



# CAL Planner

MARCH - APRIL 2007



LEED Gold Fire Station, Pleasanton, CA

## LEED-ND Is Coming

*Are You Ready? How to Implement Green Planning and Design Principles Now*

By Dave Javid, LEED AP

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The efficient layout of our built environment presents an exceptional opportunity to enhance our quality of life while reducing our ecological footprint to protect the environment. What are the essential components of a successful neighborhood design? How do we define and measure these components to ensure that they are operating effectively and that they are establishing the intended high quality of life and sense of community?

With the emergence of LEED-ND (Leadership for Energy and Environmental Design for Neighborhood

Development) there will soon be a tool that can be employed to gauge the success of neighborhood design principles from their infancy at the concept planning stage through implementation or construction. The U.S. Green Building Council (USGBC) is actively developing the LEED-ND criteria in an effort to create a compressive method of quantifying the success of neighborhood developments through a green building rating system similar to what is effectively used currently for LEED-NC (LEED™ for New Construction) projects.

*continued on page 14*



CALIFORNIA PLANNING FOUNDATION

# Spring 2007 Professional Development Workshops

*Save the Date: May 4, 2007  
Tour Space Is Limited – Register Early!*

## Northern California

Bay Area Sustainability Tour: Trekking Through the Streets of San Francisco

*A walking tour in San Francisco to include:*

- Yerba Buena Center for the Arts – winner of several environmental achievement awards.
- The Moscone Center – committed to sustainability, solar energy and environmental excellence.
- Orchard Garden Hotel, the first LEED-certified hotel in California.
- The San Francisco Ferry Building – great local organic food products.
- Additional sites and presentations TBA.

## Southern California

Walking the Sustainability/Green Building Path: Trekking Through Santa Monica

*A walking tour in Santa Monica to include:*

- Green Building Resource Center, operated by Global Green, USA.
- Natural Resources Defense Council, a LEED-certified Platinum building.
- Colorado Court, an award-winning 100 percent energy independent residential project.
- Lunch on the Third Street Promenade
- Additional sites TBA.

**A registration form for these workshops is included on page 16.**

*For more information, visit the CPF website at [www.californiaplanningfoundation.org](http://www.californiaplanningfoundation.org). To register, contact [lbynder@meetingsxceptional.com](mailto:lbynder@meetingsxceptional.com) or call 760.799.2740.*

## CCAPA Broadcasts Information

CCAPA will be broadcasting important information to your e-mail address. So that you don't miss out on these important messages, please check your e-mail address with National APA. You can review and update your membership information online at [www.planning.org](http://www.planning.org). On the home page, go to the Member Services drop-down list and choose the Membership Database link. You will need your membership number which is located on your **Planning Magazine** label or your dues renewal invoice. Please call 916.736.2434 for further information.

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#### California Planner

The *California Planner* is the official publication of the California Chapter of the American Planning Association (CCAPA). Each CCAPA member receives a subscription as part of chapter dues. Additional subscriptions may be purchased for \$22 per year. Send editorial submissions and queries to CCAPA c/o Karen Roberts, GranDesigns, 916 Avenal Way, Beaumont CA 92223 or e-mail them to [karen@firrose.us](mailto:karen@firrose.us).

Rates for job announcements, display and calling card advertisements can be obtained by contacting CCAPA c/o Stefan/George Associates, 1333 36th Street, Sacramento, CA 95816, 916.736.2434.

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#### APA Websites

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California Planning Foundation . . . . . [www.californiaplanningfoundation.org](http://www.californiaplanningfoundation.org)  
CA Planning Roundtable . . . . . [www.cproundtable.org](http://www.cproundtable.org)

# Commissioner's CORNER

## *Plan Regionally — Act Locally*

By **Kathy Garcia, FASLA**



The feature article of *The Commissioner* (Fall 2006 issue) read “Regional Planning Becomes Mega.” Hardly surprising but very sobering, it reported the fact that nearly 70 percent of the population growth and 80 percent of the economic growth will take place in 10 “mega regions” across the nation. California has two such mega regions: Northern

California/Greater Bay Area and Southern California. Their boundaries stretch farther than you may think. Chances are that you either live in one or near one of these mega regions. Even if you do not, you are definitely affected by one. Whether we like it or not, “megalopolis” is here.

As Planning Commissioners, we struggle to understand the forces that shape our jurisdiction and the detailed ordinances and codes that we must interpret for discretionary review and action. Now, we must add another layer of understanding: the region and how it affects our micro-scale planning decisions. That’s right, it is not just the intersection at the project corner that is important; it is the entire regional transportation system at stake. Now, that may sound silly, but think about cumulative impacts. One change, when added to many other similar changes, can modify an entire system to the point of concern. To identify cumulative impacts of individual decisions is one of CEQA’s most important responsibilities. It also becomes one of our Commissioner’s responsibilities. We need to know as much about how we affect the region as how our decisions will modify and alter the region.

The good news is that planning is occurring much more at the regional level than ever before. Cities and counties are not just making isolated decisions, but they are coordinating with the State’s many Council of Governments (COGs), and the COGs are planning cooperatively with the jurisdictions. The difficult part is how to disseminate this information to the local scale – to us Commissioners who need the regional context in our daily decisions. How can we find out what is being addressed regionally, and how do we apply this information?

First, do you know about the Regional Comprehensive Plan prepared for your region? Is it underway or recently adopted? Do you have a copy, and have you read about what the region is planning? Often, COGs are in the process of preparing their plans, and it is a great opportunity for you to be involved.

Second, invite your regional planning agency to give a presentation or plan summary at a Commissioner workshop. The information will be invaluable, and the workshop will allow for interactive discussions about the issues facing you here and now.

Third, search out other forums, seminars, conference presentations and the like that address these regional issues. Your local APA chapter may be a good source, as would be your local academic institution, the League of California Cities, and other planning venues. Many folks are talking about regional planning; they just need for us to listen.

If you can’t find the forum that excites you, take the initiative to organize one. The San Diego region took that big step recently. The San Diego Section of APA, SANDAG (the San Diego Association of Governments) and Caltrans District 11 jointly sponsored a workshop for Planning Commissioners and agency staff in January. Nearly 100 Commissioners and staff attended a three-hour forum on the regional issues of land use and urban form, transportation, regional public facilities and the natural environment. Roundtable discussions then followed at a sub-regional level, so Commissioners would better understand how these regional issues filtered into their jurisdiction. The participants’ overwhelming response reiterated the great value of regional information for local decisions.

Whatever means you choose, it is time to understand your region to better make local decisions.

### **Never Too Late to Learn**

Spring is always filled with new opportunities, and one special session will occur this April in which you may wish to partake. April takes us to Philadelphia for the National APA Conference from April 14 – 18. It’s not too late to register for the conference, and it is never too late to pick up new skills, information or colleagues.

The venue will offer sessions and tracks geared to Planning Commissioners.

For more information on the League of California Cities Planner’s Institute, visit [www.cacities.org](http://www.cacities.org)

For the APA National Conference, visit [www.planning.org](http://www.planning.org)  
By the way, have you set your 2007 New Year’s Commissioner Resolution? How’s it coming?

*Kathy Garcia, FASLA can be contacted at 619.696.9303 or [kgarcia@SD.wrtdesign.com](mailto:kgarcia@SD.wrtdesign.com).*

*... we must add another layer of understanding: the region and how it affects our micro-scale planning decisions.*

# CPF Increases 2006 Scholarship Awards and Raises Over \$19,000 at 2006 Auction

By Vivian Viado

We found that 2006 was a year of continued success for the CPF Scholarship Fund. We increased the level of student scholarship awards and had another record-breaking auction at the CCAPA Conference in Orange County. These achievements would not have been possible without the generous support of California Chapter APA members, Friends of CPF, auction donors and volunteers. As we enter 2007, we look forward to even greater successes in our goal of raising funds for scholarships and providing economical, timely and relevant professional development workshops for the practicing planning professional.

## 2006 Scholarships

In 2006, the CPF Scholarship Fund awarded over \$34,000 in scholarships and APA memberships to graduate and undergraduate planning students who will become practicing planners in California. This year's 26 scholarship winners and 18 merit scholarship winners, selected by the faculty in each planning program, were acknowledged at a special awards luncheon during the 2006 CCAPA Conference in Orange County.



*Hundreds of raffle tickets were sold, and many prizes were awarded.*



*Participants in the Live Auction bidding wars.*



*"Master Auctioneer" Steven Preston, AICP*

## CPF Auction

Thanks to generous donations from California Chapter APA members and conference attendees through the sale of auction items and raffle tickets, the annual Section Challenge, and sponsorships from Friends of CPF, the 2006 CPF auction raised over \$19,500! This amount also included the generosity of several auction participants who graciously donated cash – to the tune of over \$5,000!! A special "Thank You" goes out to the Friends of CPF listed below whose contributions provide support for the scholarship fund. CPF distributes all proceeds from its fundraising activities toward scholarships, and we look forward to being able to award a healthy round of scholarships in 2007.

### 2006 Section Challenge Winner:

Northern Section

### 2006-07 Friends of CPF:

Michael Brandman Associates  
Crawford, Multari & Clark  
EIP Associates, a Division of PBS&J  
Keith B. Higgins & Associates  
Stanley R. Hoffman Associates  
Mintier & Associates  
Zucker Systems

Many thanks to the California Chapter APA members for continued support of CPF and its work to provide financial assistance to tomorrow's planners! For more information, please visit our website at [www.californiaplanningfoundation.org](http://www.californiaplanningfoundation.org).



*Auction participants viewing and placing silent bids.*

# The Planner Emeritus Network Report

By Donald Cotton, AICP

The Planner Emeritus Network (PEN) is moving forward with the restructuring of the membership as directed by the CCAPA Board last year. Just to jog your memory, the CCAPA Board decided to make all eligible members of CCAPA automatically members of PEN and to dispense with separate dues for PEN membership. (Eligible members are those members of CCAPA who are Life members, FAICP, Retired members and past State CCAPA Board members.)

All PEN members will be contacted in the near future. In the meantime, you can help by updating your basic information on file with the National APA office and especially by providing a current email address. The email address is important because we hope to make all contact with members via email if possible. See the box below for instructions.

John Bridges, PEN Vice President, South, and I have been pulling together speakers for the annual PEN presentation for the CCAPA Annual Conference in San Jose. This year, the presentation will be entitled "Success Infill Projects: Past, Present and Future." The PEN policy is to organize a presentation which will be of broad interest to all planners, whether they are members of PEN or not.

I am looking for PEN members who might be interested in assisting the PEN Board in organizing PEN activities, including the PEN Annual Meeting at the CCAPA conference and assisting with the maintenance of the PEN membership database. If you have an interest in assisting PEN in any way, please contact me at donc2082@yahoo.com or on my cell phone at 626.437.3549.

*Don Cotton, AICP is President of the Planner Emeritus Network and can be reached at donc2082@yahoo.com.*

## How to Login for the First Time

*CCAPA members are now able to login to gain access to Members-Only capabilities. To login for the first time, click on the link "Forgot your Password?" in the lower left area of the web page; type in the email address CCAPA has on file for you, and login with the information emailed instantly to your email account.*

### PEN Broadcasts Information

PEN will be broadcasting important information to your e-mail address. So that you don't miss out on these important messages, please check your e-mail address with National APA. You can review and update your membership information online at [www.planning.org](http://www.planning.org). On the home page, go to the Member Services drop-down list and choose the Membership Database link. You will need your membership number which is located on your **Planning Magazine** label or your dues renewal invoice. Please call 916.736.2434 for further information.

### Land Use & Health Project Publication Available

The Land Use & Health Project is pleased to announce a newest publication, *Economic Development and Redevelopment: A Toolkit on Land Use & Health*.

This toolkit is a primer for public health advocates who want to work with local government to stimulate the development of new food retail or to expand food access in low-income neighborhoods. You can download a free copy at [www.healthyplanning.org](http://www.healthyplanning.org).

Land Use and Health project staff are available to conduct training and provide technical assistance to public health advocates and local government officials. In many cases, this training is free.

Visit the Land Use and Health website for more information about training and technical assistance and to sign up for our newsletter. You may contact the organization at 510.302.3308.

### CalPlanner Production Schedule

Issue	Articles Submitted	Mailed*
July/August	May 7	June 18
September/October	July 9	August 30
Nov/Dec	Sept 10	Oct 22

\* Membership will receive magazine within 10 working days after this date, on average. Dates subject to change without notice.

# Legislative UPDATE

By Sande George, Stefan/George Associates, CCAPA Legislative Advocate



## CCAPA Legislative Update

### *Son of Prop 90 Circulating*

Just after Prop 90 was defeated at the polls, the Howard Jarvis Taxpayers Association filed a new constitutional amendment to restrict the use of eminent domain and require the payment of damages. This new initiative, like Prop 90, would virtually eliminate the ability of the state or local governments to impose a whole host of other laws and regulations, from zoning to rent control.

The key difference between this new initiative and Prop 90 is that it would apply to existing laws and regulations, not just new ones. It would void any government action if it “results in continuing damage” to someone’s property unless the government pays for that damage. Damages and takings would include any “reasonably expected and economically viable use” in whole or “in part” of a person’s property, rather than the existing “all economically beneficial use.”

It does state that “damaged” would not include actions that are undertaken to preserve health and safety, including the abatement of nuisances or criminal activity; or as land-use planning, zoning, or use restrictions that “substantially advance a legitimate government interest and do not deny a private owner economically viable use of his property, including his reasonable

investment-backed expectations” or to “preserve land for, or to protect such land from encroaching uses that would jeopardize its use for, customary husbandry practices in the raising of food, fiber, livestock, or other agricultural products or timber.”

As a recent *Sacramento Bee* editorial said, the initiative “would be a formula for endless litigation and cost to California taxpayers.” CCAPA will be gearing up to fight this initiative as well.

### *Fish & Game Environmental Filing Fees Increase — Controversy Over “No Impact” Determination*

The Department of Fish & Game recently sent out a letter to County Clerks and CEQA Lead Agencies alerting them to increased environmental filing fees as required by a bill signed into law last year, SB 1535. The increased fees are as follows:

CEQA Document	Current Fee	Fee Effective 1-1-07
Negative Declaration (ND)	\$1,250	\$1,800
Mitigation Negative Declaration (MND)	\$1,250	\$1,800
Environmental Impact Report (EIR)	\$850	\$2,500
Environmental Document Pursuant to a Certified Regulatory Program (CRP)	\$850	\$850
County Clerk Processing Fee	\$25	\$50

Senate Bill (SB) 1535 was signed into law by the Governor last year and amends the law to increase Fish & Game (DFG) CEQA filing fees. The increased fee is designed to provide funding for additional DFG staff, hopefully resulting in faster reviews or advance project planning, DFG consultation, and direct review and comment of environmental documents for many projects.

*continued on page 7*

### *CCAPA “QUICK LEG INFO” Feature Now on CCAPA Website Homepage*

CCAPA has added a quick legislative information feature — members can now quickly and easily access key information right from the home page, without signing in. Under the new QUICK LEG INFO feature (under the Hurricane Katrina picture), you can click on one of the following two links:

- The “**Hot Bill List**” link provides members with access to a complete list of hot bills with positions that CCAPA has taken on those bills.
- The “**Position Letters**” link allows you to view each letter that CCAPA has sent to legislators indicating support of or opposition to those bills.

*Please take the time to review this time-saving feature.*

According to the Fish & Game letter, other mandatory statutory changes in the bill require the following:

- An increase in the Fish & Game filing fees for Negative Declarations, Mitigated Negative Declarations, and EIRs;
- Annual fee adjustment based on an inflation index;
- Elimination of the “*de minimus*” fee exemption for projects determined to have a *de minimus* effect on wildlife. (The *de minimus* exemption is replaced by a fee exemption, issued by DFG, for eligible projects that have “no effect on wildlife”);
- An increase in the County Clerk processing fee;

The provisions of the bill take effect on January 1, 2007.

Under the revised statute, according to DFG, a lead agency may no longer exempt a project from the filing fee requirement by determining that the project will have a *de minimus* effect on fish and wildlife. Instead, a filing fee will be required unless the project will have *no effect* on fish and wildlife. If the project will have any effect on fish and wildlife resources, even a minimal or *de minimus* effect, the fee is required. A project proponent asserting a project will have no effect on fish and wildlife will be required to contact DFG, and the Department will review the project, make the appropriate determination, and in “no effect” cases, the Department will provide the project proponent with documentation of exemption from the filing fee requirement. At this time, the Department anticipates that fewer than 5 percent of the projects would qualify for the “no effect” standard.

The process for payment of filing fees has not changed. The letter also states:

“In summary, commencing January 1, 2007, the State Clearinghouse will not accept or post a NOD filed by any State lead agency and County Clerks should not accept or post an NOD from a local lead agency, unless it is accompanied by one of the following: (1) a check with the correct Fish and Game filing fee payment (see attached table), (2) a receipt or other proof of payment showing previous payment of the filing fee for the same project, or (3) a completed form from the DFG documenting the DFG’s determination that the project will have no effect on fish and wildlife.”

This has taken many by surprise and has also sparked controversy with the statement in the letter that only the DFG may issue a certification that a project has “no impact” on wildlife and suggests checking the Department’s website for the appropriate procedure.

At this time, the Department’s website has no procedure, and SB 1535 itself does not require that this determination be made by the Department. In fact, it appears to include no restrictions to a lead agency making this determination itself based on its review of the project. In addition, it seems that the Department will not have the ability to review the hundreds of requests that it will receive for a “no impact” certification. Filing of a Notice of Determination must be done within five days of the approval of a project, and it will not be appropriate for the Department to require agencies to pay \$1,800 - \$2,500 in environmental fees because it cannot process the requests

fast enough. A better solution might be for the Department to conduct a random check of projects with “no impact” findings but retain the ability of lead agencies to make the “no impact” finding.

*Several CCAPA members are currently discussing this issue with DFG and the bill’s author. Until there is a reasonable process for the no impact determination, or until Fish and Game promulgates regulations (hopefully both), many localities have decided to: 1) pay the fee; 2) ask for exemptions early; 3) find any receipts for past payments. Given the no vesting component of the statute, local lead agencies have decided it is prudent to just pay the fee, so that the Notice of Determination can be filed in a timely manner.*

If you have questions regarding the environmental filing fees, fee payment or collection, or whether your project is subject to the fee, please contact the DFG 2007 CEQA fee informational line at 916.651.0603. A recorded message will provide information about the filing fee increase and process. Information will also be available on the DFG and OPR websites.

### *New Bills Being Introduced*

A new two-year session began in 2007. New legislation has just been introduced. The final deadline for bill introduction was February 23, so it will be quite awhile before we see the full list of new legislation. For an up-to-date list of bills any time, log on to the CCAPA website legislation page at [www.calapa.org](http://www.calapa.org). Below is a list of the key planning measures introduced so far.

#### **AB 5 – Wolk – Local Flood Protection Planning Act**

This measure is the son of AB 802 (increased General Plan flood requirements) and AB 1899 (“show me the flood protection”). To begin discussions, Assembly Member Wolk has left most of the details out of the bill for now.

As introduced, the bill will require an unspecified entity to create the Central Valley Flood Protection Plan to address flood protection in the Central Valley. The Plan must include minimum flood protection standards for urban, rural and small communities. It appears that those standards may be different for each of those areas, but the standards are not specified in the bill at this time.

It will also establish the voluntary Local Flood Protection Planning Act that lists what must be included in a local plan of flood protection, including a plan to meet minimum flood protection standards for urban, rural and small communities within the local agency’s jurisdiction, identification and assessment of flood protection facilities and improvements, an emergency response and evacuation plan for flood-prone areas, a long-term funding strategy for improvement and ongoing maintenance and operation of flood protection facilities, and approval of an ordinance to mandate flood insurance and notify homeowners annually as to the level of flood protection and flood risk. The definition of “local agency” is not yet determined. The plan would have to be submitted for review to DWR or the Reclamation Board. Priority for state funds will be given to local agencies who have adopted a local plan of flood protection.

The bill also includes a place holder section that requires unspecified conditions to be met before local governments in the Central Valley can approve new developments within high-risk flood prone areas.

Finally, the bill would establish a Local Flood Protection Plan Assistance Fund administered by DWR. The monies in the fund would be awarded as grants to local agencies to develop and implement the local flood protection plans.

**Legislative Update***(continued from page 7)***AB 29 – Hancock – Infill Incentives**

AB 29 would require a portion of the Housing and Emergency Shelter Trust Fund Act bond funds to be distributed to councils of governments to fund competitive infill incentive grants for cities and counties that meet certain criteria. The city or county, to receive the funds, must conform local plans and land use policies to the COG's regional growth plan for the area, and use the funds for projects in infill areas targeted in the regional growth plan for growth, or to protect resource and agricultural areas. The funds can be used for any capital outlay purpose consistent with the regional growth plan, including parks, urban greening projects, water/sewer projects associated with infill development, and street/road/transit/bike/pedestrian improvements. The grants will be required to promote infill development and encourage efficient development patterns consistent with the goals in AB 857.

**AB 70 - Jones – Local Flood Liability**

This bill would impose joint liability on a city or county for property damages sustained in a flood by the city or county approving new development in an undeveloped area that is protected by a project levee (Central Valley). It would apply where flood levels are anticipated to exceed three feet for a 200-year flood event.

**AB 82 – Evans – Agricultural Land Preservation**

AB 82, as introduced, is a spot bill. It expresses the intent to enact legislation that would encourage the preservation of agricultural land and to encourage local governments through local planning to recognize the importance of agricultural production to California and the local economy.

**ACA 2 – Walters – Use of Eminent Domain for Public Purposes Only**

ACA 2 is a shortened version of Prop 90. It would amend the constitution to permit private property to be taken or damaged only for a stated public use and only when just compensation has first been paid to, or into court for, the owner. It also adds two new sections to Article 1.

“Notwithstanding any other provision, a community redevelopment agency, community development commission, or joint powers agency that has the power of eminent domain shall not exercise the power of eminent domain to acquire any real property if ownership of the property will be transferred to a private party or private entity, other than a public utility.”

The above new section “shall apply to both new and pending projects that involve the exercise of the power of eminent domain” unless a resolution of necessity for the project was adopted prior to the effective date of the amendment.

**SB 5 – Machado – State Plan of Flood Control, Local Responsibilities and 500-Year Level of Flood Protection**

This bill, which is also a statement of intent at this point, would resurrect the comprehensive State Plan of Flood Control and the integration of the various funds that can be used for flood control. It would establish the roles and responsibilities of the state, local flood management agencies, cities and counties, and developers and other property owners. It would develop changes in land use and development policies in flood areas as soon as new flood risk maps are available, DWR and the Reclamation Board have completed their assessments of the current performance of state flood control and have identified and adopted a schedule for implementing the improvements, and when state and local agencies adopt a schedule for implementing the improvements. Timelines for all of the requirements in the bill are not yet specified.

It would require the state to pay 100 percent of the nonfederal capital costs to bring flood facilities up to design standards and identify and implement improvements; to partner with local flood management agencies, cities and counties to provide 500-year protection to currently urbanized areas paying 50-70 percent of the nonfederal

share (locals would have to provide the remainder of the funding with unspecified funds); and to provide 500-year protection in nonurban areas only if funds are available after first meeting the needs of currently urbanized areas. DWR would also establish maintenance standards for flood facilities, comment on all local general plans and environmental documents regarding flood risks in areas protected by the state plan of flood control that are proposed for development, and develop new building standards for new structures constructed in deep flood plains.

Local flood agencies would be responsible for maintaining the levees and other flood management facilities and would comment on local plans and environmental documents as well.

Cities and counties would be required to address flood risks explicitly in all land use planning and permitting, revise general plans to exclude any new residential development in any area with less than 500-year protection, enforce state building standards in flood plains, and annually notify property owners and mortgage holders that a parcel may be protected by a flood facility and recommend that they purchase insurance.

Developers would be required to disclose to potential buyers that the parcel may be protected by a flood facility and recommend that they buy insurance.

**SB 6 – Oropeza – Consideration of Climate Predictions Regarding Ocean Levels**

SB 6 would require cities and counties to include as a condition for approval or conditional approval of a tentative map or parcel map that a subdivision applicant have considered existing climate predictions regarding ocean levels. It would also require a state or local agency that maps and identifies flood risk to consider existing climate predictions regarding ocean levels.

**SB 12 – Lowenthal – SCAG Alternative RHNA Process**

SB 12, until January 1, 2015, would substantially revise the procedure for the Southern California Association of Governments, or delegate subregion, to develop a proposed methodology for distributing the existing and projected regional housing need to cities and counties within the region or subregion. It allows SCAG to conduct workshops rather than survey local governments for local planning factors, limits appeals to one, and gives SCAG more time to develop the final RHNA allocations. Language is still being worked out, but this bill will be on a fast track.

**SB 34 – Torlakson – User Fees and Assessments for Sacramento-San Joaquin Delta Flood Control**

SB 34 would declare the intent of the Legislature to authorize the Reclamation Board to establish a “beneficiary pays system” and to collect user fees and assessments for levee maintenance and other flood control purposes in the Sacramento-San Joaquin Delta.

**SCA 1 – McClintock – Eminent Domain Restrictions**

Also a modified version of Prop 90, SCA 1 would change the constitution to provide that private property may be taken or damaged only for a stated public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. It also adds a new requirement that private property “shall not be taken or damaged without the consent of the owner for purposes of economic development, increasing tax revenue, or any other private use, nor for maintaining the present use following the taking.” It defines “just compensation” to include the cost of acquiring comparable property; all costs and losses incurred due to the condemnation, including, but not limited to, loss of income, loss of business good will, and relocation costs; and attorneys’ fees upon determination that the amount offered by the public agency was less than the amount ascertained by the jury, or by the court if a jury is waived.

*continued on page 10*





Lead agencies must be able to determine whether a project's potential impacts could be considered significant. Thresholds of significance are a practical, convenient tool for making such determinations.

# CEQA Thresholds of Significance

## *A Do-It-Yourself Guide for Public Agencies*

by **Niko Letunic and Christopher E. Ferrell, Ph.D.**

Determining the significance of a project's environmental impacts is one of the trickiest aspects of the California Environmental Quality Act (CEQA). However, lead agencies can make the process much simpler and more efficient by using thresholds of significance — quantitative or qualitative criteria beyond which an environmental effect may be considered significant.

Unfortunately, significance thresholds are one of CEQA's most misunderstood provisions. The biggest and most common mistake that agencies make concerning thresholds is to equate them with the impacts on the familiar Environmental Checklist Form of the State's CEQA Guidelines (Appendix G). The checklist is simply a list of potential impacts that public agencies should be mindful of when reviewing projects. For example, would the project "expose sensitive receptors to substantial pollutant concentrations"? However, it provides little guidance in judging whether the potential impacts might be environmentally significant. Who or what should be defined as "sensitive receptors"? Which pollutants should be considered?

What constitutes a "substantial" concentration? Agencies that rely exclusively on the checklist — and their project applicants — are likely to experience environmental reviews that are needlessly confusing, frustrating and inefficient.

A 1994 paper by the Governor's Office of Planning and Research (OPR), titled "Thresholds of Significance: Criteria for Defining Environmental Significance" stresses the benefits to public agencies of using thresholds of significance. The paper can be found at [http://ceres.ca.gov/topic/env\\_law/ceqa/more/tas/threshold.html](http://ceres.ca.gov/topic/env_law/ceqa/more/tas/threshold.html). Among the many benefits, the proper use of thresholds:

- Promotes predictability and consistency — over time and across reviewers — in the environmental review process.
- Reduces duplication of effort.
- Bolsters the defensibility of significance determinations.
- Focuses analyses on impacts expected to be significant rather than simply controversial or "headline grabbing."
- Encourages the submission of projects that incorporate mitigation into their design by offering a "significance target."

OPR's paper also provides specific advice to public agencies for developing

thresholds of significance. Based on OPR's advice and our experience on the topic, we have devised a six-step guide for public agencies to follow in developing CEQA thresholds of significance for general use as part of their environmental review process:

1. Using the *CEQA Guidelines'* Environmental Checklist Form as a departure point, isolate the specific physical or environmental impact(s) for which thresholds are to be established; be as precise as possible in identifying the impact(s) of interest.
2. Gather material relative to the impact(s) isolated in Step 1, including plans, studies, policy documents, surveys, reports, research papers, laws, regulations and other documents and data, whether prepared internally or by others.
3. Review the material gathered in Step 2, looking for any potential thresholds of significance for the impact(s) of interest: that is, quantitative or qualitative criteria, standards, measures, circumstances or

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**CEQA Thresholds**

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conditions that might make it possible to differentiate, in the agency’s judgment, between a significant impact and one that is less than significant. Limit the list to thresholds that are backed by “substantial evidence” — a CEQA term meaning enough facts, data and other credible information that support choosing a certain threshold as the point at which an impact acquires significance. For impacts that do not lend themselves readily to the application of thresholds, it is better simply not to establish thresholds; the environmental significance of such impacts should be determined on a case-by-case basis.

4. From among the candidate thresholds identified in Step 3, select one (or more) that best meets CEQA’s intent and the agency’s goals. To the extent possible, thresholds should:

- Reflect the agency’s policies and the values of its constituents, especially as expressed in adopted plans.
- Be based on specific and enforceable environmental laws, rules and regulations.
- Be consistent with, though not necessarily the same as, those of other agencies, particularly regulatory ones.
- Be quantitative and objective rather than qualitative or subjective.
- Be simple to interpret and implement.

5. Formalize the selected threshold(s) in writing. A written threshold should state the criteria for significance clearly and succinctly to avoid misinterpretation; reference the

factual basis for the criteria; explain why the threshold constitutes environmental significance; and, if applicable, reference the settings, locations or other physical scope to which it applies.

6. Thresholds should be submitted for public review and, ideally, adopted by ordinance or resolution of the agency’s governing body. Less preferably, they may be adopted administratively by agency staff or simply put into use as unadopted in-house guidelines.

*... lead agencies can make the process much simpler and more efficient by using thresholds of significance — quantitative or qualitative criteria beyond which an environmental effect may be considered significant.*

In navigating the above process, agencies are encouraged to provide the public with opportunities to assist in the development of thresholds, possibly in the form of an ad hoc committee or technical working group. Given the complexities inherent in CEQA, agencies are encouraged to obtain legal advice during the process to ensure that any resulting thresholds are legally defensible. Establishing thresholds of significance requires a not-insignificant commitment of agency resources. However, public agencies that take the plunge will find

their efforts repaid in a more efficient, streamlined and predictable environmental review process.

*Niko Letunic is a founding partner of Eisen|Letunic, a Bay Area-based transportation, environmental and urban planning firm. Christopher E. Ferrell, Ph.D., is a senior planner at Dowling Inc., an Oakland-based traffic engineering and transportation planning firm. This article is based on research conducted by the authors in support of an effort by the San Francisco County Transportation Authority to develop new thresholds of significance for transportation impacts. The authors welcome questions and comments about the article; Letunic may be reached at niko@eisenletunic.com; Ferrell can be reached at cferrell@dowlinginc.com.*

**Legislative Update**

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It specifies that all property that is taken by eminent domain shall be used only for the public use stated at the time of the taking, except for purposes, public or private, that are incidental to that use. It states that when property taken by eminent domain ceases to be used for the public use stated at the time of the taking, or fails to be put to that use within 10 years following the date of that taking, the former owner would have the right to acquire the property at fair market value and would be taxed at its base year value, with any authorized adjustments, as had been last determined at the time the property was acquired by the condemner. It would apply to all condemnation actions commenced or pending on or after June 23, 2005.

More information on the measures discussed? Go to the CCAPA website legislative section at [www.calapa.org](http://www.calapa.org). The “Hot Bill List” and “Position Letters” can be found there.

**Setting It STRAIGHT**

We regret that in the “Inside This Issue” Section of the January/February 2007 issue of *CalPlanner*, the name of Daniel J. Curtin, Jr. was mistyped. We are sorry for any confusion or inconvenience this may have caused.

**2007 CCAPA Conference, San Jose****Transforming the Urban Fabric****Registration & Payment Deadline: May 31, 2007**

Come join us in San José for the 2007 CCAPA Conference from Sunday, September 30 to Wednesday, October 1. Experience the vibrant downtown San José area and the surrounding Silicon Valley! The 2007 California Chapter of the American Planning Association Conference will be held at the Fairmont Hotel in downtown San José. The Conference will include dynamic keynote speakers, approximately 80 plenary sessions covering a wide variety of topics including green/sustainable building practices, transportation, housing, as well as planner “nuts and bolts” topics, approximately 10 mobile workshops, a festive Opening Reception, California Planning Foundation Auction, Awards Luncheon, Consultant Reception, free student sessions and much more.

Downtown San José has seen a re-birth since the 1980s. Over the past 20 years, more than \$1.7 billion have been spent to revitalize the downtown area and surrounding neighborhoods as a part of the Strong

Neighborhood Initiative Program. The central business district is noted for the pedestrian-friendly scale with buildings not exceeding 20 stories. Notable buildings include the San José Museum of Art, Tech Museum of Innovation and the Adobe Headquarters. Additionally, San José is the home of several 19<sup>th</sup> Century buildings designated on the National Register of Historic Places.

**Mark your calendars for the upcoming CCAPA Conference in San José! We look forward to seeing you.**

**Please visit [www.calapa.org](http://www.calapa.org) for continuous up-to-date Conference information. For additional questions, please contact Lynne Bynder, CMP at the CCAPA 2007 Conference Office, [lbynder@meetingsxceptonal.com](mailto:lbynder@meetingsxceptonal.com).**

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**Conference information online at [www.calapa.org](http://www.calapa.org)**

# The Intersection of Planning and Law

By *Diana Varat*

The APA's Planning and Law Division (PLD) provides its members with a forum for discussing the diverse legal issues related to the planning profession. Through seminars, a quarterly newsletter, a fellowship program, and an annual writing contest, the PLD seeks to expand public discourse regarding the many ways in which the legal and planning professions intersect.

The PLD serves members from various professions and geographical locations. In November 2006, the PLD had 842 members, including land use attorneys, municipal planners, architects, and students. Over 100 of PLD's members and the majority of PLD's current leadership hail from California. The current Executive Committee includes **Chair Nicole Lacoste** of Ballard, Spahr, Andrews & Ingersoll in Maryland, **Chair-Elect Bradley Torgan**, who now serves as General Counsel for the California Department of Parks and Recreation; **Secretary/Treasurer Bryan Wenter** of Morgan Miller Blair in Walnut Creek; **Immediate Past Chair Eric Braun** of Kennedy, Covington, Lobdell & Hickman in North Carolina; and **Newsletter Coordinator Elisa Paster** of Paul, Hastings, Janofsky & Walker in Los Angeles.

The PLD seeks to keep its members apprised of current issues related to planning and law by sponsoring symposia and seminars, often in cooperation with local chapters of the APA or with other divisions of the APA. In the wake of the Supreme Court's decision in *Kelo v. City of New London*, the PLD co-sponsored a discussion on the Fifth Amendment with the APA's New York Metro Chapter. In October 2006, the PLD co-sponsored a session on ethics in cooperation with the Maryland and Delaware chapters of the APA. The PLD has also partnered with the Small Town and Rural Planning Division (STAR), the International Division, the Housing and Community Development Division, and the Transportation Planning Division, to reach a broad constituency and ensure that the legal aspects of relevant planning issues are fully addressed.

The APA's annual conference provides an excellent opportunity for the PLD to sponsor panels and support other law and planning-related groups. Each year, the PLD encourages members to attend the Bettman Symposium, sponsored by a fund established for **Alfred Bettman** and by Planning & Environmental Law, the APA's monthly digest of court decisions and commentaries relative to planning. As part of the collaboration, the PLD seeks accreditation for the Symposium to ensure that attorneys receive Continuing Legal Education (CLE) credits for their participation. Recent sessions

of the Bettman Symposium have addressed topics including the evolution of "public use" in redevelopment, the effect of the Endangered Species Act on land use, and how to effectively draft a development and annexation agreement.

The PLD newsletter, published electronically four times a year, further enables members to remain informed on current debates and court decisions related to law and planning. A recent issue of the PLD newsletter included articles on judicial decisions related to billboards and climate change. The PLD actively seeks contributions for its newsletter from APA members. If you have ideas for newsletter content, please contact the PLD's Newsletter Editor, **Elisa Paster**, at [elisapaster@paulhastings.com](mailto:elisapaster@paulhastings.com).

The PLD encourages the continued academic examination of the overlap between law and planning through both a fellowship program and a writing competition. Every semester, the PLD sponsors a fellowship for students at the advanced undergraduate, graduate, and law school levels. Two fellowships are awarded per semester to eligible students who demonstrate an interest in the interrelationship between land use planning and law. Fellows receive a stipend of \$2,000 for a five-month term of service, during which they assist the PLD with various tasks, including writing articles for PLD's newsletter and serving as a liaison between the APA and various state bar associations. In the future, fellows may also have the opportunity to work with the APA's Amicus Curiae Committee to assist in the Committee's filing of "friend-of-the-court" briefs in planning-related cases.

Lastly, the PLD sponsors the Smith-Babcock-Williams Student Writing Competition (formerly named the R. Marlin Smith Writing Competition). Each year, students in their final year of study at ABA-accredited law schools and approved planning programs compete for a monetary prize and the opportunity to have a paper published in *The Urban Lawyer*, the law journal of the American Bar Association's Section of State & Local Government Law. The PLD encourages all eligible students to submit papers on issues relevant to law and planning. The deadline to enter the PLD's 24<sup>th</sup> Annual Writing Competition is June 8, 2007.

We encourage all interested APA members to join the Planning and Law Division! For more information or to join, visit [www.planning.org/planningandlaw](http://www.planning.org/planningandlaw).

*Diana Varat is one of the Fall 2006 Daniel J Curtin, Jr. Fellows. She is currently a joint degree candidate for both a Juris Doctor and M.A. in Planning at UCLA, Class of 2008.*

# Job OPPORTUNITIES

## RBF Consulting

Founded in 1944, RBF's reputation and success are founded on our commitment to quality, professionalism and continuing innovation. When you join the RBF team, you will have the opportunity to collaborate with over 1,000 professionals and experts throughout 14 offices in California, Arizona and Nevada. You will work on a variety of urban design, redevelopment, brownfield and Smart Growth projects.

We currently have the following planning opportunities available:

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For additional information visit [www.RBF.com](http://www.RBF.com).

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Email: [hmail@rbf.com](mailto:hmail@rbf.com)

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## Planners On THE MOVE

Mead & Hunt added new team members in the Santa Rosa and Sacramento offices. Brian Walker, P.E., has joined the Water Resources team at the Sacramento office. Patrick Caylao will be an engineering technician at the Santa Rosa location. Tatiana Bukatko will serve as an engineering technician at the Santa Rosa office. Alberto Cruz, E.I.T., will be located at the Santa Rosa office.

Christine Bradley has joined EMC Planning Group Inc. as an Assistant Planner.

Dan Coleman has been appointed Director of Development Services for the City of San Dimas. Coleman was previously with the City of Rancho Cucamonga.

Environmental Science Associates (ESA) is pleased to announce that Eric Ruby has joined the firm as Vice President and Regional Director for Southern California.

RDM Design Group has added a new office in Sausalito.

Thomas Ryan, a biologist, has joined SWCA Environmental Consultants.

## CEQAmap

By Dean Coker, [CEQAdocs.com](http://CEQAdocs.com)

CEQAmap is California's free searchable database of Environmental Impact Reports, Mitigated Negative Declarations and development-related documents, including General Plans, Specific Plans, Zoning Ordinances, Design Guidelines, and Technical Studies of every kind.

Computer programmers have worked all winter to create software that now allows CEQAmap users to upload documents directly. This will enable everyone, anywhere in California, to seed the database. We currently have about 800 documents but should have 8,000. This new capability will make

CEQAmap the "Wikipedia" of planning and regulatory documents.

Additionally, CEQAmap will have a dedicated forum — a place to ask questions, exchange ideas and communicate important news between users. This feature greatly increases networking potential. Faculty and students are already big users of CEQAmap, and the forum provides a link between students and professionals. Students - you may discover your next great job. Professionals - you may discover your next great employee.

Visit [www.ceqamap.com](http://www.ceqamap.com) for more information.



## CCAPA Website User Manual

The CCAPA Website User Manual is online at the following address:  
<http://www.insitemanager.com/InSiteManagerManual/>.

Please bookmark this link for future reference.

We appreciate any feedback on ease of use, additional helpful sections, errors or inconsistencies.

**LEED-ND Is Coming**

*(continued from page 1)*

**Implications of LEED-ND**

While LEED-ND is part of the green building movement, it represents a departure from its predecessor. Where LEED-NC currently concentrates on individual buildings, LEED-ND has a wider focus, evaluating relationships between anywhere from a few buildings to whole neighborhoods.

The proposed LEED-ND rating system strongly encourages both compact neighborhood design and infill development:

- **Compact Neighborhood Design** — refers to developments that offer a diverse mix of land uses that are well-connected both internally and to surrounding neighborhoods and can garner up to 37% of the points (up to 39 of the total 106 points) necessary for LEED-ND certification.
- **Infill Development** — includes building in a previously developed area, a brownfield or an area adjacent to existing development. This is an important component of LEED-ND and its involvement in the green building movement, considering that even the greenest of buildings contribute to sprawl if they are built on the fringe of urban areas or on sensitive land that is disconnected from other land uses. Infill development not only preserves farmland, natural habitats and open space, but it also prevents the need for extending expensive and resource-depleting infrastructure to remote areas.

The standards for sustainable neighborhood design, used as the foundation for the LEED-ND concept, are deeply rooted in the Smart Growth Network’s principles of Smart Growth and New Urbanism objectives. These principles promote an appropriate density and diversity of housing types supported by commercial and recreational uses within close proximity to each other, inducing pedestrian activity and ultimately, establishing a sense of community.

The potential impact of the LEED-ND rating system goes beyond addressing purely environmental concerns and takes on a social issue that is rapidly becoming more pressing, particularly in California: affordable housing. Building a variety of housing types, including condominiums and townhouses, can help alleviate social and financial pressure related to the housing market. LEED-ND offers an incentive to do so by offering close to 10 percent of the available points for providing diverse and affordable housing.

To realize both the physical and social benefits of designing our communities more efficiently, LEED-ND objectives must be thoroughly and diligently implemented

through the planning process. First, public agencies will be responsible for enforcing these sustainable planning and design principles through regulatory tools such as zoning codes, General Plan objectives and design guidelines. Then development plans, such as master, strategic, and specific plans, must be held to similar standards, ensuring that new projects also meet the level of quality prescribed through LEED-ND. Finally, incentives that will inherently save the project applicant time and money, such as streamlining the permitting process for projects pursuing LEED-ND certification, will be an important component to ensure LEED-ND’s success.

**Public Agencies Implementing Sustainable Principles**

Public planning agencies are starting to realize the benefits of sustainable site and building design concepts, such as LEED-ND, and are incorporating these principles into their planning processes through regulatory tools and incentives.

Major metropolitan areas are already leading the sustainable development charge:

- **Boston** — Mayor Thomas M. Menino’s Green Building Task Force is working to incorporate LEED™ Standards into the City’s Zoning Code. In fact, the City is in the final steps of amending the Boston Zoning Code to require all large projects over 50,000 square feet to be planned, designed and constructed as LEED™ certified projects. Boston will become the first major city in the nation to require adherence to the USGBC LEED™ Certified standard as part of the private development review process.
- **Seattle** — Seattle’s Planning Commission recently endorsed the “Seattle Green Factor” as an element of the proposed legislation to update the city’s Commercial Code. The initiative is aimed at reducing open space requirements by essentially replacing them with “environmentally-beneficial landscaping.” Among other objectives, the initiative will act as an incentive to developers to provide more efficient landscaping by awarding credit for improvements, such as larger tree canopies, vine-covered walls, drought-tolerant plants and “green roofs” topped with at least four inches of soil and vegetation to help naturally process rainwater. The city is leading by example as members of the city’s Park and Recreation Department recently installed a green roof atop Seattle’s City Hall building.
- **Portland** — The City’s Office of Sustainable Development has developed the City of Portland Green Building Policy, which establishes incentives to build LEED™ certified projects by tagging them early in the design review process

*The potential impact of the LEED-ND rating system goes beyond addressing purely environmental concerns and takes on a social issue that is rapidly becoming more pressing, particularly in California: affordable housing.*

**LEED-ND Is Coming**

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and enabling them to move quickly through the review process and receive additional planning staff support.

- **Arlington County, VA** — Arlington County in Virginia has developed a LEED™ scorecard through its green building incentive program aimed at strengthening commitment to sustainable communities and green buildings. All site plan applications in Arlington County are required to include a completed LEED™ scorecard. The scorecard encourages the developer to include green components in a project while giving the county the ability to measure a project's overall sustainable design performance. The program also includes incentives, such as density bonus potentials for achieving one of the four LEED™ green building certifications, and a Green Building Fund (based on a contribution from developments throughout the county) that provides additional certification assistance.



*City of Seattle*

**LEED-ND Today**

Recently, the LEED-ND Core Committee — made up of 15 members selected by the USGBC, the Congress for the New Urbanism (CNU) and the Natural Resources Defense Council (NRDC) — further defined the LEED-ND certification procedure by introducing a three-stage process:

- **Stage 1** — Optional Pre-Review (a letter will be issued).
- **Stage 2** — Certification of an Approved Plan (a letter will be issued).
- **Stage 3** — Certification of a Completed Neighborhood Development (certification plaque will be issued).

In essence, this three-stage process allows a neighborhood development project to be submitted for LEED-ND certification in the conceptual planning stage, where the project

will be peer-reviewed by the Committee to ensure it meets the established prerequisites and list of criteria. Although this stage is optional, it provides a great opportunity to get feedback from the Committee before continuing on with the certification process. The plan can then proceed to the second stage once the project has been granted any necessary entitlements to build the project to site and development plan specifications. The final verification of the plan and presentation of a plaque will occur once the project is actually implemented through construction.

In an effort to continue to fine tune the LEED-ND rating system and test the criteria, the USGBC is calling for up to 120 pilot projects early this year. This pilot phase will last for approximately one year. As the committee has not yet developed restrictions on the types or sizes of projects able to certify under LEED-ND, it is expected that the committee will accept a variety of projects to test all aspects of LEED-ND, but infill projects are clearly encouraged.

As part of this pilot project review, LEED-ND will also be taking applications from retailers who want to be part of the green movement by opening or relocating their businesses in a pilot neighborhood. High-profile developers and politicians, including Chicago Mayor Richard M. Daley, have signed on to promote that effort and will work with the USGBC to get that program off the ground.



*US Green Building Council*

**Where Do We Go From Here?**

**Fact:** Urban form plays a critical role in influencing our environmental, social and physical health.

**Challenge:** As a society that depends heavily on a finite stock of non-renewable resources, how can we plan and design our neighborhoods for a more sustainable future?

Programs such as LEED-ND challenge the planning, design and building industry to recalculate our approach and think proactively.

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CALIFORNIA PLANNING FOUNDATION

## California Planning Foundation 2007 Workshop Form

MAKE CHECKS PAYABLE AND MAIL OR FAX TO: California Planning Foundation  
 c/o Meetings Xceptional  
 40747 Baranda Court  
 Palm Desert, CA 92260  
 Phone: 760.799.2740 Fax: 760.674.2479

Cost: \$100 APA Members  
 \$135 Non-APA Members  
 \$35 Students

Two locations to choose from: \_\_\_\_\_ Friday, May 4, 2007 – San Francisco, CA \_\_\_\_\_ Friday, May 4, 2007 – Santa Monica, CA

Name	Phone	
Organization	Fax	
Address	E-mail	
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## Sponsor Registration Form

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Sponsorships are \$300 – Sponsors are acknowledged on the CPF website, on all workshop promotional materials and announced during the workshop. A check for \$300 should accompany this registration form and mailed to CPF at the above address. For more details, contact lbynder@meetingsxceptional.com or visit our website at [www.californiaplanningfoundation.org](http://www.californiaplanningfoundation.org).

### LEED-ND Is Coming

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The measures promoted through LEED-ND can be achieved now and are starting to be realized through mandated and incentivized programs that public agencies have employed. Through a certification process, LEED-ND will provide an avenue to assess objectively whether developments are practicing and implementing the sustainable principles that they preach. LEED-ND will “create a label, as well as a set of guidelines for decision-making, which could serve as a concrete signal of, and incentive for, better location, design, and construction of neighborhoods and buildings” (USGBC).

*As a LEED-Accredited Professional and Senior Planner with RRM Design Group, Dave Javid has worked on many projects planned and designed using sustainable principles as the foundation, including selected projects that will be submitted for LEED-ND pilot project consideration.*

#### Resources:

- U.S. Green Building Council – LEED ND:  
<http://www.usgbc.org/LEED/>
- City of Boston – Green Building Task Force:  
<http://www.cityofboston.gov/environmentalandenergy/>  
<http://bostongreenbuilding.org/>
- City of Seattle – Seattle Green Factor:  
<http://www.seattle.gov/dpd/GreenBuilding/>
- City of Portland - Office of Sustainable Development:  
<http://www.portlandonline.com/osd/>
- County of Arlington, VA - LEED Scorecard:  
<http://www.arlingtonva.us/>