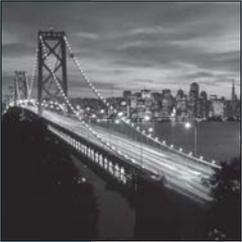


CHAPTER 3

Planning

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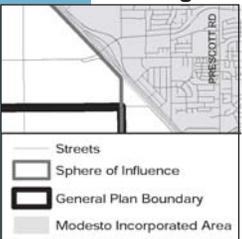


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CEQA and the Coastal Act

By Meg Caldwell

Implementing California's coastal protection program is not easy. Land use planning and regulation are fundamental to the California Coastal Act, the organic law that governs the state's premier coastal management program. In carrying out the law, the California Coastal Commission (CCC) is subject to CEQA and must make compliance findings though it is not responsible for Environmental Impact Reports (EIRs). The Commission's program has been certified as "functionally equivalent" because of the analyses and findings required pursuant to the Coastal Act.

While the CCC does not do or require EIRs, its environmental stewardship work benefits greatly from them, as well as from mitigated negative declarations. CEQA documents provide invaluable information that the twelve person CCC relies on in its decision-making. Especially important are comments from

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CEQA Improves Planning

By Tal Finney

Through planning, communities have the opportunity to identify and resolve community issues about growth, determine appropriate use of water and land resources, anticipate future demands for services, avoid potential problems, and establish the vision for a community's future. Good planning can only develop with the active participation of those who live and work in a community and the various agencies responsible for land use and resource decisions.

General Plans are the foundation for all local land use planning in California. Other more specific land use plans, zoning ordinances, and resource policies flow from a community's general plan.¹

Although California has an elaborate system for planning in statute, there is little funding available to implement comprehensive, front-end planning by local government agencies. As a result, many general plans throughout California are considerably out of date or have so frequently been amended that the original vision is no longer intact.



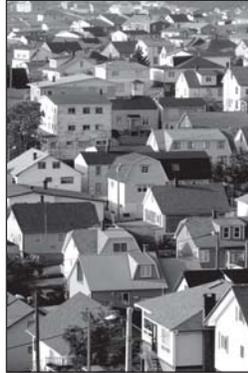
Citizen participation in the development of general plans is a requirement of State law. However, as is often the case with limited funding for planning, citizen participation may well be less than optimum.

Visioning processes, workshops, and other popular means of improving community involvement in planning are costly and staff intensive and many do not survive when budgets are tight. The "minimum-required" approach to citizen participation in the planning process, forced on many local governments by fiscal restraints, also undermines the value of the outcome of a planning process.

The lack of local government funding for planning has not slowed development. Instead, developers have filled the fiscal void, proposing and advocating for specific plans or amendments to outdated general plans in order to permit proposed new developments. While California forbids developers to pay for general plans, state law permits developer reimbursement for specific planning. As a result, the system of deliberative, community-based local planning envisioned by state planning law has become strongly influenced by the interests of property owners seeking to develop their land.

The price of this lack of community-based planning is evident all around us—longer commutes because housing opportunities are insufficient close to workplaces, increased air pollution resulting from long commutes, limited investment to create adequate transit choices, substantial stress on water supplies, and losses in agricultural lands and habitat at the edges of urban areas.

In the face of this breakdown in comprehensive community planning, CEQA has come to play an increasingly important role as a backstop where planning fails to address and resolve the real issues facing Californians today. General plan adoption and amendment are subject to the California Environmental Quality Act (CEQA), as is the approval of most planning and development projects. CEQA requires analysis of the environmental impacts of development projects, both at the project level and in terms of larger programs, such as specific plans for development in part of the community or regional plans for infrastructure. In particular, CEQA's cumulative impact analysis requirement has become a surrogate for comprehensive, community-wide planning in many cities and counties. CEQA has also become the vehicle to ensure coordination between local government agencies with land use authority and resource agencies responsible for protection and management of natural resources.



CEQA requires that the impacts of plans and projects be analyzed and disclosed to the public. More importantly, from the perspective of cash-strapped local governments, CEQA requires that environmental review documents be paid for by the project proponent. Thus, CEQA is a critical avenue for funding the development of information about proposed projects, their environmental impacts, mitigation options, and alternatives. By providing a means for the disclosure of project information and alternatives, and a real avenue for public participation, CEQA strengthens the hand of both local governments in ensuring that proposals take community needs and interests into account, and resource agencies in helping projects consider good stewardship of natural resources in project decisions. It also empowers communities and revenue-generating businesses by giving them a voice when local funds are insufficient to ensure a meaningful process pursuant to planning law.

Tal Finney, a partner in the law firm of Dongell Lawrence Finney LLP, has worked extensively on land-use issues and policy in both the private and public sectors. Mr. Finney served as the state's chief planner in his capacity as Director of the Governor's Office of Planning and Research from 2001-2003, served as the Director of Policy to the Governor's Office from 1999-2002, and served a short stint as the Director of the Office of Administrative Law, the state's chief regulator, among other posts before returning to the private sector to focus on land-use, environmental, energy, and corporate law.

Footnote: ¹Zoning ordinances in charter cities are an exception, though most charter cities follow the consistency practice.

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other public agencies and the public, providing valuable data and highlighting issues CCC staff had not thought of. Additionally, the level of detail and graphics are often much better in CEQA documents than the CCC can produce especially relative to issues such as visual impacts, as well as historical and archaeological resources. Technical data, including appendices to EIRs, often include information critical to Coastal Act review. Examples include data associated with dredging and habitat restoration projects.

A great number of projects before the CCC have been improved or changed to avoid adverse environmental impacts identified through the CEQA review process. In a recent case involving redevelopment of Los Angeles International Airport, CEQA documentation was pivotal in the CCC's ability to protect environmentally sensitive sand dune habitat. Similarly, expansion of the Santa Barbara airport resulted in important wetland restoration and protection measures identified through the CEQA process. Indeed, CEQA has proved to be an invaluable tool in coastal conservation.

Meg Caldwell is the Chair of the California Coastal Commission. Ms. Caldwell is also a Lecturer on Law, Stanford Law School, and the Director of Stanford Law School's Environmental and Natural Resources Law and Policy Program.

Setting the Precedent: CEQA Applies to Sprawl

By Carlyle W. Hall, Jr.

The California Supreme Court's six to one decision in *Bozung v. Ventura County Local Agency Formation Commission* (LAFCo) nullified the annexation of the 677 acre Bell Ranch to LAFCo activities.

Without preparation and consideration of an Environmental Impact Report (EIR), the Ventura County LAFCo had approved the annexation of prime agricultural land for the proposed development of a 10,000-person "mini-city." The City of Camarillo and the LAFCo argued that an EIR was not required at that early stage in the land use planning process, that the information in it would only be repeated in later EIRs, and that an EIR before the LAFCo would be "wasteful and uninformative."

Representing the plaintiffs, lawyers from the Center for Law in the Public Interest (CLUPI) contended that the LAFCo decision whether to approve an annexation is a key point in the land use decision-making process and can have important environmental consequences. In its 1975 ruling, the Supreme Court agreed with CLUPI observing, "The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind."

Two years later, the proposed annexation application returned to

the Ventura LAFCo, this time with a full EIR. The EIR showed that the proposed urbanization of the Bell Ranch would:

- Replace hundreds of acres of "highly productive" and "economically viable" prime agricultural land with urban residential uses, depriving Ventura County of jobs and tax revenues averaging about \$1.2

"The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind."

– From the CA Supreme Court's 1975 *Bozung* Ruling

million annually, and contributing to the deterioration of adjacent agricultural lands.

- Require very heavy public expenditures for construction of new schools, sewage systems, roads and fire and police facilities.
- Many alternative development sites within the existing Camarillo city limits presented far fewer adverse environmental impacts and no necessity for developing new fringe area infrastructure.

When the proposed Bell Ranch annexation came before the LAFCo again in 1977, residents from all over the County used the EIR to document their case against the project. Several LAFCo Commissioners recognized the importance of the EIR in their decision. One noted that information of the sort

marshaled in the EIR required the Commissioners to look at the facts objectively, "not as politicians," and to vote in accord with the purpose of the laws. The final vote against the annexation was unanimous.

Besides its obvious importance in stopping a dramatically large urban sprawl project, the *Bozung* decision has had an enormous influence in the way LAFCos go about making their decisions. As the regional agency authorized to approve or disapprove city and special district formations and annexations, LAFCos exercise very important powers. CEQA provides them with information about the many ways those decisions may have very practical (albeit indirect) environmental and infrastructure impacts.

Beyond this, the Bell Ranch annexation was one of the first successful efforts by Ventura County agricultural and environmental interests to band together to combat widespread proposed urbanization within the agricultural areas of that County. More recently, this alliance has seen its SOAR initiative and other efforts dramatically reduce urban development intrusions into the County's agricultural regions.

Carlyle W. Hall, Jr. is a partner in the law firm of Akin Gump Strauss Hauer and Feld. In 1971, Mr. Hall co-founded the Center for Law in the Public Interest (CLUPI), where he was the lead attorney in the Bozung litigation.

CEQA Slows the March of Sprawl in Antioch

By Seth Adams

Located on the eastern edge of the Bay Area, within commuting distance of the Bay Area and Sacramento, Antioch has been the site of rapid suburban-style growth for the last forty years. It has doubled in population since 1980 to over 100,000 residents, leading to severe reductions of open space, damage to endangered species habitat and some of the worst traffic congestion in the state along Highway 4.

As these quality of life concerns grew, and the development proposals continued, the citizens of Antioch began to demand an end to sprawl. Because of the public process provided by CEQA, the city council recently abandoned one of the worst sprawl development proposals in Antioch in recent years: the Sand Creek Specific Plan.

In 2002, the city council of Antioch was presented with a proposal for a massive 2,700 acre development at the southern edge of town of approximately 4,900 residential and commercial units. The push southward described in the Sand Creek

Specific Plan would have eliminated the greenbelt that separated Antioch from Brentwood, in effect blending the two towns and forever destroying the existing wildlife corridors. Traffic problems would be magnified, with some estimates as high as 140,000 more car trips a day eventually funneling onto Hwy 4.



Higgins Ranch was slated for development under the Sand Creek Specific Plan.

The plan would have turned the rugged Higgins Ranch area into a subdivision, exposing residents to the hazards of nearby sand and coal mines as well as potential landslides and high fire risks. In spite of these dangers, the city was prepared to allow the requested zoning changes. When the Draft Environmental Impact Report (DEIR) was released for public review, it gener-

ated intense community interest. The city council received extensive public comments on the DEIR from community based organizations and local agencies, including the East Bay Regional Park District, describing the harmful effects of the new expansion.

Citing “significant budgetary constraints” and a change in the City’s priorities, the city council suspended the processing of the Sand Creek Specific Plan indefinitely.

According to David Reid of Greenbelt Alliance, the abandonment of the plan marks a major victory. “CEQA brought much needed attention to this sprawl proposal. It opened people’s eyes. We must continue our vigilance to make sure the city protects itself from more poorly planned development.”

Seth Adams is Director of Land Programs at Save Mount Diablo, which has acquired land and responded to development proposals around the San Francisco East Bay’s Mount Diablo since 1971.



Higgins Ranch seen from Black Diamond Mines Regional Preserve. Only one quarter of the 2,700 acre project area is visible. According to David Reid of Greenbelt Alliance, “CEQA brought much needed attention to this sprawl proposal. It opened people’s eyes. We must continue our vigilance to make sure the city protects itself from more poorly planned development.”

Protecting the Grassland Ecological Area Through BETTER PLANNING

By Daniel L. Cardozo

Standing at the eastern end of Pacheco Pass in 1868 on his initial trek to Yosemite, John Muir described the plain that lay before him as knee-deep in “one continuous bed of honey-bloom.” The San Joaquin’s meandering riparian forest offered the only relief from the flowery carpet of Muir’s celebrated “bee-pastures.” After arriving at the forest’s edge, Muir walked for miles under a great canopy of cottonwood, sycamore, willow, box elder and valley oak. Crossing the river at its confluence with the Merced, Muir marveled at the “fine jungle of tropical luxuriance” as he proceeded east on his portentous journey.

The landscape that inspired Muir’s lyricism now lies within the 180,000 acre Grassland Ecological Area (GEA) in western Merced County, encompassing California’s largest remaining freshwater marsh complex. The GEA includes several federal and state wildlife refuges, a state park and the largest block of privately owned and managed wetlands in California. The private lands are managed primarily for migratory waterfowl and other wildlife by the approximately 200 hunting clubs that operate within the GEA.

Today the GEA serves as a major wintering ground for Pacific Flyway species. Its diverse and interconnected habitats support large native migratory and resident wildlife populations, including a substantial

and growing number of threatened and endangered species. The U.S. Fish and Wildlife Service and international treaties formally recognize the GEA as a resource of national and international significance.



Daniel Cardozo

CEQA has been critical in protecting California’s largest freshwater marsh from encroaching development.

Apart from its biological importance, the GEA provides substantial economic and employment benefits to Merced County and surrounding communities. A recent study jointly sponsored by the Grassland Water District, the Great Valley Center

The last twenty years have clearly demonstrated that land use planning informed by meaningful CEQA review is our only hope of preserving this unique legacy of California’s native landscape.

and the Packard Foundation found that direct expenditures by public and private land managers in the GEA, combined with expenditures related to hunting and other recreational uses, contribute almost \$50 million annually to the local economy and account for 800 jobs.

Despite its importance, perennial proposals to develop lands within

the GEA or the critical buffer zone adjacent to the core habitat continually imperil the restoration effort. Habitat fragmentation and degradation from encroaching urban development remain the greatest threat to the long-term viability of the resource.

Five separate planning and permitting jurisdictions have adopted spheres of influence or projected growth boundaries that directly conflict with the GEA boundary or that extend into the sensitive transitional lands. No regional planning process or state regulation guides or coordinates local land use decisions or otherwise protects the GEA from incompatible development.

CEQA is the only mechanism for comprehensive and coordinated land use and resource planning in the GEA. It has played an indispensable role in enabling the restoration of the resource by informing and influencing decision-making on a long series of development proposals in or adjacent to the GEA. Even more important for the long-term, the CEQA process

is shaping relevant General Plan policies to take into account the protection of the GEA.

Beginning in the mid 1980s, large-scale residential development proposals appeared for the first time in this formerly remote region. More recently, rural subdivisions, industrial and institutional development, a local airport and a high

speed rail line and station have been proposed in the GEA. Several projects proposed east of Los Banos within a narrow biological corridor linking the northern and southern refuge lands have been of particular concern.

The assessment of these projects under CEQA has served essential planning objectives. It has allowed for consultation between the agencies responsible for resource management within the GEA and the agencies responsible for land use planning and permitting. It has provided local jurisdictions with limited staff and financial resources access to sophisticated scientific and expert analysis from a variety of sources. It has created a forum for private refuge managers, waterfowl hunting and habitat conservation groups, agricultural interests and other stakeholders to inform local decision-makers of the biological, economic, and recreational significance of the GEA, an area that local planning authorities had largely ignored.

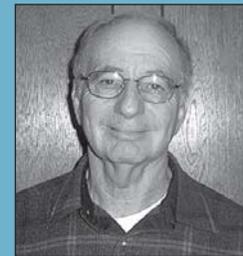
The original research and technical analysis presented in the successive CEQA project assessments has produced a detailed portrait of the GEA and its needs. It has also identified the significant and unavoidable effects that would result from urban encroachment. The cumulative impact analysis prepared with these assessments has effectively bridged a fragmented local planning process by requiring consideration of projects outside of the lead agency's jurisdiction and by ensuring that the needs of the larger GEA ecosystem are taken into account.

As a direct result of the information disclosed through CEQA, every major development proposal in the GEA biological corridor or in the transitional agricultural lands has been either rejected by local land-use decision-makers, abandoned by applicants or deferred for further study. These CEQA studies have also fostered a greater understanding and appreciation of the GEA's broader importance by local decision-makers, which in turn is informing long-range planning decisions.

In 1999, the City of Los Banos substantially revised its General Plan to establish a new eastside urban limit line and to redirect urban expansion away from the GEA. CEQA's mandate for integrated planning and environmental review also enabled the City, through the General Plan Environmental Impact Report, to develop a number of special policies designed to protect the natural resources that lie just beyond the City boundary.

The GEA is a remnant of a vast Central Valley wetland ecosystem that once covered 4 million acres. With 95 percent of this habitat lost to urban and agricultural development, the continued restoration and protection of the GEA is critically important. The last twenty years have clearly demonstrated that land use planning informed by meaningful CEQA review is our only hope of preserving this unique legacy of California's native landscape.

Daniel L. Cardozo is a partner with Adams Broadwell Joseph & Cardozo. Mr. Cardozo has represented the Grassland Water District on land use and environmental matters since 1989 and has served as its General Counsel since 1997.



Working for Waterfowl Habitat Conservation at Grassland

By Douglas T. Federighi

I have been hunting in the grasslands of Merced County for more than 50 years. Over my lifetime I have seen wildlife habitat and hunting grounds eliminated one after the other throughout northern California.

The Grassland Ecological Area provides one of the last remaining major waterfowl conservation and hunting areas in the state. My fellow landowners and I have invested our private dollars and worked with public resource management agencies to preserve and enhance this area.

Our labors are finally showing results in the diversity of ducks and other wildlife and in the increasing recognition of the importance of this resource.

If our sport hunting tradition is to survive in this state, we must protect the grasslands from the same fate suffered by so many of California's former wild places.

Douglas T. Federighi is a member of the Ducks Unlimited National Conservation Programs Committee, a Director of the Grassland Water District, and a long-time Grassland hunter.

SAVING the San Diego Backcountry

The Problem with Rural Subdivisions

By Bob Johnston

Low-density rural residences on the outskirts of cities were originally a method of letting landowners get some economic return for their lands while awaiting urbanization. This concept is still valid, as long as the density is kept very low, so that these properties can be efficiently re-subdivided later, when needed for urban uses. Parcels of eighty or even forty acres, can serve this purpose of temporary income for landowners.

The problem is that this concept has been misunderstood and/or politically compromised over the years, beginning after World War II. Now many local governments permit rural residential parcels in sizes between a half and twenty acres. These properties then are too valuable to be re-subdivided into efficient sizes for small-lot single-family dwellings and for multi-family uses, so they get skipped over. The resulting mix of land use types and densities is very inefficient to service and to provide with transit, or even roads.

Low-density sprawl consumes significantly more land per capita than efficient subdivisions. Thus, low density rural subdivisions lead to conversion of habitat and

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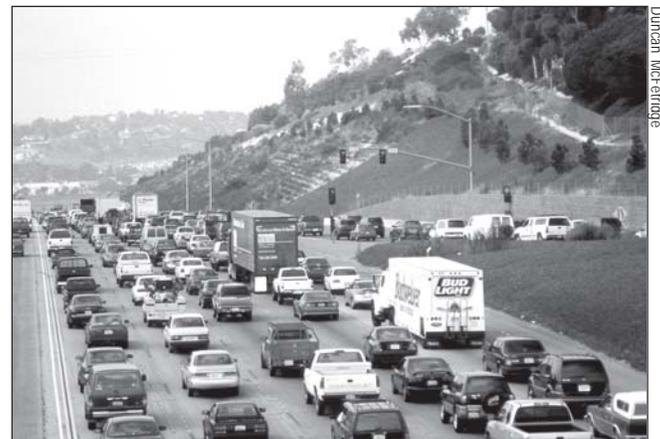
September 18, 2001 should be remembered as the day when the San Diego County backcountry breathed a sigh of relief. That morning, the San Diego County Board of Supervisors called off a five-year campaign to zone nearly 200,000 acres of rural backcountry for ranchettes and “intensive agriculture” without any meaningful environmental review. Thanks to the accountability created by CEQA, this land no longer faces the threat of development.

In 1996, San Diego County proposed to redesignate in the County’s General Plan about 200,000 acres of land for “intensive agriculture” and to impose an exceptionally small eight acre minimum parcel size west of the County Water Line. Agricultural grading and clearing would have impacted all of this sensitive habitat. Development of small-parcel farming and ranchettes would have affected water quality and further encroached upon San Diego’s scarce water supplies. Worst of all, concerned citizens feared that these small parcels would quickly be converted from farm land to sprawling residential development.

The General Plan Amendment proposal, referred to as GPA 96-03, sparked an avalanche of opposition from local and statewide environmental groups, led by Save

Our Forest and Ranchlands (SOFAR). SOFAR and other environmental groups pointed out that the environmental review for this proposal was deficient, but the County pressed forward unconcerned.

When the County approved the deficient Environmental Impact Report (EIR) for the land use changes, SOFAR took the County to court. The Superior Court found the EIR legally inadequate under



Morning congestion on Highway I-5 in San Diego. Concerned citizens feared that GPA proposal 96-03 would have exacerbated the region’s severe traffic problems.

CEQA and ordered the County to re-do its analysis. The court also placed a subdivision moratorium on the affected lands, removing all permitting authority from the County and designating SOFAR as interim land use authority.

Five years passed, and the County finally attempted to correct the EIR. However, because the analysis was still defective, in 2000 SOFAR returned to court. The case quickly drew national attention when it attracted the interest of the Attorney General of the State of California

Duncan McFarlane

and the Environmental Protection Agency (EPA). The Attorney General filed an *amicus* brief in support of SOFAR, stating that "[t]he potential clearing and grading of vast amounts of natural habitat in San Diego County without any further environmental review will impair or destroy the state's biological resources, damaging habitats utilized by numerous sensitive plant and animal species."

Like SOFAR, the Attorney General was particularly critical of the EIR's failure to identify mitigations common in other agricultural counties.

Other environmental organizations also filed an *amicus* brief in support of SOFAR. These groups included California Native Plant Society, California Oaks

Foundation, Center for Biological Diversity, Environmental Health Coalition, Mountain Defense League, San Diego Audubon Society, San Diego Baykeeper, Sierra Club, and Surfrider Foundation.

After expedited litigation, the Superior Court ultimately agreed with the arguments of SOFAR and its *amici*, and ordered the County to rescind its planning approvals. The County was prohibited from proceeding with the project pending its compliance with CEQA.

As a result of this court action, the County finally relented and prepared more rigorous environmental review. Importantly, in a new general plan amendment, the County required the implementation

of mitigation for the project's impacts on biological resources, including the adoption of a grading ordinance. This ordinance limits the amount of open space available for conversion to agriculture and ensures additional parcel-level environmental review at the time of subdivision. Lastly, the minimum parcel size west of the county water line was increased from eight to



The Santa Isabella Valley Agricultural Preserve was threatened with subdivision under GPA proposal 96-03. Because of CEQA, the County substantially revised its plan.

forty acres, a move which substantially limits the potential for this agricultural land to be re-zoned for sprawl development in the future. Today, thanks to the CEQA process, environmental safeguards are in place with respect to San Diego's important agricultural lands.

While it took several years for the County to examine the environmental impacts of this 200,000 acre project, the review ultimately resulted in meaningful protections for the environment. Without CEQA, such review would never have occurred and San Diego's backcountry would have been changed forever.

Written by PCLF staff.

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agricultural lands at a much faster rate. Households on rural parcels and large-lot urban parcels make more trips per day and travel more miles per trip, generating more pollution. Parcel sizes of a half up to about five acres cause the worst runoff and water pollution conditions, as the runoff cannot be treated naturally by the plants and soils. It is currently too expensive to capture and treat runoff at those densities.

Permitting the majority of development at or beyond the urban edge, rather than rebuilding the inner cities, also creates worse conditions for households and businesses in the older central cities, as investment drops in those areas. This pattern, of course, differentially affects poor and minority households and businesses. Sprawl also tends to lead to greater segregation of households by income and unequal school systems and tends to weaken the economies of both the inner cities and the suburbs.

In addition, there is now evidence that sprawl, with its auto-oriented lifestyle, creates health risks due to lack of walking.

Bob Johnston is a Professor in the Department of Environmental Science and Policy at the University of California at Davis. Mr. Johnston is also a Faculty Researcher at the Institute of Transportation Studies at the University of California at Davis.

CEQA, Fringe Area Growth, and the LA County General Plan

By Carlyle W. Hall, Jr.

It took 15 years, but thanks to CEQA, more than 3,000 square miles in the unincorporated areas of Los Angeles County were protected against ill-conceived urban expansion by a legally sound General Plan. In one of CEQA's longest running lawsuits, begun in 1972 and finally concluded in 1987, the Superior Court threw out three separate General Plans approved by the Board of Supervisors before a court-appointed referee convinced the County to approve what the referee advised the Court were "realistic standards and policies to accommodate [new urban] development and [to] discourage inefficient patterns of development."

In 1970, the Supervisors approved the "Environmental Development Guide"

to serve as the General Plan for the County's then 7 million residents, about 1 million of whom lived in the 3000 square mile unincorporated area. Under the Guide's "modified centers concept," new development to house about half of the projected population growth of 2.2 million persons over the next twenty years would be encouraged within already existing urban centers, while the other half was to be guided to proposed new "urban expansion areas" totaling approximately 173 square miles. This basic policy was designed to revitalize the County's older cities, while allowing limited new fringe development in the unincorporated area.

In 1972, the Legislature enacted AB 1301 which, for the first time, required localities to promptly bring their zoning into conformity with their General Plans and to follow those plans in their future land use decisions. Thus, the Guide went from being an "interesting study" to a "constitution" for future land development within the County's unincorporated area, where the Supervisors have direct authority to make land use decisions.

The Supervisors responded by ordering County planning staff to embark on a "crash program." In direct conflict with the new legislative reforms, County planners were

In direct conflict with the new reforms, County planners were secretly directed to prepare a new General Plan conforming to pre-existing zoning and to individual requests for particular treatment of specific parcels.

secretly directed to prepare a new General Plan conforming to pre-existing zoning and to individual requests by certain property owners for particular treatment of specific parcels.

Many professionals within the Planning Department were horrified by the "crash program" and by the arbitrary planning decisions that responded to the requests of politically powerful landowners. These planners undertook two key environmental studies.

- One, the "conflicts" study, revealed that, despite the fact that the County's twenty year population

projections had just been reduced from 2.2 million to only 700,000 new residents, the "crash program" had nonetheless added another 178 square miles of urban expansion areas, fully 99 percent of which were located in environmentally sensitive resource areas (e.g., significant ecological areas and watershed areas) or hazardous areas (e.g., flood hazard areas).

- The second, the "development suitability" study, showed that two-thirds of the areas designated for new urban expansion in the Santa Monica Mountains were the least suitable lands for urbanization.

No attempt was made to modify the "crash program's" land use maps in light of either study, and neither study was

revealed or made available to the public. Instead, the Environmental Impact Report (EIR) prepared for the new General Plan claimed to continue use of the Guide's "modified centers" concept, and asserted that the new Plan would direct new urban development to suitable areas, while minimizing hazards and maximizing environmental preservation.

Labeling the County's Plan a "blueprint for urban sprawl," attorneys from the Center for Law in the Public Interest (CLIP) launched a CEQA challenge to the 1973 County General Plan on behalf of a broad coalition of

environmental and homeowner groups and professional planners.

After a two-week trial, Los Angeles Superior Court Judge David A. Thomas in 1975 invalidated both the EIR and the General Plan. According to the twenty-eight page “Thomas decision,” the EIR was “simply a sterile declamation of unsupported generalities almost entirely failing to convey any factual information.” The EIR should have provided a “rational appraisal” of why 178 square miles of new urban expansion were added despite the dramatic drop in the projected population growth, and why any of the urban expansion areas should intrude into environmentally sensitive lands and lands unsuitable for urban development. The EIR also should have disclosed the existence of the conflicts/suitability studies and their results. It should have disclosed that the County’s actual rationale for adding the urban expansion in question was simply to meet the requests of specific property owners and to conform to pre-existing zoning. It should have analyzed alternative plans for channeling new urban expansion into “areas most suitable for urban development with the least conflict with natural resource and environmental factors.”

The County did not appeal any of these rulings. Over the next five years, Judge Thomas’ injunction prevented new development within the approximately 3,000 square mile unincorporated area except in accord with strict environmental standards, while the County’s Planning Department carefully revised the proposed General Plan.

The resulting 1980 Plan created very strong protections for the County’s “significant ecological areas” and avoided many of the fundamental errors that the County made the first time around. But it nonetheless still contained far more urban expansion than was needed in light of the still-diminished expected population growth. The plaintiff Coalition and many others suggested that the new Plan should include a “phasing” component to channel any new urban expansion first to the areas that were least environmentally sensitive and most suitable for development.

When the Coalition’s follow-up challenge to the new Plan went to trial, then-Los Angeles Superior Court Judge Norman Epstein again ruled in their favor. Judge Epstein ordered the County to supplement its new Plan with a phasing mechanism that would permit fringe area urban development only as population demands materialized and adequate public infrastructure (such as sewers, streets and water) became available. This phasing mechanism, Judge Epstein ruled, must include “specific standards and criteria” that would require new development to “pay its own way,” as the new County Plan promised, without additional expense to County taxpayers.

Shortly after the ruling, County planners presented Judge Epstein with a proposed program that they claimed met his criteria for development phasing. Following a series of rapid fire hearings, however, Judge Epstein rejected the County’s latest proposal and, at the request of CLUPI’s attorneys, appointed a

referee to monitor the County’s further compliance with his orders.

In late 1986, the Supervisors finally approved a new Development Monitoring System (DMS). Under this system, the County agreed to undertake sophisticated computer and planning analyses to determine whether a proposed residential, commercial or industrial development project within the urban expansion areas would potentially overburden public facilities and services. County planners would keep updated information about each unincorporated community’s traffic levels, classroom size and the like and would determine how they would change if a given project were approved. If DMS analysis showed that a proposed development would strain facilities, county planners would determine the cost of providing new or expanded public services and devise ways for the developers to finance them.

In his final report to the court, Referee James A. Kushner, a Southwestern Law School land use law professor, characterized the County’s new General Plan as “an extraordinarily significant achievement.” In April 1987, Judge Epstein brought an end to fifteen years of litigation, approving the DMS system and calling it “a forward-looking proposal that serves the public interest, that is good for the County, and good for the people of the County.”

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Modesto's Cutting-Edge Use of the General Plan Master EIR

By Patrick Kelly

Modesto's experience with Master Environmental Impact Reports (MEIRs) spans approximately eight years and counting. When the City first decided to prepare a MEIR in 1993—following passage of Assembly Bill 1888 (Chapter 1130, Stats. 1993), the enabling legislation for an MEIR—it became one of the first agencies in California to do so. The Modesto MEIR was certified in 1995 with adoption of the General Plan. The MEIR was updated in 2003 to cover primarily traffic modeling and related topic areas, and various General Plan Amendments.

The Modesto General Plan provides for an orderly plan for future growth, of which the MEIR is an integral part. Since 1974, Modesto has maintained policies regulating the quality, quantity, and direction of urban growth in the General Plan. The legacy of these policies has resulted in a compact urban form, neighborhoods offering a diversity of housing types and higher than average densities.

The MEIR allows the City to review projects in the context of a comprehensive environmental review to ensure that later projects would not have greater impacts than already analyzed. The MEIR relies, in large part, upon existing adopted General Plan policies to avoid or reduce potential environmental impacts and identifies

mitigation measures for impacts that are not avoided or reduced by the General Plan policies. These mitigation measures must be made a part of project approval when they are pertinent to a project. The



Modesto's General Plan and MEIR have resulted in a compact urban form, diversity of housing types, and higher than average densities.

City's specially adapted, initial study form includes a master list of policies and mitigation measures contained in the MEIR, to apply to individual projects for inclusion with the list of project conditions.

In addition to the required contents required of other types of EIR's, CEQA requires a Master EIR to include a description of anticipated subsequent projects to be considered within the scope of the MEIR. Modesto's MEIR includes eighteen types of subsequent projects that are declared to be

“within the scope of the Master EIR” as defined by CEQA (Public Resources Code Sec. 21157.1). Anticipated subsequent projects addressed in the MEIR include private development projects, such as subdivisions and conditional use permits, public development projects such as capital improvement programs and wastewater master plans that enable future private projects.

At such time as they are considered, subsequent projects are subject to preparation of an initial study, which determines whether they are “within the scope of the Master EIR”.

Projects that are consistent with the analysis contained in the

Master EIR do not, in most cases, require extensive additional environmental review before they can be approved. The Initial Study documents their consistency with the Master EIR, after which a finding of conformance can be made. The key question for the Initial Study is not “Would the project have a significant effect?” It is instead,



The Modesto MEIR has helped streamline approvals of infill projects, including this fifty-six unit affordable housing complex.

“Have the project’s significant effects been identified in the MEIR and the mitigation measures from the MEIR applied to the project?”

The MEIR also addresses cumulative impacts, growth-inducing impacts and significant irreversible environmental changes related to subsequent projects as required by CEQA.

The MEIR has worked well for infill projects located in the City’s baseline developed area within the City’s sphere of influence. The baseline area contains lands mostly developed with urban uses plus areas that can be served by sanitary sewer from the City’s current trunk sewer system. Most infill developments are determined to be in conformance with the Master EIR because the General Plan anticipates the near-term development of this area.

The MEIR has also served as the foundation for Focused EIR’s and Mitigated Negative Declarations prepared for later projects that have project-specific significant effects not analyzed in the MEIR or that require new mitigation measures or alternatives.

Although the MEIR does serve to streamline environmental review, there is a substantial time and cost commitment to keep it current. The 2003 update was initiated in 2000, only five years following certification of the 1995 MEIR. The update took approximately three years to

complete at a cost in excess of \$200,000.

Although MEIRs do not automatically expire, CEQA requires a MEIR to be reevaluated after five years following certification of the MEIR, to determine that no substantial changes have occurred with

new information should necessitate an update to the MEIR, particularly if the information doesn’t relate to any new or more severe environmental impact.

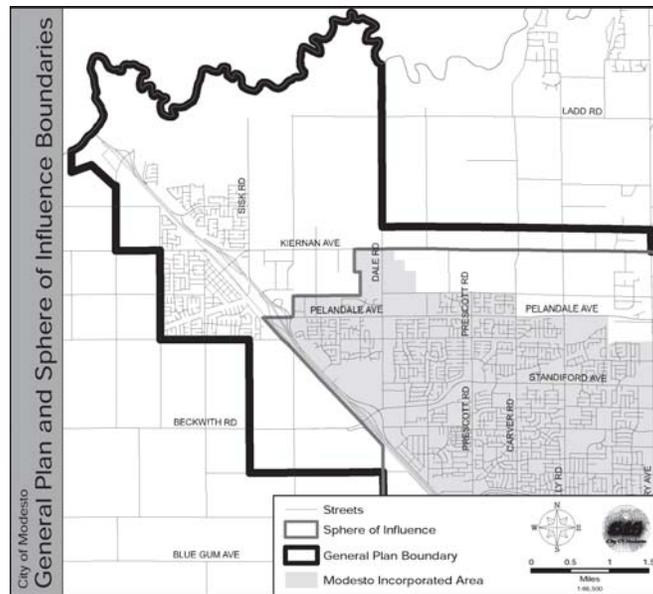
Although keeping the MEIR current requires a major staff commitment with cost impacts to the lead

agency, the time and money investment has been worth it for Modesto. Application of mitigation has been more systematic; projects consistent with the General Plan and MEIR have been encouraged by the streamlining benefit; and the environmental review of many projects has been simplified. When considering a MEIR, however, agencies should evaluate the cost/benefit of preparing a MEIR compared to other types of first-tier EIR’s, such as a program EIR.

For communities experiencing significant growth, the MEIR will likely involve a

labor-intensive effort to ensure that the analysis is up-to-date. The MEIR also requires some awareness to maintain the level of analysis to be used for subsequent projects. While CEQA’s MEIR provisions need some fine-tuning, all in all, with the right level of commitment by a community, the MEIR can serve as the environmentally protective, streamlining tool it was meant to be by the Legislature in 1993.

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Northwest corner of Modesto’s General Plan boundaries. The accompanying MEIR has created substantial streamlining benefits without sacrificing environmental protection.

respect to the circumstances under which the MEIR was certified or that no new information which was not known and could not have been known at the time the MEIR was certified has become available.

Based on Modesto’s experience, MEIRs have created substantial streamlining benefits without sacrificing environmental protection in the City. Nonetheless, revisions are needed to CEQA that would clarify how updates are handled and establish a reasonable level of importance for the type of new information that would trigger the need to revisit an MEIR. Not all

