



# NORTHERN NEWS



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

APRIL 2013



American Planning Association  
California Chapter  
Northern

*Making Great Communities Happen*

## Solving the stakeholder engagement puzzle

By Al Savay, AICP

**H**ow you — the planner — engage your community's stakeholders is a vital piece in solving the overall puzzle for any new project or city initiative. Engaging well can lead to community buy-in and win/win solutions. But a botched stakeholder process can be fraught with pitfalls and lead to project delays, communication breakdowns, and damaged trust.

### Basic questions

Who are the stakeholders? What is the difference between your role as a planner and the developer's role? What if someone drops the ball and stakeholder communication doesn't occur until late in the game? How do you go about repairing damaged trust with the stakeholders? What are some of the tools you should use and when?

### The big picture

Fitting new development into the fabric of the community is increasing in complexity. There is an expectation that, at least by the time a project reaches a public hearing, you or the developer will have made contact with stakeholders and will have carefully considered their input.

The project proponent/developer ought to fervently engage affected stakeholders. But now more than ever, planners are expected to act as stakeholder consensus builders. You can bet that the planners will bear the brunt of criticism if stakeholders report that they have not been heard or that their demands have been ignored. In the end, stakeholder consensus-building will make the process much less expensive and time-consuming.

If unfamiliar with working in your community, the project proponent will need your help to determine whom to contact. Recognize that even the most experienced developers don't always do their fair share of stakeholder engagement. In any case, expect to be called on to educate,

facilitate, strategize, negotiate, and mediate with individuals and groups, and accept that a number of strategic decisions need to be made.

### Stakeholder identification

Step one is to identify and list the stakeholders for a given project or initiative. A common misperception is that stakeholders are like-minded individuals or affiliated groups of people. (Key stakeholders are often, but not always, individuals.)

- Consider the project's location. Who will be directly affected? If a project is in a location with an established neighborhood association, a call to the association president or chair is the way to begin.
- Are the business people in a particular area such as downtown well organized or heavily represented by the Chamber of Commerce? A call to the Chamber of Commerce CEO is the starting point.
- Will the new green building code or a proposed zone change have an impact on the building and construction industry? A discussion with the building official is the best place to start. A list of contractors and architects regularly pulling permits in your community will yield key contacts. Call the residential or commercial real estate brokers who work in the area.

To learn about potential issues with local zoning practices in San Carlos, we asked a consultant to conduct interviews with a broad section of zoning ordinance users and people who had been involved in or expressed interest in an earlier General Plan Update. The interviewees included architects, developers, planning consultants, small business owners, landowners, residents, planning commissioners, and former city council members. A total of 49 stakeholders were interviewed in groups of one to four people.

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## Solving the stakeholder engagement puzzle

By *Al Savay, AICP*

An ideal stakeholder process would have everyone in agreement at the final decision-making point. But even with the best intentions and experience, the odds of a faultless stakeholder engagement process are not high. That said, stakeholder engagement is well worth the effort. Without it, resolution of difficult issues is far less likely. [Page 1](#)

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By *Jeff Baker*

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MTC's draft Plan Bay Area and EIR is scheduled to be available on March 22. MTC plans to hold public workshops throughout April and into May. Details at <http://bit.ly/141YGjT>. [Page 7](#)

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## Off-site public improvements as a Map Condition

By *Alan A. Sozio, Thomas D. Jex, and Lisa S. Kuribara*

California law allows local public agencies and developers to negotiate an agreement setting forth their relative rights in an off-site acquisition scenario. However, the Legislature offers no guidance as to what such an agreement should entail. The relationship between the developer and agency can become strained, especially in circumstances where the litigation costs or the potential for an adverse jury award become greater than the developer initially expected. This, of course, does not occur until after significant time has passed following the drafting of the off-site acquisition agreement. Therefore, both the agency and developer should take care to clearly set forth their relative rights and expectations prior to initiating the condemnation process. [Page 13](#)

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## Director's note

By Jeff Baker



It is time for the 2013 APA California Northern Section Awards. The Northern Section Awards Program recognizes local excellence in the field of planning and helps to increase the public's awareness of the planning profession by honoring outstanding planning efforts and individuals within the Section.

The awards nominations have been received and are currently being reviewed by a distinguished panel of judges.

Award winners will be announced at a dinner program and ceremony to be held the evening of Friday, May 17, at Scott's Seafood Restaurant, Jack London Square, Oakland. You will not want to miss this exciting event. For more information and to make a reservation to attend the dinner program, please visit <http://bit.ly/WK3XdL> or contact the Awards Program Directors, **John Cook, AICP**, at [jcook@circlepoint.com](mailto:jcook@circlepoint.com), and **Eileen Whitty, AICP**, at [ewhitty@ebmud.com](mailto:ewhitty@ebmud.com)

The Northern Section welcomes two new Board Members: **Thalia Leng, AICP**, and **Edward (Ted) Graves**. The Board has appointed Thalia as the Northern Section Mentorship Chair. Thalia, a transportation planner with east and west coast experience, brings her considerable energy to the position. The Board appointed Ted Graves to the position of UC Berkeley Student Representative, where he will be assisting with student outreach. Please join me in welcoming both to the Board.

Northern Section is hosting a series of training workshops, "Planning Commissioner Training: Basic Planning

101," beginning March 23rd, from 9 to noon. This series of four free workshops will cover planning fundamentals appropriate for planning commissioners, elected officials, and planners. The workshops are co-sponsored by APA California – Northern Section, the Bay Area Planning Directors Association, and the Association of Bay Area Governments. Seating is limited; preference will be given to planning commissioners. Please register at <http://bit.ly/Z7MV6O>. For more information, contact Janet Palma, AICP, at [janetpalma@comcast.net](mailto:janetpalma@comcast.net)

Don't forget — the APA National conference is just around the corner! This year's conference will be held from April 13 through 17 in Chicago. The program includes a vast number and wide variety of interesting and informative sessions and mobile workshops. Check out the conference webpage at <http://bit.ly/13WRPs5>

We are currently seeking an energetic individual for the post of Membership Director on the Northern Section Board. Are you (or do you know) someone who can help us increase Section membership and assist the APA California chapter with their membership initiatives? The Membership Director maintains the current list of Section membership (provided at least quarterly by national APA), assists Board members and event coordinators in notifying the local press of pertinent Section activities, and develops and oversees initiatives and programs to increase APA membership. If you are interested in the position, please contact me at [jeff.baker@dublin.ca.gov](mailto:jeff.baker@dublin.ca.gov) ■



Northern Section *Ethics and Law session*, March 2nd. Photo: Erik S. Balsley, AICP



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## Solving the stakeholder engagement puzzle

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To ensure a candid discussion, no city staff members were present. The city's staff and consultant coordinated on questions in advance. The interviewees were also given the opportunity to express opinions aside from the questions. This was very effective in ascertaining community sentiment on the city's zoning practices and areas for improvement.

### Stakeholder prioritization

Once you have identified the stakeholders, prioritize them. Get a clear picture of how to communicate with each group and how best to assign resources.

List the primary, secondary, and key stakeholders. A primary stakeholder will be a group directly affected, such as the neighborhood group where a project is taking place. A secondary stakeholder might be the business owners in the general vicinity. A key stakeholder also could be an influential individual with an opinion or voice in the neighborhood, such as a past president of the neighborhood association or a local commission or committee member.

Determine the real or perceived issues; they may be different. Do you know the stakeholders' stance toward past development or change? Knowing what topics, analysis, or facts these groups are looking for will assist you in preparing to discuss the project.

### Determine stakeholder influence


Determining a stakeholder's impact or influence on public opinion should be part of your engagement strategy. Do any stakeholders have a relationship with local elected or appointed officials? Do they have a significant influence on decision makers? If so, you can be sure the stakeholders will be discussing the project with them — and how you and the project proponent are handling communications. Arrange early discussions with elected or appointed officials to dispel rumors and replace them with facts and procedural timelines. Let decision-makers know up front how you intend to proceed and with whom you will be talking.

For the recent zoning update in San Carlos, we knew frequent users of the zoning code would have an influence on the decision-making process. We asked a small number of primary stakeholders (frequent users of the code, architects, contractors, and commercial and residential brokers) to form a technical advisory group to provide guidance throughout the update. We ironed out their issues ahead of time — a much needed reality check for us. The result was broad support from these groups throughout public hearings.

### Stakeholder relations

To head off potential delays, assess how a project may impact the relations between affected stakeholder groups. Let's say a downtown/commercial project is adjacent to a low-density residential area. The local neighborhood group may argue vociferously against the

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project, while the chamber of commerce is being pressured to support it by local business people who view the project as vital to local economic development. Consider stepping in as a liaison between the groups to get their views and facilitate a compromise. Bringing all sides to the table will ultimately move things forward.

Key stakeholder relationships may already exist as an integral part of the public process. In the downtown plan update in Mountain View some years ago, we merged the Planning Commission and the Downtown Committee. They became a 14-member Joint Stakeholder Committee that represented a broad spectrum of community interests ranging from property owners, merchants, at-large residents, chamber of commerce representatives, neighborhood groups, and appointed officials. Staff tapped into their special knowledge and viewpoint about the downtown throughout the update process, which helped guide the analysis of possible changes. This also allowed the group to air-out long standing differences in opinion about how to proceed with downtown. The joint committee held separate meetings with downtown property owners, merchants, and neighborhood groups.

### City staff role vs. developer role

Inescapably, the public perceives that city staff will lead in stakeholder engagement. However, a skilled project proponent with development experience knows the project will go much more smoothly if they are talking to the right people. The staff should tell applicants/developers early-on that they are expected to be responsible for leading outreach. A sophisticated developer will listen closely to stakeholders and city planners and, where feasible, modify the project to accommodate stakeholder interests.

At the same time, it is not uncommon for a project proponent to use the public hearing process to negotiate directly with decision-makers. We've all seen proponents argue that a project will become economically infeasible if the demands of the stakeholders are met. Such conduct tends to lengthen the public hearing process and breed negative press coverage. It also has a lower percentage of overall success. The planner's role is to ascertain, as soon as possible, how the project proponent intends to proceed and adjust accordingly.

### Repairing community sentiment


Every city has a story of a project or process gone wrong. You can probably identify the groups or sets of interests in your community that have had negative experiences. The feelings of distrust and anger, not to mention ongoing conspiracy theories, can last for years, even decades. However, a new project can present an opportunity to rebuild community trust and fix broken relationships through a stakeholder engagement process.

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Repairing community sentiment begins with face-to-face meetings. The initial stages require patience, a good deal of time, and numerous meetings. Start by listening and recording ideas and issues. Focus on determining the stakeholder's idea of success as well as your own.

Document issues and changes in position or opinion. It's an effective way to show transparency and that the dialogue is yielding results. You can use a matrix effectively to show progress. Create a table listing the issues, salient points, resolution or agreement achieved, and action steps. If agreement is not reached on a particular issue, document the ideas that have been explored and the alternatives offered as a sign of progress. Doing so will build trust in the process and among the participants.

### Professional mediation

In the mid 1990s, a neighborhood in San Carlos initiated a referendum to stop a Caltrain grade separation project. The referendum did not pass, and the project went forward. To this day, some neighborhood residents feel that the city and other public agencies let them down. Over the years, tensions worsened. Now a significant mixed-use, transit-oriented development project is proposed bordering the neighborhood on the opposite side of the grade separation berm.

The proposed project solidified negative sentiment, and a new and better-organized neighborhood association formed. The new association has been resolutely and vocally against the mixed-use project, claiming it is too high, too dense, and will create too much traffic. These issues, mixed with historical sentiment and perceptions, resulted in a distrust of city staff, the project developer, and the property owner (a separate public agency). Despite a number of painful attempts at a meaningful dialogue, the stakeholders said they were not being heard. The political pressure built. It was time for outside professional help.

The idea was that an objective outside expert might be able to restart a constructive dialogue and rebuild trust. All the stakeholders agreed to a mediation process — by itself a significant and positive outcome. Ten meetings have been held since the start of the mediation process, and agreement has been reached on a number of lingering and complex issues. As of this writing, the process is continuing and a conclusion is expected soon. Although the meetings have required a remarkable commitment and effort from all involved, there is general agreement the process has been valuable, and there is a genuine desire to work through the issues. Even if complete agreement on every issue is not forthcoming, trust on all sides is slowly being re-established.

### Conclusion

An ideal stakeholder process would have everyone in agreement at the final decision-making point. That would take the pressure off

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## Solving the stakeholder engagement puzzle

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the decision-making bodies, whose jobs are increasingly difficult — particularly with respect to mixed-use infill developments in well-established communities. Even with the best intentions and experience, however, the odds of a faultless stakeholder engagement process are not high. That said, stakeholder engagement is well worth the effort. Without it, resolution of difficult issues is far less likely. Planners of all disciplines should train to develop a well-constructed and thoughtfully managed stakeholder engagement plan. The skill will help you succeed in your field.



**Albert Savay, AICP**, is the Community Development Director of San Carlos, California, where he oversees the City's planning, economic development, housing, and building services divisions. You can reach him at [asavay@cityofsancarlos.org](mailto:asavay@cityofsancarlos.org) ■

## Plan Bay Area draft EIR available

MTC's draft *Plan Bay Area* and Environmental Impact Report — the next step in the Bay Area's Sustainable Communities Strategy — is scheduled to be available on March 22. The report will examine alternative environmental impacts of land use scenarios and transportation investments for Plan Bay Area. These include, among other things, the Environment, Equity, and Jobs scenario, the impacts of MTC's proposed road pricing, and whether plans will achieve the regional target of reducing the transportation and housing cost burden on low-income families. MTC plans to hold public workshops throughout April and into May. Details are posted on MTC's website, <http://bit.ly/141YGjT> ■

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## Who's where



**Thalia Leng, AICP, LEED AP**, is Northern Section's new Mentorship Director. Thalia is a transportation planner with HNTB (Oakland). She previously was an urban designer/planner with FXFOWLE (New York), and her first post-graduate position was with DC&E Planning (Berkeley). She holds a Master in City Planning and an Urban Design Certificate from the University of Pennsylvania, and a BA in Architecture from UC Berkeley.



**Nicole West, AICP**, recently joined LACO Associates in Eureka as a Planner/Landscape Designer. Prior to returning to Redwood Country, Nicole was a planner for 3D Visions in San Francisco. Nicole's interest includes sustainable development, parks, trails, and environmental health. She has been assigned the role as head planner for the Yurok Tribe's Trails and Waterways Master Plan and is designing the Klamath Boulevard Gateway Project in Klamath. Nicole holds a Master of Landscape Architecture and a Master of Regional Planning from the University of Massachusetts, Amherst. She also holds a Bachelor of Science in Interdisciplinary Studies: Sustainable Living from Humboldt State University. ■



# Plan-it sustainably

Dave Javid, AICP

## Model Sustainability Code Toolkit

I recently had the great opportunity to join the Sustainability Committee of APA California – Northern as the Co-Director. I am thrilled to work with a talented, like-minded team striving to bring sustainability topics to the forefront while educating and collaborating with the APA community.

My work as an urban planner/designer for the past 15 years has emphasized integrating sustainable practices and concepts. The majority of my planning efforts have been as a private consultant working within the public sector. They include a range of downtown specific plans, community plans, and corridor plans. I worked to craft policies and documents with sustainable measures that are easy to digest for both the general public and the development community.

A recent example is a Model Sustainability Code Toolkit I helped develop that provides a framework for addressing energy efficiency and sustainability through zoning regulations. The toolkit supports implementation of climate action plans and provides for the achievement of sustainable targets, goals, and policies. The toolkit serves as a guide to summarize existing sustainable provisions adopted by jurisdictions and to identify gaps, along with any recommendations

to add other sustainable provisions in the development code. The toolkit and related audit process are designed to be used either as part of a larger green building program or as a standalone analysis of existing development regulations, guidelines, and incentives.

The Model Sustainability Code Toolkit focuses on specific components of sustainable planning and green building programs, including CALGreen building code provisions and Leadership in Energy and Environmental Design (LEED) principles. A diverse collection of regulations was organized into sections and coupled with detailed checklists. The sections cover targeted sustainability objectives, including planning and design considerations; energy efficiency; water efficiency and conservation; material conservation and resource efficiency; renovation and reuse of existing buildings; parking; site lighting; pedestrian and bicycle connectivity; healthy food access and production; and alternative energy sources. See <http://bit.ly/WJHlub>

The toolkit — still in draft format — is being beta tested by a few communities, but please visit the Sustainability Committee website for updates <http://bit.ly/14noDpQ> or email me for more information: [davejavid@gmail.com](mailto:davejavid@gmail.com) ■

## Where in the world?



Photo by Suzanne Ise. (Answer on [page18](#))

# Norcal roundup

Assembled by Erik S. Balsley, AICP

## Oyster farm case may impact other National Parks <http://bit.ly/15J1fWd>

“Drakes Bay Oyster Company’s legal bid to continue operating in federally protected waters has broader implications than simply the fate of the Marin County family-owned business that sells \$1.5 million worth of shellfish a year. To Cause of Action, a little-known Washington, D.C.-based nonprofit that has provided the oyster company about \$200,000 worth of free legal services, the case is about curbing government regulatory overreach. To critics — including another nonprofit, California Common Cause — the oyster farm’s challenge to Interior Secretary Ken Salazar’s authority fits into a national effort to promote for-profit use of national parks and wilderness areas. The San Francisco-based 9th U.S. Circuit Court of Appeals has agreed to hear the oyster farm’s case, rejected by a district court in February, the week of May 13. The appellate ruling would apply throughout the 9th Circuit, which covers California, Oregon, Washington, Nevada, Idaho, Montana, Arizona, Alaska, and Hawaii, a region that includes several signature national parks: Yosemite, Yellowstone, and the Grand Canyon.” —Guy Kovner, “Oyster farm flap reverberates far beyond Drake’s Bay,” *The Press Democrat*, March 8, 2013.

## Mission Carmel’s retrofit nears completion <http://bit.ly/Zy6GWi>

“The \$6 million facelift for Carmel Mission is nearing completion. The National Historic Landmark, founded in 1771, has been undergoing restoration and seismic retrofitting since August. The work is meant to bring the basilica into compliance with modern safety codes and, most importantly, to ensure the safety of the 250,000 annual visitors the mission attracts. ‘(Founder) Junipero Serra kind of chose a crazy place to line up all of these missions, right along the San Andreas fault,’ said Victor Grabrian, president of the Carmel Mission Foundation. A temporary roof was built over the mission to protect the interior from inclement weather while builders worked on beams and wiring in the attic. Signaling the near completion of the restoration, a large crane removed the temporary trusses Tuesday and Wednesday. The mission’s tiles will now be replaced, restoring the iconic basilica to its pre-retrofitting likeness.” —Jessica Shugart, “Carmel Mission restoration nearly complete,” *Monterey County Herald*, March 6, 2013.

## Real estate rises in latest tech boom <http://bit.ly/XL2CjR>

“A decade after the dotcom crash, a new technology boom driven by Twitter, Google, Facebook, Apple, and hundreds of startups is roaring through San Francisco, drawing thousands of workers and billions of dollars. The city now boasts 1,826 tech companies and is experiencing 30 percent annual growth in tech jobs. Tech arrivals tend to prefer San Francisco, one of America’s most charismatic cities, to the relative sterility of Cupertino, Palo Alto, and other Silicon Valley outposts. But some worry that rocketing property prices are driving out artists, intellectuals, and middle-income families, gutting the city of its bohemian appeal, and that the boom will then collapse, repeating the dotcom bust’s economic wreckage. The property scramble spelled trouble for the poor and middle-income earners, said Ted Gullickson, director of the San Francisco Tenants Union, an advocacy group. Landlords were using a state law to override rent control and expel tenants: so-called Ellis Act evictions had tripled in recent months, he said.” —Rory Carroll, “Geek-driven gentrification threatens San Francisco’s bohemian appeal,” *The Guardian, UK*, March 5, 2013.

## Bay Area leads in long commute times <http://bit.ly/14ndsNQ>

“A new Census demographic defines ‘mega-commuters’ as workers who spend at least 90 minutes plus 50 miles to get to the office in the morning. The Bay Area has a higher percentage of these road warriors than any other major metro area in the country, according to a first-of-its-kind Census Bureau report. Experts say it’s understandable that the Bay Area would lead the pack in the new category: High housing prices in urban centers, freeway expansions to outer suburbs and rural areas, and bumper-to-bumper traffic all make the area a hot spot for commutes that are long for both distance and time. Only about 587,000 people in the country meet the mega-commuting standard. Melanie Rapino, a statistician at the Census Bureau who co-authored the report, cautioned that the top metro areas are all close in her rankings since there are so few mega-commuters. For the other 95-plus percent of us who aren’t mega-commuters, Bay Area commute times actually aren’t that bad.” —Mike Rosenberg, “Bay Area tops new ‘mega-commuter’ Census list defining the worst trips to work,” *Mercury News*, March 5, 2013.

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## High Speed Rail challenge dismissed in court <http://bit.ly/ZEHSJV>

“An effort by Peninsula cities to stop California’s high-speed-rail project came to a screeching halt this week when a Sacramento County judge upheld the California High-Speed Rail Authority’s environmental-review process for the highly controversial project. Most recently, the cities had argued that the rail authority’s environmental analysis is no longer sufficient because of the changing nature of the project. Sacramento Superior Court Judge Michael Kenny dismissed this allegation and found that the rail authority had ‘fully complied’ with prior rulings, which required revisions to sections dealing with traffic, noise, and vibration impacts associated with narrowing the Monterey Highway to accommodate the new system. Kenny specifically cited parts of the EIR that dealt with ‘phased implementation’ of the system and the ‘blended system concept.’ The rail authority had previously considered the ‘blended system’ as an interim step while the state proceeds with a four-track system. Kenny’s ruling is the latest of several notable victories for the once-beleaguered rail authority.” —Gennady Sheyner, “High-speed rail wins legal battle,” *Palo Alto Weekly*, March 1, 2013.

## Station development proceeds ahead of BART expansion <http://bit.ly/13hu6m8>

“The first concrete steps to create a transit village next to a future BART station in the city’s Berryessa district have come with the purchase by KB Home of a largely unused portion of a well-known flea market in San Jose. The 10 acres KB bought will contain 242 residential units, some detached and some attached. Construction is already under way. More homes will be built as customers order and buy them. Eventually, the 120-acre site is expected to have 2,800 to 3,000 residences. Efforts are under way to find a new location for the flea market, which the Bumb family founded at that site in 1960. ‘We really want a transit village at that location, and that makes this site particularly important,’ said Nanci Klein, deputy director of San Jose’s Economic Development Department. ‘It is assured that BART will come to this location.’” —George Avalos, “KB Home buys part of San Jose Flea Market for first phase of a transit village in the Berryessa district,” *Mercury News*, February 27, 2013.

## Jerry Brown’s CEQA reforms rooted in Oakland experience <http://bit.ly/15GZSr6>

“Gov. Jerry Brown wants to loosen requirements on the state’s 43-year-old landmark environmental law and is willing to stare down his core backers in labor and environmental circles, in large part because of what he learned as mayor of Oakland more than a decade ago. In 2001, frustrated with the pace of his plan to revive downtown Oakland by creating housing for 10,000 residents there, Brown won passage of a state law that would exempt certain parts of the city’s downtown from the California Environmental Quality Act, known as CEQA. Brown was the infant law’s fierce defender during his first stint as governor from 1975 to 1983. He sought exemptions to it as mayor of Oakland from 1999 to 2007 and enforced it vigorously to enact climate change protections as state attorney general from 2007 to 2011. One analyst said it almost seems that Brown wishes there were two versions of the law: A looser version for urban development and a stricter one to curb suburban sprawl or green-field development.” —Joe Garofoli, “CEQA future tied to Oakland’s experience,” *San Francisco Chronicle*, February 26, 2013.

## Lake Merritt reconnected to bay <http://bit.ly/VBT3DS>

On Friday, February 22, Oakland officials and a flotilla of kayaks celebrated the recent removal of a dam and culverts at 12th Street that had choked off Lake Merritt from the bay for more than 144 years. A bigger celebration is being planned for June, celebrating the completion of the entire \$47 million project to add amenities, restore marshland, and improve access at the south end of the lake. Also scheduled to open soon is a new pathway and restored marshland along a portion of Lake Merritt Channel, which connects the lake with the shoreline. The path will link the lake to 10th Street but is slated to eventually extend all the way to the shoreline and link with the Bay Trail.” —Matthew Artz, “Oakland: After more than a century, Lake Merritt reconnected to bay,” *Oakland Tribune*, February 22, 2013.

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### **Timberland preserved for mutual benefits** <http://bit.ly/12GTvpO>

“Humboldt County is calling for public input on a plan to acquire 1,400 acres of the McKay Tract near Cutten for a community forest. Green Diamond Resource Company — which owns the McKay Tract — has been working with the nonprofit Trust for Public Land to arrange purchase of the land. While the purchase of somewhere between 775 acres and 1,415 acres will be made through grants, the county would potentially be responsible for trail maintenance, parking, and other projects. Any unpurchased portion of the full 1,415 acres would be turned into an easement that prevents development. The county is looking into a selective timber harvest plan that could sustain the forest’s management costs, though harvest wouldn’t likely occur for 10 to 20 years. Though it means losing timber land, Green Diamond favors the project because it creates a buffer between urban areas and its active timber harvest, according to Craig Compton, Green Diamond’s land management and business development manager.” —Grant Scott-Goforth, “County seeks public input on McKay Tract community forest; Public Works shaping plan; land purchase could happen this year,” *The Times-Standard*, February 22, 2013.

### **Larkspur ferry navigates growth’s side effects** <http://bit.ly/YgKltM>

“In the past decade-plus, Larkspur’s Golden Gate Ferry service ridership has grown, and today it carries about 5,300 passengers a day. Parking, however, is limited. There are only 1,800 spaces provided to ferry riders, and all those are typically filled by 8:30 a.m. during weekdays. Another issue facing the Larkspur ferry is sold-out commuter boats at 7:50 a.m. and 8:20 a.m. The district has a bus available to take anyone who can’t get on the ferries into San Francisco during the time period. Between 30 and 80 people end up on that bus daily. Now transportation officials are hoping to develop strategies to address these issues that vex the successful system. That could mean tweaking ferry schedules to add another boat to the busy morning commute, charging for parking, and possibly building a parking structure at or near the ferry terminal.” —Mark Prado, “Larkspur Ferry at ‘crossroads:’ Ridership outgrowing parking,” *Marin Independent Journal*, February 21, 2013.

### **Watsonville explores ownership of Highway 152** <http://bit.ly/Xg11WL>

“Kurt Overmeyer stood at the curb of Main Street in front of Watsonville’s City Plaza late one morning as hundreds of cars and trucks passed by and kept on going. That’s the problem with having a four-lane state highway cutting through a downtown shopping area, Overmeyer said. That’s why Watsonville officials started looking at taking control of the 4.6 miles of Highway 152 within city limits more than a year ago. Since then, state legislators cleared the way for Caltrans to relinquish the road, though city officials must agree to take responsibility for it and have yet to sign off on the deal. Studies are under way to determine what it would cost the city in street maintenance and what the impact would be if major changes were made, such as reducing the number of lanes to provide more parking and wider sidewalks.” —Donna Jones, “Watsonville takes steps toward Highway 152 takeover aimed at economic development,” *Santa Cruz Sentinel*, February 20, 2013.

### **BART to further test bike ban removal** <http://bit.ly/UBiuGD>

“After a summer experiment — deemed successful by BART officials and bike advocates — in which the regional rail transit system abandoned its bike ban during commute hours on five Fridays, BART is preparing for a second test. In addition to the bikes-on-board test, BART is also reconfiguring its rail cars to make more room for bikes, along with wheelchairs, luggage, strollers, and standing riders, near train doors, and has plans to install more secure parking spots for bikes at stations, establish bike waiting areas at crowded stations, provide real-time information on train crowding, and participate in a regional bike-sharing plan. During the March experiment, BART will lift its commute-hours ban, which varies by line but generally applies from 7–9 a.m. and 4:30–6:30 p.m. in commute directions. All other bike rules — including a prohibition on boarding crowded cars or blocking aisles, doors, or accessible seats — will still apply.” —Michael Cabanatuan, “BART to test all-day access for bicycles,” *San Francisco Chronicle*, February 19, 2013. ■

# Off-site public improvements as a Map Condition

Negotiating an off-site acquisition agreement and litigating the developer-funded eminent domain case

By Alan A. Sozio, Thomas D. Jex, and Lisa S. Kurihara

In California, local public agencies may impose conditions on private development requiring construction of public improvements located within land not owned by the developer. Because private parties cannot generally condemn property, public agencies may condemn on the developer's behalf, allowing the developer to complete required improvements while also funding acquisition costs. This article identifies some of the issues that may arise in the process, and suggests various means of quelling conflicts between the agency and developer.

## Subdivision off-site improvement agreement

Section 66462 of California's Subdivision Map Act applies when conditions of approval are incomplete at the time the final map is submitted for approval. If tentative map conditions are unfinished, the legislative body can require the developer to enter into a Subdivision Improvement Agreement as a condition precedent to approving the final map.<sup>1</sup>

Section 66462.5 governs the special situation where a condition requires an "off-site" public improvement (*i.e.*, on land not owned by the developer or local agency).<sup>2</sup> Upon submittal of the final map for approval, a public agency may not disapprove simply because the developer failed to complete off-site public improvements.<sup>3</sup> Instead, within 120 days of submittal, the public agency must acquire the off-site land by negotiation, or commence eminent domain proceedings.<sup>4</sup> If no action is taken within 120 days, the condition for off-site improvement is waived.<sup>5</sup> To avoid this time limitation, Section 66462.5 allows agencies to require developers to enter into off-site acquisition agreements ("OSA"), obligating the developer to complete off-site improvements following the agency's acquisition of the necessary land.<sup>6</sup>

*Hill v. Clovis* (2000) 80 Cal.App.4th 438 is the only court decision analyzing Section 66462.5's OSA framework, though it offers no clear guidance for the contents of these agreements. Instead, *Hill* interprets Section 66462.5 as requiring an assumption that both the agency and developer are "sophisticated parties capable of protecting their own interests" in coming to "mutually agreeable terms" governing the completion of improvements after final

map approval.<sup>7</sup> The agency and developer are converted "into business equals bound by a contract negotiated at arms' length."<sup>8</sup> The execution of an OSA moves the parties' obligations into the realm of contract law, which makes it important to enter a well executed and intelligently written OSA.

## Essential terms

Because eminent domain is a core governmental power, the OSA should clarify that developer-funded acquisition does not usurp the public agency's authority and discretion to make findings necessary to proceed with eminent domain. Public agencies may proceed with eminent domain only after adopting a resolution of necessity following a public hearing.<sup>9</sup> The OSA should clarify that the agreement itself is not an attempt to make findings necessary to adopt a resolution of necessity, and that the agency retains discretion to make such findings at a future hearing. This will help avoid any right-to-take challenges that may arise on grounds that the adoption of the resolution of necessity was a predetermined result.<sup>10</sup>

Because there is no guarantee that the agency's governing body will approve condemnation, the OSA should specify that failure to adopt the resolution is not a breach of the OSA. Often, public agencies will also require language indicating that failure to adopt a resolution of necessity does not waive the off-site condition of approval. Such a provision has not, however, been tested in a published case. While the *Hill* case appears to allow such a provision on the assumption that mutually-agreeable terms were executed by sophisticated parties, such a provision could effectively put the project in perpetual limbo by allowing the agency to delay final map approval without providing the developer an opportunity to acquire the necessary property. In such circumstances, such a provision could result in the developer filing an inverse condemnation action against the public agency.

Since a contested condemnation process will result in litigation, both the agency and developer should reach an understanding in the OSA as to the developer's role in the litigation. For example, the agreement should specify

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whether the developer may assist in strategic decisions related to discovery, law and motion, and the retention of expert witnesses. Typically, public agencies prefer that condemnation counsel retain sole and unfettered discretion to direct all strategic litigation decisions. Nevertheless, the OSA may include provisions allowing the developer to consult with condemnation counsel, or at the very least be apprised of the matter's status. The parties should also consider whether to grant the developer decision-making authority over any appeals.

As Section 66462.5 allows public agencies to recoup acquisition costs from the developer, the OSA should define precisely what "costs" the agency seeks to recover, as well as the manner and frequency of repayment. The OSA should state that the developer<sup>11</sup> is liable for those costs defined in the OSA, whether the property is acquired or not, and even if the resolution of necessity is not adopted. A developer with an established relationship with a public agency may be successful in negotiating a pay-as-you-go approach. However, the preferred approach by many agencies is to require an initial retainer consisting of the initial estimate of the property's value and a reasonable estimate of litigation costs, which may be increased on request as the litigation progresses.<sup>12</sup> In some instances, the agency may also require the developer to obtain a letter of credit or other similar means of securing payment.

For a variety of reasons, developers on occasion may wish to terminate acquisition proceedings. To account for this scenario, the off-site agreement should include a recital stating that developer's termination of acquisition proceedings will not waive the condition of approval. Further, the agreement should explain that the developer is liable for any damages related to abandonment of eminent domain proceedings.<sup>13</sup> The agreement should also contain provisions obligating the developer to continue to pay for acquisition costs in the event that the public agency is not able to abandon the condemnation proceedings.<sup>14</sup>

### Discretionary terms

In addition to the essential terms, the parties may wish to address the following additional issues in their off-site agreement to comprehensively address both parties' expectations. Such issues include the type and frequency of status reports to the developer, developer's access to

litigation and work-product materials, and attorney bills, indemnity, settlement, and confidentiality.

Typically, when retaining litigation discretion, public agencies nevertheless allow for some transparency regarding the acquisition process by granting the developer access to status reports, litigation materials, other attorney work-product, and actual attorney billing. It is generally a safe practice to include provisions describing when such documents will be delivered to the developer. Automatic delivery is usually not a good idea because an agency's failure to be proactive could give rise to the agency's liability under the agreement. A better alternative is to provide the developer with materials only on demand.

At the outset, any portion of the agreement pertaining to settlements should include a recital that any settlement ultimately requires council or board approval, and that such power cannot be delegated. Beyond that, there are three basic approaches to drafting settlement terms.

- The first approach is where the settlement decision is the sole and exclusive responsibility of the public agency. No notice to the developer is required, and the agency retains exclusive authority to negotiate and consummate an acquisition above the amount of the agency's appraised value. This approach, however, has the potential for problems if the developer ultimately complains about the price.
- The second approach is a modified version of the first. Under the second alternative, a developer is entitled to notice of settlement proposals and may provide comments. However, final discretion remains vested with the agency. Though the developer may find some comfort in knowing it has an opportunity to be heard on the matter, this approach still does not completely eliminate the risk of dispute. Indeed, the right to comment without any final say may instead create its own set of problems regarding the degree of deference which the council or board should give to the developer's opinions.
- The third approach requires developer approval prior to presentation of the settlement proposal to the council or board. Under this scenario, the agreement should include a recital that the developer's rejection of the settlement is not grounds for waiver of the development condition. The agreement should also include a special recital explaining Section 1250.410 of the Eminent Domain Law:

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Section 1250.410 mandates that, 20 days before the valuation trial in an eminent domain case, the condemnor and owner must exchange final offers and demands.<sup>15</sup> If the court later determines that the condemnor's offer was unreasonable and the owner's demand was reasonable, the owner may be awarded its litigation expenses.<sup>16</sup> Therefore, it is in the developer's interest that the agreement include a provision showing that the developer understands the potential for liability if the developer fails to be reasonable.

Where the parties agree to allow developer participation in eminent domain litigation, an issue arises as to whether the attorney work-product or attorney-client privileges protect developer communications with agency's condemnation counsel. Since the public agency and developer have a common interest in the nature and result of any eminent domain action, it appears reasonable for the agency and developer to argue that the common interest doctrine protects their communications with agency counsel.<sup>17</sup> To advance such an argument, however, there must be a reasonable expectation of privilege regarding shared information.<sup>18</sup> Therefore, it is recommended that the off-site acquisition agreement include language akin to a joint defense agreement, acknowledging the common interest and including agency and developer promises to keep information shared with condemnation counsel confidential to the extent permitted by law.<sup>19</sup> However, the parties cannot assume that the joint defense agreement will withstand scrutiny, as currently there is no case law holding that an agency may share otherwise protected information with a developer without waiving the privilege.<sup>20</sup>

### Conclusion

California law allows local public agencies and developers to negotiate an agreement setting forth their relative rights in an off-site acquisition scenario. However, the Legislature offers no guidance as to what such an agreement should entail. The relationship between the developer and agency can become strained, especially in circumstances where the litigation costs or the potential for an adverse jury award become greater than the developer initially expected. This, of course, does not occur until after significant time has passed following the drafting of the off-site acquisition agreement. Therefore, both the agency and developer should take care to clearly set forth their relative rights and expectations prior to initiating the condemnation process.



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A version of this article was published in *The Public Law Journal* • Vol. 35, No.2, Spring 2012, <http://bit.ly/WOKjx5>

<sup>1</sup> Gov. Code § 66462(a).

<sup>2</sup> See Gov. Code § 66462.5.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* sub. (a).

<sup>5</sup> *Id.* sub. (b).

<sup>6</sup> Gov. Code § 66462.5.

<sup>7</sup> *Hill v. Clovis* (2000) 80 Cal.App.4th 438, 449 (citing Cal. Gov. Code § 66462(a)(1)).

<sup>8</sup> *Id.*, at 449.

<sup>9</sup> Code Civ. Proc. § 1240.040.

<sup>10</sup> See *Redev. Agency of City of Huntington Park v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1125-27.

<sup>11</sup> Gov. Code § 66462.5(d).

<sup>12</sup> See, e.g. *Hill v. Clovis*, *supra*, at 440-41 (establishing one large deposit to be adjusted once actual acquisition costs were determined).

<sup>13</sup> Code Civ. Proc. §§ 1268.510; 1268.610.

<sup>14</sup> Code Civ. Proc. §§ 1268.510(b) (granting court discretion to set aside voluntary abandonment on estoppel theory).

<sup>15</sup> Code Civ. Proc. § 1250.410(a).

<sup>16</sup> *Id.* sub. (b).

<sup>17</sup> *Oxy Resources California LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 888-890.

<sup>18</sup> *Id.* at 891.

<sup>19</sup> *Id.*

<sup>20</sup> See *id.* at 888, 890-91. ■

# Pinnacles National Park created

By Hugh Graham

The rocky monoliths and colonnades of the Pinnacles rise out of the Gabilan Mountains two hours south of San Jose. They are leftovers of an ancient volcano that began life some 23 million years ago almost 200 miles to the southeast.

The San Andreas Fault split the volcano in two, with the Pacific plate carrying two-thirds of the volcano's mass north almost to Hollister. The remaining one-third, called the Neenach Formation, remained on the other side of the fault in the desert halfway between Bakersfield and Los Angeles.

Local residents in the early 1900s, aided by the president of Stanford University, began a grassroots campaign to preserve for posterity the volcanic rock and cave remnants. The effort paid off in 1908 when President Theodore Roosevelt declared 2,060 acres of the geologic formation a National Monument.

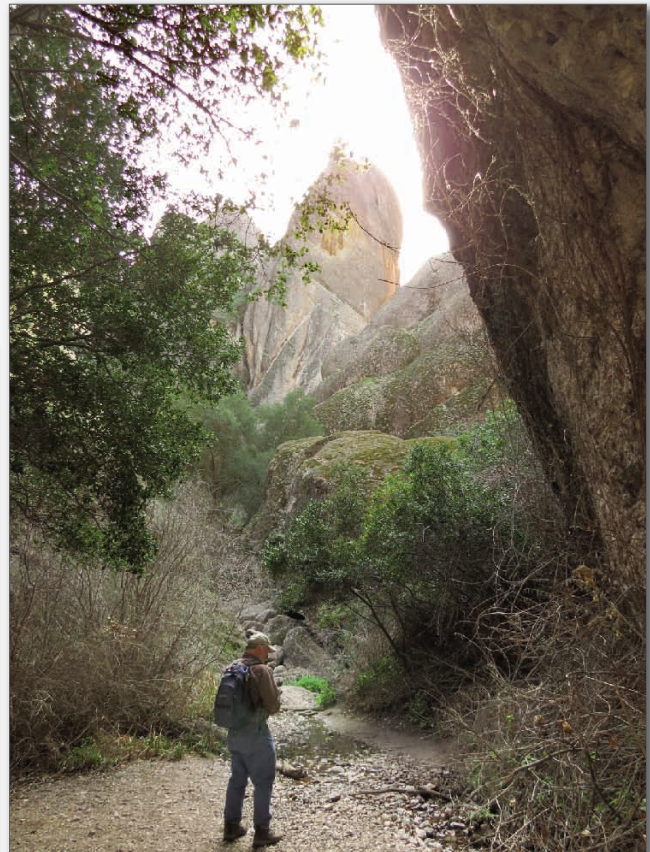
On January 10, 2013, a new effort spearheaded by Congressman Sam Farr and Senator Barbara Boxer led to President Barack Obama declaring these now 26,000 acres of wilderness land as the greater Bay Area's first National Park. ■



Pinnacles, trail to the Balconies. Photo: Hugh Graham



Balconies Cliffs. Photo: Hugh Graham



Pinnacles, approaching Balconies Cave. Photo: Hugh Graham



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# Architecture critic comments on Google proposal for NASA Ames campus

<http://vntv.fr/120jJ6m>

The following excerpts are from a February 22nd *Vanity Fair* article (link above) by Paul Goldberger, a Contributing Editor at the magazine. From 1997 to 2011, Mr. Goldberger was the Architecture Critic for *The New Yorker*. He holds the Joseph Urban Chair in Design and Architecture at The New School in New York City, and was formerly Dean of the Parsons School of Design. He began his career at *The New York Times*, where in 1984 his architecture criticism was awarded the Pulitzer Prize for Distinguished Criticism. Mr. Goldberger gave the keynote address at the APA conference in Las Vegas, May 2008.

“Google occupies some of the most famous offices in the world, taking over existing real estate and, well, Google-izing it. For the last year or two, Google has been toying with taking the plunge and building something from scratch. Now Google has partnered with Seattle-based NBBJ [on] a new project that looks, at first glance, like an updated version of one of the many suburban office parks that Google has made a practice of taking over and re-doing for its own needs.

“The more you look at the complex, however, the more intriguing it is. The new campus, which the company is calling Bay View, consists of nine roughly similar structures, most of which will be four stories high, and all of which are shaped like rectangles that have been bent in the middle. The bent rectangles are arranged to form large and small courtyards, and several of the buildings have green roofs. All of the structures are connected by bridges, one of which will bring people directly to one of the green roofs that has been done up with an outdoor café and gathering space.



Image: NBBJ

“The layout of bent rectangles emerged out of the company’s insistence on a floor plan that would maximize ‘casual collisions of the work force.’ No employee in the 1.1-million-square-foot complex will be more than a two-and-a-half-minute walk from any other. What may be most significant is that the company’s research led to a design that isn’t substantially different from the existing Google buildings, just more so. The older buildings have a mix of private, quiet work spaces (though no private offices) and social and communal work spaces; so will the new one. The older buildings are full of cafés; the new complex will be, too.

“Architecture, which is so often form-driven, doesn’t necessarily suffer from a bit more attention to factors other than shapes.” ■

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## EPA nomination may focus on coal

*Interview excerpts from NPR News, March 4, 2013*

**Scott Horsely**, <http://n.pr/12qpaMj> • “As assistant EPA administrator, Gina McCarthy focused on practical cost effective ways to keep our air clean and our economy growing. She played a key role in negotiating higher fuel economy standards for automobiles. In his State of the Union speech, the president renewed his promise to tackle climate change. But Congress has demonstrated little interest, and tools exist under the current law to further reduce

dangerous pollutants. One of the most powerful tools is the Clean Air Act, which — the Supreme Court says — gives the EPA the right to regulate greenhouse gases. The agency is already in the process of limiting carbon emissions from new power plants. The real battle will be over what to do about existing power plants, which produce 40 percent of the country’s carbon pollution. That’s where the money is, it’s where the carbon is, it’s a big deal, and it will be a big fight. The looming carbon fight could cause sparks when a divided Senate takes up McCarthy’s nomination.” ■





## From the editor

Naphtali H. Knox, FAICP

**M**ind you, I've never read an environmental impact report, let alone written one. Yet I am strangely drawn to EIR-shaking events unfolding in the State Senate.

After 40-odd years of the California Environmental Act (*see-kwah*, to those in the know), momentum is gathering to "reform" the act. Two Democratic state senators put their names to a bill (SB 731) to make CEQA less of a millstone for those who equate change with progress and can be trusted to keep our state lovely. (You know who you are.)

Then, one of the bill's two original authors — Senator Michael Rubio (no, not the one in Florida) — quit to work for one of the progress-makers, Chevron. This left Democrats not only without the usually desirable twosome to carry the bill, but also with their mouths open and one shy of a supermajority — i.e., back to normal.

What will happen now? Will the bill go forward? Will it have teeth? Merit? A snowball's chance in the Sierra Nevada?

Justin Ewers, California Economic Summit, wrote on March 8:

"The debate over updating California's premier environmental law moved past Sen. Michael Rubio's sudden resignation from the Legislature, when lawmakers confirmed the appointment on March 7 of Sen. Jerry Hill (D-San Mateo) to replace Rubio as chair of the Senate Committee on Environmental Quality.

"Much was made last fall of Sen. Darrell Steinberg handing the reform-minded Rubio the reins of the committee tasked with sending CEQA-related legislation to the Senate floor. And then much was made again of Steinberg's decision a few months later to pack the same committee with green Democrats who were expected to prevent Rubio from proposing anything that would weaken the law.

"Now, speculation about where Democratic leaders intend to take CEQA will focus on Sen. Hill, a respected former assemblyman known for his moderate views on environmental issues. Steinberg has said he wants to force all sides to 'confront' the need for changes to CEQA — something he believes the Silicon Valley Democrat can do." Read more at <http://bit.ly/16jTVSj>

Luckily, we can follow the basics of what's happening. Law firm Perkins Coie LLP issued a mercifully brief update on Feb. 25, and it's about as close to exciting prose as you can expect from lawyers, John Grisham excepted. The bill is only a framework — an outline without details. (Here we need Grisham.) There won't be any "standards-based reform" or "changes to standing rules" (here we need a thesaurus more than we need Grisham). But "carefully crafted," the bill could provide "significance thresholds" (a step up), reduce the hassle for infill and infrastructure (high-speed rail and power lines), and ban "late hits" (something for the 49ers, in more ways than one).

Excited? Me too. You can read Perkins Coie's first chapter of how this is playing out, "New CEQA Bill – Cure or Band-Aid?" at <http://bit.ly/XbLLrR> ■

### Answer to "Where in the world?" (Page 9)

**Monterey Bay, seen from the Monterey Bay Sanctuary Scenic Trail** at the world-famous surf spot, "Pleasure Point," on East Cliff Drive between Santa Cruz and Capitola. The recently completed road and bluff restoration and coastal access project started as part of a Santa Cruz County RDA infrastructure improvement. It is now part of the Monterey Bay Sanctuary Scenic Trail, which eventually will extend from Lover's Point in Monterey County to the Santa Cruz/San Mateo County line. **Photo: Suzanne Ise.** Read more about the Monterey Bay Sanctuary Scenic Trail Network at <http://bit.ly/QbAVKs>

### CEQA exploited?

California Economic Summit, March 8, 2013

**Justin Ewers, <http://bit.ly/16jTVSj>** • "At a CEO summit in San Jose, Lt. Gov. Gavin Newsom joked that his experience as mayor of San Francisco (home of a long-delayed city bike plan) showed him you 'can be married and divorced with two kids in [the] time it takes to get through CEQA.' Mayor Chuck Reed of San Jose agreed, saying the law has been so abused by those seeking financial gain, it should be renamed the 'California Extraction Quantity Act.'"

# Meet a local planner

Second in a series of interviews by Tania Sheyner, AICP

Raffi Boloyan is Planning Manager for the City of San Rafael, where he started as an assistant planner in 2000 and worked his way up to his current position. Prior to that, he worked for the City of San Bruno.

## How did you become interested in planning?

I became interested in planning when I was in junior college. I didn't really know what to major in, so I took a Eureka test that tells you your best career matches. Planning was on the list, so I gave it a shot. I ended up majoring in city and regional planning at Cal Poly – San Luis Obispo. Over time, it became clear that I was indeed interested in many aspects of planning — site planning, design, etc., so it worked out well.

## What are some trends you're seeing in planning over the past five to 10 years? Has technology made planning easier, or more cumbersome?

Technology has made things easier and cumbersome at the same time. For example, technology has made for better presentations and reports. The use of more sophisticated presentation tools has forced greater fluency in those tools for planners. Some planners in small communities now have to act like IT staff, spending part of their time just getting things to work.

In addition, what people expect from the planning process has also grown. For example, it's no longer just land use and design that are important, but also fiscal and social ramifications of proposed developments, as well as climate change, environmental impacts, etc. The public has also become more involved in the process, widening the range of what they expect planning to cover. Related to that, I've seen a huge increase in regulatory oversight. I joke that it takes about five hours to explain to applicants all of the permits they'll need. Seems like we should be able to combine and streamline some of them, since many are related.

## Are there any projects in San Rafael that particularly excite you?

Our downtown will soon host a new SMART [Sonoma-Marin Area Rail Transit] station, and we expect some really exciting projects will be coming down the pike around that station. At the same time, we recently completed several projects downtown with the goal of bringing people to live



there and activate the nightlife. One of them was a reuse of the old Macy's store into a mixed-use development — retail on the ground level, housing above, office uses in the back. It has become the focal point of the downtown. We hope that this trend will continue with the SMART train coming in and that, in the not-too-distant future, our downtown will become a truly mixed-use area.

## What makes San Rafael unique in terms of physical planning?

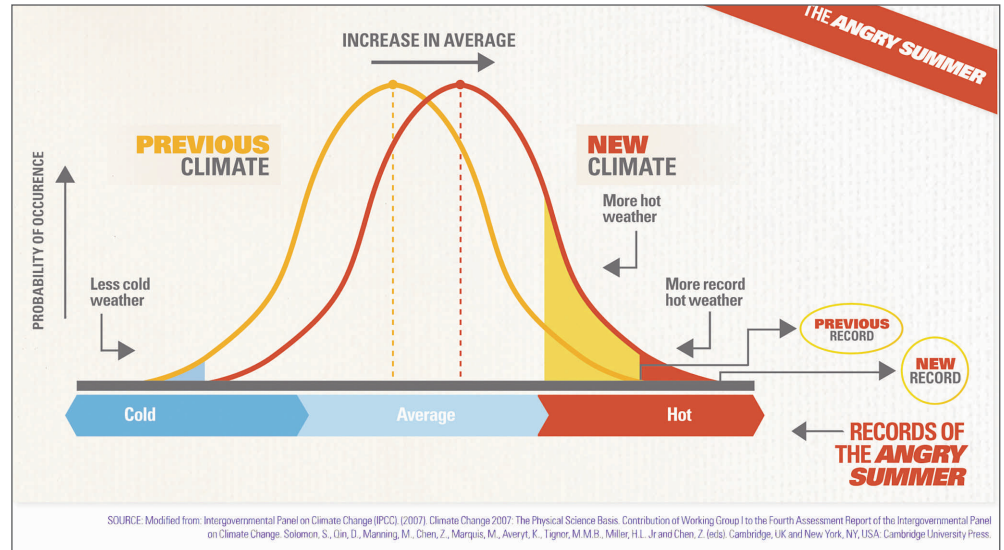
San Rafael is a great place to live because we have so many areas set aside as protected open space. The developed areas are small in comparison to all the open space and hillsides. However, our biggest challenge is access. U.S. 101 is the primary north-south road in the county and all of the smaller communities in west Marin County feed through San Rafael. So we're really at the crossroads of a bunch of other communities, and there aren't many practical solutions to alleviate traffic impacts. We deal with the issue of having a very limited main arterial in almost every planning review.



Interviewer Tania Sheyner, AICP, is Northern Section's Professional Development Director. You can reach her at [tsheyner@esassoc.com](mailto:tsheyner@esassoc.com) ■

# Australia's angry summer

"The past summer has been the hottest in Australian records. In the 102 years of uniform national weather records, there have been 21 days when the entire continent averaged more than 39 degrees (102.2F), and eight of those took place this year. Rainfall extremes also smashed records, particularly along the east coast, with more rain contributing to floods — and less to watering crops. The effects also continued into Australia's autumn, with parts of Sydney experiencing a month's average rainfall in the [first] three days [of March]." —Ben Cubby, *The Age* (Melbourne), March 4, 2013. <http://bit.ly/YX7405>



Western Australia's increase in temperature

This is how reporter Leigh Sales opened a March 4th Australian Broadcasting Corporation television interview:

"Australia's Climate Commission has joined the dots between a series of a weather-related disasters and global warming in what it calls the nation's 'angry summer.' This year was the hottest summer ever recorded in Australia with almost three quarters of the country experiencing extreme temperatures and many places reporting record maximums. In December, three states, Tasmania, New South Wales, and Victoria, battled major bushfires. January was the hottest on record. Just weeks later, Queensland and much of northern New South Wales were underwater as record rainfalls caused extensive flooding."

Ms. Sales asked several questions of Australia's Chief Climate Commissioner, Professor Tim Flannery. (He released the report, *The Angry Summer*, citation and link at the end of this article.) Following are excerpts from his responses. Video and full transcript at <http://bit.ly/ZiFnge>

"Everything we're seeing is consistent with what climate scientists have been telling us for decades, and very consistent with the physics and chemistry that we know of the way the earth works. The climate has actually changed, and we are now entering a new series of climatic conditions that we haven't seen before. In the US last summer, over 3,000 climatic records were broken. Arctic ice conditions are again at record lows.

"We're not talking about one event here, we're talking about an emerging trend, [a pattern]. We're seeing

a whole slew of new records, new climatic territory, in Australia, the US, and in the Arctic. It is very clear that we're moving from a condition where there was quite a number of cool days and a number of warm days to one where there's far fewer cool days and many more warm days, and many record-breaking days. Ninety per cent of the heat that is trapped by the greenhouse gases goes into the ocean, and you look at the whole of the Earth, we're seeing a very strong warming trend. That's consistent with the physics. The extra greenhouse gases haven't vanished. The heat imbalance is still there. The heat has to go somewhere.

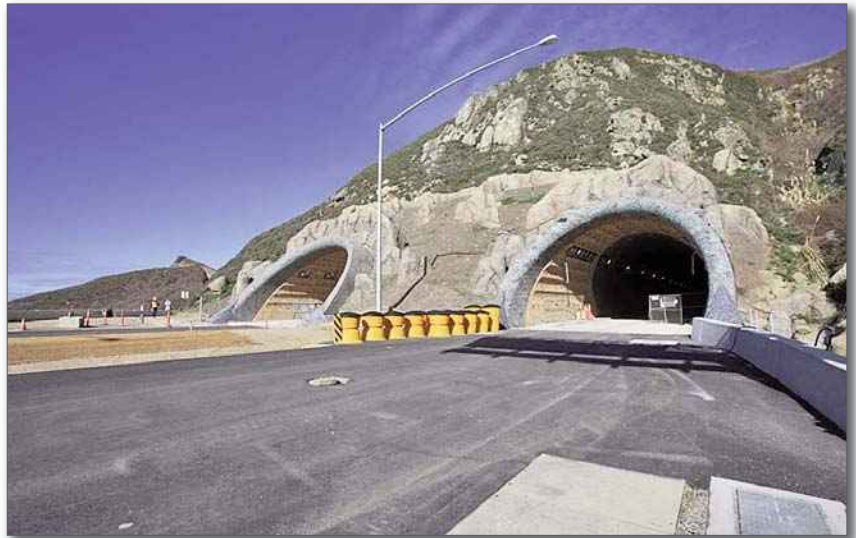
"We published this report because the Australian public are quite frankly confused with what's happened over this summer. It's been an extraordinary mix of events from record flooding to record dry spells to record heat waves. The report shows how all of that relates to a change in climate due to the increased burden of greenhouse gases. It's very important that Emergency Services and others understand the full extent of these changes and what to expect in future. The bottom line for the report: we need to act to continue the reductions we've seen recently globally and get on a more sustainable pathway."

*The Angry Summer* by Professor Will Steffen (Climate Commission), The Commonwealth of Australia (Department of Climate Change and Energy Efficiency), is a 12-page report released March 4. Download the PDF at <http://bit.ly/YblAx1> ■



# Devil's Slide tunnels open March 25

State Route 1 hugs the scenic coastline for much of the distance between Pacifica and Montara. In one part, the road crossed Devil's Slide, a steep, unstable geological formation, where the highway had a long history of closure due to rockslides and land slippage. Now Devil's Slide has been bypassed by two inland tunnels, each 30-foot wide and 4,200-foot long, beneath San Pedro Mountain. Caltrans continued work on the tunnels until mid-March, as crews conducted system checks. The Tom Lantos Tunnels are named for the late congressman from San Mateo County, who was instrumental in securing funding for the project. ■



Devil's Slide tunnels, south end. Photo: Caltrans



Preliminary significant US weather and climate events for 2012, Jan. 8, 2013. The data presented are final through July 2012 and preliminary from August–December. Ranks, anomalies, and percent areas may change as more complete data are received and processed. <http://1.usa.gov/NNMA4u>

## Other top stories

### Caffeine gives bees a buzz

*The New York Times*, March 7, 2013

**James Gorman**, <http://nyti.ms/10m8Tqf>  
“Nothing kicks the brain into gear like a jolt of caffeine. For bees, that is. They don’t need to stand in line for a triple latte. A new study shows that the naturally caffeine-laced nectar of some plants enhances the learning process for bees, so that they are more likely to return to those flowers. Several varieties of coffee and citrus plants have toxic concentrations of caffeine in leaves and other tissues, but low concentrations, similar to that in weak coffee, in the nectar itself. Research reported in *Science* [<http://bit.ly/YfzChg>] is an intriguing confirmation of deep similarities in brain chemistry across the animal kingdom. Insect and human brains are vastly different, and although caffeine has many effects in people, like increasing alertness, whether it improves memory is unclear.”

### Marissa Mayer is no fool

*Harvard Business Review Blog Network*, February 26, 2013

**Michael Schrage**, <http://bit.ly/XYjQHB> • “When Mayer decreed seven months into the job that she wants people to physically show up at work instead of telecommuting — or else — I’m pretty confident this reflects a data-driven decision more than a cavalier command. The logical inference to draw from Mayer’s action is that she strongly believes Yahoo’s current ‘stay@home’ telecommuting crowd would be significantly more valuable to the company — organizationally, operationally, and culturally — if they came to work. The crueler inference is that both the real and opportunity costs imposed by Yahoo’s ‘work@homes’ greatly exceeded their technical and economic contributions. Mayer’s Google background suggested that she was predisposed to consider physical presence as essential to digital innovation success as computational/design brilliance. After all, one key reason why Google invested so heavily in providing world-class victuals and dining experiences at the Googleplex for its employees wasn’t health food benevolence, it was to keep people on campus, working together. This CEO has done what good CEOs are supposed to do: identify unproductive ‘business as usual’ practices, declare them unacceptable and incompatible with her cultural aspirations for the firm — and then act.”

### Permafrost not so permanent

*HuffPost Green*, Feb. 22, 2013

**Michael Lemonick**, <http://huff.to/YhPxzf> • “Nearly a quarter of the Northern Hemisphere’s land surface is covered in permanently frozen soil, or permafrost, which is filled with carbon-rich plant debris — enough to double the amount of heat-trapping carbon in the atmosphere if the permafrost all melted and the organic matter decomposed. According to a paper published in *Science*, that melting could come sooner, and be more widespread, than experts previously believed. If global average temperature were to rise another 2.5°F, permafrost across much of northern Canada and Siberia could start to weaken and decay. And since climate scientists project at least that much warming by the middle of the 21st century, global warming could begin to accelerate as a result, in what’s known as a feedback mechanism. In any case, there’s no doubt that the permafrost will melt, at least in part, since it’s already starting to do so. In some parts of the Arctic, trees, buildings, and roadways have started listing to one side, or even collapsing, as soil that was once hard as a rock has softened from the warming that’s already taken place. And the Arctic is likely to warm faster than the rest of the globe — as in fact, it has already started to do. If all that stored carbon is released, exposed to sunlight, and consumed by bacteria, it could double the amount of this potent greenhouse gas going into the environment.”

### Bad news for anyone hoping to move

*Spiegel Online*, Jan. 2, 2013

**Horand Knaup**, <http://bit.ly/U9R77f>

The “housing market is going haywire as local rents explode. Many municipalities are pushing up property prices and development costs by limiting the amount of land zoned for residential purposes and allowing sluggish bureaucracies to slow down the permitting process. Likewise, almost 16 states have scaled back low-income housing construction and are adjusting the property transfer tax. In one western state, the tax recently rose from 3.5 to 5 percent. More than anything, though, it is the federal government’s shift away from nuclear power and toward green energy that is driving up housing prices.”

### Why are school buses yellow? Why not some other color?

*The New York Times, Feb. 19, 2013*

**James Barron**, <http://nyti.ms/YlflGd>

“In the 1930s, Frank W. Cyr, a professor at Teachers College, Columbia, traveled the country, surveying pupil transportation in an era when school buses cost \$2,000 apiece but differed widely from manufacturer to manufacturer and jurisdiction to jurisdiction. Buses, trucks, and even horse-drawn wagons carried schoolchildren in those days. Some buses were painted in drab colors. Some administrators suggested red, white, and blue, apparently not to make the buses more visible but to make the passengers more patriotic.

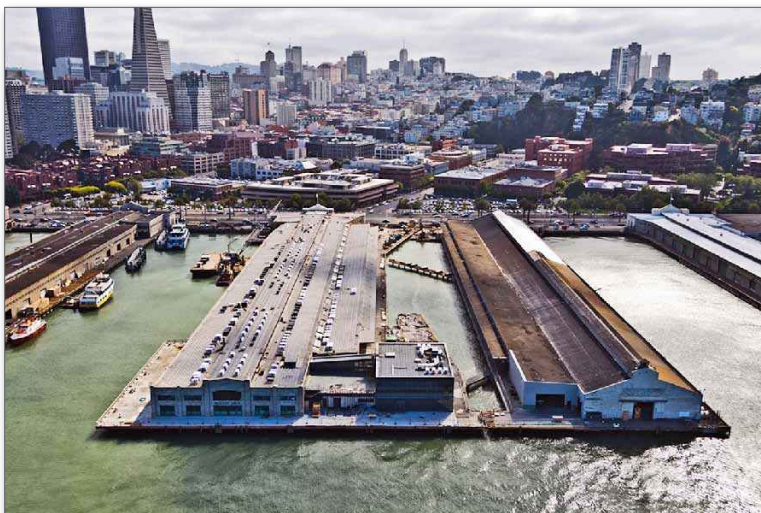
“In 1939, he called together educators, school bus manufacturers, and paint experts for a conference that approved the nation’s first school bus safety standards — 42 pages covering everything from axles to the color that the world saw outside. The standards were published in a booklet with a yellow cover — the color the group had chosen. They wanted a color that would stand out, that other drivers could see from a distance, and that would be identified with a school bus. The most recent version of the standards, approved in 2010, calls the color ‘national school bus yellow,’ and there is a specific formula for it.”

### Google to map infrastructure for GE

*Wired, Feb. 19, 2013*

**Michael V. Copeland**, <http://bit.ly/WUvI1r> • “General Electric has announced a partnership with Google to license Google Maps for use in GE’s ‘Smallworld’ GIS. Smallworld is a set of software tools used by engineers to help design and manage electric grids, pipelines, telecom networks, and other large, critical systems. Smallworld is about to get a lot bigger as it opens up to Google Maps. Google Maps could start to evolve, too, as it develops the mapping needs for this new set of industrial users. GE landed on Google Maps for its accuracy and familiarity; millions of people are already familiar with it.

“Say someone is designing the routing of a fiber optic network. They will be able to couple their design with a street view from Google to adjust the course of the fiber to avoid running across a parking lot or through a house. That same view will be accessible from the field on Android-powered smartphones and tablets, allowing revisions to be made on the fly — and ideally before the expensive business of sending trucks and digging holes commences. The next industrial version of Google Maps could display all the electric lines and pipe systems running below ground and then show how they branch out and terminate inside houses and buildings. The version of Google Maps that is being licensed to GE has the ads stripped out, but if you’re out in the field you’ll still be able to see the location of coffee shops and restaurants while laying out your electric grid.”



### Aerial view of Exploratorium progress, July 2012

The existing two-acre parking lot has been partially removed, re-exposing the Bay and creating nearly 1.5 miles of new public waterfront promenades. Pier 15 is on the left, Pier 17 on the right.

*Photo: Steve Proehl, courtesy GLS Landscape | Architecture*



### Sale, destruction, preservation, or reuse? Shuttering post offices around the country and state

*The New York Times*, March 7, 2013

**Robin Pogrebin**, <http://nyti.ms/Z6eXyn>

Of 1,100 post offices built in the 1930s, “about 200, dozens of them architecturally distinctive buildings, [may be sold by] the Postal Service. In 2011 it hired CBRE, a commercial real estate services firm, to handle the transactions. Eleven historic post offices are already on the market in places like Yankton, S.D.; Gulfport, Miss.; Norwich, Conn.; and Washington. Though many of the buildings’ exteriors are protected by local landmark laws, many of the interiors are not, and developers tend to make changes like renovating lobbies.



“There have been few public discussions or assurances that prized buildings will be protected. The battles over the buildings seem most pronounced here in California, where preservationists fear dozens of post offices may be sold. Berkeley residents rallied to protest the possible sale of their main post office, while Glendale, Palo Alto, and La Jolla have also seen efforts to protest the possible sales of older post offices.

“In Ukiah, a post office on the National Register was sold last August to a private developer despite opposition from area residents. No plan for the building has been announced. Last year, a 1939 post office in Venice, Calif., was sold to Hollywood producer Joel Silver who is converting it into his company headquarters. As part of a protective covenant agreement with Los Angeles, Mr. Silver’s renovation must preserve the historic parts of the building. Mr. Silver also agreed to restore and preserve a mural inside, ‘Story of Venice,’ by Edward Biberman.”



Downtown Palo Alto Post Office images by Naphtali Knox.  
See more post offices at <http://nyti.ms/ZITAv7>

### Some things haven’t changed in 80 years

*The Atlantic*, February 21, 2013

**James Hamblin, MD**, <http://bit.ly/YtAEbx>

“1830 gave us Tom Thumb, the first U.S. steam locomotive in Baltimore. By July 31, 1831, all horses on the B&O Railroad were replaced by steam locomotives on. By 1930, the travel time from Manhattan to Los Angeles by rail was down to three days. Using today’s Amtrak options, we’re still at about the same travel times.” Illustrated.



## Combining traditional, but lower, earthen levees with restored marshes

ContraCostaTimes.com, Feb. 23, 2013

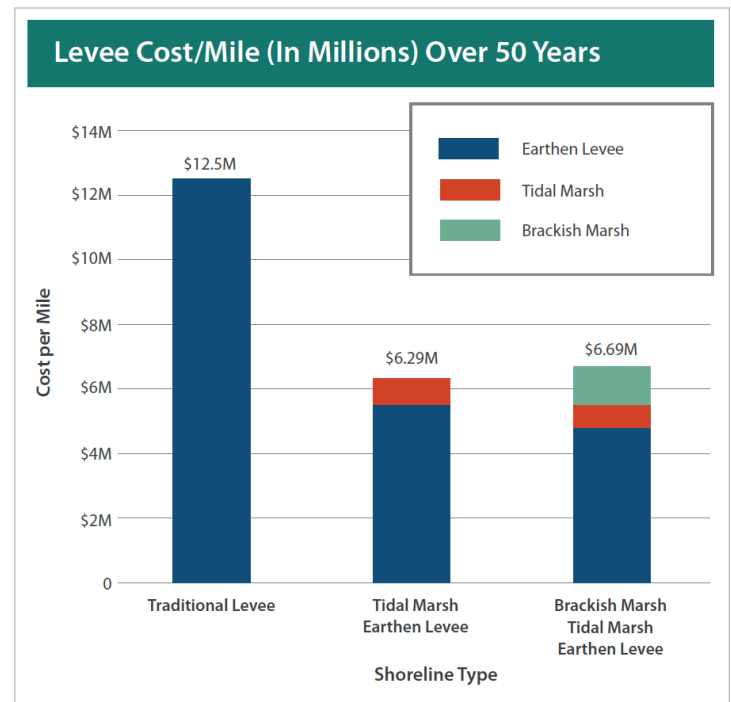


“Horizontal Levee” graphics:  
The Bay Institute

**Chris Palmer**, <http://bit.ly/X1jDpH> • “As global warming escalates, San Francisco Bay’s existing flood protection system will be no match for rising sea levels. (Sea levels in the bay rose 8 inches in the past century.) But fortifying the bay’s shoreline with [lower] levees fronted by restored tidal marshes will be a cheaper, more aesthetic, and ecologically sensitive alternative to traditional levees.

“A Bay Institute report proposes restoring tidal marshes with sediment from local flood control channels and irrigating the marshes with treated wastewater. The tall, dense vegetation of tidal marshes can absorb a significant amount of the energy of surging ocean waves during storms. Therefore, levees don’t have to be as tall. As the vegetation grows taller and the root systems expand, the levee will be able to protect against the rise in sea levels expected in the coming decades, provided the restoration begins sooner rather than later.

“The Bay Institute estimates that [such] levees fronted by tidal marshes would bring down the cost from more than \$12 million to less than \$7 million per mile, while providing the same level of flood protection. With 275 miles of bay shoreline to protect, total savings could eventually exceed more than a billion dollars. Developed areas particularly at risk are San Francisco and Oakland international airports and tech giants such as Oracle and Facebook.” Read the Bay Institute’s illustrated report, “The Horizontal Levee,” at <http://bit.ly/XuUIMP>



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- 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.

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Deadlines for submitting materials for inclusion in *Northern News* range from the 12th to the 16th of the month prior to publication. The 2013 schedule can be viewed at <http://bit.ly/104VxxW>.

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