



NORTHERN NEWS



A Publication of the Northern Section of the California Chapter of APA



American Planning Association
California Chapter
Northern
Making Great Communities Happen

FEBRUARY 2010

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Solving urban eco-issues—through the roof!

By Sarah Sutton, ASLA, LEED AP, GRP

Municipalities are at a critical crossroads as we enter a new decade. With a depressed economy, stricter stormwater regulations,¹ and a State mandate to address global warming, future planning and development decisions must follow a holistic approach. Particularly with urban infill and smart growth developments, installing vegetated swales, street trees, and “cool roofs”² alone will not do the job; an integrated, multi-functional approach is needed.

This article describes how *green roofs* can provide a solution that effectively and simultaneously addresses each of these challenges while also providing multiple environmental, economic, and social benefits.

From roof gardens to green roofs. We used to call them rooftop gardens, and their primary purpose was to provide outdoor use or a pleasant landscaped view. The term “green roof” originated in Europe, where covering a roof with a thin layer of growing medium and vegetation was well recognized as having ecological and energy saving benefits. In this country, the USGBC/LEED and Green Roofs for Healthy Cities programs have encouraged the installation of green roofs nationwide by promoting green roof benefits, providing research, and sharing case studies. The green roof industry has grown and evolved, and manufactured and warrantied products are readily available to make it easier to design and construct green roofs.

Multiple benefits. With increased population favoring infill development and denser urban cores, multi-objective solutions are needed for the limited remaining open space. Green roofs can effectively provide multiple environmental benefits, including:

- **Stormwater management and watershed health.** A green roof can reduce roof runoff volumes and frequencies as much as 69 percent during the rainy season and up to 100 percent during off-season storms³; reduce the erosion of urban streams and impacts on storm drains by delaying peak runoff; and help meet rigorous stormwater regulations by retaining water on the roof, then releasing it slowly into secondary treatment areas.
- **Reduced energy demand.** The insulating value of green roofs can keep buildings at least 10 degrees cooler in the summer and reduce energy demand by at least 10 percent in both the summer and winter.^{4, 5}

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DIRECTOR'S NOTE

By Darcy Kremin, AICP

It was wonderful to see so many of you at our annual holiday party in December. We had 85 attendees (see photos on [page 14](#)). We are especially indebted to our party coordinators this year: **Jane Wardini, Suzanne Drolet, AICP; Hanson Hom, AICP; Hing Wong, AICP; and Allen Tai, AICP.** They made the event memorable and fun for all. Volunteers helped the party run smoothly: **Jennifer Gates, Claudine Asbagh, Mike Rivera, Francesca Francia, and Alex Westhoff.** Lastly, many thanks to our sponsors: **RBF Consulting; ENTRIX, Inc; MIG; LSA Associates; Dyett & Bhatia; Design, Community & Environment; PMC; Eisen | Leutnic; and EcoCity Builders.** With their help and individual donations from **Juan Borrelli, AICP; Suzanne Drolet, AICP; and Don Bradley, AICP,** we raised \$1,000 toward the Section's annual \$3,000 contribution to the CPF Scholarship Fund. We look forward to seeing even more of our members and their guests at next year's party!

A most appreciative thank you to **Lucy Armentrout, AICP,** for her three years of service to Northern Section as Membership Director. Lucy stepped down from the post in January. Under her tenure, our sporadic and generic eNews (email to members) became a regular, attractive, timely, and useful tool to announce events and the online posting of *Northern News*.

Every year **the Section gives awards** to planning projects and professionals to recognize outstanding contributions to the field. Don't forget to submit your awards application; the deadline is March 12. Questions can be directed to **Eileen Whitty, AICP,** or **Andrea Ouse, AICP,** our Awards Program Directors. And be sure to mark your calendar now for the **awards ceremony the evening of May 14** at the Sir Francis Drake Hotel in San Francisco.

Lastly, a **BIG CONGRATULATIONS** to **Taryn Hanano** who received APA's 2009 National Planning Leadership Award for a Student Planner. She follows in the footsteps of Emy Mendoza, the 2008 national award winner. We take National's recognition of Taryn (and Emy) as a compliment to Northern California planning and the many outstanding planning programs and students in our Section. We are so proud of all of you!



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The American Planning Association, California Chapter Northern, offers membership to city and regional planners and associated professionals primarily living or working in California, from Monterey County to Del Norte County, including the nine county San Francisco Bay Area and Lake and San Benito Counties. APA California Northern promotes planning-related continuing education and social functions in order to:

- Provide an arena for communication and exchange of information about planning related activities;
- Raise member awareness and involvement in APA affairs;
- Increase public awareness of the importance of planning;
- Encourage professionalism in the conduct of its members; and
- Foster a sense of community among the members.

APA California Northern publishes *Northern News* online in PDF 10 times each year as a medium for the exchange of ideas and information among its members. Circulation (complete web downloads per issue) is 7,500.

Northern News welcomes comments. Letters to the editor require the author's first and last name, home or work street address and phone number (neither of which will be published), and professional affiliation or title (which will be published only with the author's permission). All letters are subject to editing. Letters over 250 words are not considered.

The deadline for submitting materials for inclusion in *Northern News* is the 15th day of the month prior to publication.

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Northern California roundup

Watching paint dry—20 housing elements now certified.

Many Northern California jurisdictions, including those in the San Francisco and Monterey Bay areas, were required to adopt housing elements in compliance with Article 10.6 of the Government Code in 2009. As of December 21st, HCD had certified the Housing Elements of the following APA Northern jurisdictions as complying with State law: Del Norte and Sonoma counties and the cities of Campbell, Cloverdale, Dixon, Fairfield, Fremont, Gonzales, Greenfield, Hillsborough, Monterey, Napa, Oakley, Petaluma, San José, Soledad, Suisun City, Sunnyvale, St. Helena, and Yountville.

Navy agrees to transfer Treasure Island to San Francisco.

The Secretary of the Navy and San Francisco Mayor Gavin Newsom agreed in December on general terms for conveying Treasure Island from the Navy to the City. The City will guarantee payments of \$105 million to the Navy plus a further share of potential profits from redevelopment of the island. "This agreement ... will create jobs in the San Francisco region and will effectively transition Treasure Island to productive civilian reuse," said Navy Secretary Ray Mabus. "Now that we know the basic terms," said Mayor Newsom, "we can begin the hard work of making sure the City's grand vision for Treasure Island can be realized." The City's redevelopment plans—considered among the most environmentally sustainable development plans in US history—contemplate a mixed-use town center, 6,000 homes, three hotels, hundreds of acres of parks and open space, and an organic farm.

But what about rising sea levels and building on fill? "The area proposed for housing and a town center would have the ground built up higher than the current sea wall in San Francisco and be set back about 300 feet from the water. And Mayor Newsom's administration says plans to handle rising seas will make the island safer than large parts of San Francisco's northern waterfront." Final project approvals are expected this year, with completion taking 10–20 years. Read more at "[Treasure Island utopia gets reality check](#)," by John Coté, *San Francisco Chronicle*, December 28, 2009, or "[A Treasure Hunt in San Francisco Bay](#)," by Jim Carlton, *The Wall Street Journal*, January 9, 2010 (short and interesting).

Power to Marin? "A newly formed group, the Marin Energy Authority, plans to approve its first contract with Shell Energy North America in February to bring more renewable power to the county. Through a form of public collective purchasing, it plans to provide a greener alternative to the power from the Pacific Gas & Electric Company. [PG&E] is making every effort to [stop the effort], jawboning participants, hinting at legal action and, most importantly, backing a voter referendum to nip such plans anywhere in the state. Marin, closely followed by San Francisco, is racing to get its program established because a statewide initiative, backed by PG&E

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Northern California roundup *(continued from previous page)*

and likely to be on the ballot next June could make it much harder to do so. The initiative, known as New Two-Thirds Requirement for Local Public Electricity Providers, would amend the state's Constitution to require local governments to win the approval of two-thirds of voters before pursuing community choice with any public money or bonds. It would also require two-thirds of voters to approve a local government's use of public money or bonds to start or expand municipal electricity services." —Katharine Mieszkowski, "[New group seeks to bring greener power to Marin](#)," *The New York Times*, December 20, 2009.

New tsunami maps available for California. The California Geological Survey (CGS) provides geologic and seismic expertise to the public, other State government offices, such as the California Emergency Management Agency (CalEMA; formally the Governor's Office of Emergency Services), and cities and counties. For tsunami hazards, CGS is working closely with CalEMA and the Tsunami Research Center at USC to produce statewide tsunami inundation maps and preparedness information. CGS is also the scientific representative for California on the National Tsunami Hazard Mitigation Program Coordinating Committee, a state and federal cooperative responsible for developing policies and standards for tsunami mitigation efforts in the US. For basic information about tsunami and their impacts to California, [click here](#). Statewide Tsunami Inundation Maps have been developed for all populated areas at risk in California. [Click here](#) to download a poster describing the methodology for how the maps were created (PDF 4 MB).

Water rules somewhat liquid. For some time now, California cities and counties have been adopting new water conservation rules. The State's Water Conservation in Landscaping Act of 2006 (AB1881), "designed to conserve water by altering landscaping practices, is taking effect. Cities and towns around the Bay Area are scrambling to meet the state-imposed deadline to adopt water conservation landscaping ordinances intended to drive down their outdoor usage—which in this region is usually 50 percent or more of total household use—and many are considering ordinances tougher than the model ordinance prepared by state officials. The communities must report to the state what they have done by Jan. 31. Menlo Park, like Palo Alto, is trying to design its own ordinance. This approach is allowed by the state law as long as the local ordinance conserves at least as much water as the state's model. But some homeowners—particularly in towns along the peninsula like Los Altos Hills, Palo Alto, Menlo Park, Atherton and Hillsborough with a tradition of water-intensive landscaping—dislike the idea of government limits on gardening choices." —Susan Sward, "[Water conservation could limit suburban lawns](#)," *The New York Times*, January 10, 2010.

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Northern California roundup *(continued from previous page)*

Menlo Park's draft ordinance would restrict the size of homeowners' lawns and when they can water them. The ordinance would limit lawn size to 500 square feet, or to 25 percent of the total landscaped area for properties with over 2,000 square feet of landscaping. The new rules would apply only to properties that undergo a substantial renovation or landscaping overhaul. In addition, the City would restrict daytime irrigation of any turf areas. —Sean Howell, "[Proposal in Menlo Park would restrict lawn size](#)," *Palo Alto Weekly*, January 6, 2010.

Bikes for share. A \$500,000 grant from the Metropolitan Transportation Commission will let the Valley Transportation Authority start "a pilot bicycle-sharing program in Silicon Valley in March. Commuters and weekend shoppers will be able to check out bikes at Caltrain stations in San José, Palo Alto, and Mountain View and return them at the end of the day. The program will start with 100 bikes divided among the three stations, and they would be available day or night. Bike sharing is old-hat in Europe but relatively new and spotty in the United States. Portland's first attempt in the 1990s died because of theft and vandalism. Paris supports one of the world's largest systems, with 21,000 bikes." —Joe Rodriguez, "[Don't want to drive? Share a bike!](#)", *Mercury News*, December 25, 2009.

Earthquake country. The 6.5-magnitude earthquake January 9th "was the first major temblor to hit the North Coast in nearly 15 years, providing a wake-up call to those caught in a lull in an area prone to significant seismic activity. The maximum shaking was felt in Eureka, and there were a number of aftershocks. The North Coast is no stranger to earthquakes. Below is a list of quakes going back to 1976 that registered magnitude 6 or greater. A number of these caused significant damage in the region, notably the flurry of earthquakes in 1991 and 1992." —John Driscoll, "[Quake-up call: Saturday's significant jolt ends nearly 15-year calm](#)," *Eureka Times-Standard*, January 11, 2009.

November 1976: 6.3
November 1980: 6.9-7.4
September 1984: 6.6
July 1991: 6.7-6.9
August 1991: 5.9-6.3
August 1991: 6.0-6.2
August 1991: 6.9-7.1
April 1992: 7.1
April 1992: 6.6
April 1992: 6.7
September 1994: 6.9-7.2
February 1995: 6.6
July 1996: 6.0
January 2010: 6.5

Source: Humboldt State University Geology Department ■



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Inclusionary housing requirements scrutinized in several court decisions

Assembled from online sources by Naphtali H. Knox, FAICP

1. “Patterson.” From Bingham Land Use and Development Alert, “[Decision overturning City’s affordable housing fee withstands petition to U.S. Supreme Court](#),” December 2, 2009.

“Early in 2009, in *Building Industry Association of Central California v. City of Patterson*, the California Court of Appeal struck down a local affordable housing requirement imposed on residential development. The California Supreme Court decided in June 2009 not to take the case, and the United States Supreme Court similarly refused to intervene. The Court of Appeal’s decision therefore stands as an important limitation on the powers of cities and counties to adopt affordable housing requirements.

“The case centered on a Development Agreement between the City of Patterson and a homebuilder concerning two residential subdivisions. When the City approved the Agreement, residential developers were required to pay a fee of \$734 per house in lieu of building affordable housing. The homebuilder knew that the City was considering whether to raise the fee and agreed to pay an increased fee in an amount that was ‘reasonably justified.’ The City subsequently raised the fee to \$20,946 per house and the homebuilder sued.

“The Court of Appeal invalidated the new fee, finding it was not ‘reasonably justified.’ The court interpreted this term in light of the constitutional test articulated by the California Supreme Court in *San Remo Hotel v. City and County of San Francisco* for evaluating local ordinances that impose exactions on new development. This test examines whether the exaction bears a ‘reasonable relationship, in both intended use and amount, to the deleterious public impact of the development.’

“Applying this test, the court found there was no reasonable relationship between the City’s affordable housing fee and the new homes that would be built. In particular, the City’s fee was based on the costs of meeting the City’s existing affordable housing needs, but the record showed no connection between these pre-existing needs and the demand, if any, for affordable housing that the new homes would create.

“The case raises serious questions about the propriety of imposing affordable housing requirements on residential developments. It also shows that cities and counties will be subject to constitutional scrutiny when they adopt uniformly applicable affordable housing fees, and not only when they seek to impose affordable housing conditions on an ad hoc, project-by-project basis.”

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Inclusionary housing requirements scrutinized in several court decisions *(continued from previous page)*

2. “Palmer.” Digested from “[Affordable housing ruling a setback to cities,](#)” by Robert Selna, *San Francisco Chronicle*, January 8, 2010.

Meanwhile, a number of cities are working to address a court decision that essentially prohibits cities from forcing developers to rent a percentage of units in new apartment buildings at rates affordable to people earning below the median income.

The case, *Palmer/Sixth Street Properties vs. City of Los Angeles* will probably impact 170 jurisdictions in California that have inclusionary housing ordinances (more than a third of all cities). Legal experts said the ruling does not affect new condominium projects or other units built for sale.

The law that was central to the court’s decision (the Hawkins-Costa Act) says that landlords may establish the initial rent for apartments, even in areas where there is rent control.

In *Palmer*, developers convinced the court that when the city of Los Angeles imposed affordable-housing requirements on new apartment units, it violated the law, since the initial rents were established by the affordable housing laws, and not by the landlords.

Attorneys who have studied the Palmer case said that a legislative amendment would be the easiest way for cities to eliminate the conflict with their affordable-housing rules. Language could be added to the state law saying that landlords are entitled to establish initial rents, except in developments subject to affordable-housing ordinances.

Since 1992, San Francisco has created affordable-housing laws to address the city’s chronic housing shortage and high costs. In 2006, the city revised its rules, requiring developers to rent or sell 15 to 20 percent of new housing at affordable levels. Under the laws, developers can choose to pay a fee in lieu of building affordable housing.

3. “Sterling Park.” Digested from “[Developer sues Palo Alto over affordable housing requirements,](#)” by Will Oremus, *Mercury News*, December 11, 2009.

Palo Alto is defending its low-income housing program in Santa Clara County Superior Court against a lawsuit from a private developer who argues the city has no right to require him to pay for below-market-rate (BMR) units.

City officials have disputed the lawsuit and argued in a demurrer that the city’s BMR program fully complies with state law. The demurral also notes the developer submitted his claim against the city after the three-year limitation period expired. The initial contract between city and developer was signed in June 2006.

John Mozart, builder of the 96-unit Sterling Park housing development who filed the lawsuit in October, is challenging the city’s requirement that housing developments larger than five acres set aside 20 percent of their units—or pay equivalent fees—to the city’s affordable housing program.

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Inclusionary housing requirements scrutinized in several court decisions *(continued from previous page)*

Mozart’s attorney noted that the Sterling Park homes replaced a former office park, and the city showed no evidence that the project increased demand for affordable housing in the city. The lawsuit alleges that the city’s policy is, in effect, a “special tax” on developers, which would be illegal without a two-thirds vote.

Donald Larkin, assistant city attorney, said Palo Alto’s policy is different than Patterson’s because it’s an inclusionary housing requirement rather than an impact fee. (Palo Alto’s inclusionary housing policy was the first on the west coast and has been on the books since the very early 1970s.) The fee is offered only as an alternative to the BMR set-aside requirement. Courts have upheld similar requirements in other counties, he said.

Requiring a developer to build below-market-rate units is “no different than requiring them to leave a percentage of property as open space,” Larkin said. “It’s just one of the things the city wants in exchange for being allowed to develop a certain number of units. We’re not overly concerned about this particular lawsuit.”

Still, he said, the recent wave of challenges poses an issue for the state. California requires cities to provide a certain amount of affordable housing, so it would be problematic if cities had no legal way of doing so. “I expect at some point this issue will reach the state Supreme Court,” Larkin said. “We’re hoping it’s not with us.” ■



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*Photo by Ladd Miyasaki
(Answer on page 11)*

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What others are saying

ENERGY

“Serious blow to the hopes of environmentalists”? “A \$60 million project to extract renewable energy from the hot bedrock deep beneath Basel, Switzerland, was shut down permanently after a government study determined that earthquakes generated by the project were likely to do millions of dollars in damage each year. Scientists said that because the Swiss report focused narrowly on the Basel project and also contained positive findings, it would not prove fatal to advanced geothermal energy as a whole. The report comes as the United States Energy Department is preparing its own review of the safety of a closely related project by a start-up company called AltaRock Energy” about 20 miles north of Calistoga. —Read James Glanz, [“Geothermal drilling safeguards imposed,”](#) *The New York Times*, January 15, 2010.

“An ideal ‘clean’ energy option”? “Thirty years after the American nuclear industry abandoned scores of half-built plants because of soaring costs and operating problems like the Three Mile Island accident, the pendulum may be swinging back. The 104 plants now running have sharply raised their output, and the industry is about to get a big boost. In the next few days, the Energy Department plans to announce the first of \$18.5 billion in loan guarantees for building new reactors—guarantees authorized in a bill passed by Congress in 2005.” —Matthew L. Wald, [“Loan program may stir nuclear industry,”](#) *The New York Times*, December 23, 2009.

What you need to know about dysprosium. “Some of the greenest technologies, from electric cars to efficient light bulbs to very large wind turbines, are made possible by rare earths. Two heavy rare earths, dysprosium and terbium, are in especially short supply. These elements come almost entirely from China, from some of the most environmentally damaging mines in the country. According to the government-backed Baotou Rare Earth Research Institute, heavy rare-earth deposits in the hills of southeastern China will be exhausted in 15 years. The biggest user of heavy rare earths in the years ahead could be large wind turbines, which need much lighter magnets for the five-ton generators at the top of ever-taller towers. Goldwind, the biggest Chinese turbine maker, has switched from conventional magnets to rare-earth magnets. Vestas, the world’s biggest wind turbine manufacturer, said that prototypes for its next generation used dysprosium.” —Keith Bradsher, [“Earth-friendly elements, mined destructively,”](#) *The New York Times*, December 26, 2009.

(continued on next page)

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What others are saying *(continued from previous page)*

CLIMATE CHANGE

Needed: a national policy that puts a price on GHG emissions.

“Even as many members of Congress resist the steps necessary to address global warming, American cities and states have quietly been making serious commitments to curb emissions. About half of the states have broad plans and specific regulations [that] when fully realized, would cut emissions by over 7 percent between now and 2020. About half the reductions would come from proposed emission limits in six big states. California’s goal of cutting greenhouse gases by one-quarter by 2020 is plausible partly because the state has been so successful in improving the efficiency of its power plants and buildings, promoting renewable energy, and insisting on fuel-efficient vehicles. The state recently approved strict new energy-efficiency requirements for television sets, which now account for 10 percent of the average household’s energy use but are largely unregulated. It is small steps like these that will take California to its overall goal.” —Editorial, “[Where the action is on Climate](#),” *The New York Times*, January 10, 2010.

OUR PROFESSION

U.S. News & World Report sees “**Urban Planner as one of the 50 best careers of 2010**, with strong growth over the next decade. An expanding population has created the need for additional transportation systems, affordable housing, and schools in many parts of the country. The urban and regional planning field is expected to grow 19 percent from 38,400 jobs in 2008 to 45,700 jobs by 2018. Most of the new jobs will be with state and local governments. Urban planners change the face of the city or at least make sure that its water and electricity continue to hum behind the scenes. But you’ll need to be a bit of a diplomat to get all the stakeholders to agree to your plan.” —[U.S. News & World Report](#), December 28, 2009. ■

Onward and upward

Caroline Teng is now community development assistant for the City and County of San Francisco Local Agency Formation Commission (LAFCo). She will be helping with public outreach and monitoring of CleanPowerSF, which will provide a reliable, affordable, and renewable energy supply for San Francisco ratepayers. Caroline had been an Assistant Planner at RRM Design Group. She holds a BA in urban studies from UC Berkeley and is a *Northern News* associate editor. ■



Answer to “Where in the world?” [Page 8](#)

Mt. Lycabettus, Athens, Greece.
Photo by Ladd Miyasaki

Speaking truth to false dilemmas

By *Leonardo Vazquez, AICP/PP*

“Either build that toll road to lessen congestion or let traffic speeds go down to 10 miles an hour during the rush.” “The debate about global warming is about letting the free market take its course or making regulations that will hurt our economy.” “Either I take this job that I’m going to hate, or just not have any income for six months.” These are examples of false dilemmas, a rhetorical tool that blights productive conversations. False dilemmas make us less creative and more prone to making bad choices.

A false dilemma is a statement that creates the impression that there are only a few real options, when there may in fact be many more. In the first example, there may be other realistic options to reducing congestion besides a toll road—such as more public transportation, improvements to existing roads, etc.

There are two main causes for false dilemmas: either the speaker is not aware that other realistic options exist, or the speaker is trying to manipulate us into accepting the speaker’s preferred alternative. A classic example is the case of residents of a low-density suburb who oppose townhouses or apartment buildings on the grounds that these buildings will turn their community “into a city.” Assuming there are no ulterior motives, this is an example of an innocent false dilemma. To these residents, a “suburb” and a “city” are completely different, and there is no way to combine the best of both worlds.

What should you do when confronted with a false dilemma? The best approach is to name it and show that there are a number of reasonable choices. But this is easier said than done.

- If you’re in a position of authority, you can make the speaker aware that other possibilities exist, and ask the speaker to investigate other options.
- If you’re in a subordinate or peer relationship (such as with a colleague or client), you have to be more artful.
 - First, try to understand why the speaker is making the false dilemma. Does it appear to be a lack of awareness? Or is something more going on there?
 - If your relationship with the speaker is already tense, avoid naming the false dilemma. This may aggravate the tension and cause the speaker to dig in on a position.
 - Ask non-threatening questions, such as “What would happen if...”, “Has someone considered...” These may help expand the thinking of the innocent speaker. The manipulative speaker may still dig in, but other members of the audience might start to think differently.
 - Create learning opportunities. To help residents think differently about higher density houses, planners and architects use charettes and other public forums to show how communities can add different types of buildings and stores while protecting their character.

Leonardo Vazquez, AICP/PP, directs the Rutgers University Professional Development Institute. Do you have a professional development tip? Send your tip to [Editor, Northern News](#). ■

National Planning Leadership Award goes to local planner

Taryn Hanano, a graduate of San José State University, has received APA's **2009 National Planning Leadership Award for a Student Planner**. She follows in the footsteps of Emy Mendoza, the 2008 national award winner (also from SJSU).



APA cited Taryn for “exceptional scholarship and ongoing commitment to advancing the visibility and recognition of the urban planning profession through her education and professional endeavors. As a full-time graduate student at San José State University’s Urban and Regional Planning Department, Hanano has maintained an impressive GPA of 3.93, while working full time.”

“As a graduate student, Hanano was instrumental in supporting the university and its students. She served as president of the APA Planning Student Organization and the Urban Planning Coalition, and was on the board of the APA California Chapter Northern Section, representing the interests of fellow San José State University students. She helped establish a program that provided partial airfare reimbursement for 10 students to attend the 2008 APA National Planning Conference.”

“As a Planner I for the City of Fremont, Hanano’s hometown, she has worked on updating the city’s housing element, acting as the lead project planner and producing the final element for adoption by the city’s planning commission and city council. Hanano felt that resident involvement in the general plan was crucial to its success.” ■

State law does not require cities to allow medical marijuana dispensaries

California cities and counties retain broad police power over land use planning and zoning



By *Bryan W. Wenter, AICP, Legislative Director, APA California Northern*

Local governments throughout California have been confronted with a proliferation of medical marijuana dispensaries seeking to operate under the protection of the state’s medical marijuana laws. In essence, those laws allow patients to possess and use, and primary caregivers to recommend, marijuana for the treatment of various illnesses. Although some cities and counties have created regulations to allow such dispensaries to operate within their communities, others have adopted regulations intended to ban them outright. The question this tension creates is whether state medical marijuana laws trump local authority over land use planning and zoning. According to recent case law, the answer is a resounding “no.”

In *City of Claremont v. Kruse*, a landowner opened a medical marijuana dispensary in a city where marijuana dispensaries were not an enumerated use under the city’s zoning laws and therefore could not operate anywhere within the city. The city promptly informed the owner of the dispensary that the proposed use was not permitted at any location in the city, denied his application for a business license, and stated that he would need to seek a discretionary zoning amendment to legally operate there. The medical marijuana dispensary owner responded that state law required the city to allow the use and then proceeded to open the dispensary. The city then sought to obtain voluntary compliance, and when that failed the city issued administrative citations. The city also filed a lawsuit seeking a temporary restraining order and preliminary and permanent injunction to abate a public nuisance.

The medical marijuana dispensary owner asserted that his dispensary could have been categorized under numerous existing zoning classifications. The trial court disagreed and ruled in favor of the city, finding that medical marijuana dispensaries were not permitted uses under the city’s zoning ordinance. The trial court also made several legal conclusions, including that California’s Compassionate Use Act does not preempt the city because nothing in the text or history of that statute suggested California’s voters

(continued on next page)

Planners seeking employment

APA California Northern wants potential employers to know about urban, regional, and environmental planners who are unemployed and available. Members of Northern Section APA can post a brief ad here (67 words maximum). Ads for the March issue must be received no later than 5 PM Wednesday, February 10th, at Editor, *Northern News*, knoxnaph@gmail.com.

Land Planner/CEQA/Project Management.

Over 25 years experience. Previous employers: City of Alameda (17 years), Alachua County Florida (3 years), Pasadena Texas (5 years), San Joaquin County (4 years). MS Environmental Management, University of San Francisco, BA Inter-American Studies, BA Human Ecology. Contact comstockeliason@yahoo.com or (510) 483-1666. (9-29)

Land Planner/Urban Designer. 9 years experience in project entitlement and neighborhood and commercial layout, specific plans, and graphics. Part- or full-time, flexible availability. Recent Employers: MacKay and Soms, Pleasanton (3 years); Randall Planning and Design, Walnut Creek (2 years). Salary history on request. AICP, LEED AP. Master in City Planning, MIT. BS, Planning and Development, USC. Contact kelsey_moldenke@yahoo.com. (8-24)

Land Planning & Entitlements; Advance Planning/General Plans; Community Planning/Specific Plans; CEQA; LAFCo.

24 years experience. Recent employers: Arnaiz Development Co. Inc., 5 years; City of Stockton, 5 years; County of Sacramento, 14 years. Salary history upon request. MA and BA Geography, California State University, Fresno. Contact ttruszkowski@comcast.net or (209) 612-0605. (5-04)

Northern News reserves the right to reject or edit ads, and to place them as space permits. Northern Section and Northern News reserve the right to cancel this service at any time, or to charge a nominal fee for posting an ad, or to limit the number or type of ads in any way. ■

State law does not require cities to allow medical marijuana dispensaries (continued from previous page)

intended to require cities to allow medical marijuana dispensaries to operate within their city limits or to alter the fact that land use remains a function of local government under its constitutionally conferred grant of the police power.

The appellate court affirmed the trial court decision in all respects and held that “[d]efendant’s operation of nonenumerated and therefore expressly prohibited use, without obtaining a business license and tax certificate, constituted a nuisance per se” under the city’s zoning ordinance. The court also ruled that California’s Compassionate Use Act and Medical Marijuana Program do not preempt the city’s zoning ordinance. After analyzing the state laws in detail, the court held that neither statutory scheme expressly or impliedly preempted the city’s enforcement of local zoning and business licensing requirements.

The *Kruse* court also explained at length how the facts at issue are “materially indistinguishable” from those in another recent case, *City of Corona v. Naulls*. There, the court held that “where a particular use of land is not expressly enumerated in a city’s municipal code as constituting a permissible use, it follows that such use is impermissible.”

The California supreme court recently denied a request to review or de-publish the *Kruse* decision. As a result, California’s cities and counties retain their broad constitutionally-conferred police power over land use planning and zoning, even when that power is used to prevent certain land uses that may otherwise be allowed under state law.

Bryan W. Wenter, AICP, is an assistant city attorney for the city of Walnut Creek. ■

2009 Northern Section *another great Holiday Party*

By Jane Wardani

APA California Northern's 2009 Holiday Party added welcome warmth to the season. In recognition of the difficult economy, a reduced admission rate was offered for unemployed planners and students. Approximately 80 guests attended the party, held on December 3rd at Restaurant Lulu in the SoMa District of San Francisco.



Charity Wagner (Urban Planning Partners) and Irene Avetyan (URS)



From PMC: Jillian Rich, John Steere, AICP, Adam Petersen, and Greg Powell (Berkeley)



Claudine Asbagh and Jordan Harrison (both City of Berkeley)



Alex Amoroso (Berkeley) and spouse Suzanne Drolet (both AICP)



Three CPF raffle winners: Allen Tai, Hanson Hom, and Hing Wong (all AICP)



Jillian Rich (PMC), Caroline Teng (Assoc. Ed., Northern News)



Berkeley's own: Wendy Cosin, AICP, and Dan Marks, AICP



Lindsey Virdeh, Riad Elbdour, Emy Mendoza, Natalie DeLeon



Terry and (Section Director) Darcy Kremin, AICP



Christina Ratcliffe, AICP (PMC, and Northern Section's professional development director) and Greg Powell (Berkeley)



Holly Pearson, AICP (Oakland), Jason Chafin and Nat Taylor (Lamphier-Gregory), Michael Rice, AICP (PBSJ)



Jennifer Gates, AICP (California Preservation Foundation), Mike Rivera (Oakland), Jane Wardani (ecocity-builders)

(continued on next page)

2009 Northern Section holiday party (continued from previous page)

We would like to thank the board members and volunteers who helped organize the event and pitched in to make it such a success. We especially thank the 13 individuals and organizations that contributed attractive gifts for the evening's drawing. The drawing raised \$1,000 for the California Planning Foundation, which will apply the funds toward scholarships for students in planning throughout Northern California.



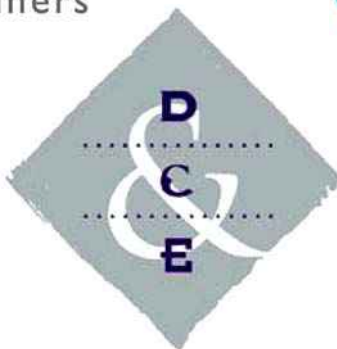
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APA California – Northern wishes to thank the following individuals and organizations for their generous sponsorship of the California Planning Foundation and support for the 2009 Holiday Party

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ECOCITY BUILDERS



Chicago City Hall got its green roof in 2001.
Photo: [Antonio Miguel Rafael Vernón, 2008.](#)



Living roof, California Academy of Sciences, San Francisco. *Photo:* [California Academy of Sciences](#)

- **Urban heat island reduction.** Evapotranspiration is one of the primary advantages of a green roof. As moisture is re-evaporated into the air, temperatures are reduced. Temperatures at the Chicago City Hall green roof averaged 50 degrees cooler than the adjacent black tar roof on the County building.⁶
- **Carbon sequestration.** Plants break down CO₂, releasing oxygen and storing carbon, effectively reducing CO₂ in the atmosphere. A Michigan State University study concluded that if green roofs were installed on just 20 percent of Detroit rooftops, 22,000 metric tons of carbon could be sequestered. The full potential for green roofs to sequester carbon needs further study to better quantify the benefits.⁷
- **Viable wildlife habitat.** Pollinating insects like butterflies and bees are declining at alarming rates in cities. Green roofs can provide pollinator plants that bloom throughout the season. Beehives and pollinator plants are a part of Chicago City Hall's green roof. The honey is harvested and sold down the street at a local nonprofit. Closer to home, the new San Francisco Academy of Science's 2.5-acre green roof is planted with native species that attract birds, bees, butterflies, and many beneficial insects.
- **Social benefits.** Green roofs can offer viable open space and establish a connection to nature in heavily urbanized areas. Urban farming has already taken to the roof in lower income, inner city neighborhoods.

Given these multiple benefits, why aren't more green roofs being built?

Cost. When comparing a green roof to a cool roof, the installation cost for a green roof is significantly higher. But rather than dismiss green roofs due to a lack of immediate capital funds, look for additional funding sources. Here are a few examples:

- **Grants.** Projects that improve water quality, especially in impaired watersheds and/or disadvantaged communities, are ready candidates for grants. Although all funds were allocated by the end of December 2009, Federal Stimulus Grants considered green roofs as qualifying projects. The trend for green infrastructure funding will almost certainly continue at the local, state, and national levels. Green roofs would be eligible for Proposition 84 funding under California's Urban Greening for Sustainable Communities Program, for example.
- **Incentive programs** can greatly offset the initial installation costs of a green roof. Portland, Seattle, Chicago, and Toronto have developed successful programs using grants, density bonuses, reduced permit or infrastructure fees, and expedited processing. Toronto adopted an ordinance requiring a green roof on buildings 21,500 square feet or larger.

(continued on next page)

- **Larger picture synergies.** Green roofs save money on stormwater infrastructure and energy. Cities can use the savings to fund projects. By basing its grants on the specific infrastructure that is directly benefited, the Green Roof Subsidy Program in Washington DC translates these savings into incentives.
- **Initial vs. amortized cost.** As with solar panels, the cost of installing a green roof can be offset by long term savings. Based on studies showing energy savings and greatly extended roof life spans of two to three times the average, it takes about 11–14 years to break even.⁸ Since energy costs are unlikely to decrease, installing a green roof will definitely result in long-term savings.
- **Leveraging options.** Are there project costs that can be averted with a green roof? First Community Housing was able to avoid a large stormwater surcharge fee for one of their low-income housing developments in San José by installing a green roof. The fees saved were greater than the cost of the roof. The roof was planted with native species to provide habitat for the endangered Bay Checkerspot butterfly.



Installing pre-planted trays simplifies installation and maintenance. Shown here: a Green Jobs Now event in 2008 that installed a 1,000 sq. ft. green roof atop a dormitory. Co-hosted by SmartRoofs, LLC (a subsidiary of Sustainable South Bronx) and Sarah Lawrence College. Source: [green roofs/green jobs in New York](#)

Leaks. There is some concern that covering a roof with vegetation will make it impossible to locate and repair leaks; this is not true. Leaks on any rooftop usually appear at joints and slab penetrations. Careful attention to the design detailing and inspection during any roof installation will greatly minimize the potential for leaks. Key recommendations include: design the flashings to terminate 8 inches above the green roof surface, slope the subslab at least 2 percent, and provide redundant surface drains in case one or more clog. In addition, permanent leak detection systems can be installed with the roof membrane, or Electric Field Vector Mapping can be utilized after construction to quickly locate a leak. Green roofs are often designed with modular planting systems to simplify the removal of substrate and plants for roof repairs.

Water demand. All green roofs in California will need irrigation, given our climate, but rooftop plantings will also need to comply with new State requirements that went into effect this year.⁹ Installing a high-efficiency irrigation system with drip emitters, self-adjusting controllers, and rain gauges—and using plants with low-water requirements—will go a long way to meeting the ordinance. Moisture sensors are simple and cost effective and will help keep the plants alive. The sensors should be installed in key locations to detect saturated or dry planting medium. Consider optional water sources, such as graywater, rainwater, or condensate from air conditioners (which are usually on the roof anyway). Recently adopted State regulations for graywater pave the way for using this resource.

Maintenance. Green roofs can be designed to minimize the need for maintenance and to allow easy access to the rooftop. Expectations, appearance, and ease of maintenance must be considered at the outset to ensure a proper match between design intent and ongoing care.



In-line drip emitter lines irrigate this extensive green roof atop the new dining facility at the 2006 award-winning [Presentation Center](#), Los Gatos, California. Photo: Daniel Smith and Associates, Architects, Berkeley

(continued on next page)

Register now for APA National Planning Conference, New Orleans

APA's April 10–13 conference includes hundreds of sessions and workshops on leadership strategies, financing tools for lean times, and a major focus on sustainability.

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Conference highlights

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- Two leadership institutes for directors and managers
- Advanced training on topics such as transportation
- Complete program for planning commissioners
- Ideas for responding to the challenges of a rough economy
- Updates on federal stimulus funding
- A track tailored to those working in suburban communities
- AICP CM credits. The conference provides an opportunity to earn the 32 required Certification Maintenance credits.

Important dates

- Reserve housing now. [Click here](#).
- Early-registration deadline: **February 18**
- Housing-reservation deadline: **March 11**
- Registration deadline: **March 11** ■

Solving urban eco-issues—through the roof¹

(continued from previous page)

Weight. An extensive green roof (with 4 inches of growing medium) will add approximately 22–24 pounds per square foot saturated. New buildings can design for the load with minimal impact. Retrofits may require additional structural support, which will cost less if added when a roof needs to be replaced.

Conclusion. The challenges and concerns that prevent more widespread installation of green roofs can be overcome with creative design. The larger benefits to our cities and the environment are impressive. Green roofs can significantly reduce urban temperatures, decrease energy needs, restore watershed health, provide acres of much-needed urban wildlife habitat, create urban green spaces, and offer places to grow food locally.

Sarah Sutton, ASLA, LEED AP, GRP, is a landscape architect, a green roof professional, and principal with Design, Community & Environment (Berkeley, Ventura, and San Diego). She became involved with green roof design and construction over 20 years ago, working directly in the field with contractors and architects to solve multiple technical and design challenges. She can be contacted at sarah@dceplanning.com

¹ See the December/January 2010 *Northern News*, "Ambitious new stormwater rules adopted for the Bay Area," page 14. http://www.norcalapa.org/assets/chapter/newsletter/Dec_Jan10.pdf

² A cool roof is typically a white or light colored surface material that provides high solar reflectance and radiation, resulting in a cooler roof surface and reduced heat transfer into the building. http://en.wikipedia.org/wiki/Cool_roof.

³ Stormwater Monitoring Two Ecoroofs in Portland, Oregon; Doug Hutchinson, Peter Abrams, Ryan Retzlaff, Tom Liptan; City of Portland, Bureau of Environmental Services. PDF: <http://www.portlandonline.com/shared/cfm/image.cfm?id=63098>.

⁴ "Green Roofs Curb Global Warming, Study Finds," Charles Q. Choi, <http://www.livescience.com/environment/091005-green-roofs.html>, November 30, 2009.

⁵ See "Green roof Fact Sheets," Center for Green Roof Research, Penn State University <http://web.me.com/rdbberghage/Centerforgreenroof/airconditioning.html> and "ASLA Green Roof Monitoring Results" http://land.asla.org/050205/documents/Green_Roof_monitoring_results.doc.

⁶ Astrid Haryarti, former Assistant to the Mayor at City of Chicago, Mayor's Office. Personal conversation with Sarah Sutton, March, 2007.

⁷ Green Roof Infrastructure: Plants and Growing Medium 401 http://www.greenroofs.org/index.php?option=com_content&task=view&id=26&Itemid=40, *Participant Manual*, page 31, Green Roofs for Healthy Cities.

⁸ Choi, *ibid*.

⁹ California cities and counties that haven't adopted new conservation rules as required by the Water Conservation in Landscaping Act of 2006 (AB1881) must abide by the State's Model Landscape Water Ordinance. ■

NORTHERN SECTION CALENDAR

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JANUARY 2010

Northern Section Planning Awards 2010 application materials available, <http://norcalapa.org/>. Contact Award Co-Directors Eileen Whitty at (510) 287-1109, ewhitty@ebmud.com, or Andrea Ouse at (650) 985-2590, andrea.ouse@lsa-assoc.com, with any questions.

Planning for Healthy Places with Health Impact

Assessments, a free online course available through June 30, 2010. Earn up to 6.0 CM credits online. A how-to guide for conducting health impact assessments, developed by APA and the National Association of County & City Health Officials, and sponsored by the Centers for Disease Control and Prevention. Learn the value of conducting a Health Impact Assessment and the steps involved in conducting an HIA.

To participate, visit

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1/23 APA California, Northern Section Board retreat.

10 AM–3 PM, First Street Café, 440 First Street, Benicia.

The Board will set its goals and budget for the year. All APA members welcome. RSVP to Hanson Hom at (408) 730-7450 or hhom@ci.sunnyvale.ca.us.

1/30 Big Steps, Little Steps to Addressing Climate Change.

9 AM–2 PM, MetroCenter, 101 Eighth Street, Oakland. The session will discuss the SB 375 implementation process and reducing greenhouse gas emissions in air quality, transportation, housing, and land use. Speakers include LaRonda Bowen, CARB; Julia Lave Johnston, Governor's Office; Jeremy Madsen, Greenbelt Alliance, and others. Register via the League of Women Voters Bay Area (LWVBA) PayPal at

<http://www.lwvba.ca.lwvnet.org>. Cost is \$25 with a light breakfast and bag lunch or \$15 without lunch. Payments at the door are \$30/\$20 respectively. For more information, contact Eileen Whitty at (510) 287-1109 or ewhitty@ebmud.com

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FEBRUARY						
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FEBRUARY 2010

2/2 **Closing the Climate Gap.** 5 PM–8 PM, SPUR, 654 Mission Street, San Francisco. Professor Rachel Morello-Frosch, co-author of *The Climate Gap* (2009), will discuss the disproportionate effect climate change has on disadvantaged communities. Following will be a reception and panel discussion on how Bay Area businesses and organizations are implementing solutions. Free for SPUR and APA California Northern members, \$5 for general public. Co-sponsored by SPUR. For more information [click here](#).

CM | pending

2/11 **APA San Francisco Social/Networking Event.** 6 PM–8 PM, Press Club, a wine tasting bar, 20 Yerba Buena Lane (between 3rd/4th Street, south of Market). Wine and light snacks provided free to members, first-come first-serve. Come sample great wine and food, network, and tell us what types of events you'd like to see in The City in 2010. For more information, contact Danny Serrano at serranochile@hotmail.com or (619) 850-1527.

2/24 **The High Cost of Free Parking.** 6:30 PM–9 PM, San José City Hall, Council Wing Room 120, 200 E. Santa Clara Street. UCLA Professor **Donald Shoup**, author of *The High Cost of Free Parking*, will discuss how parking reforms can reduce vehicle travel, traffic congestion, air pollution, energy waste, and GHG emissions while increasing the supply of housing and improving public services. Free event co-sponsored by the Great Communities Collaborative (Greenbelt Alliance, Silicon Valley Bicycle Coalition, and TransForm), City of San José, and San José State University Urban Planning Coalition (UPC). For more information, contact Justin Meek at justin.meek@gmail.com

2/24 **Fox Theater Tour—East Bay RAC Social Event.** 5:30 PM–7 PM, Fox Theater, 1807 Telegraph Avenue, Oakland (one block from 19th Street BART). Join East Bay planners for a free tour of the historic Fox Theater, which reopened in February 2009 after being shuttered for almost 40 years. City of Oakland staff and lead architect Jim Heilbronner will explain the history of this magnificent theater and how the ambitious, innovative restoration and reuse project became a reality. Networking in the Fox Den to follow. For more information or to RSVP, contact Joanna Jansen at joanna@dceplanning.com or (510) 848-3815.

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MARCH

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MARCH

3/12 **Deadline for receiving applications, Northern Section Planning Awards, 2010.** Contact Award Co-Directors Eileen Whitty at (510) 287-1109, ewhitty@ebmud.com, or Andrea Ouse at (650) 985-2590, andrea.ouse@lsa-assoc.com, with any questions.

APRIL

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25	26	27	28	29	30	

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