Traffic Mitigation and Developers

■ C. KENNETH ORSKI

In a growing number of jurisdictions, concern about mounting traffic congestion has led to a new brand of initiatives. Known as "traffic mitigation" or "demand management," these initiatives aim to reduce peak hour traffic in congested suburban areas by encouraging the use of alternative transportation modes and shifting commuter travel to less congested hours of the day. While not a substitute for new highways, demand management has been increasingly embraced in densely settled suburbs where community opposition and environmental considerations have precluded or severely limited the opportunities for new road construction.

Participation of the business community in demand management is deemed essential to the success of traffic mitigation programs. Developers, property managers, and employers can offer tangible incentives to workers to modify their commuting habits. Thus, they can directly influence the volume of automobile traffic.

This article presents a critical evaluation of the state of the art of traffic mitigation, with special emphasis on its impact on the development community. The article is based on the author's experience as a consultant to local governments and private developers, and does not purport to be an exhaustive research analysis.

Voluntary Traffic Mitigation Programs

Traffic mitigation efforts fall into two categories. Some are undertaken voluntarily; others are mandated by local government. Voluntary programs are most likely to occur where property owners and tenants are strongly motivated by economics to maintain a high degree of accessibility.

Voluntary traffic mitigation programs are carried out either by individual companies or through transportation management associations. Employer-sponsored ridesharing programs date back to the oil embargo of the 1970s. Although corporate support of ridesharing (and employee interest in ridesharing) has declined substantially since then, there are still pockets of significant employer-sponsored ridesharing activity, notably in Los Angeles, Houston, San Francisco, Connecticut, and northern New Jersey.

However, the most visible manifestation of a growing private sector involvement in traffic mitigation has been the expansion of transportation management associations (TMAs). In only a few years, these organizations have assumed a major role in local efforts to address mobility problems. Today, more than 30 TMAs are operating nationwide, and their number continues to grow. Interest in them is particularly prevalent in high-growth metropolitan areas where traffic conditions have reached alarming proportions—Chicago, Dallas, Los Angeles, northern New Jersey, Orange County, the San Francisco Bay Area, and Washington, D.C.

Each TMA is individually crafted to respond to the special needs and circumstances of the area it serves. Some TMAs are organized around a single activity center (for instance, a suburban office park), while others are regional in scope. Some TMAs are purely private (such as TMAs at Tysons Corner, Virginia, and Irvine, California), while others are partnership ventures supported by a mix of private and public funds (such as the TMAs at the Dallas Parkway Center, Morris County, New Jersey, the Baltimore/Washington International Airport, and North Bethesda, Maryland).

TMAs also differ in the way they view their mission. Some TMAs focus on policy leadership and advocacy, and serve primarily as a voice of the business community in local transportation decision making. Others assume a more operational role and function as shadow transportation districts. They facilitate ridesharing, coordinate alternative work hours programs, administer parking management programs, and manage a variety of local transportation services such as internal circulators, park-and-shuttle systems, and subscription buses. Many TMAs also try to promote a positive image of mobility intended to reassure existing and prospective tenants. Most TMAs engage in all three types of activities, though they may do so with differing degrees of emphasis.

Negotiated Traffic Mitigation Requirements

Where voluntary efforts have been found lacking, local governments have turned to mandating private sector involvement as a condition of individual project approval (negotiated requirements), or through ordinances enacted in the exercise of local police powers (regulatory requirements).

Negotiated traffic mitigation agreements have become a common practice in numerous jurisdictions, including Dallas, Fairfax County, Virginia, Los Angeles, Montgomery County, Maryland, Orlando, San Francisco, and Seattle. Most such agreements set a traffic reduction goal (often expressed in terms of a minimum level of ridesharing participation, or a stipulated reduction in the number of automobile trips), but differ in the degree of prescription concerning implementation methods. An example of a nonprescriptive approach is the trip reduction agreements negotiated by the Montgomery County Planning Board. The agreements specify the number of vehicle trips to be ultimately eliminated from a given development but leave wide latitude to the developers in deciding how those reductions are to be achieved. Other jurisdictions have adopted a more prescriptive approach. Thus, the "development disposition agreements" ne-

C. Kenneth Orski is president of the Urban Mobility Corporation, a transportation-management consulting firm based in Washington, D.C.

gotiated by the Community Redevelopment Agency of Los Angeles (CRA) not only set a performance requirement but list a number of specific actions the developers must adopt to carry out the intent of the agreement.

The CRA's development disposition agreements (DDAs) probably contain the most elaborate set of traffic mitigation requirements on record, and therefore deserve close scrutiny. To stem the influx of yet more commuter automobiles into the already crowded central business district, the CRA has begun to impose ridesharing requirements on new downtown office buildings. The DDAs stipulate that a certain percentage of office employees must arrive at work by means other than single-occupant automobiles. In a recent case, involving a new office tower at Wilshire Boulevard and Figueroa Street, the ridesharing goal was set at 44 percent. The DDAs also commit the developers to certain specified implementing actions, such as hiring a "commuter transportation coordinator," providing rideshare incentives, and monitoring employee participation in the ridesharing program. Finally, the agreements contain a long list of recommended policies—that is, actions that are considered supportive of the requirement but are not obligatory. Among them are subsidized transit passes, preferential parking policies for carpools and vanpools, and involvement of tenants in traffic mitigation programs through lease provisions. If a project fails to achieve its rideshare performance requirement, the developer must provide (or pay for) free van seats equivalent to the shortfall between the requirement and the actual number of rideshare participants.

Traffic Mitigation Ordinances

Limiting traffic from new development through individually negotiated development agreements can prevent future congestion in newly urbanizing areas where there are few existing traffic generators. However, it is of less value in established areas where new projects are likely to generate only a small fraction of total traffic. This is why jurisdictions already experiencing serious traffic congestion are inclined to employ a regulatory approach, which gives them the power to control traffic from existing as well as future development.

Ordinances appeal to local officials on several grounds; they can achieve more significant trip reductions because of their wider coverage; they are more equitable because they can be made to apply to existing as well as future development; and they may be less vulnerable to legal challenges than conditions imposed on development approvals, especially in light of the *Nollan v. California Coastal Commission* Supreme Court decision.

Close to 20 jurisdictions have enacted traffic mitigation ordinances and several others are actively moving in that direction. An examination of enacted ordinances reveals a large degree of commonality in the way local jurisdictions are approaching the subject of regulating automobile use. The ordinances studied include those of Alexandria, Virginia; Bellevue, Washington; Concord, California; Contra Costa County, California; Hartford, Connecticut; Los Angeles, California; Marin County, California (proposed); Montgomery County, Maryland; North Brunswick, New Jersey; Pleasanton, California; Sacramento, California; Seattle, Washington; and Santa Clara County's (California) "Golden Triangle" (proposed).

Extent of Coverage

Most of the ordinances apply both to new and existing development and explicitly cover employers. However, some ordinances (Alexandria, Hartford, Los Angeles Coastal Corridor) apply only to new development, and one ordinance (Bellevue) applies only to property owners (existing and future). Small employers are generally exempt from the requirements. Some ordinances (Contra Costa County, Pleasanton, Seattle) impose more stringent requirements on major employers than on small employers.

Residential uses are almost universally exempted; enforcement of traffic mitigation requirements where residents are concerned is considered too onerous and virtually unenforceable.

Where the ordinance applies to developers or property owners, it usually remains silent as to tenants. As a matter of practice, however, developers and property managers often incorporate the ordinance conditions in their leases and CC&Rs.

Flexibility of Means

Some ordinances (Placer County, Sacramento, Seattle, Bellevue, Hartford) require specific traffic management measures. Most ordinances, however, set out traffic mitigation goals without specifying how these goals are to be met. The targets are

By far the most innovative example of a legislative initiative to regulate traffic congestion is Montgomery County's recently enacted "transportation management district" in Silver Spring, Maryland.

Downtown Silver Spring, a suburban center in the Washington, D.C., metropolitan area, has become the target of significant urban revitalization efforts. To accommodate the proposed new commercial development without running afoul of the county's annual growth policy (which sets development limits as a function of available transportation capacity), the county has established a special transportation management district. The aim of the district will be to maintain traffic levels consistent with the commuting goals specified in the county's annual growth policy, which, in the case of the Silver Spring CBD, will require a 25 percent transit modal split and an average car occupancy of 1.3. These commuting goals are to be reached by enlisting the private sector in a concerted program of demand management. All employers of more than 25 workers are required to submit traffic mitigation plans and participate in an annual commuter survey. Developers of all new projects are required to enter into formal traffic mitigation agreements as a condition of subdivision approval and must meet a 30 percent transit modal split. If the commuting goals are not met through voluntary efforts, a mandatory program of demand management may be promulgated. An advisory board of citizens and business leaders will oversee the program and evaluate the progress in attaining the commuting goals.

Significantly, the proposed legislation provides no penalties against employers who fail to meet the traffic reduction goals. But fines are to be levied for failure to comply with procedural requirements—that is, for not making an honest effort to carry out the intent of the legislation. Developer agreements, on the other hand, will contain stronger sanctions; for example, requirements for specific performance and financial security assurances such as performance bonds and escrow accounts.

The county's commitment to making the TMD work is underscored by its willingness to devote sizeable resources to its implementation. A staff of four full-time professionals, supported by an administrative budget of $372,000, will administer the district. In addition, a sum of $1.6 million has been recommended by the county council to support the annual cost of commuter transit incentives. Another $590,000 of the county's transportation budget would be used for enhanced transit access to Silver Spring, such as shuttle buses from a fringe parking lot into the CBD. The total county contribution thus amounts to over $2.5 million per year, by far the most ambitious local financial commitment of its kind.

The most novel feature of the Silver Spring TMD legislation is its aggressive use of public incentives and parking controls to secure private sector cooperation and achieve the desired commuting goals. The package of incentives includes discounted transit and commuter rail passes, and discounts for carpools and vanpools in the county-operated parking facilities. Employers who exceed the modal split and car occupancy goals will receive additional incentives. Of even greater significance is the county's ability to control the total supply of downtown parking and its avowed determination to constrain the supply of commuter parking within the transportation management district, while at the same time vigorously enforcing commuter parking bans in the surrounding residential neighborhoods.

The Silver Spring Transportation Management District represents a bold and far-reaching exercise of local police powers to regulate automobile use and control traffic congestion. Its foundation is the county's longstanding bipartisan acceptance of the principle of managed growth, as reflected in its annual growth policy and in an "adequate public facilities ordinance." In jurisdictions with little or no political commitment to growth management, such an initiative might seem a bit ahead of its time.

typically expressed in terms of the modal split (for example, "no more than X percent of all trips during the peak hour shall occur in single-occupant vehicles" or "at least Y percent of all trips shall be in other than single-occupant vehicles"). Other performance measures have been used, however, such as maximum peak hour traffic generation (Irvine), minimum level of service at specified intersections (Concord, Pleasanton), average daily traffic volume, and minimum average car occupancy.

Enforcement and Sanctions

Should failure to reach a prescribed goal be penalized? Or should only "good faith efforts" be required? Most of the ordinances provide penalties for failure to comply with procedural requirements, such as the submission of a transportation system management (TSM) plan or a survey report. A few go somewhat further and penalize failure to implement an approved TSM plan (Contra Costa County, Pleasanton, Santa Clara County). But none of the ordinances imposes penalties for nonattainment of the trip reduction goals. Indeed, one ordinance (the Los Angeles Rideshare Ordinance) explicitly states: "Having made a reasonable effort to duly comply with the provisions of this Section, failure . . . to meet the applicable goal shall *not* be considered a violation of this Section."

Some ordinances require that traffic mitigation conditions applicable to new development to be recorded as covenants running with the land. Thus, the ordinance can be enforced not only against the initial developer but also against all subsequent owners of the property if they fail to carry out the traffic mitigation programs.

Oversight/Monitoring/Citizen Improvement

Virtually every ordinance provides for some kind of a collaborative public/private oversight, but the ordinances vary in the

degree of power and responsibility accorded to the oversight bodies. Most are purely advisory (Contra Costa County, Concord, Los Angeles), but at least in one case (Pleasanton) the "TSM task force" also has the power to approve or reject TSM plans, refer violators to the city council, and recommend changes to the ordinance.

The burden of monitoring is almost invariably placed on the private parties—the project owners or building occupants—who are required to submit annual progress reports. Many jurisdictions also require employers or project owners to submit annual surveys of employee commutation patterns.

Traffic Mitigation Evaluation

No discussion of traffic mitigation would be complete without addressing the following three essential questions:

How effective and acceptable is traffic mitigation? Although long-term experience with traffic mitigation programs is lacking, available evidence suggests that well-conceived and aggressively promoted programs can reduce peak period trip generation in suburban developments by as much as 10 to 15 percent. While this may appear as a negligible benefit from a regional perspective, reductions of this size can have a dramatic effect on local traffic conditions and on public perception of traffic congestion.

The most fully documented experiences comes from Pleasanton, California, whose ordinance requires developers and employers to reduce peak hour vehicle trips by 45 percent (based on the worst case of everyone driving alone) over a four-year period. After three yeats, single-occupant use of autos in the rush hour has decreased by 36 percent, which exceeds the city's 1987 goal of 35 percent. Overall, Pleasanton has succeeded in reducing trip generation from 13 to 10 trips per 1,000 square feet. A 1987 survey of Hacienda Business Park—the principal employment concentration in Pleasanton—conducted by the Pleasanton Planning Department and the Hacienda Business Park Owners Association, shows that only 78 percent of its 6,700 employees drive to work alone. The closely watched Pleasanton experiment may offer the first tangible evidence of the traffic mitigation potential of an aggressively promoted demand management program.

One should be careful, however, to understand the limitations of this potential, Traffic mitigation programs, unless undertaken on a truly massive scale, can only have a local impact. They can relieve spot congestion—for instance, at freeway ramps adjoining a large employment center, or on roads adjoining an office park—but they cannot materially relieve regional congestion. Taking even several hundred trips off the road is unnoticeable beyond the immediate vicinity of the traffic generator in question. This in not to say that local traffic mitigation programs are not worth undertaking, only that one should be careful not to raise unrealistic, public expectations as to their impact on areawide traffic.

How vulnerable are traffic mitigation requirements to legal challenges? Until last July, the answer would have been clear; Not very. But the *Nollan* case has introduced new uncertainties about how much latitude public agencies have in imposing conditions on development permits. Although the law remains far from settled, many observers predict that local officials will act more cautiously, fearful of litigation.

The power to attach conditions is part of a government's police power. Once, conditions (or fees in lieu of those conditions) had to be directly related to the project in question, but in recent times the courts gave more leeway to public agencies to impose indirect conditions at their own discretion, as long as a "reasonable nexus" exists. Now, the Supreme Court appears to have reined in some of this discretion, or at least shifted the burden of proof onto the local government to show that the conditions are indeed directly related to the project at hand.

A California case, *Russ Building Partnership v. San Francisco* (1987) indicates how the courts may rule in the future. That case was a challenge to San Francisco's transit impact fees. The city argued that the fees were necessary to offset the impact of new downtown development on the city's transit system, and produced mounds of statistical analysis to prove a direct relationship between office construction and increased fiscal burden for the transit system. The plaintiff claimed that the fee was a tax in disguise and therefore required approval by two thirds of the voters. The state appellate court sided with the city.

The *Russ Building Partnership* case suggests that traffic mitigation conditions would likewise survive a court challenge, but their defense likely would require a rigorous proof of direct effects of transportation management actions on traffic congestion, something that has eluded transportation analysts so far.

How onerous are traffic mitigation requirements? So far, traffic mitigation programs have met with few objections on the part of the development community. Their general acceptance can be attributed to the fact that few of the programs contain sanctions for nonattainment of goals. With most programs requiring only a showing of good faith efforts, the real question boils down to the cost of compliance. Here, experience indicates generally modest requirements. The cost of complying with the traffic mitigation conditions of a typical development agreement has been estimated at $0.20 to $0.40 a square foot for medium- to large-scale projects. The cost for an individual project can be substantially reduced if the program is run collaboratively, through a transportation management association.

In the final analysis, traffic mitigation requirements will be judged as onerous or not depending on one's philosophy. Is traffic mitigation just another example of unwarranted government intrusion into private affairs? Or is it a much-needed public/private response to a problem that could seriously hamper future, development if left unaddressed? If it is the latter—and a growing number of participants in the development process seem to take this view—then participation in traffic mitigation programs may well be worth the effort. (IR/WA)

Reprinted with permission from Urban Land, *March 1988.*