August 1987 | William Fulton, Editor & Publisher | Vol. 2, No. 8

Clean Air Legislation May Affect Development

With the federal Clean Air Act up for renewal this year, the politics of smog in California is getting thicker. Though current development practices aren't likely to be affected in the short run, the smog issue will probably become a major factor in planning and development policy around the state in the long run.

For now, regional, state, and federal air officials have direct leverage only over highly noxious construction projects which probably won't be built anyway. But particularly in Los Angeles, where smog is created mostly by auto emissions, it is clear that more responsibility for clean air will gradually be shifted to local governments and real estate developers.

A leading proposal in Congress now, for example, could lead to a considerable crackdown on auto-intensive development in Los Angeles. Sen. George Mitchell, D-Maine, has introduced a bill that would extend the deadline for compliance with the Clean Air Act, but at a price — the bill would prohibit any net increase in the amount of travel by Los Angeles residents.

Mitchell's bill would also double the "offset" in air quality improvements required for an industry to obtain a permit to open or expand a plant that would add considerably to local air pollution. *Continued on page 5*

Tahoe Limits Lifted; Some Disputes Remain

A federal judge has finally dismissed a lawsuit against the Tahoe Regional Planning Agency, thus lifting a three-year-old building moratorium in the area.

The dismissal came after most parties in Tahoe agreed to a settlement allowing a limited amount of residential and commercial construction to proceed for the first time since 1984. But it has not brought an end to litigation and controversy surrounding development in the Lake Tahoe basin.

Commercial property owners, who were not a party to the lawsuit filed by environmentalists and California state officials, have never supported the agreement. Owners of building lots on the Nevada side have a lawsuit pending in the Ninth U.S. Circuit Court of Appeals in San Francisco. And Nevada developer William Cody Kelly has filed two lawsuits since the old suit was dismissed. Kelly's federal court suit challenges the new Tahoe plan, which is the basis of the settlement. His suit in state court seeks damages because his property could not be developed.

The key points of the Tahoe settlement are these:

• Construction of 300 single-family homes will be permitted each year for the next five years. After that time, the number may be increased if water and air quality have improved. *Continued on page 6*

Santa Clara Drops Out Of Joint Planning Effort

Unable to go along with a joint agreement to restrict industrial development, the City of Santa Clara has dropped out of the six-city Golden Triangle joint planning effort.

Santa Clara's decision came after the six Silicon Valley cities spent two years hammering out a four-point agreement covering growth management, transportation, and housing.

Santa Clara rejected a proposed voluntary cap on industrial development, but sought permission to remain a member of the Task Force for the other three parts of the effort. However, the other Task Force members required an all-or-nothing commitment, and Santa Clara pulled out. City Planning Director Jeff Goodfellow said he expects the city to enact parallel policies in the other three areas.

The other five cities are still in the process of seeking city council ratification for the Task Force's proposals.

The Golden Triangle effort began at the instigation of the Santa Clara County Manufacturing Group, a private organization concerned about growing traffic congestion and jobs/housing balance problems in Silicon Valley.

Previously, the six cities — Palo Alto, Sunnyvale, Milpitas, Santa Clara, San Jose, and Mountain View — had all encouraged industrial and high-tech development within their borders at the expense of housing, which is not as "profitable" to a local government in post-Proposition 13 California. For example, a 1980 Manufacturing *Continued on page 6*

San Diego Reins In Schools' Surplus Land Policies

The San Diego Unified School District recently struck a deal for development of one piece of surplus land — but it may be the district's last lucrative deal, at least for a while.

The city is expected to reap more than $1 million a year from industrial development of never-used school land in Sorrento Mesa. However, the City Council has imposed an "institutional overlay zone" on the district's property elsewhere, and animosity between residents and the school district has led to low-density zoning on at least one surplus school site — Dana Junior High School in Point Loma.

In Point Loma, "the city has cut our buildable value in half," said J.V. Ward, the school district's property management director. School officials do not appear to be optimistic about obtaining more favorable results elsewhere.

City officials say that they are responding to the concerns of neighboring residents and will use the institutional overlay zone to make the process of developing surplus public and school land more open.

Financially strapped school districts all over the state are turning to development of surplus land as a source of revenue. However, state law gives cities great power over the use of surplus school land, leading to friction in many localities. (*CP&DR Special Report*, "Schools and Land," May 1987.)

At the Dana Junior High School site, the city council zoned the area for five units per acre, even though some surrounding areas are zoned for eight units per acre. Acting Planning Director Michael Stepner said the site straddled two density zones, adding that the decision was a "tough judgment call." However, he acknowledged that bad feelings between the neighbors and the school district didn't help the district's cause in front of the city council.

Stepner said the city enacted the institutional overlay zone as a supplement to state law, which requires school districts to offer some surplus property to other public entities at a reduced price before selling it at market rates. The new zone requires any public institution to go through a public hearing process before a new use is allowed on surplus land.

"Under state law, the process is a much less public process, and does not really afford the opportunity to review what the proposed use is," Stepner said.

School district officials said they have not yet decided whether to sue or take other steps against the city.

The school district's recent lease agreement, predictably, involves land located outside a residential area. Two sites totalling close to 40 acres in Sorrento Mesa were acquired in 1960 but never used for school purposes because the area was developed for industrial use.

While the school district will retain ownership of the land, R.G. Richardson Co. and Great American Development Co. will develop some 430,000 square feet of light industrial space on a 65-year lease. The deal is expected to net the school district almost $800,000 in the first year, $1.1 million in the fourth year, and $1.4 million in the sixth year.

Ward said the key to the deal was the district's willingness to accept discounted rent in the first three years of the lease, when the project will be under construction.

Contacts: J. V. Ward, San Diego Unified School District, (619) 293-8612.
Michael Stepner, Acting Planning Director, (619) 236-6450.

UPDATE

Citrus Heights Incorporation Vote Postponed

There will be no incorporation vote in the Sacramento suburb of Citrus Heights this November.

By a 3-2 vote, the Sacramento County Board of Supervisors decided July 9 to use a legal technicality — postponing the opening of a required protest hearing — to knock the incorporation issue off the November ballot.

Though incorporation still could be placed on the ballot as early as next April, opponents say they will use the extra time to try to kill the cityhood drive.

The proposal to incorporate Citrus Heights has led to a huge dispute between cityhood advocates and the Board of Supervisors, which stands to lose several million dollars in tax revenue if Citrus Heights residents approve the new city (*CP&DR*, June 1987). Several attempts at compromise have failed.

Although the Sacramento Local Agency Formation Commission approved the November election at its meeting on July 6, the supervisors were required by law to hold a protest hearing. The supervisors' decision not to open the hearing on July 9 meant the incorporation measure could not meet legally required deadlines for the November ballot.

Final Approval Given to San Diego Building Limits

The San Diego City Council voted July 21 to formally approve an 8,000-unit limit on residential construction for the next year.

The council also tentatively approved an overlay zone protecting inland hillsides, canyons, and wetlands which are not covered by San Diego's coastal plan.

At a meeting June 22-23, the council had tentatively agreed to hold residential construction at 8,000 units for one year (April 1987-April 1988) while the city's growth management plan is revised. (*CP&DR*, July 1987.) A moratorium on building permits has been in effect since the end of April, when the possibility of an interim limit was first proposed.

Acting Planning Director Michael Stepner said his staff is still working on a plan to allocate the 8,000 units by geographic area within the city. He added that if the council approves the allocation plan at a special meeting Aug. 7, the moratorium will be lifted and the city will allocate 2,000 permits for the period April-July.

CALIFORNIA PLANNING & DEVELOPMENT REPORT

is published monthly by Torf Fulton Associates

Editorial Offices:
1275 Sunnycrest Avenue
Ventura, California 93003
(805) 642-7838

Subscriptions:
8306 Wilshire Blvd., Suite 111
Beverly Hills, California 90211

Editor & Publisher: William Fulton
ISSN No. 0891-382X

LAND USE

Bradley Orders Environmental Review on Projects in L.A.

Bowing to a court ruling in the so-called *Friends of Westwood* case, Los Angeles Mayor Tom Bradley has ordered environmental review of most big development proposals in the city.

In making the announcement on July 27, Bradley, whose political clout has been weakened by his pro-growth posture, said he was not jumping on the no-growth bandwagon. Rather, he said, "I am a law-abiding person" who wants to comply with the court ruling. He ordered the Department of Building and Safety to undertake the reviews beginning on Aug. 17.

In *Friends of Westwood v. City of Los Angeles*, a state appellate court in Los Angeles ruled earlier this year that the city erred in not preparing an environmental impact report for a proposed 26-story building on Wilshire Boulevard in Westwood.

The city had argued that because a building permit in Los Angeles is a "ministerial act" so long as it conforms with current zoning, the project was categorically exempt from the California Environmental Quality Act. The Court of Appeal in Los Angeles ruled otherwise, and the California Supreme Court later allowed the ruling to stand.

Bradley's temporary order closely follows an ordinance proposed by Councilmembers Zev Yaroslavsky and Marvin Braude. It would cover all building projects over 40,000 square feet, the same as the Zev-Braude proposal; all residential projects over 35 units, as opposed to the 25 proposed by Zev-Braude; and all projects within 50 feet of single-family homes, an idea which picks up on another Zev-Braude proposal to restrict the height of buildings close to single-family neighborhoods.

But Bradley also decided to require environmental review of all projects that generate more than 500 vehicle trips per day, which could increase the breadth of his order tremendously. According to the Institute of Traffic Engineers' trip-generation tables, the 500-trip level would include:

- Retail centers as small as 10,000-12,000 square feet. (Most mini-malls are bigger.)
- Office buildings of about 28,000 square feet.
- Fast-food outlets of about 3,0000 square feet. (Most are somewhat smaller).
- Sit-down restaurants of about 7,000 square feet.
- 24-hour convenience food stores of less than 900 square feet. (Most 7-11-type stores are bigger, though if the hours of operation are cut back to 16 hours a day, the trip generation is sliced almost in half.)

Planning Director Ken Topping said that environmental review under CEQA will be used to implement Bradley's order because no city ordinance allows discretionary review. He said an interdepartmental team in City Hall is currently working on an ordinance to give the city discretion in reviewing projects.

Topping also pointed out that even under Bradley's ruling, many projects may simply receive a negative declaration under CEQA, meaning that in the city's view they are not likely to have much environmental impact and no further review is needed. He added that, in his view, the intent of the *Friends of Westwood* decision was to extend discretionary review to important projects, not to every building permit in the city.

Previously, Los Angeles conducted no environmental review at the building permit stage. This has allowed large office buildings to be constructed with no environmental review because they fall within the zoning envelope.

However, in many parts of L.A., the zoning still is not consistent with the general plan, which frequently calls for smaller buildings. Because of an earlier court decision, the city is currently undertaking a massive effort to bring the zoning and general plan into conformance.

Although Bradley said his order went further than the court required, Westwood homeowners said it should go further. In particular, said homeowner leader Laura Lake, the city will not be able to take into account the cumulative impact of projects that fall below the threshholds contained in the Bradley order.

After a long silence on the issue, Bradley made a major speech in mid-March laying out a planning agenda. A major point on that agenda was the creation of 35 community planning boards. At that time, close Bradley advisers, such as Planning Commission President Dan Garcia, said discretionary review was not necessarily a good idea because it placed more control in the hands of the city council. (*CP&DR*, April 1987.)

Growth Battle Continues to Rage in San Diego County

Growth-control wars continue to rage in Northern San Diego County. Threatened with a citizen initiative, the Escondido City Council voted to approve a growth management ordinance at the end of June, while a builder group has challenged an Oceanside measure passed by voters there in April.

Virtually all cities in the North County area have enacted some kind of growth control measure in recent years, either through council action or citizen initiative. (*CP&DR*, December 1986 and May 1987.) Earlier this year, citizens in Carlsbad sued in hopes of having their ballot initiative implemented alongside a council-sponsored measure which also passed. (*CP&DR*, June 1987.)

In Escondido, the growth ordinance was a compromise between a council subcommittee and a citizen group that had collected 5,000 signatures in an initiative drive. Unlike many other North County ordinances, however, it does not contain a numerical cap on housing construction. Rather, it seeks to make rezonings more difficult.

For example, rezoning to higher densities may occur only one level at a time, so that the owner of property zoned for one unit per acre may increase that zoning to two units per acre, but not three or more. In addition, property owners must wait four years between rezonings. General plan amendments would require a fourth-fifths vote of the council.

The ordinance passed 4-1. One council member opposed it, calling it "blackmail." By contrast, the council's most ardent slow-growth advocate supported it despite criticisms that it did not address the timing and location of development.

Lawsuits against Oceanside's Proposition A were filed by the Building Industry Association of San Diego County and the developers of a large project known as Ivey Ranch. BIA officials said Proposition A, which limits Oceanside to 1,000 units this year and fewer in years to come, violates state "fair share" housing laws. Under such laws, BIA claims, Oceanside must provide at least 1,700 units per year.

Also, Lemont Financial Corp., Ivey Ranch's master developer, filed suit seeking $53 million in damages, claiming that it will not meet its financial commitments on the property if the pace of development is slowed. A similar lawsuit was filed against Oceanside earlier this year by Robinhood Homes.

San Diego Reins In Schools' Surplus Land Policies

The San Diego Unified School District recently struck a deal for development of one piece of surplus land — but it may be the district's last lucrative deal, at least for a while.

The city is expected to reap more than $1 million a year from industrial development of never-used school land in Sorrento Mesa. However, the City Council has imposed an "institutional overlay zone" on the district's property elsewhere, and animosity between residents and the school district has led to low-density zoning on at least one surplus school site — Dana Junior High School in Point Loma.

In Point Loma, "the city has cut our buildable value in half," said J.V. Ward, the school district's property management director. School officials do not appear to be optimistic about obtaining more favorable results elsewhere.

City officials say that they are responding to the concerns of neighboring residents and will use the institutional overlay zone to make the process of developing surplus public and school land more open.

Financially strapped school districts all over the state are turning to development of surplus land as a source of revenue. However, state law gives cities ...

didn't help the district's cause in front of the city council.

Stepner said the city enacted the institutional overlay zone as a supplement to state law, which requires school districts to offer some surplus property to other public entities at a reduced price before selling it at market rates. The new zone requires any public institution to go through a public hearing process before a new use is allowed on surplus land.

"Under state law, the process is a much less public process, and does not really afford the opportunity to review what the proposed use is," Stepner said.

School district officials said they have not yet decided whether to sue or take other steps against the city.

The school district's recent lease agreement, predictably, involves land located outside a residential area. Two sites totalling close to 40 acres in Sorrento Mesa were acquired in 1960 but never used for school purposes because the area was developed for industrial use.

While the school district will retain ownership of the land, R.G. Richardson Co. and Great American Development Co. will develop some 430,000 square feet of light industrial space on a 65-year ...

LAND USE

Bradley Orders Environmental Review on Projects in L.A.

Bowing to a court ruling in the so-called *Friends of Westwood* case, Los Angeles Mayor Tom Bradley has ordered environmental review of most big development proposals in the city.

In making the announcement on July 27, Bradley, whose political clout has been weakened by his pro-growth posture, said he was not jumping on the no-growth bandwagon. Rather, he said, "I am a law-abiding person" who wants to comply with the court ruling. He ordered the Department of Building and Safety to undertake the reviews beginning on Aug. 17.

In *Friends of Westwood v. City of Los Angeles*, a state appellate court in Los Angeles ruled earlier this year that the city erred in not preparing an environmental impact report for a proposed 26-story building on Wilshire Boulevard in Westwood.

• 24-hour convenience food stores of less than 900 square feet. (Most 7-11-type stores are bigger, though if the hours of operation are cut back to 16 hours a day, the trip generation is sliced almost in half.)

Planning Director Ken Topping said that environmental review under CEQA will be used to implement Bradley's order because no city ordinance allows discretionary review. He said an inter-departmental team in City Hall is currently working on an ordinance to give the city discretion in reviewing projects.

Topping also pointed out that even under Bradley's ruling, many projects may simply receive a negative declaration under CEQA, meaning that in the city's view they are not likely to have much environmental impact and no further review is needed. He added that, in his view, the intent of the *Friends of Westwood* decision ...

Gary Ragghianti, Tiburon's town attorney, said the town will ask the judge to reconsider the decision, a necessary first step for an appeal.

Tiburon is not new to land-use litigation. The city was one of the parties in the 1979 *Agins* case, in which the California Supreme ...

However, Judge Wilson's ruling addressed only the state law regarding the length of building moratoriums and did not deal with the compensation question.

Contact: Gary Ragghianti, (415) 453-9433.

Development Fees Struck Down by New Jersey Court

The New Jersey Supreme Court has ruled that local jurisdictions in that state need legislative authorization to impose development fees that are not directly related to the project at hand.

Ruling July 8 in the case of *New Jersey Builders Association v. Bernards Township*, New Jersey's highest court unanimously ruled that the state's 1976 Municipal Land Use Law did not grant local governments the power to levy development fees unless a "rational nexus" exists between project and fee.

Stewart M. Hutt, attorney for the New Jersey Builders Association, said the decision would "force towns to act in a more reasonable manner." Government attorneys, on the other hand, said they were encouraged that the fees were struck down on narrow grounds and challenged the legislature to take up the cause.

In making the ruling, the court affirmed lower court decision to strike down Bernards Township's 1982 traffic linkage ordinance. The ordinance required new developments to pay about two-thirds of a 20-year, $20-million transportation improvement plan. The court's ruling referred to the state law's language requiring a developer "to pay his pro rata share of the cost of providing only reasonable and necessary (infrastructure improvements)."

A more complete description of *New Jersey Builders Association v. Bernards Township*, Docket No. A-55, appeared in the New Jersey Law Journal on July 16. (120 N.J.L.J. 87.)

Clean Air Legislation May Affect Development

Continued from page 1

In the long run, smog concerns may soon dovetail with measures to reduce traffic, such as mandatory ridesharing for large employers. The Los Angeles City Council recently imposed a mandatory ridesharing requirement on all employers with more than 700 workers, and Mayor Tom Bradley has proposed that the requirement be expanded to include companies with 250 or more employees.

But business and governmental officials in Los Angeles acknowledge that, sooner or later, extreme changes in travel and work patterns will be required in Southern California. For example, Pat Nemeth, director of environmental planning at the Southern California Association of Governments, predicts that the Los Angeles Basin will be unable to meet federal air standards unless the number of vehicle miles traveled is cut in half.

The opening salvo in the latest smog wars came in June, when the Environmental Protection Agency announced plans to impose partial construction bans on 14 metropolitan areas which would fail to meet clean-air standards by the Dec. 31, 1987, deadline. Five of the 14 were in California: Greater Los Angeles, Ventura County, Kern County, Sacramento County, and Fresno County.

However, the practical effect of such a sanction is nil. In Los Angeles, the South Coast Air Quality Management District already requires that new polluters be "offset" by air-quality improvements in older facilities. Virtually the only viable projects that would be affected would be trash-burning plants, such as L.A.'s LANCER project, which Bradley recently killed because of public outcry over possible air pollution.

The more probable target of the EPA's announcement of sanctions is Congress, which is considering Mitchell's bill and others. In 1982, the Reagan Administration threatened to hit California with all sanctions allowed by law in an attempt to persuade Congress to weaken the law.

This year the EPA's approach has been more muted, but the announcement of sanctions served to focus attention on the fact that Congress must pass an extension of the Clean Air Act by the end of this year. Along with Mitchell, Rep. Henry Waxman, D-Los Angeles, has introduced a bill, as have others.

State and local governments get involved in air quality issues because, although the EPA must oversee matters, the Clean Air Act requires states to carry out programs to improve the air. In California, that job is the responsibility of the state Air Resources Board. The state legislature delegated direct responsibility for air quality programs in Los Angeles, Orange, Riverside, and San Bernardino counties to the South Coast Air Quality Management District, which is based in El Monte.

Officials in California have repeatedly insisted that the state's unusual geographical features make air cleanup more difficult than elsewhere. "We have most urban areas located in valleys, bounded by mountains, which restricts air flow," said Bill Sessa, spokesman for the Air Resources Board.

Thus, Sessa claimed, smog persists in California — particularly in Los Angeles — despite the state's strong efforts to clean it up. As evidence, he pointed to a recent ARB study showing that the amount of smog and the number of smog alerts had been virtually halved in the Los Angeles Basin since 1975. However, the basin is nowhere near meeting the federal standards for air quality.

Others do not agree, however. Waxman sharply criticized the South Coast District at a congressional hearing in Los Angeles last February. And air quality officials are also fighting a lawsuit by the Coalition for Clean Air, challenging the terms of a five-year extension L.A. received under the Clean Air Act in 1982. The coalition claims the South Coast District has not made "reasonable extra efforts" to clean up the air, as it promised at the time.

Although Waxman is also introducing a bill, the focus of congressional attention this summer has been on the Mitchell bill, S. 1351. The bill would give smoggy cities more time to meet federal clean air standards — 15 years for Los Angeles, less time for other cities. But it would also require cities to cut emissions 33 percent by 1991, 50 percent by 1994, and 65 percent by 1997.

The bill would also prohibit any net increase in vehicle mileage in the Los Angeles Basin, and require new industrial plants to round up two pollution "credits" under the AQMD's system for every one they must acquire now.

Like the Air Resources Board, business leaders in Los Angeles are seeking more flexibility in meeting air quality standards. Noting that smog alerts usually occur in the late afternoon only, the Greater Los Angeles Chamber of Commerce wants local air officials to have the power to impose air-pollution control measures only in the morning, when the pollutants that create smog are first emitted into the atmosphere. They have also called for the creation of five-year interim goals.

Even the EPA opposes the Mitchell bill. At a contentious hearing July 22, normally mild-mannered EPA Administrator Lee Thomas lambasted the bill as a costly usurpation of state and local control by the federal government.

State legislators have used smog's status as a high-profile issue to push their own air-quality bills. SB 151, by Sen. Robert Presley of Riverside, would reorganize the South Coast District's administration and give it more regulatory authority. AB 2595, by Assemblyman Byron Sher of Palo Alto, would require a 25-50 percent reduction in emissions in Los Angeles by 1992.

However, in the long run, according to SCAG's Nemeth, it will not be possible to meet federal air standards unless local governments (and their development policies) are "brought to the table and held as accountable as industry."

BRIEFS

A Los Angeles developer was convicted of federal charges that he used a fake letter to inflate the price of land in the Santa Monica Mountains which he sold to the National Park Service.

Jerry Y. Oren was found guilty by a federal jury in Los Angeles July 15. In late 1985, he sold 336 acres in Cheeseboro Canyon to the Trust for Public Land for $7.5 million. The Trust immediately conveyed the land for $8 million to the National Park Service, which added it to the Santa Monica Mountains National Recreation Area.

Testimony revealed that Oren and associates had faked a letter from a New York real estate agent reporting that Union Pacific had offered $9.3 million for the land. An appraiser testified that the letter induced him to value the land at $8.4 million, though an earlier appraiser had placed the value at $5.8 million.

Proposition M lives. A San Francisco judge has dismissed a lawsuit by the Residential Builders Association challenging the slow-growth initiative, which passed narrowly last November.

Superior Court Judge Lucy McCabe ruled July 16 that three San Francisco supervisors had not violated the Brown Act open government law by placing the measure on the ballot without public hearings. She also concluded that the supervisors were not required to send the ordinance to the city planning commission for review under the California Environmental Quality Act.

Proposition M limited office construction in the city to 475,000 square feet per year, and also imposed a series of policies designed to emphasize neighborhood considerations in the planning process.

Tiny Irwindale May Win Race to Lure Football Team

Unlikely as it may seem, the tiny San Gabriel Valley city of Irwindale has rapidly emerged as a leading contender in the competition for the Los Angeles Raiders football team — thanks largely to its skill as a redevelopment-backed haven for businesses.

Just when it looked as though Inglewood-based Hollywood Park had the inside track on the Raiders, Irwindale, laden with tax-increment dollars, coughed up an offer that would provide the team with a $115 million loan (including at least $1 million cash up-front) to build a stadium — owned by the Raiders, not by the city — on the site of a former quarry.

Though Irwindale has only 1,000 residents in its 7.5 square miles, it has been remarkably successful in luring businesses, including the Miller Brewing Co., which moved from nearby Azusa, and the corporate headquarters of Home Savings of America. Last year, despite its small size, it issued more money in redevelopment bonds than any other city in the state except for Oakland and San Jose.

According to Fred Lyte, the city's redevelopment consultant, Irwindale has $35 million in redevelopment proceeds at its disposal — more than any other city in the state.

With the Los Angeles Coliseum Commission in seemingly hopeless disarray, the peripatetic football franchise is certain to move somewhere.

Hollywood Park, which is putting together a privately funded deal, is hoping the team will help pull the racetrack out of financial trouble. Other serious contenders in Southern California include Carson, though the site there is locked in litigation, and the Los Angeles County Fairgrounds in Pomona.

According to a letter from Lyte to the Raiders, the football team is seeking a cash advance of at least $20 million to relocate, but the city is unwilling to produce more than $1 million up front. However, industries in Irwindale may produce the other $19 million as a loan in exchange for advertising rights at the stadium.

Ultimately, the $115 million would be produced from an $80 million revenue bond issue, a $10 million general-obligation bond issue for parking, and some $25 million of the redevelopment agency's available cash.

Like Vernon, Commerce, and the notorious City of Industry, Irwindale has used its redevelopment powers to lure businesses inside its borders while keeping the number of residents low. Located near Interstate 210 about 20 miles east of downtown Los Angeles, it was incorporated 30 years ago by the quarry companies that dominated the local economy. When the sand and gravel quarries began to shut down in the '70s, the city turned to industrial development.

Since then, its redevelopment activity has been remarkably high. According to the California Debt Advisory Commission's 1984 survey of redevelopment in the state, Irwindale had, at that time, used redevelopment to produce 6 million square feet of industrial space — more than any other city in the state besides San Diego and Industry. Last year, Irwindale issued almost $70 million in tax-allocation bonds, or almost 7 percent of the statewide total.

Contact: Fred Lyte, Lyte Enterprises Inc., (818) 793-7151.
John Herrera, L.A. Raiders, (213) 322-3451.

COURT CASES

Judge Strikes Down Tiburon Building Moratorium

A private judge has invalidated a building moratorium in the City of Tiburon, but did not address the question of damages for temporary takings, as lawyers for property owners had asked.

Marin County Judge Joseph Wilson, hired privately to expedite the case, ruled that a moratorium approved by voters in April 1986 could extend only until January 1987 because state law allows a local building moratorium to remain in effect only two years. The Tiburon Town Council imposed a building moratorium in 1985, prior to the vote.

Gary Ragghianti, Tiburon's town attorney, said the town will ask the judge to reconsider the decision, a necessary first step for an appeal.

Tiburon is not new to land-use litigation. The city was one of the parties in the 1979 *Agins* case, in which the California Supreme Court ruled that a landowner whose property had been downzoned could seek only invalidation of the regulation, not money damages. That rule was overturned in June by the U.S. Supreme Court in *First English Evangelical Lutheran Church v. County of Los Angeles* (*CP&DR*, July 1987).

In *First English*, the Supreme Court ruled that landowners are entitled to compensation even if their property is "taken" only temporarily. Subsequently, attorneys for landowners in the current Tiburon case (including the *Agins* family) sought to introduce the "temporary taking" as an issue in the case.

However, Judge Wilson's ruling addressed only the state law regarding the length of building moratoriums and did not deal with the compensation question.

Contact: Gary Ragghianti, (415) 453-9433.

Development Fees Struck Down by New Jersey Court

The New Jersey Supreme Court has ruled that local jurisdictions in that state need legislative authorization to impose development fees that are not directly related to the project at hand.

Ruling July 8 in the case of *New Jersey Builders Association v. Bernards Township*, New Jersey's highest court unanimously ruled that the state's 1976 Municipal Land Use Law did not grant local governments the power to levy development fees unless a "rational nexus" exists between project and fee.

Stewart M. Hutt, attorney for the New Jersey Builders Association, said the decision would "force towns to act in a more reasonable manner." Government attorneys, on the other hand, said they were encouraged that the fees were struck down on narrow grounds and challenged the legislature to take up the cause.

In making the ruling, the court affirmed lower court decision to strike down Bernards Township's 1982 traffic linkage ordinance. The ordinance required new developments to pay about two-thirds of a 20-year, $20-million transportation improvement plan. The court's ruling referred to the state law's language requiring a developer "to pay his pro rata share of the cost of providing only reasonable and necessary (infrastructure improvements)."

A more complete description of *New Jersey Builders Association v. Bernards Township*, Docket No. A-55, appeared in the New Jersey Law Journal on July 16. (120 N.J.L.J. 87.)

Clean Air Legislation May Affect Development

Continued from page 1

In the long run, smog concerns may soon dovetail with measures o reduce traffic, such as mandatory ridesharing for large employers. The Los Angeles City Council recently imposed a mandatory ridesharing requirement on all employers with more than 700 workers, and Mayor Tom Bradley has proposed that the requirement be expanded to include companies with 250 or more employees.

But business and governmental officials in Los Angeles acknowledge that, sooner or later, extreme changes in travel and work patterns will be required in Southern California. For example, Pat Nemeth, director of environmental planning at the Southern California Association of Governments, predicts that the Los Angeles Basin will be unable to meet federal air standards unless the number of vehicle miles traveled is cut in half.

The opening salvo in the latest smog wars came in June, when the Environmental Protection Agency announced plans to impose partial construction bans on 14 metropolitan areas which would fail to meet clean-air standards by the Dec. 31, 1987, deadline. Five of the 14 were in California: Greater Los Angeles, Ventura County, Kern County, Sacramento County, and Fresno County.

However, the practical effect of such a sanction is nil. In Los Angeles, the South Coast Air Quality Management District already requires that new polluters be "offset" by air-quality improvements in older facilities. Virtually the only viable projects that would be affected would be trash-burning plants, such as L.A.'s LANCER project, which Bradley recently killed because of public outcry over possible air pollution.

The more probable target of the EPA's announcement of sanctions is Congress, which is considering Mitchell's bill and others. In 1982, the Reagan Administration threatened to hit California with all sanctions allowed by law in an attempt to persuade Congress to weaken the law.

This year the EPA's approach has been more muted, but the nnouncement of sanctions served to focus attention on the fact that Congress must pass an extension of the Clean Air Act by the end of this year. Along with Mitchell, Rep. Henry Waxman, D-Los Angeles, has introduced a bill, as have others.

State and local governments get involved in air quality issues because, although the EPA must oversee matters, the Clean Air Act requires states to carry out programs to improve the air. In California, that job is the responsibility of the state Air Resources Board. The state legislature delegated direct responsibility for air quality programs in Los Angeles, Orange, Riverside, and San Bernardino counties to the South Coast Air Quality Management District, which is based in El Monte.

Officials in California have repeatedly insisted that the state's unusual geographical features make air cleanup more difficult than elsewhere. "We have most urban areas located in valleys, bounded by mountains, which restricts air flow," said Bill Sessa, spokesman for the Air Resources Board.

Thus, Sessa claimed, smog persists in California — particularly in Los Angeles — despite the state's strong efforts to clean it up. As evidence, he pointed to a recent ARB study showing that the amount of smog and the number of smog alerts had been virtually halved in the Los Angeles Basin since 1975. However, the basin is nowhere near meeting the federal standards for air quality.

Others do not agree, however. Waxman sharply criticized the South Coast District at a congressional hearing in Los Angeles last February. And air quality officials are also fighting a lawsuit by the Coalition for Clean Air, challenging the terms of a five-year extension L.A. received under the Clean Air Act in 1982. The coalition claims the South Coast District has not made "reasonable extra efforts" to clean up the air, as it promised at the time.

Although Waxman is also introducing a bill, the focus of congressional attention this summer has been on the Mitchell bill, S. 1351. The bill would give smoggy cities more time to meet federal clean air standards — 15 years for Los Angeles, less time for other cities. But it would also require cities to cut emissions 33 percent by 1991, 50 percent by 1994, and 65 percent by 1997.

The bill would also prohibit any net increase in vehicle mileage in the Los Angeles Basin, and require new industrial plants to round up two pollution "credits" under the AQMD's system for every one they must acquire now.

Like the Air Resources Board, business leaders in Los Angeles are seeking more flexibility in meeting air quality standards. Noting that smog alerts usually occur in the late afternoon only, the Greater Los Angeles Chamber of Commerce wants local air officials to have the power to impose air-pollution control measures only in the morning, when the pollutants that create smog are first emitted into the atmosphere. They have also called for the creation of five-year interim goals.

Even the EPA opposes the Mitchell bill. At a contentious hearing July 22, normally mild-mannered EPA Administrator Lee Thomas lambasted the bill as a costly usurpation of state and local control by the federal government.

State legislators have used smog's status as a high-profile issue to push their own air-quality bills. SB 151, by Sen. Robert Presley of Riverside, would reorganize the South Coast District's administration and give it more regulatory authority. AB 2595, by Assemblyman Byron Sher of Palo Alto, would require a 25-50 percent reduction in emissions in Los Angeles by 1992.

However, in the long run, according to SCAG's Nemeth, it will not be possible to meet federal air standards unless local governments (and their development policies) are "brought to the table and held as accountable as industry."

BRIEFS

A Los Angeles developer was convicted of federal charges that he used a fake letter to inflate the price of land in the Santa Monica Mountains which he sold to the National Park Service.

Jerry Y. Oren was found guilty by a federal jury in Los Angeles July 15. In late 1985, he sold 336 acres in Cheeseboro Canyon to the Trust for Public Land for $7.5 million. The Trust immediately conveyed the land for $8 million to the National Park Service, which added it to the Santa Monica Mountains National Recreation Area.

Testimony revealed that Oren and associates had faked a letter from a New York real estate agent reporting that Union Pacific had offered $9.3 million for the land. An appraiser testified that the letter induced him to value the land at $8.4 million, though an earlier appraiser had placed the value at $5.8 million.

Proposition M lives. A San Francisco judge has dismissed a lawsuit by the Residential Builders Association challenging the slow-growth initiative, which passed narrowly last November.

Superior Court Judge Lucy McCabe ruled July 16 that three San Francisco supervisors had not violated the Brown Act open government law by placing the measure on the ballot without public hearings. She also concluded that the supervisors were not required to send the ordinance to the city planning commission for review under the California Environmental Quality Act.

Proposition M limited office construction in the city to 475,000 square feet per year, and also imposed a series of policies designed to emphasize neighborhood considerations in the planning process.

Tahoe Limits Lifted

Continued from page 1

• Hotel and motel construction will be capped at 200 rooms over the next 10 years.

• Commercial construction will be limited to 400,000 square feet over the next 10 years.

• Apartment and condominium construction will be limited to 1,600 units over the 20-year life of the plan. Multi-family construction has been banned on the California side of the Tahoe basin since 1975.

The dispute over development in Lake Tahoe stretches back many years. The most critical environmental issue involves the quality of the lake's unusually clear water, which has been damaged by erosion resulting from construction and from algae growth. As Tahoe is located in a valley, air quality is also a concern.

The Tahoe Regional Planning Agency was first created jointly by California and Nevada in 1969. However, in the following decade, the number of dwelling units in the Tahoe basin almost doubled. In the late '70s, administration of planning regulations in Tahoe became increasingly difficult, as environmentalists lobbied the California legislature and development interests lobbied the Nevada legislature for changes.

Finally, in 1980, a new bistate compact was signed, and the reorganized TRPA was charged with determining the Tahoe basin's environmental and development threshholds. Four years later, the TRPA board approved a new regional plan, but it was challenged in court by California Attorney General John Van de Kamp and the League to Save Lake Tahoe, a preservationist group. Among other charges, the plaintiffs claimed the plan allowed too much commercial development (1.1 million square feet over 20 years) and did not provide a time schedule to clean up the lake's algae.

U.S. District Court Judge Edward J. Garcia quickly imposed a preliminary injunction which essentially prohibited construction in the Tahoe area. However, in both 1986 and 1987, Garcia allowed TRPA to issue permits to construct about 300 single-family homes.

In 1985 and 1986, TRPA brought together more than 30 different interest groups in a "consensus-building process" meant to reach agreement on Tahoe-area policies that could be included in a new regional plan. (*CP&DR*, November 1986.) After difficult negotiations, that group reached tentative agreement about a year ago on the following points:

• Buildings could cover no more than 50 percent of a site.

• The environmental sensitivity of 17,000 subdivided lots would be reassessed.

• Hundreds of landowners who were partway through the permitting process when the injunction was imposed would be allowed to proceed.

• A system of transferrable development rights would be created to allow environmentally sensitive pieces of property to be saved from development.

This agreement formed the basis of the new TRPA plan, which was approved by the TRPA board in late May and ratified by Judge Garcia in mid-July. The only vocal opponent of the plan among TRPA board members was Los Angeles developer Alexander Haagen, who was appointed by Gov. George Deukmejian.

Santa Clara Drops Out of Golden Triangle Group

Continued from page 1

Group study revealed that if all vacant land in the six cities had been developed as zoned at that time, the new development would have created 211,000 jobs and only 59,000 housing units.

However, this "fiscal zoning" led to high housing prices in the Silicon Valley and increased traffic congestion, particularly along Highway 101, as most employees had to commute from the southern part of the San Jose area.

As the electronics industry slowed down in the 1980s, the cities became more sensitive to competition between Silicon Valley and other areas — and agreed to begin discussing common solutions.

"The fact that they are even holding hands at all is amazing," says Peter Valk, a Pasadena-based transportation consultant who has been assisting the group, known as the Golden Triangle Task Force.

In June, representatives of the six cities reached agreement on four points, including the following:

• Joint transportation demand management techniques.
• Ways of financing capital transportation improvements.
• Methods of increasing the housing stock.
• A cap on industrial development.

It was this last proposal that caused Santa Clara to drop out of the Task Force when the points were brought back to the city council for ratification.

The cap took the form of a floor-area floor-area ratio limit of 0.35. There was considerable flexibility in the cap. It could be spread across all industrially zoned land in the city, or applied only to vacant industrial land. In addition, each city would receive "bonus" of 150 square feet of industrial space for each housing unit created beyond the amount of housing called for in the city's general plan.

According to Edie Dorison, executive vice president of the Manufacturing Group, the industrial cap would result in the loss of up to 1 million square feet of industrial space in some of the Silicon Valley cities, and hardly any loss in others.

"You could accommodate a tremendous amount of additional development without running afoul of the basic principal," added Dennis Church, an aide to Shirley Lewis, a San Jose city councilwoman and Task Force member.

That idea didn't wash with Santa Clara, however. Goodfellow said the city council there was philosophically opposed to a limit on use of industrial land. He also noted that the Golden Triangle restrictions would apply only to certain portions of the county.

Santa Clara has been perhaps the most blatant fiscal zoner in the Silicon Valley. The 1980 Manufacturing Group study reported that vacant land there, if developed as zoned, would create 24,000 jobs and only 2,800 housing units.

"The city is nowhere near a balance by any means," acknowledged Goodfellow, who pointed out that the city has sought to find ways to provide more housing. Among other things, he said, the city is converting a landfill/golf course into a housing project.

Contacts: Edie Dorison, Santa Clara County Manufacturing Group, (408) 496-6801.
Jeff Goodfellow, Planning Director, City of Santa Clara, (408) 984-3111.
Dennis Church, aide to Shirley Lewis, (408) 277-5320.