



# CAL Planner

NOVEMBER - DECEMBER 2005

## Katrina and the Planners

# Recovering New Orleans

By James A. Clapp

*And, behold, I, even I, do bring a flood of waters upon the earth, to destroy all flesh, wherein is the breath of life, from under heaven; and every thing that is in the earth shall die.*

*Genesis 6:17*

In the annals of urbanism, such things have happened innumerable times. Floods, volcanoes, earthquakes, fires, plagues and pestilence, the scourges of Mother Nature, and war, the perennial pastime of human nature, have brought cities low. Planners, whether they were called that or not, were always involved in some way or another, building fortifications and dikes, arranging land use, showing concern for health and safety.

With hurricane Katrina, *Fortuna*, the goddess of luck, came up snake eyes for New Orleanians and their neighbors. It was a perfect storm for an imperfect system of land use and emergency defense and preparedness. Now planners

might just become necessary to adjust the odds with Mother Nature; they might have to provide some rational assurance to returnees, investors, and insurance underwriters, so that a few

more generations might make it through a city nine feet below sea level with a water table that can make your feet squishy.

Can planners ensure the recovery of New Orleans? Nobody, it seems, stays or leaves cities because of the "say-so" of planners. If they did,

there would be fewer cities astride fault lines, in flood plains, on volcanic slopes, in hurricane or tornado alleys, or in the climes of plagues and pestilences.

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# Letter from the PRESIDENT

By Jeri Ram, AICP, CCAPA President



It is hard for me to believe that an entire year has passed since I became President of CCAPA. Due to the deadlines for publishing this newsletter, this is the first opportunity I have had to address the tragedy of the hurricanes in the South of our country.

In September, I attended an APA Leadership Meeting in Buffalo, New York. The Chapter Presidents from all over the United States as well as our National Leadership spent many hours discussing planning issues involved with rebuilding the areas devastated by Hurricanes Katrina and Rita.

At that meeting, we worked on an organizational strategic framework to effectively respond to the needs of our members and everyone in the affected areas. The Board of Directors adopted a statement outlining APA's response to recovery from Hurricane Katrina, including key planning principles to make the recovery most effective and equitable.

I was pleased to hear that APA was one of the first responders in the recovery of the area. Many of you may have heard **Paul Farmer, APA's Executive Director**, speak on the contributions APA is making on National Public Radio – but for those of you who did not hear - I wanted to convey to you a little of what APA is doing:

- Pro-bono Planning Assistance Teams of APA's Professional Institute, AICP, will work with the impacted communities, on location, offering their assistance, expertise, and knowledge. The volunteer experts will help community leaders address a variety of planning, rebuilding, hazard mitigation, and other needs.
- At the request of local officials and FEMA, APA is providing a five-person team to evaluate and make recommendations regarding the planning function in New Orleans. The team, headed by Fort Worth Planning Director Fernando Costa, AICP, and including Bob Lurcot, former Planning Director of Pittsburg; Chandra Foreman, an urban planner from Tampa, Florida; and Rich Roths of URS Corp., will be in residence three weeks, working with local planners and officials. APA anticipates providing teams of this type to other impacted communities.
- APA has created a page listing offers of temporary employment for planners displaced by the hurricane. We know that many of our members have been directly affected and may need housing or jobs. <http://www.planning.org/katrina/tempjobs.htm>
- We have created a resume posting section for members and others who wish to provide pro bono services.



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Many of our members have experienced floods, wildfires, earthquakes, and other disasters and can offer valuable assistance to their colleagues and communities in these states. <http://www.planning.org/katrina/volunteering.htm>

- APA will provide a workshop at the Louisiana Chapter Conference October 6-8, 2005 on Recovery Planning. Faculty will consist of international experts who have provided disaster recovery assistance in places such as Australia, Sri Lanka, Japan, and several countries of Latin America as well as within the U.S.
- APA is collaborating with Congressional offices on federal legislation related to Safe Growth, rebuilding initiatives, and a variety of issues such as housing, transportation, and the environment.
- APA will sponsor a summit of design profession organizations, to discuss how to leverage each other's efforts.
- APA will create a "kitchen cabinet" sounding board, for discussion of various strategies, in conjunction with Tulane University and key business leaders.
- APA will support education and constituent building (long-term support-building) using schools as "centers of community," building a planning curriculum in Gulf Coast schools, special planning projects by community members and school kids, and establishing a potential link with the Gates Foundation.
- APA will coordinate circuit-riding planners to assist small communities to bring the discussion to the residents in a variety of venues, utilizing volunteer planners, AICPs, Fellows, and so on.
- APA has a special "Katrina" section of the website that will allow us to continuously add both educational materials and functions. [www.planning.org/katrina](http://www.planning.org/katrina)
- AICP Training provided a Safe Growth workshop in Washington, D.C. in September. This workshop was originally planned as part of our "super topic" curriculum on Safe Growth, which has been a focus of APA for the past two years. This specific workshop curriculum was modified to focus more on disaster recovery and mitigation planning.

*APA was one of the first responders in the recovery of areas hit by hurricanes Katrina and Rita.*

- The Planners Toolkit section of Planning for Post-Disaster Recovery and Reconstruction, PAS Report 483/484, the first all-hazards guidance manual for local planners developing plans for post-disaster recovery and reconstruction is available for free online. This manual includes a model ordinance and case studies of five different hazard scenarios — flood, earthquake, tornado, wildfire, and hurricane. The report also offers planning tools for managing long-term community recovery after a natural disaster.
- APA is also continuing coordination of our efforts with other professional organizations and associations. As planners at the local level are making contacts with local Congressional leaders, our Policy staff in D.C. is making contacts as well.
  - APA offered a new audio conference called "Disaster Recovery," free for planners and others in the Gulf region. More than 250 people participated. The conference focused on emergency permitting, visioning the next steps, rebuilding local businesses, historic preservation, and FEMA long-term recovery planning.
- APA is soliciting gifts to the Planning Foundation of APA that will be used exclusively to support the planning efforts that will be undertaken by APA and our chapters in Louisiana and Mississippi. While we will be coordinating pro bono efforts of members, those efforts, and others, will require financial support. Tax-deductible donations to the Planning Foundation should be noted as "Katrina relief." <http://www.planning.org/foundation/default.htm>
- APA is developing a special conference track for the National Planning Conference in San Antonio in April 2006, to educate our members about disaster mitigation and recovery.

After attending the National Leadership Meeting and meeting and participating in the exchange of ideas on this issue as well as others, I can convey to you that at least from my perspective, APA is doing a great job.

At the State APA Conference in Yosemite, donation areas were set aside to collect money for APA's planning efforts for the hurricane recovery. I am happy to say that California contributed more than \$6,000 towards APA's efforts. This does not include what some of you may have contributed separately from the conference.

Since this is my last message to you this year, in closing I want to wish everyone peace and good health in the new year.

## Recovering New Orleans

*continued from page 1*

Since they stopped working for conquerors, kings, and popes, planners have not had much say in the location of cities. In any case, if New Orleans is to recover, it must do so *com'era, dov'era*, as the Venetians once said, "as it was, where it was." New Orleans can't be itself anywhere else; it must be the new (old) New Orleans, making its namesake in France more remote. No one would expect the home of the blues, zydeco, unique cuisine, and a stew of local lore that includes Jean Lafitte, Old Hickory, voodoo, Storyville, Jackson Square, and the Vieux Carré to be relocated to ground that is high and dry.

While location and history are immutable, "New Orleansians" are not. No city is the same today that it was yesterday. People remember cities differently, and there are always new and different people repopulating a city.

Poet Andrei Codrescu knows New Orleans well and feels that it has had a great period. Now it's going to sink into some kind of glorious mess, like Venice, and become just a tourist spot. People will come to gamble in the casinos and feel the grandeur of what was once there, which the tourist bureau will do its best to recreate.

Perhaps.

But a certainty is that House Speaker Dennis Hastert's suggestion that the place might be bulldozed will be declined in favor of the politics of presidential contrition and popularity-rating repair. With \$150 billion or more to be poured into the region, the queue of especially favored corporations like Halliburton, Bechtel, Fluor, and others, is already forming. Business interests are lining up not only for what is spent on reconstruction, but also for what profitable prospects lie in the land use decisions yet to be made.

The recovery of New Orleans will likely involve a recasting of land ownership and the land use pattern. In this midst of this, the question might not be whether planners will be intimately involved in this process, but whose planners.

Local and state planners may quickly find themselves overwhelmed - or compromised - in such an environment. Planners who represent concerns of local demographic cohorts, such as the poor and near-poor, may find themselves on the opposite side of the table from some of their professional brethren.

Playing heavily into these matters are more obvious plannerly concerns. For New Orleans not to be a Venice on the Gulf, the disappearance of the tidal marshes will have to be arrested according to some environmental and geological planners - for these are the marshes that used to provide protection from storm surge. According to civil engineers, improved levees will also be an expensive element in providing protection, assuaging investment fears, and lowering insurance fees. There is also need for substantial re-investment in the port and petroleum refineries if the economic base beyond tourism is to be revived.

Two other variables merit consideration by planners.

New Orleans was losing population for some years before the arrival of Katrina. The city might well have been past its prime, living already as Codrescu foretells on its cultural legacy and conventions and Super Bowls, and looking to casino gambling for fiscal succor. That is in some measure reflected in the fact that a very high proportion of New Orleansians are impoverished, a circumstance made clear to anyone watching CNN who may have had doubts. It may be that many of those who were trapped in the city were just as trapped socially and economically as they were geographically. So it will make little recovery sense to some planners and politicians to expend funds to accommodate the return of residents, specifically if they concur with Barbara Bush that the victims are better off elsewhere. Some planners might even see Katrina as providing an opportunity to balance the social profile of the Crescent City.

Secondly, New Orleans has been notoriously corrupt politically. And although there are many victims of the disaster who call local and state politicians and officials to account, the aggrieved are mostly scattered in the post-Katrina diaspora and might be soothed with FEMA debit cards and other political blandishments. If history is instructive in the matter, urban recovery will be the handmaid of political recovery. To the consternation of many planners, 'Nawlins is likely to remain what one wag said of it well before Katrina: A city that seemed to float up from some Central American banana republic and attach itself to the bottom of the United States.

In a generator-lit Jackson Square kept clear of residents by a cordon of National Guard, one could almost hear strains of Dixie as George Bush announced that a recovery program was in the works that rivals the program for putting Iraq back together. New Orleans will rise again he prophesied, as he borrowed the secessionist refrain and doubtless hoped his approval polls will likewise rise. But if it cannot rise above sea level, New Orleans will not rise high enough. The enemy is the Gulf of Mexico, said Roy K. Dokka, a professor of engineering at Louisiana State. If you're at sea level and the National Weather Service tells you you're going to have a 20-foot storm surge, you need to have a wall more than 20 feet high.

New Orleans will rise again in some fashion, in defiance of nature, and with deference to its sunk costs. Planners will do their part. They will mitigate what they can of the whims of Mother Nature and accommodate as best they can to the human nature of politics.

Perhaps they can raise the odds a couple of points in New Orleans' favor. But the waters will rise again, too.

*James A. Clapp, Ph.D. is Emeritus Professor of City Planning and Urban Affairs at San Diego State University. He was recently a Fulbright Scholar in Hong Kong and a Visiting Professor of Urbanism and Media at the University of Paris. His latest book, This Urban Life: Writing About Cities for Multiple Media, (2005) contains other essays on urban disaster and recovery and is available from Amazon.com.*

# Commissioner's CORNER

## *Who Makes the Best Planning Commissioner?*

By Kathy Garcia, FASLA



As appointed by Mayors, Supervisors, or City Councils, Planning Commissioners are a diverse group of people. Some are trained

professionally in the planning and development industry; others are interested community members concerned about their quality of life, while others are appointees who have assisted or supported elected officials.

Is it better to have a lay Commission that represents diverse interests? Or is it more appropriate to have a professionally trained Commission to ensure informed planning decisions?

Of course there is no right answer, but I ask the question to better understand a trend afoot.

My jurisdiction (City of San Diego) has appointed mostly professionals during my five-year tenure. Currently, we have two architects (one of whom practices as a developer), two landscape architects, an environmental activist, a real estate professional, and an attorney who specializes in affordable housing.

Many have said that when Commissioners come from land use professions, they are highly informed, i.e., "you can't pull the wool over their eyes." Others feel that commissions need to include more community activists. While some say neighborhood appointments may be more concerned with local rather than community-wide issues; such appointments might also have less of an issue with conflict of interest since clients in the development industry won't be an issue.

I learn a tremendous amount from my fellow Commissioners. There are usually seven points of view for any one issue, and while we often reach a consensus, we do so for different reasons. The architect can predict how a policy decision will look as a built project. The environmentalist is quick to point out the cumulative impacts. The landscape architect can spot a grading debacle. The real estate professional knows

what it is like to operate condominium conversions. These are all important issues in our jurisdiction, and ones that a trained eye recognizes immediately. But are we missing other voices? Possibly.

No matter who is on the Commission, the charge remains good planning.

Some will always feel that the Commission should have more professional expertise than it does – and some will feel just the opposite and encourage more community member participation. Rather than debate the makeup of a politically-appointed body, perhaps our energies should be put into something far more productive: giving Commissioners a true representation of the issues at hand.

How often have we heard a special interest thinly veiled as a community interest? We have all observed the developer who enlists hordes of supporters to drown out the opposition that may more clearly represent the community's desire. Who hasn't seen a community representative portraying a personal opinion as the belief of many when, in fact, it's just the sentiment of a few?

What means do we have to get to the root of an issue and true community representation? As Commissioners, we are all residents of the community as well. We must be careful to weigh our own opinions with that of those testifying. And most importantly, we must look to make the findings that benefit all citizens in our jurisdictions – not just those vocal enough to voice their opinions.

The debate will rage on regarding the makeup of appointments. We look to elected leadership to be both fair and informed and not to favor any one direction, to give the community what it deserves: excellent planning.

As for our responsibility as Commissioners, we need to charge ahead, listen intently, and ask the intelligent questions to get to the core of an issue.

Whether professional or activist, any concerned citizen can do that. Planning Commissioners must.

*Kathy Garcia, FASLA can be contacted at 619.696.9303 or kgarcia@SD.wrttdesign.com.*

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## Letter from the EDITOR



### ***Planning Pioneer Passes Away***

*Samuel J. Cullers passed away on September 28, 2005. He served in numerous planning areas, and specifically served in various state chapters of APA. Specific to California: he served as the Chief of Urban Planning for the State of California's State Office of Planning; Vice President, Planning and Environmental Affairs for Engineering Science, Inc.; and in 1972, he opened Samuel J. Cullers & Associates.*

*Other professional activities included Jury of Awards; CalChapter; APA Director, Sacramento Valley Section; and Council of State Planning Agencies, among others. He was also the founder of the Sacramento Chapter and served as International Vice President, West.*

*Source: Sacramento Bee.*

*Property rights issues, always at a simmer, are starting a slow boil in California. But knee-jerk reactions don't help anyone's cause.*

By Stephen Silverman, AICP

It's never been clear to me that axioms and adages are especially useful beyond providing something to say when a need arises. Perhaps it's for the best. A man's gotta do what a man's gotta do. Make no small plans.

I've been thinking about axioms because two have been buzzing in my head. They're caused by news about legislation that directly affects our profession. One of the buzzers is the old line that laws are like sausages, it's better not to see them made. The other is more grandiose: The mills of the gods grind slowly, but they grind exceedingly fine.

For my part, the first one is pretty close to Truth; the second is something we merely hope is true.

Oregon's Measure 37, about which Terry Rivasplata wrote in the July/August issue of *CalPlanner*, was about a 2004 law that entitled a landowner to compensation if a regulation reduced property value. Public agencies were deeply concerned the law was going to migrate into California and – in what was not much of a surprise – there were some hasty attempts to introduce similar measures in the Golden State.

But in the middle of October 2005, along comes an Oregon court declaring that the measure is unconstitutional. Seems it violates five provisions of the state and federal constitution. The jury is still out on this one of course. An appeal to the Oregon Court of Appeals and, eventually, to the Oregon Supreme Court is inevitable. Maybe the uncertainty will slow down die-hard California property rights advocates. Or not.

The second bit of legislative angst involves Kelo, the subject of Ron Bass' article in the last issue of *CalPlanner*. Kelo was the 2005 U. S. Supreme Court decision that upheld the use of eminent domain to promote economic development.

Rather than rejoicing, many public agencies in California were concerned about the decision. The principal worry was that Kelo could be read so broadly that some would see it as devastating to private property rights. Moreover, it was feared that the reaction to Kelo might limit the use of eminent domain by public agencies. Eminent domain, obviously, is a major tool for redevelopment.

There was a flurry of activity in the state legislature after the Kelo decision and, in the October/November *CalPlanner*, Sande George summarized three bills that had been introduced. Kelo still remains a very hot topic.

But here's the thing: It seems that the responses to Kelo are wholly predictable based on who is doing the talking. California redevelopment agencies say the state requirement to prove blight means the use of eminent domain is not only thoughtful, but also essential to carrying out redevelopment programs. Property rights folks – and others – think the argument about blight and careful application of eminent domain is a crock; they round up all sorts of examples where the use of eminent domain seems capricious if not downright avaricious.

For a thoughtful follow-up to Ron Bass' article from last month, read the piece in this issue by Kevin Reese and Scott Sheppard on eminent domain issues in San Diego.

Which ultimately brings me to the last adage: Nothing is simple.

# Legislative UPDATE

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



## 2005 Legislative Wrap-Up

The Legislature is now in recess until January 4th, and the Governor has finished his signing and vetoing of measures sent to his desk this session. Below is a list of the hot bills that CCAPA lobbied this year.

As you can see, by the end of session, there were very few significant planning bills that were signed other than a few housing-related measures. But, there were a number of bills left on the table before the Legislature adjourned. They are expected to be back in 2006. These two-year bills, which are dead for this year but can be resurrected in January, would restrict the use of eminent domain, impose penalties on jurisdictions that do not have an HCD-approved housing element, require updated general plans to deal with flood, air, and asbestos hazards, and develop a bond measure to provide local planning and infrastructure funding. Also expected next year are the Governor's and others' proposals to amend CEQA, provide for a 20-year supply of housing, and provide transportation and goods movement infrastructure. And, once again, there will most likely be a bill to amend and expand density bonus law.

If you would like a copy of any of these bills, or an analysis of the measures, just go to the CCAPA website legislative page at [www.calapa.org](http://www.calapa.org).

### **AB 528, Frommer, Private right of action to bring nuisance suits – OPPOSE**

This bill would authorize any person with a beneficial interest in the outcome to bring a civil action against any person to enforce laws, including regulations, permits, and orders issued pursuant to those laws, that provide for the protection or enhancement of public health or the environment.

*TWO-YEAR BILL*

### **AB 549, Salinas, Self-certification and production-based housing elements – SUPPORT**

This bill would establish a self-certification, production-based housing element pilot program as an alternative means of determining whether a housing element substantially complies with housing element law.

*TWO-YEAR BILL*

### **AB 590, Walters, Eminent domain: Private property – REVIEW AM**

This bill would provide that "public use" under eminent domain law does not include the taking or damaging of property for private use, including, the condemnation of property for economic development.

*TWO-YEAR BILL*

### **AB 648, Jones, Development projects: disclosure requirements – NEUTRAL AS AM**

Existing law requires each state agency and each local agency to compile one or more lists that specify in detail the information that will be required from any applicant

for a development project. This bill would require that the lists additionally include the identity of the persons or entities that will own, lease, or occupy the project, if different from the person or entity applying for the development permit, if that identity is known to the applicant at the time of the application.

*Vetoed by the Governor*

### **AB 712, Canciamilla, Land use: density – NEUTRAL AS AM**

This bill would extend existing law prohibiting local jurisdictions from downzoning sites below the number of units that are needed to meet that jurisdiction's housing element inventory or adequate sites program, to sites not identified in a local jurisdiction's housing element. It would prohibit these sites from being downzoned below 80% of the maximum allowable residential density for the site unless the city or county finds such sites are not needed to meet the housing element requirements. It would also extend existing law allowing for attorney's fees where such law is violated.

*Vetoed by the Governor*

### **AB 1162, Mullin, Eminent domain – REVIEW AM**

This bill would prohibit, until January 1, 2008, a community redevelopment agency, or community development commission or joint powers agency, from exercising the power of eminent domain to acquire owner-occupied residential real property if ownership of the property will be transferred to a private party or private entity.

*TWO-YEAR BILL*

*continued on page 8*

**AB 1192, Villines, Public works: Prevailing wages: affordable housing – SUPPORT**

This bill would exempt from the definition of “public work” and the prevailing wage requirements the construction, expansion, or rehabilitation of affordable housing units for low- and moderate-income persons performed by a nonprofit organization.

TWO-YEAR BILL

**AB 1227, Torrico, Housing: Discrimination – NEUTRAL AS AMENDED**

This measure originally would have required attorney’s fees and costs to be paid to any successful plaintiffs litigating under laws relating to discrimination and planning moratoriums. Those provisions were removed from the bill, but the bill still expanded circumstances under which housing discrimination could be alleged and when attorney’s fees could be awarded.

Vetoed by Governor

**AB 1233, Jones, Housing element: Regional housing need – SUPP AS AM**

This bill would require for housing elements due on or after January 1, 2006, that any portion of a local government’s share of the regional housing need as identified in the adequate sites assessment and inventory that remains unprovided for at the end of one planning period be carried over into, and provided for, in the next planning period.

SIGNED BY THE GOVERNOR AND Chaptered by the Secretary of State, Chapter Number 614

**AB 1259, Daucher, Property tax revenue allocation – OPPOSE**

This bill would, beginning with the 2006-07 fiscal year, require the county auditor to increase the total amount of ad valorem property tax revenue otherwise required to be allocated to a qualified city or county, by a housing bonus amount. This bill would also require the county auditor to commensurately reduce the total amount of ad valorem property tax revenue otherwise required to be allocated to all other local agencies in the county by the countywide housing bonus amount. This bill would define a qualified city or qualified county as an entity that has exceeded 80% of the Regional Housing Needs.

TWO-YEAR BILL

**AB 1367, Evans, General plans: Regional housing need – OPPOSE**

This bill would prohibit a state, local, or regional agency, or any other governmental entity from enacting regulations applicable to a city or county’s fair share of the regional housing needs that are contrary to the land use determinations made in compliance with locally adopted land use initiatives.

TWO-YEAR BILL

**AB 1387, Jones, CEQA: Residential infill projects – REVIEW AM**

This bill would authorize local governments to approve residential projects in infill sites in urbanized areas without having to mitigate for traffic impacts.

TWO-YEAR BILL

**AB 1433, Emmerson, Public finance contracts – OPPOSE**

This bill would specify that the approval, sale, or issuance of bonds by a state or local government shall not constitute a project approval triggering a California Environmental Quality Act (CEQA) review, unless a state or local government specifically determines that the approval, sale, or issuance of bonds, or limited project approval constitutes approval of the project under CEQA.

TWO-YEAR BILL

**AB 1450, Evans, Land use: Density bonus – SUPP IF AM**

This bill would clean-up and clarify various sections of the density bonus law related to moderate income resale restrictions.

TWO-YEAR BILL

**AB 1665, Laird, Flood control – REVIEW AM**

This bill would require the Department of Water Resources to prepare a schedule for mapping areas at risk of flooding in the Sacramento and San Joaquin Rivers drainage, and, thereafter, to update the schedule annually. It was the vehicle to deal with liability for flood damage.

TWO-YEAR BILL

**ACA 15, Mullin, Eminent domain: Redevelopment – REVIEW AM**

This measure would set forth a constitutional provision prohibiting a redevelopment agency from acquiring property through the exercise of the power of eminent domain unless it first makes a written finding that the property contains conditions of both physical and economic blight.

TWO-YEAR BILL

**ACA 22, La Malfa, Eminent domain: Condemnation proceedings – REVIEW**

This measure would add a condition that private property may be taken or damaged by eminent domain proceedings only for a stated public use and only upon an independent judicial determination on the evidence that the condemnor has proven that no reasonable alternative exists. The measure would require that the property be owned and occupied by the condemnor, except as specified, and used only for the stated public use.

TWO-YEAR BILL

**SB 17, Escutia Property tax: Change in ownership – SUPPORT**

This bill would authorize a split-roll property tax, authorizing a substantial increase in the property taxes paid by publicly-traded businesses.

TWO-YEAR BILL



Legislative Update

*continued from page 8*

**SB 44, Kehoe, General plans: Air quality element – SUPP AS AM**

This bill would require the legislative body of each city and county located in non-attainment areas to either adopt an air quality element as part of its general plan, or amend the appropriate elements of its general plan to include data and analysis, comprehensive goals, policies, and feasible implementation strategies intended to contribute to and complement other local, regional, state, and federal strategies to improve air quality.

TWO-YEAR BILL

**SB 53, Kehoe Redevelopment – REVIEW AM**

This bill would require redevelopment plans to contain a description of the agency's program to acquire real property by eminent domain, including prohibitions, if any, on the use of eminent domain, and a time limit for the commencement of eminent domain proceedings. (SB 1026, which would have created a two-year moratorium on the use of eminent domain on owner-occupied residential real property for private use, was amended into a completely different bill, and all eminent domain provisions deleted.)

TWO-YEAR BILL

**SB 223, Torlakson, Infill housing – SUPP AS AM**

This bill would establish the Job-Center Housing Planning Program to be administered by the Department of Housing and Community Development for the purpose of providing loans, to the extent funds are made available for this purpose, to cities, counties, and cities and counties to adopt specific plans that provide for additional infill housing opportunities.

TWO-YEAR BILL

**SB 321, Morrow, Development: Fees – OPPOSE**

This bill would amend California's Mitigation Fee Act to require, in any action establishing, increasing, or imposing a fee by a local agency as a condition of approval of a development project, a test similar to the Supreme Court's "rough proportionality" test. It would place the burden on the local agency to show that their mitigation fees don't exceed the costs of the cost of the public facility, service, or regulatory activity.

TWO-YEAR BILL

**SB 326, Dunn Land use: Housing elements – SUPPORT**

This bill expands existing law to provide that any attached housing development (other than mixed use) is a permitted use not subject to a conditional use permit in a residential zone if various criteria are met. The bill would make these provisions applicable to all cities and counties, including charter cities.

SIGNED BY THE GOVERNOR AND Chaptered by the Secretary of State, Chapter Number 598

**SB 427, Hollingsworth, California Environmental Quality Act: Exemption: CAL-TRANS: Right-of-ways – OPPOSE**

This bill would exempt from CEQA requirements the expansion of an existing overpass, onramp, or offramp that is built on an easement or right-of-way under the control of a state or local transportation agency, or a city, county, or city and county.

TWO-YEAR BILL

**SB 435, Hollingsworth, Housing: Density bonuses – NEUTRAL AS AM**

This bill makes several technical and clarifying changes to the density bonus law.

SIGNED BY THE GOVERNOR AND Chaptered by the Secretary of State, Chapter Number 496

**SB 521, Torlakson, Local planning: Transit village plans – SUPPORT**

This bill would require a transit village plan to include a transit station and a parcel, at least 1/2 of which is within not more than 1/4 mile of the exterior boundary of the parcel on which the transit station is located or parcels located in an area equal to the area encompassed by a 1/4 mile radius from the exterior boundary of the parcel on which the station is located.

TWO-YEAR BILL

**SB 575, Torlakson, Housing development projects – NEUTRAL AS AMENDED**

This bill makes various changes to the anti-NIMBY law. This bill requires a city or county to have met or exceeded its regional housing need for lower and moderate income housing before the jurisdiction may disapprove an affordable housing development based on lack of need.

SIGNED BY THE GOVERNOR AND Chaptered by the Secretary of State, Chapter Number 601

**SB 655, Ortiz, Asbestos – REVIEW AM**

This bill would require the notice of intention filed with the application for a public report to include a statement indicating that the property is within an asbestos hazard zone and to provide a specified notice. It would require new asbestos hazard maps to be completed by the state, and then would require those jurisdictions with areas found to include asbestos hazards to adopt best management practices developed by a task force into local agency rules, regulations and ordinances as the local agency deems appropriate.

TWO-YEAR BILL

**SB 725, Morrow, Land use regulation: Compensation – OPPOSE**

This bill would provide that if a state or local public entity enacts or enforces a new land use regulation that restricts the use of private property or any interest therein and has the effect of reducing the fair market value of the property or interest by 25%, then the owner of the property or interest shall be paid just compensation.

TWO-YEAR BILL

*continued on page 10*

**SB 832, Peratam CEQA: Infill development – SUPPORT**

Existing law exempts from CEQA a residential project located on an infill site within an urbanized area that meets specified criteria, including that the site of the project is not more than 4 acres in total area and the project does not contain more than 100 residential units. This bill would provide an alternative to those criteria if the site is located in a city with a population of more than 200,000 persons, the site is not more than 10 acres, and the project does not have fewer than 200 or more than 300 residential units, as adopted by a resolution of the city council.

*TWO-YEAR BILL*

**SB 843, Dunn, General plans: Housing elements – REVIEW AM**

This bill would require a court, on a finding by HCD that there is not substantial compliance with the housing element law by a city or county, to levy a fine on the local entity and award attorney fees. The bill would require the Controller to levy a fine of \$5,000 per month or \$0.25 per month per person in the jurisdiction, whichever is greater. The bill would provide that all fines shall accrue to a new Housing Supply Account.

*TWO-YEAR BILL*

**SB 948, Murray, CEQA: environmental impact reports: Short form – OPP UNLESS AM**

This bill would require a lead agency to prepare a short form environmental impact report for a project subject to CEQA if the lead agency has determined that the project consists of a residential development combined with one or more qualified urban uses, is located within the boundaries of an incorporated city or within an unincorporated area designated in an approved local general plan for residential development, and is consistent with specified land use requirements.

*TWO-YEAR BILL*

**SB 1024, Perata, Public works and improvements: Bond measure – SUPPORT**

This bill would enact the Safe Facilities, Improved Mobility, and Clean Air Bond Act of 2005 to authorize \$10,275,000,000 in state general obligation bonds for specified purposes, including the state transportation improvement program, passenger rail improvements, levee improvements, flood control, restoration of Proposition 42 transportation funds, port infrastructure and security projects, trade corridors of significance, emissions reduction projects, environmental enhancement projects, transit-oriented development, transportation needs in cities, counties, and cities and counties that meet certain requirements relative to provisions of housing needs in their communities, and housing, regional growth, and infill development purposes, subject to voter approval.

*TWO-YEAR BILL*

**SB 1059, Escutia, Electric transmission corridors – OPPOSE**

This bill would authorize the Energy Commission to designate a transmission corridor zone on its own motion or by application of a person who plans to construct a high-voltage electric transmission line within the state. The bill would require local general plans to be amended to be consistent with the designated transmission corridor zones.

*TWO-YEAR BILL*

**SB 1087, Florez, Housing elements: Services – NEUTRAL AS AM**

This bill would require that the adopted housing element and any amendments be delivered immediately to all public agencies or private entities that provide water or sewer services. It would require, on or before July 1, 2006, that these public agencies or private entities adopt written policies and procedures, and at least once every 5 years thereafter, with specific objective standards for provision of priority water or sewer services to affordable housing projects.

*Signed by the Governor*

**SB 1099, Hollingsworth, Eminent domain: Agricultural property – REVIEW AM**

This bill would prohibit the exercise of the power of eminent domain to acquire agricultural property for public use.

*TWO-YEAR BILL*

**SCA 12, Torlakson, Eminent domain – REVIEW AM**

This measure would declare, for purposes of eminent domain law, that public use does not include the taking of owner-occupied residential property for private use.

*TWO-YEAR BILL*

**SCA 15, McClintock, Eminent domain: condemnation proceedings – REVIEW AM**

This measure would provide that private property may be taken or damaged only for a stated public use. The measure would also require that the property be owned and occupied by the condemnor, and used only for the stated public use.

*TWO-YEAR BILL*

***How to Log in for the First Time***

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# Thinking More About KELO

## *Is the San Diego Experience So Different from Elsewhere?*

By Kevin Reese and Scott Shepard

Eminent domain is again on stage in planning and development circles. That's true here in San Diego and across the United States due principally to the June 2005 United States Supreme Court decision in the *Kelo v. City of London, CT*.

As most planners know, Kelo grew from efforts of the City of New London to redevelop its Fort Trumbull neighborhood. Susette Kelo, one of the affected property owners, argued that eminent domain was not necessary to achieve the City's economic and community development goals. In contrast, New London contended that the proposed redevelopment would stimulate the City's economy by creating new jobs and increasing tax revenue.

New London's position was upheld by a 5-4 vote and, at outset, it appeared to be a victory for the public sector. However, the case underscored the ongoing struggle between government use (some say abuse) of police powers employed for "the greater public good" – and the right of private property owners to retain their land and homes even when just compensation is provided.

### Implications

The Kelo decision does not open the flood gates for government to exercise new, far-reaching eminent domain powers. The taking of private property and then transferring it to other private interest to revitalize impoverished areas has been a common practice for 50 years. However, Kelo codifies and strengthens the role of government in fostering private business enterprise in the name of public benefit, even if that benefit comes at the considerable expense of select individuals.

A fundamental implication of Kelo appears to be that it expands the meaning of "public use." The Taking Clause of the Fifth Amendment of the U.S. Constitution actually restricts the exercise of eminent domain by stating that private property shall not be taken for public use, without just compensation.

Historically, this clause was interpreted as limiting the taking of private property to projects that were to be publicly-owned and government-run, such as highways, roads, schools, dams, and military bases. But a 1954 court ruling in *Berman v. Parker* resulted in the reinterpretation of the phrase "public use" to include public benefit or public purpose.

*Berman* ultimately paved the way for eminent domain for public uses, but also for incidental public benefits, such as the creation of new jobs and increased tax revenues. Kelo is simply a reiteration of an expanded interpretation of public use.

Still, there is a major difference between previous Court rulings on eminent domain and the Kelo decision. Under *Berman*, takings for economic redevelopment are justified only

when the property in its existing state caused harm to society, such as when blight or extreme poverty is present. Kelo tacks away from the blight caveat, suggesting that simply because the public will benefit, takings are valid whether or not property is blighted.

Supreme Court Justice Sandra O'Connor, in writing the Kelo dissent, states:

...Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so as long as it might be an upgrade.

Many agree with O'Connor's sentiment, observing that any private property can be taken and improved if it will produce greater economic benefits for cities. This makes residential, low-income, and working class communities particularly at risk since they typically do not have the kind of capital to transform their neighborhoods into places that boost city coffers.

The California legislature and many local jurisdictions have laws to guard against eminent domain abuse. At minimum is the requirement that an area eyed for redevelopment be deemed "blighted." Kelo does not affirm or sack this requirement. In fact, the Court ruling defers responsibility for determining the limits of eminent domain to state and local authorities, almost guaranteeing that future eminent domain battles will be fought in court and the legislature.

Supporters of Kelo, including the National APA, suggest that the decision is an affirmation of the role of planning in economic development. The expansion of the meaning of "public use" gives planners and local jurisdictions a powerful tool to stimulate economic growth and revitalize urban communities. Further, supporters argue that eminent domain as allowed by Kelo can be used as a catalyst for smart growth. That is, it can help redevelopment agencies assemble land to revitalize inner cities and direct growth inward rather than outward. Kelo thus supports policies already stipulated by numerous jurisdictions, including the San Diego Association of Governments (SANDAG) and the City of San Diego.

In the San Diego region, planners have as many questions as they do elsewhere in California how the Court's decision will affect future development, policies, plans, and the built environment. Those questions are prompted, at least in part, by the use of eminent domain by public agencies and the high profile media attention that resulted.

### Grantville Redevelopment

In the City of San Diego efforts are underway to authorize

*continued on page 12*

## More Thoughts on Kelo

*continued from page 11*

the creation of the City's 17th redevelopment area, the Grantville Redevelopment District. It would encompass a linear and primarily commercial area along a swath of road that runs from a freeway to a regional park. Chronic flooding, traffic congestion, and an unsightly commercial/industrial area are mentioned as the rationale for creating the redevelopment district to resolve these physical concerns/conditions in a relatively short period of time.

However, several commercial property owners, notably including an auto dealership, feel that their businesses will be threatened by the use of eminent domain and by the proposed redevelopment district. They would prefer normal market conditions to dictate the buying and selling of property and say that it's unjust to remove a profitable business just because someone thinks it looks shabby. Members of the City Council and City staff have tried to quell private property owners' fears by stating that the power of eminent domain will be used sparingly and as a last resort, but many are not convinced.

### Gran Havana Cigar and Coffee Lounge

A recent and highly publicized eminent domain struggle in San Diego took place between the Center City Development Corporation (CCDC) – which is the City of San Diego's redevelopment arm – and the Gran Havana Cigar and Coffee Lounge. Gran Havana is in the Gaslamp Quarter, an extremely popular part of downtown that attracts tourist and locals alike.

The Gran Havana owner waged a spirited and costly legal battle to stop CCDC from declaring that the property on which he ran his fairly upscale business was blighted. For their part, CCDC wanted to make way for a proposed Marriot Renaissance Hotel. During the legal standoff that resulted, Gran Havana was unwilling to sell its property to either the developer of the hotel or CCDC, regardless of the fact that "just compensation" may have been offered.

According to the Gran Havana owner, it was not an issue of money. He just wanted to keep the business he had started and was not interested in cashing out and moving on.

The case drew national attention from property rights advocates and was the subject to a documentary film. By June of this year, however, the Gran Havana owner ended his fight, stating in court that the battles with CCDC left him financially and emotionally broken. The case did, however, leave an imprint on local minds.

### Model School Development Agency

What many consider one of the most egregious examples of the use of eminent domain came in August of 2005. It was the kind of case that gives redevelopment agency directors sleepless nights.

It seems that the little known San Diego Model School Development Agency decided to demolish 188 homes in a working class neighborhood in San Diego in order to build 509 townhouses, condos, and apartments. The new housing was

needed to relocate some 200 tenants from a site where the Agency was building a new school.

What caused the flare up was that the area of the 188 homes had been undergoing a market-driven renaissance over the last several years, with new homeowners moving in and upgrading properties with hundreds of thousands of dollars of investment. To call the 30-acre site "blighted" was more than your normal stretch of credulity. Besides, the Agency's unelected board had the power to condemn private property and owners had no right of appeal to the City Council or school board.

The issue played across the front page of the *San Diego Union-Tribune* for days and was the subject of several editorials, including one that concluded:

No wonder state Senator Tom McClintock, R-Thousand Oaks, is confident his push for an initiative to sharply limit eminent domain will make the ballot and win. He doesn't even have to buy ads. All he had to do was sit back and watch the oblivious redevelopment bullies make his case for him – one crazy "blight" designation after another. (SD Union Tribune, Sept 9, 2005, p. B8)

The issue has yet to be resolved.

### Conclusion

Eminent domain is an important and useful planning tool. But Kelo is having the effect of increasing the polarization between private property interest and public planning efforts. An unfortunate outcome of this increased antagonism may be an eminent domain blowback. Already in California and other states, legislators are in the process of considering multiple bills aimed at curbing the power of cities to take private property for economic development. It may turn out that in some states, reaction to Kelo will create even stricter controls on the use of eminent domain, thus impeding the efforts of redevelopment agencies to take full advantage of the federal support given to a fairly expansive application of eminent domain. Kelo may also provoke more public suspicion of planners, seeing them as mere pawns of big-business and the politically well-connected.

Eminent domain touches on a deep fear about government intervention in personal lives and property. Personal property is sacrosanct in the American consciousness, and Kelo reaffirms the vulnerability of what the Constitution states is the inalienable right of property. Although on the surface Kelo appears to be a strong endorsement of the planning profession, planners should exercise caution. Even the National APA conceded that eminent domain is a "harsh power" and that we must be careful to constrain its use.

Power, after all, demands vigilant responsibility.

*Kevin Reese (kreese@urbancounsel.com) is a planner for Urban Counsel in San Diego. Scott Shepard (scott.shepard@keithco.com) is a planner in for The Keith Companies in San Diego. Both Reese and Sheppard are on the Board of the San Diego Section of APA.*

## Planners On The MOVE

Denise Duffy & Associates, Inc. (DD&A) is pleased to announce the following staff members: Quincy Yaley as Planner/Project Manager heading up the Truckee/Reno office of DD&A, Brett Becker as Associate Planner/Project Manager, and Matt Johnson as a GIS Specialist in Monterey.

Lynn Alexander Goldberg, AICP has joined the City of Healdsburg Planning Department as their Senior Planner. She can be contacted at [goldberg@ci.healdsburg.ca.us](mailto:goldberg@ci.healdsburg.ca.us) and 707.431.3332.

Jeffrey Harvey, Ph.D., and Leslea Meyerhoff, AICP are pleased to announce the establishment of the Harvey-Meyerhoff Consulting Group, an environmental consulting firm with offices in San Diego and Sacramento. Harvey can be reached at 916.799.6065 and Meyerhoff can be reached at 760.845.8028.

Randy Hatch has been appointed the Community Development Director for the City of Lodi. He was the Planning and Community Development Director for the City of Ceres.

The Berkeley office of LSA Associates, Inc. (LSA), is pleased to announce several new staff members. Colette Meunier was formerly the Community Development Director for the cities of Benicia and Alameda. Jennifer Craven comes to LSA from the City of Livermore, where she served as Associate Planner. Charity Wagner was with the City of Dublin, where she served as an Associate Planner. Colette, Jennifer and Charity will significantly expand the office's skills and experience in municipal planning. Amy Fischer comes to LSA from VRPA Technologies in Fresno, and will add experience in air quality, noise and traffic. The

recent addition of Theresa Bravo adds to the planning and environmental skills of the office.

Christine Huard-Spencer and Romi Archer have joined LSA Associates, Inc. (LSA) as Senior Environmental Planners in the firm's Irvine Office.

SWCA Environmental Consultants, has announced the opening of their newest office in Pasadena. Managing the Pasadena office is Cara Corsetti. Ms. Corsetti will oversee all Pasadena office staff and client development, while continuing to lead SWCA's western U.S. paleontology program. Key SWCA paleontology staff will be located in the Pasadena office, together with cultural resources, natural resources, and CEQA/NEPA specialists. The new office is located at 625 Fair Oaks Avenue, Suite 190, South Pasadena, CA 91030, 626.240-0587.

Brad Torgan, AICP, has been appointed by Governor Schwarzenegger to serve as General Counsel to the California Department of Parks and Recreation. He was most recently a partner in the Los Angeles-based law firm of Kelly Lytton & Vann, LLP. He can be reached at [btorgan@parks.ca.gov](mailto:btorgan@parks.ca.gov).

The Town of Truckee has undergone some exciting planning changes with promotions and a new Community Development Director. The Town Council appointed Tony Lashbrook as the new Town Manager. John McLaughlin has been named Director. Also, Danyelle Nishimori, AICP was promoted to Associate Planner, and Jaime LaChance was promoted to Assistant Planner.

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## *SANDAG Names New General Counsel*

The San Diego Association of Governments (SANDAG) is pleased to announce the promotion of Julie Wiley to General Counsel. The position was previously held by Jack Limber, who is retiring after more than 25 years of combined service with SANDAG and the Metropolitan Transit System.

"It is gratifying that someone of Julie's caliber was already in our organization," said SANDAG Executive Director Gary Gallegos. "Our legal matters will remain in very capable hands."

Since joining SANDAG in 2001 as its first Deputy General Counsel, Wiley has proven to be an invaluable resource in critical areas such as employment and environmental law, competitive procurement, conflicts of interest, and Brown Act compliance.

Prior to SANDAG, Wiley worked for six years in the private sector as a litigator and advisor to private sector clients as well as local governments and school districts. She received her BA from UCSD and her Juris Doctorate from the University of Denver.

# UC Davis Extension Courses — LUNR Winter Course Listing

## Sacramento

*Urban Site Design*, January 12, Sacramento, Instructor: Terence Bottomley. Enroll in section 053LUP112. \$275.

*Effective Code Enforcement Programs: Development and Implementation*, January 13, Sacramento. Instructors: Ken Schiedig and Linda Ferris. Enroll in section 053LUP111. \$275.

*CEQA: A Step by Step Approach*, January 18, Sacramento. Instructor: Terry Rivasplata and Maggie Townsley. Enroll in section 053NAT212. \$275.

*Planning in California: An Overview and Update*, January 19 and 20 and February 16 and 17, Sacramento. Instructor: Bill Fulton. Enroll in section 053LUP500. \$525.

*Clean Water Act Section 404: Nationwide and Other Specialized Permits*, January 25 in Davis. Enroll in section 053NAT223. \$275.

*Thresholds of Significance in Environmental Planning*, January 26 in Sacramento. Enroll in section 053NAT210. \$260.

NEW! *Conjunctive Use of Groundwater and Surface Water*, February 2, Sacramento. Instructors: Dave Purkey and Paul Bartkiewicz. Enroll in section 053NAT264. \$275.

*Environmental Review of California Water Projects: Legal Requirements, Approaches and Techniques*, February 8, Sacramento. Instructor: Al Herson and James Moore. Enroll in section 053NAT301. \$275.

NEW! *Economic Development and the Infrastructure of Special Districts*, February 9, Sacramento. Instructors: Paula Connors and Brad Kilger. Enroll in section 053LUP144. \$275.

*Endangered Species Regulation and Protection*, February 15, Sacramento. Instructor: David Zippin. Enroll in section 053NAT221. \$275.

*Water Resources Planning and Urban Growth*, February 17, Sacramento. Instructor: Jeff Loux and Karen Johnson. Enroll in section 053NAT222. \$275.

*Brownfield Reuse and Development Strategies*, February 23, Sacramento. Instructor: David Zehnder. Enroll in section 053LUP119. \$275.

*Making Effective Use of Mitigated Negative Declarations*, February 24, Sacramento. Instructors: Curtis Alling and Sydney Coatsworth. Enroll in section 053NAT208. \$275.

*Implementing Planning Law*, February 25, March 31, April 1, April 28, and April 29, Sacramento. Instructor: Kathryn Tobias. Enroll in section 053LUP510. \$525.

*Interest-Based Negotiation (for Planning and Resource Management)*, March 2 and 3, Sacramento. Instructor: Jeff Loux. Enroll in section 053LUP117. \$325.

NEW! *Improving Public Transportation: Principles and Strategies*, March 8, Sacramento. Instructor: Alan Hoffman. Enroll in section 053LUP707. \$275.

*Hydro Project Relicensing: Technical Regulatory Overview*, March 8, Sacramento. Instructor: Scott Wilcox. Enroll in section 053NAT204. \$275.

NEW! *Environmental Issues on the Farm: An Overview of Environmental Requirements that Impact Agricultural Operations*, March 10, Sacramento. Instructor: Chris Beale. Enroll in section 053NAT418. \$275.

*CEQA Update, Issues and Trends*, March 15, Sacramento. Instructors: Ken Bogdan and James Moose. Enroll in section 053NAT211. \$275.00.

## Davis

*Role of the Planning Commissioner*, February 2, Davis. Instructors: M. Thomas Jacobson and Gary Binger. Enroll in section 053LUP150. Fee TBD.

*Annual Land Use Law Review and Update*, Sacramento, February 22 in Davis. Instructors: Bill Abbott and Dan Curtain. Enroll in section 053LUP141. \$275.

*GIS Data Development and Integration*, March 27 and 28 in Davis. Instructor: Karen Beardsley. Enroll in section 053NAT421 \$450.

## Redding

*Timber Harvest Planning and Regulation in California*, March 17 in Redding. Instructors: Terry Rivasplata and Eileen Carey. Enroll in section 053NAT207. \$275.

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