies, said Eric Robinson, a Kronick, Moskowitz, Tiedemann & Girard attorney who filed an amicus brief in the case on behalf of the League of California Cities and the California State Association of Counties.

"You don't want to get a court second-guessing groundwater experts. I think that rule goes beyond groundwater," Robinson said.

Stephen Kostka, an attorney for the developer in the case, said the ruling is important because the court treated the question of water supply assessment methodology as a factual one, rather than a legal one, and thus deferred to the city's experts. "Instead of treating it [water supply] as something that is decided in the abstract, you've got to consider the actual data," Kostka explained.

In an analysis of the First District decision, attorneys for the Nossaman law firm who did not participate in the case agreed the ruling is important because it provides "water suppliers with considerable discretion to adopt technical and practical approaches to evaluating the sufficiency of water supplies for new development."

Since 1999, Rohnert Park has sought to expand its city limits and urban growth boundary to accommodate 1,000 acres of new growth. A 2001 general plan update called for the growth. In January 2005, the city adopted a water supply assessment for all projects in the planned expansion area, which would be served by a city water system that relied primarily on groundwater. Among the projects was the 300-acre University Village, where developers propose about 1,600 housing units and 250,000 to 350,000 square feet of commercial space (see *CP&DR Public Development*, August 2006) and Brookfield Homes' 2,900-unit housing project. According to the WSA, there would be an adequate groundwater supply to meet the needs of the projects and others within a defined study area. The study estimated groundwater pumping would be about 7,350 acre-feet per year during 2025, a slight increase from recent levels but a decrease from historic amounts. Pumping 7,350 acre-feet of water from the ground each year is sustainable, according to the WSA.

A group called the OWL Foundation sued, arguing the WSA was invalid because the study area was insufficient. Sonoma County Superior Court Judge Knoel Owen agreed and tossed out the WSA. The city and the University Village developers appealed.

The issue was whether the city complied with Water Code § 10910, subdivision (f) (5), which guides the preparation of a WSA in which groundwater is a source. The statute requires a WSA to include "an analysis of the sufficiency of the groundwater from the basin or basins from which the proposed project will be supplied to meet the projected water demand associated with the proposed project."

The court decided to review the city's actions based on the "abuse of discretion" standard, which is deferential to the city. The court declined to use the "substantial evidence" standard, which is typical in California Environmental Quality Act cases, although the court opined that Rohnert Park's water study would pass either test.

The OWL Foundation complained that the city's groundwater study area – which was based on the California Interagency Watershed Map – was inconsistent with a water study performed for the general plan update. The study for the general plan found that full implementation of the plan would substantially lower the groundwater table. The group also said it was improper for the city to extend the study area into the hills outside of town because the area was not representative of the groundwater sub-basin. In his ruling, Judge Owen suggested that Rohnert Park should restrict its inquiry to a definite sub-basin.

The First District rejected these arguments. It found that the term "sub-basin" does not appear in § 10910, that a sub-basin may be too large for practical study, and that there is no "inherent hydrological significance in the delineation of a sub-basin" because the Department of Water Resources allows the use of political and institutional boundaries to define a sub-basin. Studying the entire Santa Rosa Valley groundwater basin, which underlies numerous jurisdic-

tions and contains 40,000 wells, would not be feasible either, the court determined.

"As a practical matter, requiring a water supplier to collect data on pumping throughout a groundwater basin would impose an enormous if not impossible burden on the water supplier, particularly given the relatively brief [90-day] time frame required to complete a WSA," Presiding Justice William McGuiness wrote for the First District Court of Appeal, Division Three. "A WSA serves the limited function of providing information about groundwater sufficiency for a specific, proposed development project. It is not a general planning document for the management of groundwater supplies in a basin."

The city's experts justified their use of the watershed map to determine the study area, McGuiness continued. "[T]he selection of the watershed as study area appears to be based on an analysis of the empirical data rather than an unsupported assumption," he wrote. "There was plainly a rational reason for choosing the particular study area."

Procedurally, the court departed from the ruling in *California Water Impact Network v. Newhall County Water Dist.*, (2008) 161 Cal. App.4th 1464 (see *CP&DR Legal Digest*, June 2008). In that case, the court declined to consider the adequacy of a WSA until after the study was incorporated into an environmental impact report and the development project approved. In the Rohnert Park case, the OWL Foundation sued before the EIR was finalized. However, since the suit was finalized, the city certified the EIR, approved the University District specific plan and the OWL Foundation filed a second suit on the same grounds. All parties agreed the court should decide the first lawsuit, and the court did so.

The water supply assessment ruling means the CEQA litigation is complete, and the University Village project may move forward, according to Kostka. ■

■ The Case:
OWL Foundation v. City of Rohnert Park, No. A114809, 08 C.D.O.S. 14341, 2008 DJDAR 17157. Filed November 19, 2008.

■ The Lawyers:
For OWL Foundation: Edward Casey, Alston + Bird, (213) 576-1000.
For the city: Veronica Ramirez, McDonough, Holland & Allen, (510) 273-8780.
For real party in interest University District LLP: Stephen Kostka, Bingham McCutchen, (925) 937-8000.

ceqa

EIR For Madera County Quarry Tossed Out For Many Reasons

An environmental impact report for a proposed quarry in Madera County has been thrown out by an appellate court, which found the document's consideration of water, traffic, noise and cumulative impacts to be inadequate. The court also determined a water supply assessment is needed for a mitigation measure that could require the quarry to connect surrounding property owners with a water system.

Although the Fifth District Court of Appeal upheld portions of the EIR for the proposed Madera Ranch Quarry, the court found a number of shortcomings. The court said the analysis of water issues was acceptable, for example, but found that one mitigation measure defied common sense and that another improperly deferred specific action.

Seven years ago, W. Jaxon Baker purchased property in Madera County, about 16 miles northeast of Madera. Baker applied for a conditional use permit to develop and operate a hard rock quarry, and he sought a rezoning and second use permit for a hot mix asphalt plant. The excavation pit for Madera Ranch Quarry would encompass 86 acres, and the remaining facilities would cover about 39 additional acres. At the time of the application, the land was zoned for agriculture, used for cattle grazing and covered by a Williamson Act contract.

There are dozens of residences and at least 55 wells within a mile of the project site. Residents raised many questions about the project, as did the Central Valley Regional Water Quality Control Board. After several public hearings, the Madera County Board of Supervisors in October 2006 approved two conditional use permits, the rezoning and the cancellation of the Williamson Act contract. The board also certified the EIR. Neighbors Sheryl and Bruce Gray sued, arguing the county violated the California Environmental Quality Act (CEQA), the Surface Mining and Reclamation Act (SMARA) and the Madera County general plan. Madera County Superior Court Judge Charles Wieland ruled for the county.

Area residents and the Regional Water Quality Control Board were concerned that the quarry would dry up area wells and that the quarry's pit would serve as a well tying together disconnected aquifers, possibly polluting aquifers residents use for drinking water. The county approved two mitigation measures to ensure neighbors were not harmed. Measure 3.9-1a provided Baker with three options: rehabilitate or deepen the private wells; provide "incremental replacement water" with a connection to the quarry's water system, or provide full replacement water with a connection to the quarry's system. Measure 3.9-1b permitted Baker to provide bottled water to neighbors or build a "water system constructed under federal, state and county guidelines" to provide potable water to affected neighbors. The Grays argued there was inadequate evidence the mitigations were feasible or effective, and the Fifth District agreed.

"[O]ur common sense informs us that the mitigation measures will not effectively replace the water that could be lost by the neighboring landowners," Presiding Justice James Ardaiz wrote for the unanimous three-judge panel. "It is true that the mitigation measures will provide a replacement for the lost amount of water. However, neither Mitigation Measure 3.9-1a nor Mitigation Measure 3.9-1b will provide neighboring residents with the ability to use water in substantially the same manner that they were accustomed to doing if the project had not existed and caused a decline in the water levels of their wells."

The only true mitigation would be connecting neighbors to a water system, but the county never examined the feasibility or impacts of such a system, the court determined.

"While we generally agree that CEQA permits a lead agency to defer specifically detailing mitigation measures as long as the lead agency commits itself to mitigation and to specific performance standards, we conclude that here the county has not committed itself to a specific performance standard. Instead, the county has committed itself to a specific mitigation goal – the replacement of water lost by neighboring landowners because of mine operations," Ardaiz wrote.

Because building a new water system "is the only effective mitigation measure that was proposed," the court said the county must analyze the impacts of building a system, and the county must either conduct a water supply assessment to determine whether water will be available or explain why a water supply assessment is not required.

To offset traffic impacts, the county required Baker to construct intersection improvements on Highway 41 under Caltrans oversight or to pay fees to Caltrans.

Another mitigation measure required the payment of road maintenance fees based upon annual tonnage mined. Again, the court agreed with the Grays that the mitigations were inadequate. There was no evidence Caltrans had scheduled improvements to the highway "in a way that would mitigate the increase in vehicle traffic," the court ruled. Nor was there evidence the county had a plan for maintenance or improvements required by the increased traffic.

The court rejected the county's findings regarding noise because of the "bare conclusion" that an increase of 2.1 decibels in the day-night average was insignificant. In addition, because the area already has noise levels greater than allowable in the general plan, the EIR should have addressed the project's contribution to cumulative noise impacts, the court found. For these reasons, the court found the county's statement of overriding considerations regarding noise to be unacceptable. The county's failure to address cumulative noise impacts also placed the project in conflict with the general plan.

The court rejected the EIR's cumulative impacts section because the county did not document how it determined there would be no substantial cumulative impacts.

The county did not violate SMARA, the court ruled. ■

■ The Case:
Gray v. County of Madera, No. F053661, 08 C.D.O.S. 13523, 2008 DJDAR 16168. Filed October 24, 2008.

■ The Lawyers:
For Gray: Donald Mooney, (530) 758-2377.
For the county: Douglas Nelson, county counsel's office, (559) 675-7717.
For Madera Ranch Quarry: Thomas Terpstra, (209) 599-5003.

ag's opinion

City-County Habitat Plan Deal Upheld As Legitimate Agreement

Agreements approved by Riverside County and cities in the Coachella Valley in support of a multiple species habitat conservation plan did not violate a political corruption law, according to the state attorney general's office.

Attorney General Jerry Brown's opinion unit provided its analysis in response to a request by state Sen. Jim Battin, a Republican from La Quinta who has since been termed out. A staunch opponent of the Coachella Valley multiple species habitat conservation plan, Battin in June 2007 asked the attorney general if a memorandum of understanding between the county and eight cities in support of the plan violated Penal Code bribery prohibitions, and if the agreement would remain in effect as the membership of elected bodies changed over time.

Deputy Attorney General Marc Nolan said the MOU did not violate the Penal Code, and that ongoing implementation of the agreement was permissible because it did not contract away any jurisdiction's police power.

Nearly 15 years of planning and politicking went into the habitat plan, which the cities approved in 2007 and became final in September 2008 when the U.S. Fish and Wildlife Service and the California Department of Fish and Game provided formal approval. The plan permanently preserves 240,000 acres (in addition to 500,000 acres already owned by public agencies) to provide habitat for 27 sensitive plant and animal species (see *CP&DR Local Watch*, April 2006). The "hard line" plan prevents nearly all development in protected areas and calls for a mitigation fee (now at $5,730 per acre) on development outside protected areas to fund acquisition of conservation lands. Every city in the Coachella Valley except Desert Hot Springs, along with Riverside County and other local government agencies, has agreed to participate in the plan.

Battin fought against the habitat plan and specifically against political pressure from Riverside County Supervisors Roy Wilson and Marion Ashley, both of whom championed the plan and publicly suggested they would make life difficult for cities who did not support the plan. Battin questioned the MOU between the county and the cities under which the county agreed to abide by city development standards within a city's sphere of influence if the city endorsed the habitat plan. Battin suggested the agreement amounted to illegal vote trading under Penal Code § 86.

In his opinion, however, Nolan explained that § 86 concerns bribery, corruption and personal advantage, and that the provisions dealing with vote-trading are narrowly written. "The mere fact that the item voted upon involves a proposed trade-off *between jurisdictions* does not dictate or even imply that any trade-off will occur *between officials* voting on that item," Nolan wrote. The mutual obligations set forth in the MOU did not portray a corrupt intent, he added.

"To conclude otherwise would, in effect, criminalize the conduct of entering into intergovernmental contracts which, by their very nature, mutually commit participating jurisdictions to any number of obligations, and thereby subject the public officials who vote to enter into such agreements to the severe criminal and civil sanctions reserved for bribery and like offenses," Nolan wrote. "We decline to attribute such sweeping coverage to § 86. Absurd results would follow."

An agency may not contract away its police power or that of "successor legislative bodies," but the agreement at issue here did not do so, Nolan found. In fact, the implementing agreement made clear a participating jurisdiction may withdraw from the conservation plan and its provisions with sufficient notice, Nolan pointed out.

The attorney general's opinion is No. 07-506 and may be found at 08 C.D.O.S. 14099, and 2008 DJDAR 16920. It was published on November 13, 2008. ■

rent control

Court Finds County Process Unfair, Orders New Hearing For Landlord

A mobile home park owner in San Luis Obispo County has won a state court order for a new county hearing on a rent increase. The Second District Court of Appeal ruled that Manufactured Home Communities is due a new hearing because it did not have the opportunity to cross-examine tenants who testified against the proposed rent increases at an earlier county hearing.

However, the state appellate court panel declined to consider Manufactured Home Communities' argument that the county's application of its rent control ordinance was an unconstitutional taking of private property.

In a federal court case involving exactly the same ordinance and proposed rent hikes,

the Ninth U.S. Circuit Court of Appeals withdrew a 2007 ruling against the mobile home park owner, but once again rejected all the property owner's contentions that its Fifth and Fourteenth Amendment rights had been violated.

One of largest owners of mobile home parks in the United States and Canada, Manufactured Home Communities (also known as MHC and Equity Lifestyle Properties) has vigorously fought rent control measures in numerous California cities and counties with minimal success. In 1997, the company purchased the 126-space Sea Oaks Manufactured Home Community, located in the unincorporated coastal town of Los Osos, just south of Morro Bay. The park is subject to San Luis Obispo County's mobile home rent stabilization ordinance, which voters approved in 1984. The ordinance limits its annual rent hikes to 60% of the increase in the consumer price index, although park owners may boost rents by 10% upon transfer of a mobile home. The ordinance also provides a hardship exception when park owners have extraordinary expenses, and an exception when tenants sign leases or contracts for a period longer than month-to-month.

The company's San Luis Obispo County lawsuits stemmed from its 2002 proposal to increase rents by 185% for nine tenants in Sea Oaks. MHC said the rent control ordinance did not apply to those tenants because they had signed 12-month rental agreements. The county's rent review board conducted a hearing at which the tenants said the park manager had told them they were covered by the rent control ordinance and that MHC had engaged in "deception" and "mob-like bullying tactics." An MHC attorney asked to cross-examine the tenants, but the board refused to allow the questioning. The board rejected the rent increase after finding that the tenants had treated the leases like month-to-month agreements and that MHC had misrepresented the contracts' terms. MHC appealed to the Board of Supervisors, which upheld the rent review board.

The company then filed suit, alleging that the county had denied MHC a fair hearing because it would not allow cross-examination of witnesses, and that the county's rent control ordinance was unconstitutional. A San Luis Obispo County Superior Court judge ruled the 12-month contracts were invalid and not exempt from rent control, and rejected arguments about the ordinance's constitutionality.

On appeal, MHC argued it had a constitutional right to cross-examine the tenants. The county argued MHC had no such right in a rent control proceeding akin to a public hearing. In a unanimous ruling, a three-judge panel of the Second District, Division Six, agreed with MHC.

"The tenants had an unfair advantage. They could select the facts they wanted the board to hear, and avoid questions concerning those facts," Presiding Justice Arthur Gilbert wrote. "There are valid reasons for restricting cross-examination in some administrative proceedings. But this was not a quasi-legislative hearing or an informal public hearing where speakers are not sworn and cross-examination could inhibit public comment.

"This was an adversarial hearing where the tenants requested the board to make findings against MHC. The rent control ordinance requires findings and testimony under oath, and the board exercised 'judicial-like' powers in deciding the parties' rights involving their individual leases," Gilbert explained. "Where it makes a decision based on a party's testimony, the adversary is entitled to question his or her opponent."

The court then turned to the question of the leases' validity. The trial court found them invalid because one paragraph permits the park owner to raise rents upon a 90-day notice. The court ruled this provision conflicted with the county's rent control procedures. However, the appellate court noted that the same paragraph in the leases says that rent increases are subject to state and local laws. The leases are not necessarily invalid, the court ruled, although it is possible the county could reject the leases if it determines the tenants were misled or that MHC was somehow barred from claiming a rent control exemption. The court sent the matter back to the county's rent review board for a new hearing at which it permits cross-examination.

Because it ordered a new hearing, the Second District declined to consider MHC's contention that the county's application of the rent control ordinance to MHC's proposed rent hike was an unconstitutional taking.

In federal court, the Ninth Circuit withdrew a 2007 decision in which it rejected all of MHC's arguments about the validity of the county's rent control ordinance and refused to consider challenges to the rent increase process (see *CP&DR Legal Digest*, November 2007). In November 2008, the Ninth Circuit rejected MHC's petition for rehearing and issued a new opinion similar to the 2007 ruling.

On MHC's taking claim, the court continued to maintain MHC could not seek federal court relief without first requesting a "Kavanau adjustment," the state process in which future rents increase to compensate for previous confiscatory rents (see *CP&DR Legal Digest*, February 2004). The court found no basis for MHC's arguments that the county violated the company's due process and equal protection rights. The rent control ordinance serves a legitimate public purpose, and the shortage of mobile home spaces along with the impracticality of moving a mobile home justify the county's singling out park owners, the court found. ■

- State Court Case:
  Manufactured Home Communities, Inc. v. County of San Luis Obispo, No. B196426, 08 C.D.O.S. 13243, 2008 DJDAR 15820. Filed October 15, 2008.
- Federal Court Case:
  Equity Lifestyle Properties, Inc., v. County of San Luis Obispo, No. 05-55406, 2008 DJDAR 17425. Filed November 25, 2008.
- The Lawyers:
  For MHC: Edith Matthai, Roble & Matthai, (213) 624-3062.
  For the county: Henry Heater, Endeman, Lincoln, Turek & Heater, (619) 544-0123.

coastal commission

Jurisdiction Of State Panel Upheld After Landowner Delays Challenge

A property owner cannot participate in a California Coastal Commission appeal process for years and then assert that the Commission was prohibited from considering the appeal because it missed a procedural deadline years earlier, the Second District Court of Appeal has ruled.

The court rejected a Pacific Palisades landowner's contention that the Commission had lost jurisdiction over an appeal of the landowner's three-lot development because the Commission did not conduct a hearing within 49 days of receiving an appeal in 1999.

Landowner Mt. Holyoke Homes (MHH) "did not question the Commission's jurisdiction until June 7, 2003 – three and a half years after the latest date on which it contends the Commission lost jurisdiction. During that time, MHH readily provided

information to the Commission in response to several requests; its actions over such an extended period of time constituted consent (acquiescence) to jurisdiction or, alternatively, invited error," Presiding Justice Dennis Perluss wrote for the Second District, Division Seven.

As with many coastal development projects, the one at issue here has a legacy. Nearly 20 years ago, Darla and Stanley Jones formed Mt. Holyoke Homes for the purpose of developing their property in Los Angeles's Pacific Palisades. (Mr. Jones has since died.) They filed an application with the city for a four-lot subdivision, which the City Council ultimately rejected on appeal of a neighborhood group. After MHH sued, a Los Angeles County Superior Court judge in December 1993 ordered the city to reconsider.

Negotiations ensued amongst the Joneses, their neighbor Barbara Schelbert and the city. MHH agreed to reduce the project to three lots, increase building setbacks and provide view corridors between the planned houses. But city officials raised new concerns about geology and soils that required extensive study. Finally, in April 1999, the city approved the revised, three-lot project.

Schelbert appealed the decision to the Coastal Commission in June 1999. The following month, the Commission opened but continued a public hearing on the appeal because the city had provided no documents related to the project. The landowners then arranged to have a copy service copy and transmit more than 2,000 pages of city records to the Commission. Staff members for the Commission found the record incomplete, however, so MHH arranged to have the entire city file delivered to the Commission. On April 3, 2000, MHH delivered a stipulation signed by the Joneses, a city representative and Schelbert stating the Commission had been given all documentation. Five weeks later, the Commission determined the appeal raised substantial issues regarding geologic hazards and landform alternation and said it would conduct a *de novo* hearing at a later date.

From August 2000 until April 2003, MHH and the Commission's staff went back and forth, including one 17-month period when MHH did not respond to a staff request for seismic information. Eventually, the staff recommended project approval, but at a June 2003 hearing, the Commission denied the proposal. MHH then requested the Commission reconsider, in part because the Commission did not act on the appeal within 49 days as required by the Coastal Act. MHH argued the Commission should have determined whether the appeal presented a substantial issue by either August 2, 1999, or January 25, 2000, the later date being 49 days after MHH's copy service delivered records to the Commission. After filing the request for reconsideration, MHH then asked the Commission to continue the matter "for an indefinite period of time in order to facilitate discussion and consideration of alternatives."

In the meantime, MHH sued the Commission and Schelbert for inverse condemnation and to overturn the Commission's decision. In 2004, the Commission and the landowners signed a tentative settlement in which the Commission agreed to conduct a new hearing on an alternative site plan with a larger view corridor. But when Schelbert protested that she had not been a party to negotiations, the settlement fell apart. After further proceedings, Los Angeles County Superior Court Judge Dzintra Janavs ordered the Commission to conduct a new hearing but also dismissed MHH's suit. In an unpublished 2005 opinion, the Second District Court of Appeal overturned Janavs and ordered the suit reinstated. The case went back to Superior Court, where Janavs in November 2006 ordered the Commission to set asides its disapproval and dismiss Schelbert's appeal because the Commission had missed the 49-day deadline.

This time, the Commission and Schelbert appealed. Much of the argument on appeal centered on the relevance of *Encinitas Country Day School, Inc., v. California Coastal Commission*, (2003) 108 Cal.App.4th 575 (see *CP&DR Legal Digest*, July 2003). In that case, the court ruled the Commission had lost jurisdiction in an appeal of an approved private school project because the Commission did not decide within 49 days whether the appeal presented substantial issues warranting a new hearing. In the case at hand, however, the Second District said *Encinitas* "did not change the law" and was not needed for a decision anyway.

The Second District said the question here concerned "estoppel to contest jurisdiction" – in other words, whether MHH should be prohibited from challenging the Commission's jurisdiction over the project. MHH argued it should not be barred from challenging the Commission's jurisdiction because MHH's participation in the Commission's process did not hide the facts or cause the errors. But the Second District said MHH "had an obligation to contest the Commission's jurisdiction promptly after the date on which it contends the Commission lost it." Justice Perluss even suggested MHH was wasting everyone's time with its allegations.

"If MHH were not now estopped to contest the Commission's jurisdiction and the city's approval of its project were to be deemed final without a *de novo* hearing on the substantial issues raised by Schelbert's appeal, significant resources will have been expended over a period of several years for naught," Perluss wrote. "Such conduct amounts to an unacceptable trifling with a public agency and the courts."

The Second District decision appears to clear the way for new Commission hearing on the MHH proposal. In December, MHH asked the state Supreme Court to overturn the appellate court. ■

■ The Case:
Mt. Holyoke Homes, LP v. California Coastal Commission, No B201517, 08 C.D.O.S. 13328, 2008 DJDAR 15935. Filed October 21, 2008. Modified and rehearing denied November 12, 2008, at 2008 DJDAR 16823.

■ The Lawyers:
For Mt. Holyoke Homes: John Bowman, Jeffer, Mangels, Butler & Marmaro, (310) 203-8080.
For the Commission: John Saurenman, (213) 897-2000.
For Barbara Schelbert: John Murdock, (310) 450-1859.

legal fyi

Procedural Error Dooms CEQA Suit

The Fourth District Court of Appeal has thrown out a California Environmental Quality Act lawsuit filed by Riverside residents because of a procedural error.

Because Friends of Riverside's Hills brought California Environmental Quality Act (CEQA) challenges along with allegations that the City of Riverside violated the Subdivision Map Act, the map act's requirement for service of a summons within 90 days of the city's decision applied. Friends argued they had to comply only with CEQA procedures, but the court disagreed and blocked the lawsuit.

Friends did successfully defend against

a claim for millions of dollars in damages and sanctions sought by landowners, who argued the appeal was frivolous.

On June 13, 2006, the Riverside City Council accepted as complete final tract maps for three subdivisions in La Sierra, located in northwest Riverside. La Sierra has been the scene of growth battles since the 1970s as residents have fought to maintain the area's semi-rural nature. A month after the council's 2006 decision, Friends of Riverside's Hills sued, arguing the city had violated open space protections and mitigation measures required by a 1996 specific plan. The group also argued the city violated the map act.

On September 14, 2006, the city, the subdivision developers and the landowners asked the Riverside County Superior Court to dismiss the lawsuit because Friends had failed to serve a summons within 90 days of the City Council's decision. Riverside County Superior Court Judge Stephen Cunnison granted the request and dismissed the suit.

Friends appealed only the issue of the map act's procedural requirements to the CEQA claims. Friends argued that because the allegations of CEQA violations did not involve the map act, the 90-day deadline for service of a summons should not apply. But the court determined that the CEQA claims and the map act claims were essentially all the same and, therefore, the map act's procedural requirements applied.

"[T]he CEQA cause of action was merely another vehicle for challenging the city's failure to require the applicant to implement open space and other mitigation measures that were part of the project's conditions of approval and of the specific plan," Presiding Justice Manual Ramirez wrote for the Fourth District, Division Two. "Friends not only could have brought this claim under the SMA [subdivision map act] rather than CEQA, it in fact did."

While the appeal was pending, the landowners asked the court to sanction Friends because "any reasonable attorney would agree that the appeal is totally and completely without legal merit." The landowners sought $16 million for loss of market value, $403,000 for out-of-pocket expenses plus $1,248 every day since September 1, 2007, and $27,500 in attorney fees. The court rejected the request because such an award could chill litigants' right to appeal.

"Weighing the chilling effect of sanctions against the issues raised in this appeal, and finding that a reasonable attorney may well have believed the appeal had some merit, we conclude that sanctions are not justified," Justice Ramirez wrote. ■

■ The case is *Friends of Riverside's Hills v. City of Riverside*, No E042724, 08 C.D.O.S. 14458, 2008 DJDAR 17376. The opinion was filed October 24, 2008, and ordered published November 24, 2008.

Email Notice Doesn't Trigger Deadline

In a California Environmental Quality Act (CEQA) case from Contra Costa County, the First District Court of Appeal has ruled that notification of a trial court's judgment via email did not trigger the 60-day deadline for filing an appeal. The court ruled that opponents of Davidon Homes' plan to build 22 single-family houses on the 15-acre Weber Ranch may press forward with their appeal of the trial court's ruling.

The Town of Danville approved the housing development in 2007 based on a mitigated negative declaration that said all significant environmental impacts would be fully offset. A group called Citizens for Civic Accountability sued, arguing the city needed to further study impacts on roads, red-legged frog habitat and scenic views. The group insisted the city should prepare an environmental impact report.

Contra Costa County Superior Court Judge David Flinn ruled for the city but did insist on further study of the impacts of removing 120 trees from the site. The clerk of the court then sent the parties an email advising them that the judgment had been authorized for filing on April 1, 2008. On April 10, Citizens served a "notice of entry of judgment" and on June 9 filed an appeal.

The city and Davidon Homes contended the appeal was too late because the 60-day deadline started to run with the April 1 email notification. The First District, however, said an email did not suffice under California Rules of the Court rule 8.104(a). That rule requires filing a notice of appeal within "60 days after the superior court clerk mails the party filing the notice of appeal a ... file-stamped copy of the judgment."

The city and Davidon Homes argued the terms "mail" and "email" were essentially the same here. The court disagreed. "[B]ecause rule 8.104(a) must be strictly construed to preserve the right to appeal when possible without doing violence to the language of the rule, 'mail' must be construed according to its primary meaning to be limited to postal delivery," the court ruled. ■

■ The case is *Citizens for Civic Accountability v. Town of Danville*, No. A121899, 08 C.D.O.S. 13565, 2008 DJDAR 16254. The opinion was filed October 27, 2008.

Records Case Costs Monterey County

Monterey County has been ordered to pay more than $244,000 in attorney fees and costs in a California Public Records Act case involving a long-controversial development proposal in Carmel Valley.

The Sixth District Court of Appeal upheld a trial court's award of $244,287 in fees and costs to the Open Monterey Project, an organization that sought records related to the proposed September Ranch project. The Sixth District also directed the trial court to award the Open Monterey Project attorney fees related to the appeal.

Plans to build houses on the 900-acre September Ranch have been around since the 1990s, and in 1998 the Monterey County Board of Supervisors approved a 109-unit subdivision. However, the Sixth District Court of Appeal invalidated the project approval because of an improper water supply study (Save *Our Peninsula Com. v. County of Monterey*, 87 Cal.App.4th 99; see *CP&DR Legal Digest*, April 2001). After conducting additional environmental analysis, the county approved a 95-home project on a small portion of the ranch in 2006; however, a Monterey County judge last year rejected the revised cumulative water analysis.

While the county was processing the revised project, the Open Monterey Project made several California Public Records Act (CPRA) requests. Although the county produced some records, the organization was not satisfied and went to court in March 2005. A special master was appointed and ultimately recommended the county turn over another 2,000 pages of records. Superior Court Judge Robert O'Farrell accepted the recommendation and ordered the county to produce the records. Open Monterey Project then filed a request for attorney fees of $194,800, with a multiplier of two because attorneys worked on a contingency basis and because of the protracted nature of the litigation. Judge O'Farrell approved fees of $188,630, applied a multiplier of 1.25, and then added costs to reach a total award of $244,287.

On appeal, the county argued that the fee amount should be cut by two-thirds because Open Monterey Project was successful in only one of three areas of requests, and that

no multiplier was appropriate. The county said that the special master rejected most of the group's requests for private records of the environmental impact report consultant, and all requests for correspondence with the county's legal advisor. The Sixth District, however, found no legal basis for the county's argument, and concluded that the county's approach could diminish efforts to enforce the Public Records Act.

"[W]e determine that there is no requirement that the trial court make an award of attorney fees in an amount that is commensurate with or in proportion to the degree of success in the CPRA litigation," Justice Patricia Bamattre-Manoukian wrote for the court.

The appellate panel also upheld the fee enhancement because of the incentive it provided to an attorney to enforce "important constitutional rights" on a contingency basis. ■

■ The case is *Bernardi v. County of Monterey*, No. H0231648, 08 C.D.O.S. 13725, 2008 DJDAR 16415. The opinion was filed on September 30, 2008, and ordered published on October 29, 2008.

Pacifica Developer Loses Yet Again

A state appellate court has upheld the Coastal Commission's handling of a housing project appeal. The court ruled that although the Commission did not comply precisely with the state open meeting law's requirements, the Commission came close enough and did not portray an intent to avoid the law.

The ruling is the latest setback for developers Keith Fromm and Robert Kalmbach, who propose a 43-unit housing development on about 6 acres in Pacifica's coastal zone. Last year, the Ninth U.S. Circuit Court of Appeals threw out an award of $665,000 to the developers for damages and legal fees in a suit alleging the City of Pacifica violated the developers' equal protection and due process rights (see *CP&DR Legal Digest*, July 2008).

In 2002, Pacifica approved a coastal development permit for the project proposed by Fromm and Kalmbach (operating as North Pacifica LLC). A resident appealed the decision to the Coastal Commission. Before the Commission could take action, North Pacifica filed lawsuits in state and federal courts. The state court lawsuit concerned one of the city's conditions of approval, which an appellate court upheld in an unpublished opinion.

Because of the litigation, the Coastal Commission delayed consideration of the appeal until December 2005. At that time, the Commission determined the appeal was within its jurisdiction. It followed up on December 20, 2005, by mailing a "Commission Notification of Appeal" to the city and North Pacifica setting a tentative hearing date of January 11-13 in San Pedro. The Commission posted an agenda for its January 2006 meeting on its website December 28, and posted a staff report on the appeal December 30. The Commission mailed formal hearing notices on January 3, 2006. On January 11, the commission decided the appeal presented a substantial issue but postponed a hearing until February 2006. North Pacifica did not attend the January 11 meeting but afterward requested the hearing be delayed until at least April. The Commission finally conducted its appeal hearing on May 11, 2006, during which the Commission overturned the coastal development permit because of potential impacts to wetlands, water quality and environmentally sensitive habitat. North Pacifica did not attend the May 11 meeting, either.

In the meantime, North Pacifica sued the Commission, arguing that its noticing of the January 11 meeting was deficient. Los Angeles County Superior Court Judge David Yaffe rejected the contentions, and a unanimous three-judge panel of the Second District, Division Five, upheld the ruling.

The Bagley-Keene Act (Government Code § 11120 *et seq.*) requires state agencies to provide 10-day advance meeting notice to all interested parties. The law authorizes nullification of actions taken at improperly noticed meetings, which is what North Pacifica sought. The court conceded North Pacifica did not get the actual meeting notice until six days before the hearing, but the court found the Commission substantially complied with the law.

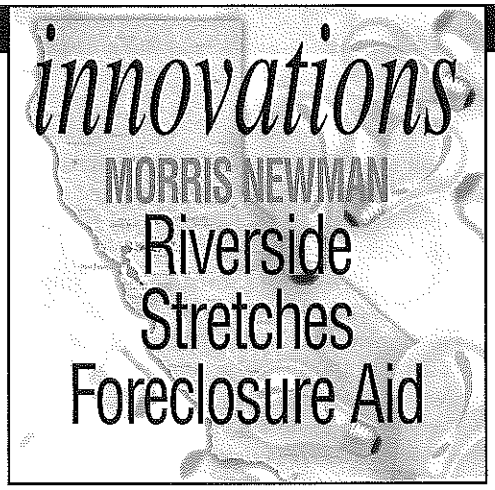
"When the Commission's efforts to provide notice of the January 11, 2006, meeting are viewed in the aggregate, they substantially comply with Government Code § 11125," the court ruled. "Nothing about those efforts suggests that the Commission was attempting to thwart the objectives of the Bagley-Keene Act by holding a meeting that was not fully disclosed or open to the public."

Even if the meeting notice was inadequate, North Pacifica was not harmed because the Commission at the January 11 meeting – without debate or public comment – merely set a date for a hearing on the merits, the court found. Thus, the Commission was authorized the act on the appeal at the May 2006 meeting.

North Pacifica has asked the state Supreme Court to overrule the appellate court. ■

■ The case is *North Pacifica LLC v. California Coastal Commission*, No. B199446, 08 C.D.O.S. 12419, 2008 DJDAR 14787. It was filed September 19, 2008. ■

innovations



Riverside Stretches Foreclosure Aid

MORRIS NEWMAN

How far can the City of Riverside extend $6 million in federal aid for cleaning up the foreclosure mess?

Before tackling that question, please review the following numbers, all of which are big: As of October 2008, more than 2.5 million households in the U.S. were either in foreclosure or somewhere along the way, a 72% increase above the year-earlier level, according to foreclosures.com, an investment website. The total value of what lenders call REOs (for "real estate owned" by banks) is anybody's guess, but it's safe to peg it somewhere north of $100 billion. (Remember when a $1 billion seemed like a lot of money? Now it seems barely enough to buy a carton of milk at the school cafeteria.)

If the financial cost of the foreclosure avalanche is high, however, the social cost seems no less overarching. In many working-class neighborhoods, where foreclosure activity tends to predominate, the number of abandoned properties on some blocks threatens to outnumber homes that remain occupied. As a consequence, even non-foreclosed homes lose much of their value and become nearly unsellable while vacant homes become nests for squatters or gangs or both.

The so-called Inland Empire, which is the marketing name for Riverside and San Bernardino counties, is reporting one of the highest foreclosures rates in the country. In cities such as Perris and Hemet, foreclosures represent up to 15% of all single-single-family homes. The mortgage default rate in the City of Riverside is not as severe, yet 3,688 homes became REOs from July 2007 through November 2008, according to city officials.

In October, Congress finally responded by enacting the $15 billion Neighborhood Stabilization Act of 2008, authored by a group led by Rep. Maxine Waters (D-Los Angeles). HUD's Neighborhood Stabilization Program, created to disburse the money, is budgeted with only $3.92 billion, for some reason. The intent of the bill is to enable local government to buy foreclosed homes and resell them as quickly as possible to new owners, rather than let the homes become social hazards and eyesores. At least 25% of those units (both single-family and multi-family) must be sold or rented to low- and very low-income households. As a whole, Riverside County is set to receive $48 million for neighborhood stabilization.

Some communities have balked at the idea of government getting involved in the business of buying and selling homes, viewing the practice as an unwelcome intrusion on free enterprise, or as tying up precious cash in white-elephant real estate at a time when local government is cash-poor. The slow recovery of the mortgage market combined with the calamitous growth in foreclosures arguably trumps both those contentions, however.

Like much recent Congressional legislation, the statute is an emergency measure: Under HUD rules, local governments had only 45 days to put their plans together, with a deadline of December 5, so they can receive funds by mid-January.

Riverside, a city of nearly 300,000 people, responded as quickly as any municipality in the country, according to the city's housing program manager, Jim Yerdon, who wrote the city's foreclosure aid plan. In less than four weeks, "we held a public hearing, drafted the plan, held another public hearing on the draft, got the plan approved by the City Council and submitted the plan to HUD on Election Day, a month before the official deadline," he said. "I think we were the first in the country to finish."

Beyond speed of preparation, flexibility may be the most notable aspect of Riverside's foreclosure-aid plan. The plan says the city is ready to participate in nearly every category of housing rescue listed by HUD – including rehabilitation, readying properties for sale to homeowners, and even demolishing properties that are too far gone and selling the land to Habitat for Humanity, the volunteer home building group. The only category that Riverside did not sign up for is new construction. "There's just no market for it," Yerdon said.

> **"The plan says the city is ready to participate in nearly every category of housing rescue listed by HUD."**

To assist low-income families to buy homes, the city plans to set up a lease-purchase structure, by which households initially pay monthly rent. The city sets aside at least 5% of the rents into an escrow account to be applied toward a future purchase. To stretch the city's thin supply of foreclosure-aid dollars, the city plans to ask lenders of some foreclosed properties, when possible, to "carry back the note" while the city looks for a new buyer. In other words, the city wants the bank to provide a new mortgage for the city as homeowner. It's cheaper, after all, for the city to pay a monthly mortgage than buy a property outright for cash. The city plans to assist households earning less than $35,000 a year, for whom home ownership is untenable, by converting multi-family foreclosures into affordable rentals.

Nobody, including Yerdon, pretends that $6 million is enough to cure the foreclosure problems of Riverside. "It's a drop in the proverbial bucket, but a start in the right direction," he said. One best-case result, he said, would be to "stabilize the neighborhoods that are near the tipping point," because foreclosures could overwhelm the local housing inventory.

Given its limitations, what is Yerdon's view of the HUD program? "I'm completely impressed by HUD," said the Riverside official, who worked as a real estate agent for six years before entering government. The federal housing agency, he added, took "a very difficultly written piece of legislation and made it workable."

This statement may startle some readers, especially affordable-housing advocates who have long viewed the federal housing agency as a tangle of red tape and inefficiency. Hearing the federal agency praised for effectiveness may strike their ears as oddly as hearing defense contractors being applauded for thrift. So be it.

If the Neighborhood Stabilization Act is not enough to cure the foreclosure problems in Riverside or elsewhere, at least HUD was able to move quickly while allowing local government enough flexibility to get the maximum benefit from limited dollars. Until the next ship comes in, Riverside's version of neighborhood stabilization looks seaworthy enough. ■

Counties Wield Much Power Plant Authority

– CONTINUED FROM PAGE 1

annually for every 8 to 10 megawatts. Wind farms involve windmills that are deadly for birds, especially raptors that often live and hunt in windy grasslands. The newest, most powerful windmills can interfere with military radar. Many of the projects are planned in remote desert or agricultural areas, potentially turning isolated places into major industrial centers. The projects often require new transmission lines, which can mean carving power line corridors through previously undeveloped areas. (Geothermal sources and tidal action are also potential renewable resources, but they are not being pursued aggressively so far. Hydroelectric power often is not characterized as renewable.)

The state's permitting scheme is schizophrenic. The California Energy Commission (CEC) regulates solar thermal projects, which essentially collect the sun's warmth to create steam that turns a turbine, thereby making electricity. Solar thermal projects smaller than 50 megawatts, however, fall to local government. In addition, local government has jurisdiction over wind energy and photovoltaic projects, which create electricity directly from the sun's energy. Dozens of solar projects are proposed for federal territory controlled by the Bureau of Land Management, which is working with the CEC on project review. Wind and photovoltaic projects proposed by a public utility such as Sacramento Municipal Utility District or Los Angeles Department of Water and Power do not have to abide by local government regulations. Transmission lines fall within the purview of the Public Utilities Commission.

"We've never had such a long list of power plants under review," said Percy Della, a CEC spokesman. The list contains both gas-fired and alternative fuel projects.

Long the center of California's petroleum industry, Kern County appears poised to become the heart of the renewable energy business. County planners are currently reviewing five conditional use permit applications for projects that would generate from 350 megawatts to 850 MW apiece, and it has at least a dozen energy-related environmental impact reports in process. (One megawatt is enough to power approximately 700 homes.) The county last year permitted a 300 MW wind farm in the high desert proposed by a subsidiary of enXco, a company that operates wind farms around the country. It would be the largest wind farm in California. The Los Angeles Department of Water and Power (LADWP) recently activated the first of 80 1.5 MW windmills in its Pine Tree project near Ridgecrest, and LADWP plans another 200 MW of wind development in the area.

"There is certainly potential here from an energy standpoint, even without the oil," said Kern County Planning Director Ted James, noting the county's windy mountain passes, and sunny Central Valley and high desert territories. "There is a lot of good for Kern County that will come out of it."

Still, said James, the issues are rapidly becoming challenging. The biggest issue may be protection of military installations. With its expansive desert bases, the military remains Kern County's largest employer. However, reflections off wind machines – some of which are proposed near military flight paths – can interfere with radar. The county is currently working with the CEC to determine the best practices for dealing with the conflict, as well as for minimizing avian mortality.

The windmill-radar conflict has stalled proposals for large wind farms in Solano County's Montezuma Hills, southwest or Rio Vista, according to Solano County Planning Manager Mike Yankovich. Sacramento Municipal Utility District and other companies have operated wind farms in the area since the 1980s, but they have used smaller, 100 kilowatt wind machines that had no effect on radar. The proposed 1MW to 1.5MW machines cause a ghost in the radar used by the Air Force, whose base at Travis is within 10 to 15 miles of the Montezuma Hills.

Both Solano County and the CEC have identified the Montezuma Hills for wind power development. Although aesthetics and avian impacts are concerns, large-scale wind development is compatible with the area's wheat, hay and livestock operations, Yankovich said.

In Eastern San Luis Obispo County's very dry Carrizo Plain, the interest is sun. A CEC study found the area could generate as much as 4,600 MW of solar electricity. The county has begun reviewing a proposal from Topaz Solar Farms, a subsidiary of Optisolar, for a 550 MW photovoltaic power plant, according to John McKenzie, senior environmental planner. A separate 250 MW photovoltaic project is also being discussed, as is a 177 MW solar thermal plant.

"There are a few unique components to these type of developments that we are dealing with. But we are also looking at the standard impacts on the ground," McKenzie said. The more obvious effects include potential loss of habitat, and water and visual impacts. But the projects also create the need for new transmission line capacities, meaning the creation of new corridors, and the photovoltaic projects' on-site energy storage presents a safety issue, McKenzie explained.

The biggest concern of both the county and residents of the sparsely populated pastoral area, though, may be the sheer size of the projects. The Topaz Solar Farm would cover 9 square miles with solar panels, McKenzie said. "The size and industrial composition of these projects would change the nature of the Carrizo Plains," he said.

Environmental advocates are monitoring the large-scale alternative power plant trend. Steve Siegel, a Center for Biological Diversity attorney, emphasized the organization endorses the replacement of fossil fuel energy. But, he said, new solar and wind projects need to be located in already disturbed locations, and not in areas with viable habitat. In addition, he said, projects should be located as close as possible to power users to minimize the need for new transmission lines.

Among the projects environmentalists are watching is the very isolated 400 MW Ivanpah solar thermal project proposed by Solar Partners/Brightsource near Interstate 15 and the Nevada border. A preliminary assessment released in December determined the project could have significant impacts on air quality, biological resources, cultural resources, land use, soils and water, traffic, aesthetics and transmission systems.

The Ivanpah project is one of dozens proposed for BLM land in the Southern California deserts. The BLM is currently working on a programmatic environmental impact statement for solar development on public lands.

A transmission corridor that could reach some projects on BLM land in Imperial County was approved by the PUC in December. The 123-mile Sunrise Powerlink project won approval after San Diego Gas & Electric agreed to steer the transmission lines away from Anza-Borrego Desert State Park. Still, environmental groups and some consumer activists say the project is unnecessary and vow to sue. ■

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Steve Siegel, Center for Biological Diversity, (619) 241-6409.
California Energy Commission solar projects: www.energy.ca.gov/siting/solar/index.html
Bureau of Land Management Solar Energy Development: http://solareis.anl.gov/

Insight

WILLIAM FULTON

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environmentalists asked for. They wanted a reduction of between 11 and 15 MMTCO2E.

Third, it is still a pretty big number. As near as I can tell, meeting this target will require a reduction in vehicle miles traveled (from the current levels, not projected 2020 levels) of around 3-4%, which would require a considerable shift in land use patterns.

And fourth, it actually is not the final number. CARB punted to the soon-to-be-appointed "Regional Targets Advisory Committee" called for in SB 375 (see *CP&DR,* November 2008, September 2008). The committee will do an analysis of each region in the state and come up with a target for that region. The total reductions could be more or less than 5 million metric tons. But if it's less, then CARB will have to come up with other savings somewhere else. So the battle over the target is far from finished – and it's likely to stretch well into 2010, when the regional numbers must be finalized.

Let's take a step back and look at just exactly what 5 million metric tons means in the real world of planning and development.

Right now, Californians have more than 35 million vehicles, and they drive about 330 billion miles a year. Obviously, that's more than any other state. On a per-capita basis, however, California does pretty well. Annual per-capita vehicle miles traveled (VMT) in California is about 9,000 miles, or about 24.6 miles per day. This ranks California 11th out of the 50 states in VMT efficiency. By contrast, per-capita VMT is about 10,200 miles in Texas and 11,300 miles in Florida. Still, all this driving represents a significant amount of greenhouse gas emissions – somewhere around 135 million metric tons per year, or slightly less than a third of the state's current total of around 460 million metric tons.

The problem is that VMT is expected to go up in the future – both in absolute numbers and per capita – and it has to go down in order for the state to meet the AB 32 targets. Forecasts for VMT for 2020 range between 380 billion and 430 billion miles, and the higher number is a much more likely "business as usual" scenario. This kicks the GHG emissions up to around 180 billion metric tons.

Under AB 32, the state is expected to realize significant savings in vehicle-related GHGs from two other sources – better fuel efficiency for the vehicles themselves (32 million metric tons) and lower carbon content in the gasoline (15 million metric tons). But that still won't be enough to meet the state's goal. Hence the 5 million metric ton total to be extracted from changing land use patterns.

So how much driving do we have to eliminate?

If nothing else were to change, VMT would have to go down 11 billion miles per year from the current number – about 31 million miles per day. That's the equivalent of taking more than 1 million vehicles off the road completely in California.

Alternatively, it's the equivalent of everybody in California – 40 million or so vehicles – driving about 1 mile less per day.

Obviously, lots of people are locked into current driving patterns because they live in residential subdivisions accessible only by car. Others will probably increase their driving if they move to distant areas in order to buy houses, such as the Central Valley and Southern California's high desert. So that puts an enormous amount of pressure on infill development to deliver driving reductions.

In essence, infill is going to have to offset all the increased VMT from new greenfield development and deliver a reduction of 31 million miles driven every day from current levels.

Does this mean the end of greenfield development in California? Obviously not. There's too much land in play, too big a market and too many expectations – by landowners, developers, and local governments – for greenfield projects to go away. But the regional targets, combined with new SB 97 requirements to study a project's contribution to climate change, will put enormous pressure on greenfield projects to minimize their carbon footprint.

And because even the most carbon-light greenfield development will create an increase in greenhouse gases, there will be an enormous amount of pressure on infill projects to create greenhouse gas savings. Inevitably, if AB 32 is the driving force, regional planning agencies will have to stack huge densities at every serious transit stop, and even in nodes and activity centers not heavily served by transit in order to reduce VMT (even if congestion increases). Infill areas could conceivably serve as "mitigation banks" for greenfield projects.

Of course, if the enviros have their way, the target will be double or triple the 5 million metric tons per day. And because the land use target is currently squishy, it's possible that other sectors who anticipate having a tough time making their target will try to push for more savings from the land use sector.

Which leads us, inevitably, to the politics of the Regional Targets Advisory Committee, which will recommend the actual land use target for each region. Senate Bill 375 says that the committee – which is scheduled to be appointed this month – is to be essentially a land use stakeholder committee that includes representatives from the metropolitan planning organizations and the air districts; from cities, counties, and local transportation agencies; and from homebuilding groups, environmental organizations, planning organizations, environmental justice organizations, affordable housing organizations, and other groups.

Senate Bill 375 envisions a nerdy, technical task for the Regional Targets Advisory Committee, which is supposed to pass judgment on the modeling that will forecast possible GHG savings from land use in each region, as well as growth predictions and jobs-housing balance forecasts. The committee is supposed to make its recommendations to CARB by September.

No matter how technical the task is on paper, however, the targets committee inevitably will be enmeshed in a political tug-of-war among the usual land use suspects – local governments, homebuilders, environmentalists – over the numbers. Local governments and homebuilders will probably argue in favor of 5 million metric tons at most – and maybe less. Environmentalists will probably continue to argue for double or triple that number. Given the history of land use politics in Sacramento, it is hard to see how this committee will break through the usual logjam to have a meaningful discussion about how to shape the future of California's growth. ■