

# NORTHERN NEWS



American Planning Association  
California Chapter  
Northern  
*Making Great Communities Happen*

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

**NOVEMBER 2013**

**FEATURED ARTICLE**

## San Francisco's street wars

James Rojas and Fay Darmawi

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New eastern span  
San Francisco—Oakland Bay Bridge  
Photo © James Pan  
Oct. 3, 2013, 12:15 AM  
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## San Francisco's street wars

By James Rojas and Fay Darmawi

A bitter battle is being fought over the future of the quaint and charming streets of San Francisco, and it is pitting cyclists, pedestrians, and business owners against each other.

James Rojas was invited by a group called StreetUtopia to help mitigate some of this tension and assist in their campaign to “reimage” Columbus Avenue — possibly the worst street in the US for mobility. Columbus cuts through the street grid diagonally and creates more five-point intersections than in all of LA County! The street — which slopes with the topography to connect Fisherman’s Wharf with downtown via North Beach and Chinatown — has become a shortcut for drivers to and from Marin County. The narrow street is unsafe for pedestrians, cyclists, transit users, and drivers, yet it is one of the most beautiful streets in America, with its historic triangular buildings and a perfect and direct view of the Transamerica Pyramid. The street — rich in literary history and lined with dozens of coffee shops and bike rental places — attracts hundreds of tourists.

StreetUtopia was selected to participate in the San Francisco AIA’s celebration of Architecture in the City. SFMTA and Bubble Real Estate provided support for the project to build a 50-foot long base map of Columbus Avenue as an experiment to engage the public on the streets. The goal of the model was to ask, “When is a ‘street’ not a street?” and to distill the “street” into its most basic construct: a large, flat, “concrete plain.” From that point, people are asked to imagine other ways they would like to live on this concrete plain. Once they see the concrete plain as part of their lives, infinite ideas bubble up.

On a sunny Sunday afternoon in September, over 150 tourists, residents, and children walked through and took part in re-imagining Columbus through active and passive activities.



Planner James Rojas at Grant Avenue and Jack Kerouac Alley, San Francisco. Photo: Fay Darmawi.

Energetic participants shared and built a different vision for Columbus Avenue as others looked on. These “builders” unearthed their vision not by answering surveys or sitting in focus groups, but simply by playing. Results of this new groundbreaking public engagement process revealed that people deeply craved “unique gathering places” for human connection, pleasure, joy, and community.

The StreetUtopia event started like no other participatory planning process. First, it was held outside in Jack Kerouac Alley, a decidedly public crossroads, to attract those who ordinarily would not participate in or even think about urban design. Above the din of tour buses on Columbus and a street festival in Chinatown, James called

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*By James Rojas and Fay Darmawi*

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## APA scholarship winners announced



UC Berkeley's **Stefani Cox** is one of three students in the US to be awarded the Judith McManus Price Scholarship, given each year by the American Planning Association. The scholarship is given to female or minority students who intend to pursue careers as practicing planners in the public sector. The other recipients for 2013 are **Adriana Akers** (MIT) and **Deyanira Martinez** (University of Arizona).

The selections were made by the APA Fellowship Committee for this year, who are **Jeanette Dinwiddie-Moore, FAICP**, Chair; Kelli Sertich, AICP; Ron Shiffman, FAICP; and Gene Lewis.

"I'm honored to have received the Judith McManus Price scholarship and also happy to have some extra financial support for the year," said Cox. "I'll be graduating from DCRP's master's program in May, and I look forward to working on issues of equity and community engagement related to housing and community development in the Bay Area."

Women and minority students enrolled in an approved Planning Accreditation Board (PAB) planning program are eligible to apply for the McManus Price scholarship, which ranges between two and four thousand dollars. Applicants must also be US citizens who intend to pursue careers as practicing planners in the public sector, and are able to demonstrate a genuine financial need. ■

## Where in the world?



Photo by H. Pike Oliver, AICP. (Answer on page 7)



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## 2013 Legislative Year in Review for land use planners

By Alexandra Barnhill, Legislative Director,  
APA California-Northern



The Governor ended the 2013 Legislative session on October 13th with a bang, signing nearly 90 percent of the bills on his desk. While it is not possible to summarize all the actions taken on bills that are relevant to land use planners, some of the most significant developments are described below.

**Another year without major CEQA reform.** Though there were early indications that 2013 could be a year of sweeping reform of the California Environmental Quality Act, it was not meant to be. When it became clear that SB 731 (Steinberg), the “CEQA Modernization Act of 2013,” would not be successful, the author abandoned it for a diluted CEQA reform bill, **SB 743 (Steinberg)**. Governor Brown has signed SB 743 into law.

Of note, the bill provides for immunity from challenges to residential, mixed-used residential, or reemployment center projects, based on aesthetics and parking impacts on infill sites within a transit priority area. In other words, parking and visual impacts cannot be considered a significant impact on projects that are surrounded by development on three sides and are within a half-mile of a major transit stop. The legislative intent behind this law is clear: providing infill residential and mixed-use development around transit stops is worthwhile, even though they may create parking and aesthetic impacts.

In addition, SB 743 provides for future revisions by the Office of Planning and Research (OPR) to the CEQA Guidelines that establish thresholds of significance for noise and transportation impacts of projects within transit priority areas. At the recent state planning conference in Visalia, the OPR Director suggested they are considering moving from the current “level of service” standard for traffic impacts to the “vehicle miles traveled” threshold. So it is possible that this bill will indirectly result in significant reform in years to come.

**Bill to fix Palmer vetoed. AB 1229 (Atkins)** would have superseded a controversial appellate court decision, *Palmer/Sixth Street Properties L.P. v. City of Los Angeles*. The *Palmer* case held that the state’s rent control law prohibits local governments from creating affordable rental housing through local inclusionary housing programs. As a result of this precedent, local agencies have stopped adopting and enforcing inclusionary housing ordinances that were previously used to create affordable housing.

AB 1299 would have re-authorized cities or counties to impose inclusionary rental housing requirements on new development.

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## 2013 Legislative Year in Review for land use planners

(continued from previous page)

However, AB 1229 would not have required adoption of inclusionary policies or altered the state's rent-control laws. Instead, it would have clarified the Legislature's intent and allowed the policies that helped create affordable housing for the last 40 years to continue at the local level without the threat of litigation.

The Governor's veto message implied that Brown is skeptical of this land use tool. However, the thrust of the veto message was that the bill was premature because a related case is pending before the California Supreme Court.

**Efforts to revive redevelopment unsuccessful.** Several efforts to resurrect redevelopment from the dead failed this legislative session. **SB 1 (Steinberg)**, which was nearly identical to a bill vetoed last year by the Governor, would have created Sustainable Communities Investment Authorities as redevelopment authority replacements. These authorities would have used tax increment to fight blight and focus on job creation through new economic development. However, the bill's progress faltered on September 12, when it was ordered to the inactive file at the request of its author, Senator Steinberg.

Infrastructure financing districts (IFDs) are viewed as a possible alternative tool to redevelopment agencies, but the laws relating to the use of IFDs are antiquated. **SB 33 (Wolk)** proposed legislation to remove roadblocks encountered by local government officials attempting to use IFDs to fund public works projects. Like SB 1, though, the bill was moved to the inactive file.

Related bills that did not get off the ground include SB 391 (DeSaulnier), AB 294 (Holden), AB 229 (Perez), and AB 1080 (Alejo). Economic development did receive a small boost in the form of **SB 470 (Wright)**, which authorizes the establishment of local programs to loan funds to rehabilitate commercial buildings and help finance capital improvements for industrial or manufacturing purposes. We can expect to see new bills proposing redevelopment alternatives to be introduced in the next legislative session.

**Voters to decide fate of transparency laws.** Several attempts have been made to eliminate the state's duty to reimburse local agencies for their cost of complying with the California Public Records Act and Brown Act transparency laws. The latest effort is **SCA 3 (Leno)**, a proposed California Constitutional amendment. If the voters in the June 2014 primary election approve the constitutional amendment, local government agencies will be required to adhere to the transparency laws and will be solely responsible for the costs of compliance.

Unless otherwise provided for in the law, the statutes enacted by this new legislation take effect January 1, 2014. ■



## REPORT AVAILABLE

### The California Poverty Measure: A Portrait of Poverty within California Counties and Demographic Groups

<http://stanford.io/GBmuCx>

This is an 11-page “research brief” with tables, charts, and end-notes. Published by The Stanford Center on Poverty and Inequality, it “presents initial results from the newly released California Poverty Measure (CPM). The CPM, which is jointly produced by the Public Policy Institute of California (PPIC) and the Stanford Center on Poverty and Inequality, is our best estimate of economic disadvantage across and within California. ... It follows in the spirit of the research Supplemental Poverty Measure (SPM) now released each year by the U.S. Census Bureau, with some adjustments to account for underreporting of safety net program benefits and for various factors that are unique to California, such as its large unauthorized immigrant population.”

Some excerpts from the key findings:

- “The CPM indicates that 22.0 percent of Californians were living in poverty in 2011.
- “There is wide variation in poverty rates across California, with especially high rates observed in counties with high housing costs, such as Los Angeles County (26.9 percent) and Orange County (24.3 percent). By contrast, lower rates tend to be observed when housing costs are more moderate, as in Placer County (13.8 percent) and Sacramento County (17.0 percent).
- “Immigrant poverty, at nearly 30 percent, is remarkably high.” ■

Answer to “Where in the world?” (Page 4)

#### Downtown Seattle from Puget Sound

Looking northeast across the ferry terminals and Alaska Way Viaduct to tall buildings south of Spring Street and West of 5th Ave. **Photo: H. Pike Oliver, AICP.**

**“Take all vehicles off the roads, and the air will get cleaner.** A new paper published in *Atmospheric Environment* [studied Tel Aviv on] Yom Kippur, the Day of Atonement. During the 25 hours in which all anthropogenic emissions ceased, [there was] an 83- to 98-percent reduction in emissions of nitrous oxides measured in the Tel Aviv urban core. But, the paper’s summary cautions, ‘In spite of the striking reduction in emissions, changes in ozone are not greater than what is reported in the literature about less significant events like the ozone weekend effect.’” —John Voelcker, <http://bit.ly/1eLdoSp>

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## APA lists SF Chinatown as one of 30 "Great Places in America," 2013

San Francisco's Chinatown is now one of "the country's 10 Great Neighborhoods in APA's national program, *Great Places in America*. The unique sense of place found within this ethnic enclave comes not only from the architecture and compact street grid but a cultural identity that has persevered for more than 160 years. Despite its reputation as a tourist attraction — it is San Francisco's third most-popular visitor destination — Chinatown is an immigrant gateway and cultural capital, a touchstone for Chinese throughout America as well as the 150,000-plus San Franciscans of Chinese heritage."

"Launched in 2007, *Great Places in America* recognizes unique and exemplary streets, neighborhoods, and public spaces — three essential components of all communities. They are defined by many characteristics including architectural features, accessibility, functionality, and community involvement.

"APA singled out Chinatown for its historic role as a cultural capital, storied 'Oriental' architecture, community activism, rebuilding after San Francisco's 1906 earthquake, and planning efforts protecting the neighborhood's character and identity.

"Chinatown is an authentic, ethnic community that has successfully maintained its cultural heritage and tourist appeal despite natural disasters, prejudice, and incompatible development proposals," said APA Chief Executive Officer Paul Farmer, FAICP. "Residents' understanding and appreciation of how a neighborhood and its special qualities enhance community aesthetics and individual lifestyles has led Chinatown to evolve into a remarkable community that is unique not only in the U.S., but also the world," he added.

"The most populated neighborhood west of New York City and oldest Chinese community in the U.S., Chinatown is known for its bustling sidewalks, housing affordability, sustainable character, and colorful and ornate architecture. Residents strategically and quickly rebuilt in an oriental style after the 1906 earthquake and fire to draw tourists and thwart a proposal to move the leveled neighborhood elsewhere. Contributing to Chinatown's sustainability is its housing (40 percent is single-room occupancy) and low percentage of households owning a car — less than 20 percent.

"We are grateful to APA for recognizing one of our great neighborhoods, and the value of good planning to make great places. We are committed to preserving the cultural heritage of Chinatown while improving the neighborhood's physical character to best serve its 15,000 residents and the millions of tourists that visit annually," said John Rahaim, Planning Director for the City and County of San Francisco.

Details at <http://bit.ly/19m4lV3>; click on "Characteristics." ■

# MONTEREY BAY

## Aboard the good ship Chardonnay II

By Justin Meek, AICP

Sixteen professional planners, instructors, and students — San José State Urban and Regional Planning alumni, faculty, and friends — boarded the Chardonnay II on Saturday, October 19, for a sunny ocean excursion on Monterey Bay. While enjoying pizza and beer or wine, the passengers shared their planning experiences and caught up on recent life events.

During the two-hour sailing trip, the 70-foot yacht reached eight knots under the power of the mainsail and jib, and followed two humpback whales as they fed on anchovies in the bay. See “A whale of a time: Anchovies bring record numbers of humpbacks,” by Jason Hoppin, *Santa Cruz Sentinel*, Sept. 13, 2013, <http://bit.ly/1brepha>



Out of Santa Cruz. Hilary Nixon, PhD (left), Erin and John Fitzgibbons, and a different Justin at the ship's wheel. Photo: Sarah Diaz-Bastin.

This was one of many events organized by Regional Activity Coordinator (RAC) chairs around the Northern Section. For more information about future events in the Monterey Bay region, and to provide suggestions, contact:

Justin Meek at [justin.meek@gmail.com](mailto:justin.meek@gmail.com) or

Aaron Ackerman at [ackerman@emcplanning.com](mailto:ackerman@emcplanning.com) ■



Humpback, Monterey Bay. Photo: Sarah Diaz-Bastin.

### Squabbling over funds to start bullet train work.

“The state’s high-speed rail agency asserted in a legal filing that using federal funds would not trigger restrictions imposed in 2008 on use of state bond money for the proposed \$68-billion, Los Angeles-to-Bay Area high-speed train. State Treasurer Bill Lockyer’s office said [Oct. 11] he is not willing to sell high-speed rail bonds, which would generate funds for the project, until a separate court case is resolved. A ruling in that suit may not come until late December.” —Ralph Vartabedian, <http://lat.ms/161s4ql>

# Announcements

## 2015 Conference Local Host Committee to meet

Northern Section is hosting the Chapter Conference in Oakland in October 2015. Planning has already started with many enthusiastic volunteers attending the first Local Host Committee (LHC) meeting. The next LHC meeting will be on November 16. Those interested in helping will get to select from one of nine committees: Diversity Summit, Fundraising/Local Exhibits, Hospitality/Special Events, Merchandise/Souvenirs, Mobile Workshops, Planners Guide, Program Sessions, Volunteers/Student Events, and Public Relations/Website.

**When:** Saturday, November 16, 10 AM to Noon

**Where:** URS, 1333 Broadway, Suite 800, Oakland.

For more information, contact Hing Wong, AICP, at [hingw@abag.ca.gov](mailto:hingw@abag.ca.gov), or Erik Balsley, AICP, at [balsley@alum.mit.edu](mailto:balsley@alum.mit.edu)

## International Tour group will meet

The proposed tour will probably be for 17 days, starting Saturday, June 14, in Belgrade, and ending Monday, June 30, in Moscow. Other cities on the tour include Budapest, Krakow, Tallinn, and St. Petersburg. A pre-tour to Prague for those interested is being considered. Many planners have shown interest in joining the tour. Although there is not yet a firm maximum size for the group, it will likely be 22 to 25 people. If you are interested but are not yet involved, please attend the next meeting.

**When:** Thursday, November 7, 7–9 PM

**Where:** MetroCenter, 101 Eighth Street, Rm 171, Oakland

For more information, contact Hing Wong, AICP, at [hingw@abag.ca.gov](mailto:hingw@abag.ca.gov), or Alex Hinds at [alexhinds47@gmail.com](mailto:alexhinds47@gmail.com)

## Exhibit proposals invited

International Making Cities Livable, LLC, is inviting urban designers, landscape architects, architects, planners, developers, and cities to submit proposals for an exhibit of “Successful designs for making cities healthy for all” to be mounted in conjunction with the 51st IMCL conference in Portland, OR, June 8–12, 2014. Application deadlines and exhibit categories and criteria are available at <http://bit.ly/1e7lml9>

## Four from Northern Section get PEN Honor Awards

Congratulations to the 2013 Planner Emeritus Network (PEN) Honor Award recipients from Northern Section. The awards were presented at the California Chapter conference in Visalia, October 7.

Linda C. Dalton, FAICP, Vice President Planning, CSU East Bay

Congratulate her at [Linda.Dalton@csueastbay.edu](mailto:Linda.Dalton@csueastbay.edu)

Barry J. Miller, FAICP, Barry Miller Consulting

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Pete W. Parkinson, AICP, Planning Director (retired), Sonoma County

Congratulate him at [pete.parkinson54@gmail.com](mailto:pete.parkinson54@gmail.com)

Donald R. Weden, Principal Planner (retired), Santa Clara County

Congratulate him at [weden@ix.netcom.com](mailto:weden@ix.netcom.com)

## Database of city planning and urban design jobs

Jason Su, Project Management Trainee at City and County of San Francisco, Department of Public Works, has put together a “working list” of city planning and urban design job websites. The list is “for all those looking for employment opportunities — whether a job or an internship.” You can see the clickable list at <http://bit.ly/15vDo03>

## Oakland picked for Northern Section Holiday Party

The 2013 Holiday Party will be held Friday, November 22, 7–10 PM, at **District**, 827 Washington Street, Oakland. Tickets are \$30 for APA members, \$35 for nonmembers, and \$15 for students and unemployed. A drawing will be held for the California Planning Foundation to benefit students who are pursuing planning degrees. Contact Florentina Craciun at (510) 874-3127 or

[Florentina.craciun@urs.com](mailto:Florentina.craciun@urs.com) if you would like to donate an item or otherwise contribute to CPF for the Holiday Party, or if you have any questions regarding CPF or the party. No donation is too big or too small. We’ll see you at the party! **RSVP** at [apaholiday2013.eventbrite.com](http://apaholiday2013.eventbrite.com) ■



## From the editor *By Naphtali H. Knox, FAICP*

### Does BRT spur development better than light rail or streetcars?

A lot of folks have been examining and editorializing about a report released in September by the Institute for Transportation and Development Policy (ITDP), ‘More Development for your Transit Dollar.’ As the report concludes and the headlines shout, “The type of mass transit providing the best bang for the buck is bus rapid transit.” Here are a few of the varying takeaways and opinions I’ve read.

**Jeff McMahon**, writes in *Forbes*, September 15, 2013: “Bus rapid transit can not only spur development, but can do so far more efficiently than light rail and streetcars, according to a study from the Institute for Transportation and Development Policy. ‘Both BRT and LRT can leverage many times more development investment than they cost,’ according to the institute’s director for the U.S. and Africa [and co-author], Annie Weinstock. ‘Per dollar of transit investment, and under similar conditions, BRT can leverage more investment than LRT or streetcars.’ For example, Cleveland’s HealthLine, a BRT project completed on Cleveland’s Euclid Avenue in 2008, generated \$5.8 billion in development — \$114 for each transit dollar invested. Portland’s Blue Line, a light rail project completed in 1986, generated \$3.74 per dollar invested.

“BRT’s efficiency makes sense — bus rapid transit lines are generally cheaper to develop than rail lines, but the difference has never before been documented, Weinstock said. The U.S. has seven authentic BRT lines in Cleveland, Las Vegas, Los Angeles, Eugene, Ore., and several in Pittsburgh. ‘I don’t think we are attributing the development 100 percent to the transit investment,’ said Weinstock. ‘It’s part of the package of the importance given to the corridor. But you still need transit to create that kind of dense urban environment.’” Read more at <http://onforb.es/166ocAl>

**Eric Jaffe**, writing in *The Atlantic Cities*, September 24, 2013, finds a much more important takeaway from the ITDP report. “While the economic success of BRT (especially Cleveland’s) may grab most of the headlines, it’s not the most important lesson cities should learn from the report. Far more instructive is that ‘transit quality’ itself played only a limited role in predicting transit-oriented development. Of the three main TOD



BRT in Eugene, Oregon. Photo: H. Pike Oliver, AICP.

factors considered for the ITDP analysis, what mattered most to TOD success was government intervention. Rezoning a corridor to encourage mixed-use development, creating a comprehensive plan for the area, actively reaching out to investors, marketing the program, offering financial incentives — these elements of a strong official involvement directly predicted TOD success. In other words, if your goal is economic development, then focusing on transit is besides the point.” Read more at <http://bit.ly/16YXNJe>

**Stephen J. Smith**, writing in *Next City*, September 24, 2013, pretty much agrees with Jaffe. “While it presents an interesting snapshot of a few projects, there are far too many variables for a sample size of 21 — the number of projects ITDP analyzed — to yield many conclusions. Annie Weinstock, one of the study’s co-authors, was upfront about its limitations. ‘There are a lot of variables and it’s a relatively small sample size,’ she said. ‘There aren’t enough systems to make for a statistically significant dataset.’” Read more at <http://bit.ly/18nwnLw>

The 159-page ITDP report is available at <http://bit.ly/1eF6dde> ■

## San Francisco's street wars (continued from page 1)

out like a town crier to passersby to build their ideal street. The intrepid and curious wandered to tables filled with found objects (discarded plastic toys, buttons, and scraps of this and that). Using these alien yet familiar objects, they were asked to create their utopian vision of Columbus Avenue. While most models highlight buildings, this one captured street activities only, giving participants a plain of no restraints.

Participants varied from tourists exploring literary San Francisco to Chinese families going to and from the New Moon Festival. While some participants may have been visiting Columbus Avenue for the first time, they responded to what they saw, felt, and projected from their previous experience, memories, or needs. For example, a German Tourist created Oktoberfest, and children created park spaces. Many local residents knew exactly what they wanted to see on Columbus and where, from wide sidewalks to roundabouts.

It took no longer than a few minutes for the participants to gather materials and build their utopian vision. It was as if they already knew what they were missing in their urban experience and were only waiting for someone to ask.

Two organizers of StreetUtopia, Fay Darmawi and Phil Millenbah, AICP, asked the participants to describe their creations in words on handy Post-it notes. Other volunteers distributed a short survey developed by StreetUtopia.

The results of the found object exercise and the surveys were astonishing. A StreetUtopia volunteer noted, "The Post-its and the survey had clear winners, and they were not the same."

The survey responses to the question of what would you change on Columbus Avenue focused on wider sidewalks and traffic calming. Imagination generated by the "found objects" exercise led people to what we call the "third space" that allows people to build, share, inspire, and shape ideas through playing together.



Found objects are used to re-imagine streets into "concrete plains" and from there into "living plains." Photo: James Rojas.



Co-author Fay Darmawi and her twin sons prepare to welcome participants. Photo: James Rojas.

(continued on next page)

**"China, CA team up on climate.** In a move to strengthen cooperation on lowering carbon dioxide emissions, China's top climate negotiator and California's Governor signed a Memorandum of Understanding in San Francisco on September 13. The first-of-its-kind agreement between the National Development and Reform Commission (NDRC) of China and a US state clarifies 'areas of cooperation' as well as 'forms of cooperation' and 'implementation.'"  
—Chen Jia, *China Daily USA*, <http://bit.ly/1aGi5aY>

## San Francisco's street wars

(continued from previous page)

Many of the ideas created with the found objects focused on our primal need to find intimacy in public space through a flower, water, small animals, and most importantly, each other. The ideas generated from the exercise ranged from the banal (a bank) to the truly inspiring, including a Columbus canal with gondolas, a floating zoo in the Bay, an inland beach at one edge of Washington Square, a bridge over a small lake with flower beds, and a sort of “space needle” in the middle of a roundabout.

Because this method gives people autonomy and agency over the process, it diffuses tension between the urban planners and the public. Rather than the public reacting to a plan, the planner is reacting to the public's ideas — ideas that can shape the project or plan.

The participants on this day saw Columbus Avenue as not merely a means for getting from point A to point B. They also saw Columbus Avenue as a destination in itself, and they expressed a deep desire for Columbus to be designed that way.

For a full set of amazing photos from the day, please go to <http://bit.ly/15F0Nw6>

*James Rojas is a globe-trotting planner who developed a visualization method to engage the community in the urban planning process. Rojas, who lives in Alhambra, California, is a member of the California Planning Roundtable and a founder and member of the Latino Urban Forum. You can contact him at [jamestrojas@gmail.com](mailto:jamestrojas@gmail.com)*

*Fay Darmawi holds a Master's degree in City Planning from the Massachusetts Institute of Technology. She is a 20-year affordable housing finance professional currently managing a portfolio of low income housing tax credit investments for a mid-size San Francisco Bay Area bank. Darmawi lives in San Francisco's North Beach neighborhood with her twin 12-year old boys and is passionate about making her city a better place to live. ■*

## Inclusionary Housing Requirements suffer another blow

By Megan Burke

On the heels of the *Palmer* fix bill (AB 1229) being vetoed by the Governor, the California Supreme Court held on October 17 that a below market rate (“BMR”) housing requirement was an “exaction” under the Mitigation Fee Act. This ruling may make it easier for developers to challenge local affordable housing regulations.

The case, *Sterling Park v. City of Palo Alto*, involved a 96-unit condominium project. As a condition of project approval, the city required the developer to give it an option to purchase 10 units at below market rates and pay in-lieu fees equal to a percentage of the units' selling price or fair market value. The developer agreed to the BMR condition, but years later when the city requested conveyance of the units, protested and filed suit.

The city argued that the suit was untimely under the 90-day statute of limitations in Government Code §66499.37. The Court disagreed and held that the BMR condition was an exaction subject to the pay-under-protest requirements in §66020 of the Mitigation Fee Act. Under those requirements, a developer must protest a condition within 90 days of receiving notice from the city that it is being imposed.

The 90-day protest period does not begin until the city issues the notice. Therefore, cities would likely benefit from providing a section 66020 notice, which specifically references the BMR condition, at the time the condition is imposed.

This decision also indicates that the Court may conclude that BMR requirements are exactions subject to stricter standards of review, rather than land use regulations, in the *CBIA v. City of San Jose* case, which is currently pending before the Court.

*Megan Burke is an associate attorney at Burke, Williams & Sorensen, LLP. In addition to serving as the assistant counsel for the Eastern Contra Costa Transit District, Ms. Burke focuses on general municipal law, the California Public Records Act, conflicts of interest, local land use and zoning, inverse condemnation, eminent domain, and revenue issues such as Proposition 218 compliance and other tax and fee related matters. ■*

**Database of city planning and urban design jobs.** Jason Su, Project Management Trainee at City and County of San Francisco, Department of Public Works, has put together a “working list” of city planning and urban design job websites. The list is “for all those looking for employment opportunities — whether a job or an internship.” You can see the clickable list at <http://bit.ly/15vDo03>

## Other top stories

### Housing in California – Do we have enough (in the right places)?

*The California Economic Summit, October 3, 2013*

**Ed Coghlan**, <http://bit.ly/1aXHxsa> • “Are people going to keep putting up with a commute from Modesto to San Jose or from the Antelope Valley to downtown Los Angeles just so they can have a backyard? Housing is a cross-cutting issue for the California economy. It’s a major driver in the state because it is a significant source of direct and indirect jobs. And if California is going to maintain its middle class with good jobs today and for the future, people will need an affordable and convenient place to live. While some parts of the Golden State are booming again (Silicon Valley, Orange County, San Diego, San Francisco), others aren’t. There wasn’t a major population area hit harder by the economic downturn five years ago than the Inland Empire region, which is still struggling to rebound. The story of two California economies is not being told sufficiently. The state’s coastal regions are doing much better than the inland areas. California’s economic recovery won’t be complete until all areas of the state are on the upswing.”

### CPUC passes first-in-country ridesharing rules

*TechCrunch, September 19, 2013*

**Anthony Ha**, <http://tcrn.ch/1aOeKGT> • “The California Public Utilities Commission has approved new regulations for ridesharing services. The regulations establish a new category of business — Transportation Network Company — and require such companies to obtain a license from CPUC, conduct criminal background checks, establish a driver-training program, and hold a commercial insurance policy with a minimum of \$1 million per-incident coverage. California is the first state to establish such rules.”

The San Francisco Cab Drivers Association “found it disturbing that a new class of for-hire transportation service would not have regulatory oversight of local bodies while unfairly competing with regulated taxi services.”

A CPUC press release said that Lyft, SideCar, and UberX are charter party passenger carriers allowed to compete with traditional forms of transportation [to give] drivers and consumers greater choice. The insurance market will determine the best approach to ensure that there is coverage for passengers, drivers, and third-parties while these vehicles are operating on a commercial basis.” The press release is available at <http://bit.ly/1esUpLh>

### Fresno to tear up historic pedestrian mall

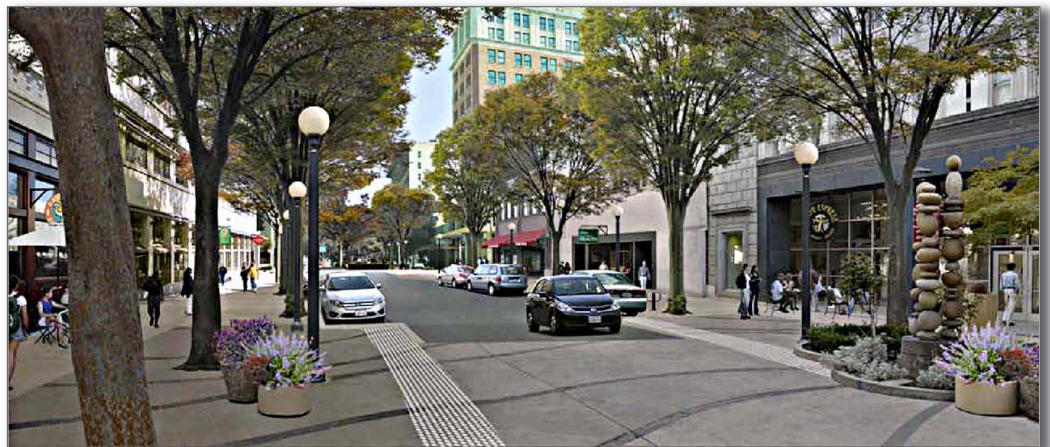
*Associated Press / Boston Globe, October 3, 2013*

**Gosia Wozniacka**, <http://bo.st/16yYNNX1>

“Fresno leaders want to lay down roadway on a six-block pedestrian mall once touted as a national model for pedestrian-friendly downtowns. The reconstructed street would be pedestrian- and environment-friendly, with two lanes of traffic, 25-foot wide sidewalks, and public artwork. And a high speed rail station is planned just a block from the mall.

“Built during urban renewal in the 1960s, the Fulton Mall lapsed into decay, its mostly empty 1920s-vintage office buildings attracting little revenue. The mall’s 45 buildings have a 56 percent vacancy rate.

“Many business owners favor opening the strip to cars. Critics say reconstruction may not lead to revitalization, and would destroy one of the city’s few walkable areas.”



Artist’s rendering of Fulton Mall with selected Eckbo features preserved and restored.

Source: Fresno Fulton Corridor Specific Plan, Public Draft, October 14, 2011. <http://bit.ly/znwqjK>

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