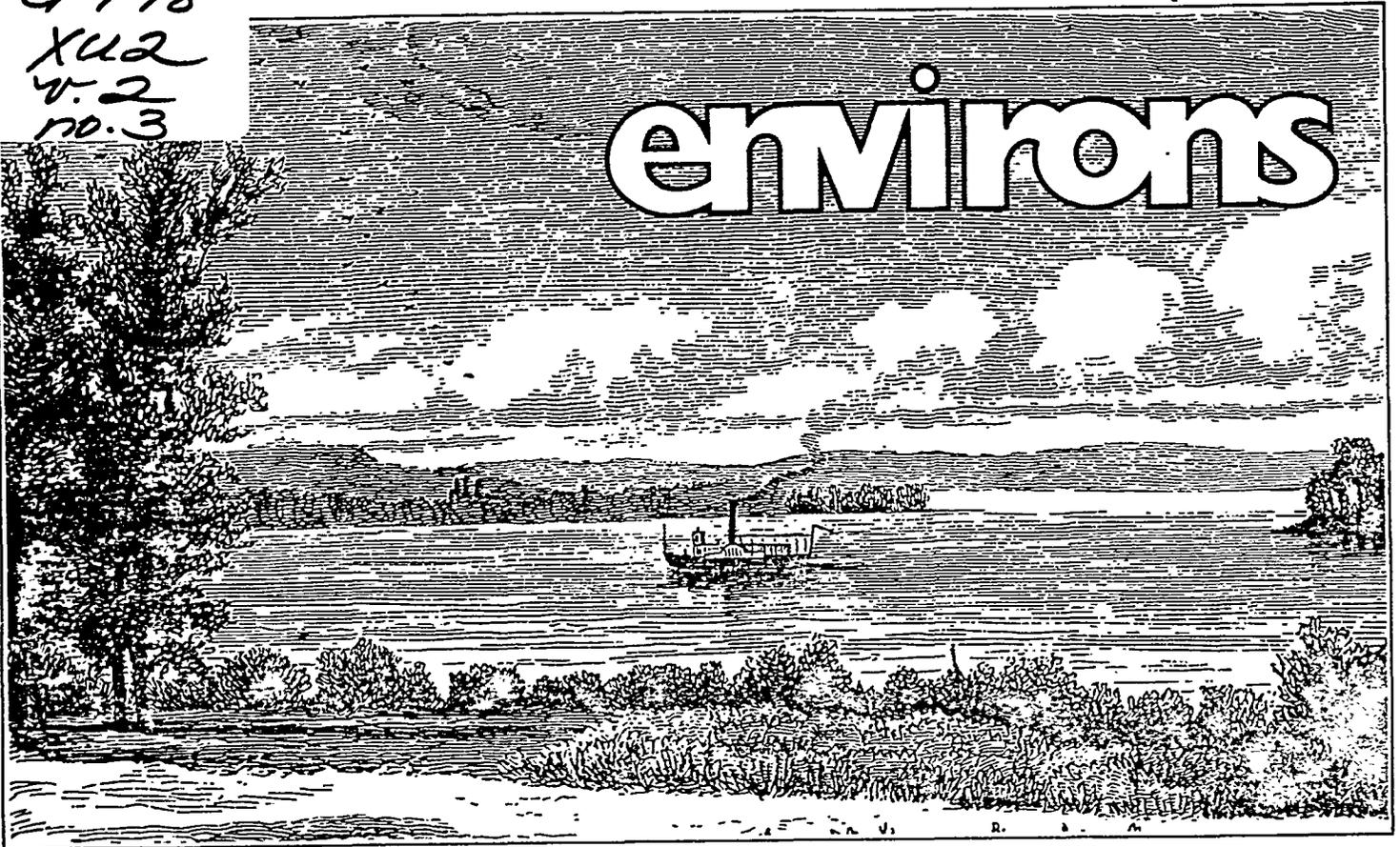


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PAWS

In recent months the U.S. Air Force's multimillion dollar radar project, code named PAVE PAWS, has become the subject of a mounting controversy. The project has come under attack from local citizens' groups, local governments and legislators. The controversy surrounds the sufficiency of the Environmental Assessment (EA) prepared by the Air Force indicating that the project would not have a significant effect on the environment. The attack on the project has been carried into court, where a decision as to the sufficiency of the Environmental Assessment will be reached sometime in March.

The radar site at Beale Air Force Base, Yuba County, California, is part of a United States Air Force project (no. 2059) known as PAVE PAWS, consisting of two long range, two faced, phased array warning radars to be installed in the United States: one at Beale AFB and the other at Otis AFB, Barnstable County, Massachusetts. The two radar facilities will replace six existing installations now in operation on the East and West Coasts. The two facilities represent a \$100 million defense effort to set up a radar "search fence" around the U.S. The Otis AFB facility is expected to begin operations in 1979 with the Beale installation to be operational one year later.

The system will be used primarily for detecting and tracking submarine-launched ballistic missiles (SLBMs) activated against the United States. Its secondary function is to assist the U.S. Air Force Space Track System with earth satellite tracking and surveillance, and with radar identification of objects in space.

The phased array radar utilizes electronically steered, pencil shaped, electromagnetic beams which will scan 240 degrees of the Western horizon. The beams are capable of detecting SLBMs launched some 3,000 miles off the Pacific Coast.

Beale AFB, the site of the Western PAVE PAWS radar facility, is located thirteen miles from the Marysville-Yuba City area (pop. 23,000) and nearly sixty miles north of the Sacramento metropolitan area.

Soon after the Air Force released its Environmental Assessment to the public in November, 1976, Yuba County residents began raising serious questions concerning the environmental effects of the proposed project. Extensive publicity given the project further fueled the concern of the community. This concern became fully focused on August 8, 1977 when a civil complaint was filed in the United States District court Eastern District of California by the Citizens Concerned About PAVE PAWS, an unincorporated association, and

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anti-speculation laws, ceqa, and due process

King Hall's 1978 Environmental Moot Court competition concerns the legal propriety of a hypothetical law modeled on the so-called Anti-Speculation Ordinance recently enacted on an interim basis by the City of Davis. The Davis Ordinance is premised on the belief that a sharp increase in the inflation rate of single-family home prices in California is to a significant extent caused by "an unprecedented rush of speculators seeking to purchase individual residential units as investments." It cites serious detrimental effects of inflated housing prices and seeks to restrict the purchase of single-family homes to owner-occupants.

Any person selling such a house in Davis is required to obtain from the intended purchasers and file with the

City a sworn declaration that the purchaser (or a relative) intends to occupy the house for twelve consecutive months, beginning within six months of purchase. Intentionally providing false information in the declaration, intentionally failing to file the declaration, and back-dating of sale documents to evade the Ordinance are punishable as misdemeanors. Violation of the Ordinance may be abated by injunction. Procedures for appeal to the City Council are provided and certain types of title transfers are exempted.

In a fictional case, *Whiplash and Fenwick v. City of Darvis*, moot court competitors must consider environmental and constitutional challenges to an essentially identical, but permanent, ordinance. The major issues on appeal to the California Supreme Court are: Must the City prepare an environmental impact report (EIR) before enacting such an ordinance? Is such a restriction on the sale and purchase of houses a proper exercise of City's police power? Does it interfere with a fundamental property right?

The specific questions to be argued are:

— Does the California Environmental Quality Act (CEQA) require preparation of an EIR when *controversy* exists over the question of *whether the anticipated effects of the action are "environmental impacts"* or not? The controversy involved in *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d 68, 85-86 (1974), where dictum introduced the controversy notion into CEQA, was over the *extent of environmental consequences*, rather than over the definitional question here.

— Are substantial sociological and economic changes impacts on the *"physical environment"* within the meaning of CEQA? Such impacts may be *"environmental"* when considered under the National Environmental Policy Act, which is frequently relied on in

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update: davis energy ordinance

On January 15, 1976, the City of Davis passed an ordinance which sets out energy performance standards for all new residences. It is a model ordinance which is flexible and successful to date in achieving significant energy conservation.

Flexibility

The ordinance allows builders to choose either a "performance" path or a "prescriptive" path. The performance path analyzes the proposed building for actual thermal efficiency within the allowable levels of heat gain and loss. This method accomodates individualized designs and tastes.

The more popular prescriptive path establishes standards for glazing area, location, and shading. Insulation standards are prescribed for floors, walls, ceilings, roofs, and hot water piping. Most builders choose this method, apparently because it is more easily applied to tract homes than the "performance" method.

Costs

A recent study finds that the costs of new residences have not been significantly increased due to the ordinance. This may be due in part to the City's efficient implementation of the ordinance and education of the builders.

Selling prices have averaged a less than one percent increase due to the ordinance. This additional cost does not reflect the projected savings due to lower energy bills, nor the future savings due to the use of smaller heating and cooling systems than are now mandated.

Implementation

Approximately 1600 new residences have been issued permits under the ordinance. No hard data is yet available on the energy reduction achieved in these homes. The evidence indicates that these homes may be able to reduce their heating and cooling demands up to 50% in comparison to the pre-ordinance homes.

Prognosis

The ordinance is merely a part of the City's comprehensive community planning program. Davis limits new residential construction to 800 units annually, and all new subdivisions are subject to the planned unit development technique. New subdivisions are built with specified street widths and orientations most favorable to energy efficient tract design.

Davis currently is considering the establishment of standards of energy conservation for homes built before 1976. Probably this would entail "retrofitting"

continued to page 5

pending legislation:

AIR POLLUTION

AB 471 (Calvo) - Requires the State Air Resources Board to report the state progress in air quality impact to the Governor and Legislature starting January 10, 1979. Prohibits any permit from being issued for a nonvehicular source where federal or state ambient air quality standards in a local air basin are exceeded. Senate Natural Resources and Wildlife.

AB 724 (Sieroty) — Increases fines and civil penalties that are imposed for violation of air pollution statutes and regulations. Senate Local Government.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

SB 211 (Carpenter, P.) — Requires a person attempting to attack, review or void an environmentally adverse project to execute a bond costing at least 10% of the project's estimated cost. Assembly Ways and Means.

SB 351 (Holmdahl) — This bill permits public agencies to make findings that economic, social or other benefits can outweigh the environmental consequences of a project or its alternative. If they do, the project will proceed, despite its significant effects. Assembly Resources, Land Use, and Energy.

SB 904 (Green) — Provides that agencies approving Environmental Impact Reports (EIRs) may disapprove a project only after finding that the adverse impact on the environment is so significant that it outweighs the anticipated job and economic benefits from the project. Assembly Resources, Land Use, and Energy.

ENERGY

SB 1015 (Russell) — Would exempt the Sundesert Nuclear Power Plant from existing law which prohibits the State Energy Commission from certifying any nuclear fission power plants until a viable means for disposing of high-level reactor wastes has been found. Assembly Resources, Land Use, and Energy.

SCA 15 (Alquist) — Requests the people of the State to give the Legislature the authority to exempt from property tax all or any portion of property which is used as an alternative energy system not based on fossil fuels or nuclear fuels. Stats. 1977, c.29. Proposition 3, June ballot.

FOREST RESOURCES

AB 1236 (Calvo) — Revises Z'berg-Nejedly Forest Practices Act of 1973 with regard to legislative intent. Authorizes State Board of Forestry to appoint technical advisory committees as necessary. Revises procedures for approval by the Board of timberland utilization other than the growing of timber. Revises penalties for

violation of the Act. Senate Natural Resources and Wildlife.

LAND USE

AB 1900 (Calvo) — Enacts the Prime Agricultural Lands Preservation Act. The Act would create the Agricultural Resources Council. The Council would be required to adopt advisory guidelines to assist cities and counties in preparing local agricultural lands. All lands designated as prime agricultural land by the Council would be deemed restricted within the meaning of the California Constitution. To the Senate.

PESTICIDES

SB 669 (Gregorio) — Prevents the issuance of a license for an agricultural pest advisor to any person with a direct financial interest in the manufacture, sale or distribution of any pesticide. Dropped.

SOLID WASTE

SB 253 (Rains) — Would prohibit the sale of beverages, fruit juices, or fruit drinks in plastic containers on and after January 1980, unless the containers may be reused in the same form. Dead.

SB 342 (Nimmo) — Would require beverage containers and cartons which are subject to a deposit to designate the amount of the deposit; would require nondeposit recyclable beverage containers to be clearly identified as recyclable. Dead.

TRANSPORTATION

SB 1158 (Sieroty) — Omnibus legislation that would provide equitable standards for motor vehicle fuels; would give authority to the State Air Resources Board to provide guidelines for testing and inspection of vehicle pollution control devices, plus the authority to issue citations of noncompliance; would set penalty fees for violation, define and redefine terms and authorize the ARB to assist in enforcement of the provisions. Dead.

WATER

SB 346 (Ayala) — Appropriates \$900,000,000 to build a Peripheral Canal and other water facilities including an offstream dam near Antioch, delta water facilities to supply water to San Francisco, San Joaquin and San Mateo counties, an extension of the North Bay Aqueduct to Marin County and facilities to supply water to Contra Costa County. Building of facilities is conditioned upon enactment of federal legislation and the Secretary of the Interior entering into a contract with the Department of Water Resources. Failed to pass the Senate but granted Reconsideration.

AB 1629 (Gualco) — Changes the legal liabilities for the discharge of oil or residuary products of petroleum to impose strict liability without requiring proof of intent or negligence, except for specified causes. Dropped.



Literature review:

Concerned with the future of land use regulation in California? You may want to read "Vested Rights to Develop Land: California's Avco Decision and Legislative Responses" in the most recent **Ecology Law Quarterly**, Vol. 6, No. 4. Vested rights — the rights to complete a project despite the enactment of new laws or regulations — are discussed in light of the important decision in *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 C.3d 785, 553 P.2d 546, 132 Cal. Rptr. (1976). The author analyzed two bills, still in committee at the end of the 1977 legislative session, which would statutorily expand vested rights beyond what is constitutionally required under *Avco*.

An interesting description of how the legislative process addresses, or fails to address, an urgent issue is presented in "Recombinant DNA Bills Derailed: Congress Still Trying to Pass a Law" in the January 28, 1978 issue of **Science**. The article discusses separate bills introduced in the Senate and the House which would impose regulations on genetic engineering and research. The reader should be aware that **Science** is published by the American Association for the Advancement of Science, and as the name suggests, the article may reflect a pro-scientific research basis.

Looking for someone to blame for the weather? Maybe the enemy is us. The November 1977 issue of **Environment** focuses on the ways in which human activities, particularly industry, affect the world's climate in two articles, "A Question of Climate" and "Desert Greenhouse."

anti-speculation

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interpreting CEQA. However, NEPA speaks of the "human," rather than "physical," environment.

— Are possible long term effects of this Ordinance, such as shifts in the pattern of construction of single-family, as opposed to multi-family residences, so remote and speculative that they need not be considered by an EIR?

— Is the Ordinance an *unreasonable or unduly oppressive means* of attacking the problem of housing price inflation? Is it *rationally related* to this goal? Is control of such inflation a *legitimate goal* for an exercise of the police power?

— Is the Ordinance an impermissible interference with a *right to sell or buy property* which is protected by either the United States or California Constitution?

Woody Brooks



Litigation which could potentially have far-reaching effects for the nation's environment is discussed in **Environmental Affairs**, Vol. 6, No. 2. "Toward Corporate Environmental Disclosure: *NRDC v. SEC*" analyzes a case pending in the District of Columbia Circuit (see 10 ERC 1001 (D.D.C. 1977)) which will determine the relationship between the National Environmental Policy Act (NEPA) and the Securities Exchange Act of 1934. Specifically, does NEPA mandate the SEC to require comprehensive corporate environmental impact disclosure in the registration of securities? This case could subject much previously unregulated private activity to the strictures of NEPA.

"Has Vermont's Land Use Law Failed?" discusses one of the nation's earliest attempts at statewide land use regulation in the December 1977 issue of **Environmental Comment**, published by the Urban Land Institute. Vermont has an interesting two-tiered process for land use approval: land development is subject to review by a regional review commission to determine its compliance with certain stated criteria, and it must conform to a state land use map. The author argues that the law has not been a failure, despite the legislature's inability to approve a state land use map.

The Winter 1978 quarterly newsletter of the American Bar Association Standing Committee on Environmental Law records activities of ABA members related to environmental matters. Also in that issue, "Regulation and Monitoring of Toxic and Hazardous Chemicals under the Clean Water Act" presents a discussion of the enforcement, or lack thereof, of regulation of dangerous chemicals under the Federal Water Pollution Control Act.

Elliot Gilberg

update:

continued from page 3

houses at the time of resale or renovation. Such provisions probably would not require the same energy performance as the new housing standards because of the higher costs of retrofitting as compared to new construction.

Conclusion

Davis has achieved national recognition for its thoughtful approach to energy conservation. The ordinance carefully reflects local weather patterns and is relatively flexible and workable. Costs of new homes have not been significantly increased; in fact the long term use of the new standards may achieve a net savings for home owners. Due to the inherently limited impact of an ordinance directed only at new homes, the anticipated "retrofit" ordinance should have marked impact on total energy conservation in the City of Davis.

Mike Boli



sundesert

Since May of 1976 there has been an effective moratorium on construction of new nuclear power plants in California. Within the next month or so, the state Assembly and Governor Brown will decide whether to grant an exemption to the ban.

At issue is the proposed 950 MW Sundesert plant which, if approved, would be located near Blythe in Riverside County. The consortium desiring to build Sundesert includes the city utilities of Anaheim, Burbank, Glendale, Pasadena, and Riverside; Los Angeles' Department of Water and Power; the state Department of Water Resources; and San Diego Gas and Electric, Inc.

Background

Just before the Nuclear Safeguards Initiative (Proposition 15) was to go before the voters in the June, 1976 primary, the legislature and governor agreed to amend the Warren-Alquist Energy Act. Sections 25524.1 and .2 were added to the Public Resources Code. These sections prohibited the construction of new nuclear plants until the federal energy agency (at that time FEA, now DOE) discovers a technology for reprocessing nuclear fuel rods and a method for permanently disposing of high-level nuclear wastes. The supporters of the amendments felt that since reprocessing and waste disposal problems are common to all nuclear plants, no new plants should be built until these problems were solved.

At the same time however, it was realized that some plants were so far along in development that it would be unfair to their financiers if they were not allowed to proceed. As a result, the amendments contained a list of plants to be exempted from the ban. Sundesert was not included in that list.

Last year, at the request of the Sundesert consortium, the legislature passed AB 1852 (McAlister, D-San Jose). Governor Brown signed the bill on September 28, 1977. AB 1852 added section 25524.25 to the Public Resources Code. AB 1852 was drawn so that it applied only to the Sundesert plant. It requires the state Energy Commission to notify the legislature in writing by January 16, 1978 whether a solution had been found to the reprocessing and waste disposal problems. If these problems were still unsolved, the Commission was to recommend whether Sundesert should be exempted from the moratorium and, if so, under what conditions.

On December 21, 1977, the Energy Commission approved the Sundesert Notice of Intent (NOI). NOI approval is a pre-requisite for approval of construction. NOI approval was given subject to 49 conditions. One condition was that San Diego Gas and Electric, the major partner in the consortium, be limited to a 33% share of the investment. Also, the Commission NOI approval was for a plant only half the size of the one originally proposed.

In granting NOI approval, the Commission emphasized that this was merely the first hurdle for Sundesert. Before the plant could be approved for construction there would have to be an exemption —and the Commission expressly reserved its views on that issue.

On January 25, 1978, the Commission determined that it was unable to announce a solution to the waste disposal problem. It stated that "an acceptable waste disposal technology has not been demonstrated and it is even *questionable to assume* that one will be demonstrated before the mid-1980's" (emphasis in original).

On the same day the Commission exemption to Sundesert; the vote was overwhelmingly passed SB 1015 (I exemption to Sundesert notwithstanding Committee on Resources, Land Use, and on the bill. If passed by the committee Governor Brown —who has indicated Anticipating the veto, Assemblyman which would eliminate the need for 1976 amendments to the Warren-Alc

Th

At the upcoming Assembly hearing Energy Commission staff report issued recommendation. AB 1852 required the Commission making its recommendation:

1. Energy needs projected for the this century.
2. The extent to which the Sundesert reduced by conservation measures
3. The extent to which the need satisfied by "non-generational alternatives" not require the construction of n



4. The extent to which demand for energy is satisfied by construction plants based on a practical alternative technology economically as Sundesert, be technically acceptable, and be certifiable for and other relevant agencies by the

Energy Need

The report discusses the need — by each member of the consortium beginning at some time during the increase in succeeding years.

However, the report contends

oms

recommended against granting an exemption. Almost immediately, the state Senate (Sen. Bill Bell, R-Glendale). SB 1015 grants an exemption to the Commission. The Assembly will soon hold extensive hearings on the full Assembly, SB 1015 will go to the full Assembly, and the full Assembly will veto any Sundesert exemption. Assemblymember Alister recently introduced AB 2170, which would change the exemption procedure by repealing the Energy Act.

sues

the focus of debate is likely to be the need to explain the no-exemption recommendation to address the following issues in

the Sundesert service area during the rest of

the Sundesert service area demands could be

maintaining after conservation could be "practical alternatives"; i.e., supply options which do not require new generation facilities.



Additional generation facilities could be "practical alternative technologies." which could generate electricity as long as they are logistically feasible, be environmentally acceptable, and receive approval by the Energy Commission by the end-to-late 1980's.

Conservation

new conservation measures — faced with the fact that each will need new capacity, and these needs will in most cases

enough cost-effective conservation

measures exist to significantly delay the projected need for new capacity. In some cases conservation could stretch out the need for new capacity until the 1990's.

The conservation measures proposed are of two types — load management policy changes, and a variety of other programs. One example of the first type is changing the pricing policies so that large users would pay more than small users. The second group of conservation programs includes ceiling insulation programs, lowering thermostats at night, and instituting motor-efficiency standards for appliances.

Non-generational Alternatives

The report identifies three non-generational alternatives which further reduce the need for Sundesert: power pooling, purchase of northwest hydroelectric power, and solar space and water heating and cooling.

Under power pooling, a utility with excess capacity would share with one facing a shortage. Power pooling is important because when the conservation measures proposed by the staff are in effect, the southern California region as a whole will not need new capacity until 1991.

There are significant problems with power pooling. It is unclear whether municipal utilities would be able to participate in pooling. For example, Los Angeles' Department of Water and Power is restricted by a city charter provision which prohibits it from sharing non"surplus" power. Surplus has never been defined. And pooling might be deemed an unconstitutional appropriation of public funds — because in effect the taxpayers in a "rich" service area would be helping to supply a "poor" service area with electricity. Finally, pooling is arguably anti-competitive. Existing pooling arrangements, which are far less restrictive than the arrangements contemplated by the staff report, are now under attack as violating anti-trust laws.

Northwest power purchases are crucial because hydroelectric power could reduce the need to burn oil during peak demand periods. It is anticipated that this would reduce capital and oil consumption costs as well as pollution. The problem with northwest power purchases is that they depend on the completion of three transmission line projects. These projects are presently at very early stages of development.

Active and passive solar measures also merit consideration according to the report. For example, the staff estimated that 25% of existing homes could be retrofitted for solar space and water heating. It further believed that, using passive solar designs, all new homes could reduce air conditioner usage by 70%. If these two measures are taken, the staff envisioned that a reduction in energy need equivalent to 18% of the proposed Sundesert output would be achieved.

Practical Alternative Technologies

The staff identified four technologies which are available today to increase generation capacity. They are:

1. Conventional coal facilities. Specifically, the staff identified three sites in Imperial County that would be environmentally acceptable under present standards. The problem is that these sites are outside the area to be served by the plant, and it may be difficult to persuade the residents of Imperial County to pollute their air for the benefit of others.
2. Oil-fired combined cycle facilities. A combined facility is one which uses the waste heat from the oil cycle to turn a second generator. The staff says that one or two 475 MW plants could be environmentally acceptable at a number of sites in southern California. The problem is that the more environmentally advantageous sites are the most remote ones. Power transmission and oil transportation costs are higher for those sites. But the closer the plant sites are to the Sundesert service area, the more investment in pollution mitigation measures is required in order to meet environmental standards.
3. Combustion turbine facilities. These are plants powered by a liquid or gas. They could be located close to the service area without costing much for environmental mitigation. The problem is that this type of facility tends to be

saving california's agricultural land

A growing concern in California over the disappearance of the state's agricultural land to urbanization is prompting the California Legislature to explore means to restrict urban growth whenever possible. In 1965, the Legislature attempted to meet this threat to California farmland by enacting the California Land Conservation Act (or Williamson Act). (Cal. Gov't. Code sec. 51200-51295.) Under the Act, owners of agricultural land may contract with local governments to restrict their land to agricultural use for ten years in return for reductions in property taxes, but owners of land on the fringe of cities generally opt to pay higher taxes to retain the right to sell their land to developers as potential residential or commercial property.

Present Legislation

The Legislature has centered its attention upon two measures introduced in the 1977 Session: AB 1900 (Calvo, D-San Mateo) and SB 193 (Zenovich, D-Fresno).

Assembly Bill 1900, which the Assembly passed 41-36 on January 30, proposes the creation of a state Agricultural Resources Council to oversee local agricultural land preservation efforts. The Council provides localities with a map of the state's prime agricultural land, prime rangeland, and other land the Council designates as "economically significant to California agriculture," and advisory guidelines to steer the creation of local agricultural resources programs.

Within a year of receiving the map and guidelines, each local government must then prepare an agricultural resources program including all mapped agricultural land except that dedicated to urban use because of existing construction, urban services assessments, location amidst neighborhoods, or the community's need for the land to meet projected growth within ten years. Included land is to be zoned for agricultural use only and assessed on that basis.

The council will review the programs for substantive compliance with the statute. Those approved take effect immediately. Those programs not approved must be re-written to the satisfaction of the Council. The rulings of the Council will be final, absent a showing of fraud or abuse of discretion.

Senate Bill 193, which the Senate passed 28-6 on January 30, is a combined version of an earlier Zenovich proposal and SB 1003, which Senator John Garamendi introduced last year. This measure orders the inclusion of an agricultural element in each locality's general plan. The agricultural element is to be adopted through the aid of a locally-appointed advisory committee and may be challenged by the state Office of Planning and Research only on issues of "statewide interest." A newly-created Agricultural Land Appeals Council will determine if the Office of Planning and Research has shown that the local government has failed to comply

with the statute. In the Council's determination of compliance, "a conclusive presumption exists that local conditions and circumstance shall have precedence over guidelines adopted by the Office of Planning and Research." Exclusions from the act are similar to those in AB 1900, but are somewhat broader.

Criticism of the Proposals

The conflict between the proponents of the two measures stem from differing views of the inadequacy of the present agricultural land preservation system. The Zenovich forces, which include most of the state's agricultural lobbies and the County Supervisors Association of California, wish to restructure the present system as little as possible; they believe that local governments are in the best position to know of local needs. The Calvo forces, which include the League of California Cities and the Sierra Club, want to impose tighter restrictions upon landowners to insure that they will be unable to wriggle free of any land use restrictions imposed.

The chief draftsman of SB 193, Zenovich aide James F. Moblet, maintains, "The big issue is the state versus local controversy. The fatal flaw of the Calvo bill is that it gives the state more power than is needed . . . and if it's not needed, it's wrong." He cites the pervasive powers of AB 1900's proposed Agricultural Resources Council as an ill-advised centralization of authority in one agency. "The Council may by resolution include any 'unique farmland' within its authority. It then issues maps and guidelines designating prime agricultural land. What does the Council know about local conditions? It then reviews *all* local plans for compliance with the law. When those who make guidelines decide compliance, they aren't guidelines. Maybe they're not quite regulations — but they're not guidelines. The burden of proof then falls upon local governments to show that the guidelines aren't correct." Moblet insists that SB 193 still gives the state the final word, but with a minimum of violence to local and existing procedures.

The supporters of AB 1900 insist that their opponents are exaggerating the state/local controversy to mask some of the weaknesses in SB 193. "There's not all that much state control," states Tom Willoughby, consultant to the Assembly Land Use, Resources, and Energy Committee, which is chaired by Calvo. "The proposed state review of local agricultural land programs is just to have them uniform — and to keep 'em honest. The Council's discretion to include 'unique farmland' is just to protect land on which specialty crops, such as avocados and wine grapes, are grown and can easily be limited to prevent overreaching. The broad advisory guidelines are just to help local governments with their plans, which must be in substantial compliance with the statute, not the guidelines. Conceptually we presume that the local governments are acting reasonably, but you must be able to rebut that presumption."

Willoughby states that the Calvo forces fear that SB 193 offers "no meaningful state review" of local protection efforts. Their first concern is that inadequate

local plans will be next-to-impossible to overturn under SB 193 because of its conclusive presumption that local conditions take precedent over state guidelines. Their second concern is that land owners may circumvent use restrictions imposed under SB 193 by having their land annexed to a local improvement district and then demanding a change in the general plan to allow them to develop that parcel.

Mobley answers that the conclusive presumption extends only to compliance with state guidelines; local plans still must comply with the general mandate of the statute. He also contends that the measure does not allow rolling exemptions of farmland by annexation to improvement districts, but concedes that this probably needs to be clarified.

Prognosis

Virtually all interested parties agree that the state should take a greater role in the preservation of California's agricultural land. As Willoughby states, "It's just too easy to undo a local government plan." Both Zenovich and Calvo appear genuinely interested in gaining passage of their measures this year.

However, any farmland preservation measure faces severe obstacles to its passage this year. Both bills squeaked out of their respective houses by slim margins. (SB 193 required a two-thirds vote for passage.) Drafting deficiencies have produced squab-

bles over issues about which there is actually little disagreement. Both will confront major opposition in the other house of the legislature.

The conflicts between the two groups appear to be reconcilable. Zenovich wishes to avoid further bloating the state bureaucracy. Calvo wants to insure that the agricultural land preservation program adopted can not be circumvented by local governments which are too submissive to developer and landowner pressure. According to Spencer Hathaway, consultant to the Government Organization Committee of the Senate, both goals can be achieved if each side is willing to accept substantial changes in their proposals.

The agreed inadequacy of the present agricultural land preservation system serves as a strong catalyst to the passage of a statute improving that system. Despite the differences separating proponents of SB 193 and AB 1900, both sides agree that some form of legislative action is necessary to save California's agricultural land — or there will be very little of it left for the legislature to try to save.

John Dressler



The author is researching an article on state land use control for the U.C. Davis Law Review.

sundesert

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smaller (producing less electricity) than other types.

4. "Repowerization" of existing oil-fired facilities. This involves turning them into combined cycle facilities, thus substantially increasing capacity. Repowering presents pollution problems; hot water discharge may be above legal limits, and a repowered plant may run afoul of air pollution regulations.

Conclusion

For almost all parties concerned, the Sundesert plant battle provides an important test.

It tests the strength of Governor Brown's leadership. A keystone of his political program is the belief that only "appropriate technologies" should be used to satisfy society's needs. In the energy field, he believes that nuclear power is not an appropriate technology. His appointments to the Energy Commission reflect this view. The Governor has taken a highly visible stand in favor of his Commission's Sundesert decision.

To both proponents and opponents, Sundesert tests the future viability of nuclear power in California. Each

characterizes nuclear power and the alternatives to it very differently. Each side reflects a different set of fears. Each is trying to persuade the public and the Assembly that its characterization and its fears are correct — Sundesert is the vehicle.

Proponents see nuclear power as a proven technology, a sure and relatively benign way to meet the short-term energy needs of a growing population. To them, the alternatives proposed by the Energy Commission are speculative — unable to be relied upon until the 1990's or beyond. In short, they characterize nuclear power as the least risky policy choice, given that we need new energy sources now.

Opponents characterize it as the most risky policy choice. They see the waste disposal problem as one which may never be solved; certainly they believe any talk of solving it is highly speculative. To them the things that are most proven about nuclear power are its risks. They see the alternative sources as being eminently feasible if the state is willing to make a serious commitment to them. Sundesert will provide a test of that willingness.

Chris Elms



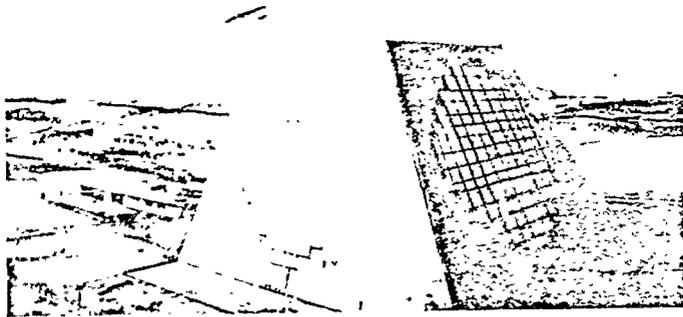
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six other individuals. These litigants sought an injunction to restrain John C. Stetson, Secretary of the U.S. Air Force, et al., from entering into any contracts, or undertaking any site preparation, development, construction or any other activity for the purpose of constructing the PAVE PAWS radar facility at Beale AFB. That same day the District Court Judge denied from the bench plaintiffs' Motion for a Temporary Restraining Order.

In the complaint plaintiffs allege that the Air Force failed to comply with the substantive policies and procedural requirements established by the National Environmental Policy Act of 1969, 42 U.S.C. Sections 4321 et seq., (NEPA). Plaintiffs allege that the Environmental Assessment approved by the Air Force on March 18, 1976 fails to form an adequate administrative record upon which the Air Force could reasonably conclude that PAVE PAWS is not a federal action significantly affecting the environment.

Under Section 4332 (2) (C) of NEPA a formal Environmental Impact Statement (EIS) is required for any federal actions "significantly affecting the quality of the human environment." Thus, in order to determine whether a formal EIS is required by NEPA, the agency in charge of a project must address the threshold question of whether the project has a "significant effect" on the environment. Under Air Force Regulation 19-2, promulgated in accordance with NEPA, this threshold determination can take either of two forms: (1) an informal environmental assessment, or (2) a formal



environmental assessment. The formal environmental assessment, which was the one chosen for the PAVE PAWS project, is a detailed document prepared in much the same way as an environmental impact statement.

In the Environmental Assessment prepared for the PAVE PAWS project the U.S. Air Force concluded that the project would not significantly affect the quality of the human environment. Accordingly, the Air Force did not prepare the detailed EIS otherwise required by NEPA.

The crux of the litigation will revolve around the court's treatment of several factual issues, for the plaintiffs believe that certain factual controversies concerning the environmental effects of the project were not so resolved that the Air Force could reasonably conclude that there will be no adverse effect on

the environment. Foremost among these issues is the question of what exposure standard for microwave radiation the Air Force should have used in assessing the possibility of adverse biological effects due to the project. Other factual controversies are the effect microwave radiation will have on Electronically Exploding Devices (EEDs) aboard aircraft traveling in the vicinity of Beale AFB, the effect of microwave radiation on pacemakers, and the possibility of interference with communications systems near the project.

Opponents of the project have focused their criticism of the American exposure standard for this form of microwave radiation; however, the Air Force concludes that the effects of such radiation are not cumulative. Critics contend that there has not been sufficient research into the biological effects of microwave radiation to establish a valid exposure standard; absent such a standard, the Air Force could not reasonably conclude that the project would not result in any significant adverse environmental consequences. In support of this contention opponents of the project point to the discrepancy between the American exposure standard and the Soviet standard. The American standard established a maximum safe exposure level of ten milliwatts per square centimeter (10m W/cm²). The Soviets have set a non-occupational standard for exposure to microwave radiation at one microwatt per square centimeter, a maximum safe exposure level 10,000 times smaller than the standard used in the United States.

However, both the reliance by the Air Force on the American exposure standard, and the conclusion reached in the Environmental Assessment that the design of the facility would be sufficient to safeguard against any adverse biological effects, are supported by a report sent by the Environmental Protection Agency (EPA) to Congressperson Leggett, 4th Congressional District, California. In June, 1977 Congressperson Leggett transmitted the Air Force's Environmental Assessment to the EPA and requested a judgement on the "sufficiency and validity" of the PAVE PAWS Assessment.

Based on their analysis the EPA believed it unlikely that exposures as great as 10m W/cm² could occur near the ground at any distance from the antenna. At the exclusion fence, a distance of one thousand feet (1000) from the antenna, the EPA predicted a maximum exposure of less than 0.88 W/cm². The agency concluded, "the predicted values of power density for project PAVE PAWS are well below the values that should have any health impact at all accessible locations outside the Beale AFB property lines or at the Base hospital and housing areas."

Critics of the project also contend that the possibility that Electronically Exploding Devices (EEDs) might be activated by the radar was given inadequate treatment by the Air Force in the Environmental Assessment. In an amendment of that document the Air Force conceded that the location of the radar facility at an active Air

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please help

ENVIRONS, the environmental resources newsletter edited by the members of the Environmental Law Society at King Hall School of Law needs your help. We must become self-sustaining. We need your subscription donations.

ENVIRONS has previously been financed by various organizations on a one-time-only basis. Dean Loiseau, the UCD Law School Alumni Association and the King Hall Law Student Association were generous enough to fund one issue. Additionally, we received an American Bar Association/Law Student Division Governor's Discretionary Grant. As a result, you have been receiving ENVIRONS free of charge.

The only viable means of continuing ENVIRONS, however, is to make it a reader-supported publication. Thus, the editorial staff of ENVIRONS has initiated this subscription drive as an attempt to preserve an endangered species. A good many of you have already contributed and we are very grateful. It's the rest of you we are after!

ENVIRONS was founded in 1976 to serve as a one-stop clearinghouse for all environmental information relevant to the Solano-Yolo-Sacramento area. To date, there is no other publication that covers the field of environmental law for these counties. We define environmental law to include the areas of environmental impact analysis, natural resources, water, mining, land use planning, agriculture, and pollution control.

ENVIRONS covers significant state legislation and activities. The present scarcity of readily accessible information combined with a firm commitment to informing the public provided the catalyst for founding ENVIRONS.

ENVIRONS presents its analysis of all substantive issues by using an objective, non-partisan format. This editorial policy was selected in hopes of reaching all segments of the population.

The staff of ENVIRONS has tried very hard to produce a quality publication. There is no shortage of enthusiastic and qualified individuals willing to devote their time and energy. We have the expertise and dedication to continue ENVIRONS. What we need is MONEY.

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Editor



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Force Base could result in the inadvertent dropping of stores or aircraft components into populated areas due to the activation of the EEDs. Air Force officials have since said that the inadvertent detonation of EEDs is only a "theoretical possibility." At present the only aircraft with an EED-system at Beale AFB are KC-135 tankers which use an EED in a fire extinguisher system. The Air Force believes the danger of the inadvertent detonation of EEDs can be eliminated by the promulgation and publication of flight restrictions in the vicinity of Beale AFB, though critics of the project point to a statement in the Environmental Assessment that "there is no way to insure that an aircraft will never fly into the restricted airspace."

Finally, opponents of the PAVE PAWS project have also expressed concern over the effects of microwave radiation on pacemakers, and to a lesser degree, the possible interference with communication systems in the area due to the radar facility.

Against this background the court must decide whether the Environmental Assessment prepared by the Air Force sufficiently fulfilled the requirements set forth in NEPA. Regardless of the court's decision, it is not likely that these controversies will be resolved. They will linger, and further litigation over the environmental effects of the PAVE PAWS project may be expected.



Mark W. Nelson

(Editor's Note —

On March 6, 1978, the U.S. District Court for the Eastern District of California heard Plaintiff's Motion to Consolidate and/or Transfer the Action. Plaintiffs sought to consolidate the instant action with the action filed in early March by the Cape Cod Environmental Coalition, Inc. (CCEC, Inc.) against the Secretary of the U.S. Air Force. In that case, filed in the U.S. District Court for the District of Massachusetts, CCEC, Inc. sought an injunction preventing the Defendants from operating the PAVE PAWS facility located at Otis AFB, Massachusetts. Ruling from the bench, Judge Wilkins denied Plaintiff's Motion to consolidate and/or Transfer.

Plaintiffs then moved to dismiss the action without prejudice. The court denied Plaintiff's Motion, noting that if the Court dismissed the action without prejudice, Plaintiff would be free to file a new action in the District Court for Massachusetts and attempt to have the new action consolidated with that filed by the CCEC, Inc., thus circumventing the Court's earlier denial of Plaintiff's Motion to Consolidate and/or Transfer. Instead, the court dismissed the action brought by Citizens Concerned about PAVE PAWS with prejudice.)

calendar

The following Public Hearings have been tentatively established for the dates noted. Please contact the address given to verify time and place.

April 7

California Fish and Game Commission, monthly meeting.

Auditorium, Resources Building
1416 Ninth Street
Sacramento, California

April 24, 25

Water Resources Control Board,
Public Hearing on the Delta Water Quality Control Plan.

Auditorium, Resources Building
1416 Ninth Street
Sacramento, California

April 27

California Air Resources Board, Public Hearing on:

- 1) New Source Review Rules for Sacramento County
- 2) Agricultural Burning

Time and place not set

Write to Public Information Officer,
Air Resources Board
P.O. Box 2815
Sacramento, California 95812

editor's notes

The article by Christy Bliss and Sam Imperati entitled "Sale of Water Rights" which appeared in *ENVIRONS*, Volume 2, Number 2 was written while researching an article for the UCD Law Review.

* * *

The King Hall Environmental Law Society will present an annual seminar, "Careers in Environmental/ Resources Law" on Saturday, April 8th. A panel of five speakers will be featured, representing state and federal agencies, local government and private practice. The seminar will be held in the Moot Court, University of California at Davis, School of Law from 10:00 am to 1:00 pm. The public is invited to attend!

* * *

Frederic P. Sutherland, Executive Director of the Sierra Club Legal Defense Fund will speak the week of April 16th in the Moot court Room at U.C. Davis, King Hall, School of Law. His talk is entitled, "A Practitioner's Subjective View of Environmental Law." The public is invited. Please contact Lew Ross at 756-6749 (evenings) for the exact date.