

Contra Costa Lawyer Online

April 2018

The screenshot shows the homepage of the Contra Costa Lawyer Online website. At the top, there is a banner with the title "CONTRA COSTA LAWYER" and a navigation menu with links for "Concepts/Issues", "Features", "Spotlight", "Pro Bono", "Self-Study MCLE", "About", and "MarketPlace". Below the banner is a secondary navigation menu with links for "Home", "President's Message", "News & Updates", "Our Firm", "Lifestyle", "LEAD", "Ethics Corner", "Contra Talk", and "Magazine Archive".

The main content area features a large graphic of a house with colorful segments (green, red, blue, yellow) and icons representing a house, a graduation cap, a bar chart, and a person. Below this graphic is the headline: "Update on Housing Projects in Contra Costa: Innovative Affordable Homes Address the Housing Crisis".

Below the headline is a row of six small thumbnail images. The first two are related to the housing update, and the others show various scenes like a person, a building, and a person in a red shirt.

The page is divided into two columns. The left column is titled "Spotlight" and contains two articles:

- Take the Initiative and Kick Off!**
At four separate events in February and early March 2018, I had the opportunity to...
- One Step Closer!**
I recently had the pleasure of learning about Bike Deal Day, a local non-profit organization...
- Conduct Interviews with Dist. Robert Jones - 2009 Governor Candidate**
On December 22, 2017, Candidate Governor Robert D. Jones, Jr....

The right column is titled "News & Updates" and contains two articles:

- Local, State, and Construction Industry**
- District Attorney Candidates Forum - April 24, 2018**
Contra Costa County District Attorney Candidates Forum Tuesday April 24...
- Women's Social and Wellness Training - Tuesday, April 24, 2018 9:00 - 11:50**
at Crowne Plaza Hotel, Concord, CA

At the bottom of each column, there are sections for "MCLE" and "More From This Category".

The Contra Costa Lawyer magazine is the official publication of the Contra Costa County Bar Association (CCCBA), published 12 times a year - in six print and 12 online issues.

Contents

Update on Housing Projects in Contra Costa Developers' Innovative W...	4
California Environmental Law Update	6
With 3.3 Parking Space per Car, Why Do We Complain About Parking? P...	11
The State Wants More In-Law Units: New Policies Favor Accessory Dwe...	15
Solving California's Housing Gap Requires Legislation that Respects...	18
Engineering a Solution to Contra Costa Building Foundations	21
The Contra Costa County Office Market: Now and in the Future	25
Take the Initiative and Reach Out!	28
Solutions to Contra Costa's Traffic Woes	30
The Silver Lining Behind Local Planning Department Challenges	31
Bar Soap	32
Bike East Bay	35
Lunar New Year Celebration [photos]	36
District Attorney Candidates Forum, April 24, 2018	37
Women's Section Wine Tasting Fundraiser 2018	38

Update on Housing Projects in Contra Costa Developers' Innovative W...

Sunday, April 01, 2018



We have all read the headlines, and perhaps, have personally experienced the very real and significant housing crisis facing the Bay Area. Here in Contra Costa County, housing prices increased nearly 10% in 2017, with the median sales price of a single family home in Walnut Creek coming in at a staggering \$1,070,000. [1] Housing sales dropped 11.4.% from 2016 to 2017. It does not take an economist to understand what is driving these statistics; it's simply a function of supply and demand.

The need for more housing—at all levels of affordability—is acute and reflects the demand side of the equation. While there are more than enough qualified, well-financed and experienced developers eager to build housing throughout the county, the permitting and entitlement process is lengthy, enormously expensive and fraught with challenges from any number of sources. Relative to the issue of expense, developers face development impact fees on average of \$90,000 per unit, which does not include the cost to purchase the land, nor does it include processing and entitlement costs, building permit fees or school impact fees. This affects the supply side of the equation.

Municipalities frequently find themselves caught between the state's obligation to provide their regional share of housing units and vociferous opponents to new housing developments based upon fears of impacts to traffic, schools, air quality and quality of life. Other articles in this month's *Contra Costa Lawyer* detail efforts by legislators to alleviate the housing crisis and will not be addressed here. Rather, we would like to focus this article on just two recent housing developments and the innovative efforts developers and their land use counsel have used in seeking project approval.

Under the Housing Element Law [2], when a jurisdiction rezones properties in its General Plan Housing Element inventory to residential uses in an effort to accommodate its share of the regional housing need, those sites allow residential use on the properties "by right." This "use by right" authority means that, once an inventory site is rezoned to residential use, the jurisdiction's review of a residential housing project proposed for the site *may not* require further discretionary review under the California Environmental Quality Act ("CEQA") [3].

A recently approved apartment project in central Contra Costa County relied upon this statutory "use by right" authority. The apartment project was proposed for one of the city's Housing Element inventory sites. As a result, the city could not undertake any discretionary review typically associated with the land use entitlement process (such as a conditional use or planned development permit) other than design review of the proposed project. Nor was the city permitted to undertake any CEQA analysis of potential

environmental impacts or impose mitigation measures (other than those which had been identified as a part of the CEQA review of the rezoning of the Housing Element inventory site).

As CEQA is the most-relied-upon weapon in housing opponents' arsenal, this statutory "use by right" provision is a powerful tool to acquiring approval of certain housing projects in a time- and cost-effective manner. This project approval will allow for the construction of 150 multi-family residential units, meeting the need for such housing while assisting the city in meeting its share of state mandated regional housing obligations.

Another example of developer creativity in securing project approvals is reflected in an infill development featuring mixed-use (residential and ground floor retail) that included hotel rooms which the city had envisioned for the parcel through a "specific plan" planning process. That specific plan mapped out desired land uses on various parcels within the specific plan area, allowing parcels to be developed according to the particular land uses through a conditional use permit ("CUP") issued by the Planning Commission. As a result of allowing a change in land use (for example, from office zoning to residential zoning) by issuance of a CUP by the Planning Commission, a number of parcels in the city had seen a change in use from non-residential to residential. Of course, this change has been market driven with developers understanding the need for more multi-family housing.

During the entitlement process for this particular project, the city considered a moratorium on developers' use of the CUP process in connection with seeking project approvals. The city was primarily concerned that too many mixed use projects were being approved using this streamlined CUP approach. While the moratorium was, ultimately, not adopted by the city, it appeared the city was focused on providing hotel units on the site.

In an effort to address the city's desire to add more hotel rooms, the developer offered to make just under a quarter of the residential units hotel units. Creativity on the part of the developer was precisely what was needed to get the project approved, meeting both market needs and the city's objectives for more hotel rooms within the city.

Despite public concern over crowded schools and streets, the Bay Area has far too few housing units to support the number of new employees flooding the region. Rather than working at cross-purposes, developers and public officials should strive to work cooperatively to meet the high demand for housing and to focus those efforts on under-utilized parcels in cities close to transit.

[1] <http://rereport.com/ccc/>

[2] Gov. Code § 65580 et seq

[3] Gov. Code § 65583.2(i)

California Environmental Law Update

Sunday, April 01, 2018



Every real estate attorney needs to keep their toolkit of environmental law up to date. The following are some new laws, court decisions, and regulations that may help.

A. New Laws

In the early 1970s, the U.S. Congress and the California Legislature created environmental statutory programs to clean up and preserve water and air; clean up abandoned hazardous wastes; and protect habitat for threatened and endangered species. But time passes and the election in November 2016 brought significant changes.

Federal agencies are cutting back their roles in these environmental protection programs, as well as reducing or eliminating federal funding for the California programs. In early 2017 the California legislature made its first steps to fill the void left by federal agencies by introducing three “Preserve California” bills in **SB49**, **SB50**, and **SB51**. SB49 is formally named the California Environmental, Public Health, and Workers Defense Act of 2017. The California Senate passed Senate Bill 49 and as of early March, it was an active bill in the Assembly Rules Committee. The Governor signed Senate Bill 50 into law in October 2017. The Governor vetoed Senate Bill 51. It was intended to protect federal whistleblowers and preserve federal scientific data.

SB50, the enacted bill, imposes a right of first refusal for the State to purchase any federal land the US is transferring out of federal ownership. (About 47% of the land in California is federally owned.)

Of the three bills, SB49 is the most significant for government environmental protection and clean-up programs.

SB49 is intended to substitute for any federal standards reduced by the Administration or Congress. The baseline is January 19, 2017 (the last day of the prior administration). SB49 targets the federal Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and the Endangered Species Act. If enacted, the California Air Resources Board (CARB) and the State Water Resources Control Board (Water Board) would monitor changes to federal statutes and regulations. If CARB or the Water Board determined that a change in these federal programs could negatively impact California’s environment, public health, or welfare, CARB or the Water Board would act – i.e., interpret California’s similar statutory programs (and propose necessary legislation). The goal of SB49 is to maintain environmental protections in California at least as stringent as the baseline federal standards on the day before the 2017 inauguration.

In another part of SB49, if the federal government delists any species from the federal Endangered Species Act list, the state would consider and list that species on the California threatened or endangered species list.

As for worker protections, SB49 would establish a new state agency. The new agency would monitor changes to federal health and safety rules and regulations that existed January 1, 2016. If the federal government reduced standards, the new agency's mandate would be to maintain and, if needed, establish worker rights and safety standards more stringent than the federal standards.

Finally, SB49 would also establish private rights of action for "citizen suits" to enforce the standards set by state agencies as a result of SB49 (i.e., if federal standards are reduced).

B. Court Decisions

1. Clean Water Act exposes commercial landlords to litigation

One federal court lawsuit in 2017 may help explain how commercial landlords – and others involved with industrial activities on real estate – can get trapped into Clean Water Act lawsuits. In *California Sportfishing Protection Alliance v. The Shiloh Group LLC*, Case No. 4:16-cv-06499-DMR (USDC ND Calif.), a commercial landlord owned a 31-acre light-industrial park. The industrial park had a common storm sewer system. The storm waters eventually reached the Russian River. The industrial park had 60 to 80 commercial and industrial tenants, who operated a variety of businesses. The industrial park also had some areas with soils polluted from past activities (the site was originally a single manufacturing facility).

Over a decade ago, the industrial park applied for and received a stormwater discharge permit under the Water Board's Industrial General Permit program. In 2016, a citizen suit plaintiff group sued the landlord, alleging, among other things, that it had violated the pollutant limits established by the Water Board pursuant to the authority delegated by the Clean Water Act to the Water Board. When the landlord received from the plaintiff group the prerequisite "60 day notice of intent to sue letter" required by the Clean Water Act, the landlord cancelled its stormwater permit. But, the plaintiff group filed suit anyway in federal court.

The landlord moved to dismiss based on cancelling its stormwater permit before the 60 days had expired. Based on the allegations in the complaint, the magistrate judge denied the motion on various grounds. The landlord settled, and entered a consent decree with significant requirements for modifying the stormwater system, administering existing leases, and entering new leases.

The Clean Air Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Endangered Species Act all have citizen suit provisions. But why are the vast majority of environmental citizen suits filed under the Clean Water Act? The State's program for administering stormwater permits requires permittees to post stormwater sampling data online – which plaintiffs use for summary judgment motions. Defendants are left with the difficult job of proving compliance with fuzzy permit terms. In addition, the recent amendments to the federal rules of civil procedure favor plaintiffs who have alleged admissions of violations.

2. Paint Manufacturers Required to Clean Up Lead Paint in Pre-1951 Homes.

The appeals court in *People v. ConAgra Grocery Products Co.*(2017) 17 Cal.App.5th 51, affirmed a trial court ruling that three manufacturers of lead paint are liable for creating a

public nuisance and so will have to remediate lead paint in pre-1951 homes in California. Also, the 9th Circuit in 2017 directed the EPA to update its 2001 standards for children's exposure to lead paint dust. In re A Community Voice (2017) 878 F.3d 779.

3. What are "Waters of the United States?"

Another court decision that should concern real estate lawyers is the "waters of the United States" decision of the Supreme Court, National Association of Manufacturers v. Department of Defense (Jan. 22, 2018) 138 S.Ct. 617. The Clean Water Act applies to "waters of the United States." This term delineates the geographic reach of (a) the US EPA's permitting program for discharges of water (the National Pollutant Discharge Elimination System, or "NPDES")(the basis of the Shiloh Group lawsuit, supra), and (b) the "dredge and fill" permit program of the US Army Corps of Engineers.

The USEPA and the Corps developed in 2015 a rule interpreting "waters of the United States" – and thus the extent of the jurisdiction of the US Army Corps of Engineers (dredge and fill permits) and the USEPA (discharge permits). Challenges ensued in federal district courts and courts of appeal across the US. However, the Supreme Court fell short in January 2018. The Justices did not resolve the issue of what constitutes "waters of the United States." Instead, the Court made the narrow ruling that interpretation of the term "waters of the United States" is not within the exclusive jurisdiction of the appeals courts.

So, the term – and Clean Water Act jurisdiction – will be decided first by individual federal district courts. (Contra Costa County is in the Oakland division of the Northern District of California.) In addition, within a week of the Supreme Court's decision, the Trump Administration suspended the 2015 USEPA/US Army Corps of Engineers interpretative rule, stating that the Administration would publish a new rule later in 2018.

This mess means that real estate attorneys may be unable to advise their clients whether the Clean Water Act requires their development needs either (a) discharge permits, or (b) dredge and fill permits. Recently, a California farmer began plowing land that had once been farmed, but for over a decade had been used only for grazing cattle. The property had temporary seasonal pools of water (called vernal pools) that connected to a creek which ran into the Sacramento River. The Sacramento River is "navigable" and so was considered to be within the jurisdiction of the Clean Water Act over "waters of the United States."

The US Army Corps of Engineers cited the farmer for violating the Clean Water Act for not having a dredge and fill permit. The farmer settled on the eve of trial for \$330,000 in civil penalties, buying \$770,000 in vernal pool mitigation credits, and limiting use of about 10% of his property for 10 years. *Duarte Nursery v. Army Corps of Engineers*, 2016 WL 4717986 (E.D. Cal. June 10, 2016).

The legal problem for real estate attorneys will continue to be whether a property is within the jurisdictional boundaries of the Clean Water Act. Until the Supreme Court or the Administration provide more definition, would-be developers of land with seasonal ponds, or near creeks, in flood plains, with potential construction site runoffs, etc., may be facing issues similar to the farmer in Duarte Nurseries.

4 . Can Water Suppliers Recover Costs to Clean Up Groundwater Storage Areas?

As for public water suppliers, the Orange County Water District continues with a closely watched lawsuit against alleged sources of pollution of its groundwater storage areas. In June 2017, the 4th District Court of Appeal ruled against the Water District on several claims, but also ruled that the private right of action for “indemnity” in the California Superfund Law, Health & Safety Code §25363(d) means reimbursement of clean-up costs and is not limited to traditional equitable indemnity. *Orange County Water District v. Alcoa Global Fasteners, Inc.* (June 1, 2017) 12 Cal.App.5th 252. Later the same week, the Water District fared better in the US Court of Appeals for the 2nd Circuit (New York City), because that court reinstated the district’s claims against BP and Shell for MTBE contamination from leaking underground tanks in Orange County. *Orange Co. Water District v. Texaco Ref. & Mktg. Inc.* (In re Methyl Tertiary Butyl Ether (“MTBE”) Products Liability Litigation) (June 12, 2017) 859 F.3d 178. The efforts of the Orange County Water District to recover clean-up costs from industries allegedly polluting its groundwater are being watched by water districts throughout the state.

5. Can a Buyer Rely on an Environmental Investigation?

There is one decision in 2017 from the 6th District Court of Appeals that is informative about “due diligence” and the duties of an environmental consultant investigating and preparing a site assessment. In *Mao v. Piers Environmental Services, Inc.* (2017) 2017 WL 511853, a buyer of commercial property sued the environmental consultant who had investigated the property for the lender making the purchase loan on the property. The plaintiff asserted that the consultant had missed significant contamination, which a later investigation found.

The appeals court considers *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, which held an auditor has no duty to a third party relying on the auditor’s report. But the court also distinguishes *Beacon Residential Community Assn. v. Skidmore, Owings & Merrill LLP* (2014) 59 Cal.4th 568 (holding the architect liable for design defects to third-party homeowners). The Mao decision is instructive for real estate attorneys because in ruling for the environmental consultant, the court explains that “Exposing the environmental consultant to a negligence claim for harm arising from later discoveries based on more extensive subsurface investigation conducted for a different purpose (in connection with redevelopment of the property after a fire destroyed the premises) creates the potential for liability substantially disproportionate to fault.”

C. Some Regulatory Developments

A couple of regulatory developments will affect real estate development. First, in 2017 the State Water Resources Control Board proposed new rules for wetlands in order to standardize the permitting process for discharging dredge and fill materials. Among the Board’s reasons is the finding there is “need to strengthen protection of waters of the state that are no longer protected under the Clean Water Act (CWA) due to U.S. Supreme Court decisions ... ” See www.waterboards.ca.gov/water_issues/programs/CWA401/wrapp.shtml. Such proposed new rules for wetlands is an administrative law counterpart to SB49, supra.

Secondly, the Department of Toxic Substances Control is developing more stringent state toxicity standards for human health risk assessments in cleanups of hazardous wastes and hazardous substances. These standards result from a dispute between the US Air Force using less stringent toxics cleanup criteria in the federal Integrated Risk Information System (IRIS) toxicity criteria for cleaning up PCE at former Air Force

facilities. <https://www.cacities.org/Top/News/News-Articles/2017/February/Department-of-Toxic-Substances-Control-Proposes-St> Cities are concerned they will lose flexibility that is needed to redevelop formerly contaminated sites (aka “brownfields” sites).

Secondly, the Department of Toxic Substances Control (DTSC) sets state toxicity standards for assessments of risk to human health. These are particularly significant in cleanups of hazardous wastes. The DTSC is developing more stringent standards because of a dispute with the US Air Force in cleaning up old airfields. The dispute involved the cleanup standards for perchloroethylene (PCE) which is the “drycleaning solvent” that is causing trouble for property owners. (The Air Force applies less stringent toxicity standards for PCE, using the federal Integrated Risk Information System.)

The League of California Cities, which advocates on behalf of cities, has raised concerns with DTSC’s regulations with the proposed standards. As drafted in early February, the League contends the regulations reduce the flexibility of cities to redevelop formerly contaminated sites, also known as brownfield sites. The League argues that a “one size fits all” standard for all types of projects, regardless of the proposed end use, will mean cleaning up an area for a parking lot will have to meet the same risk standards as cleaning up an area for a home. The League is concerned DTSC’s approach risks stifling community revitalization and economic development. The League believes that cleanup standards should instead continue to be based on site-specific criteria.

With 3.3 Parking Space per Car, Why Do We Complain About Parking? P...

Sunday, April 01, 2018



In 2010 it was determined that there were 18.6 million parking spaces in Los Angeles County or 3.3 parking spaces per automobile. The same survey concluded that Los Angeles County devoted almost 200 square miles to parking. This is more than the 140 square miles devoted to all streets and freeways. The report called this 200 square miles a parking crater. [1] The problem is not having parking when and where you want it.

No Los Angeles County is not Contra Costa County. But to conclude that Contra Costa is radically different is simply a result of our Bay Area versus “La-La Land” bias. We too

have dense urban areas and urban sprawl.

How does a developer determine how much onsite parking to provide in their proposed development, the requirements, how the numbers are developed and the potential future of parking? This article focuses on Walnut Creek where I serve as a Transportation Commissioner.

Onsite parking requirements are technically unique to a jurisdiction. There are many similarities between jurisdictions; however key influencers are the Metropolitan Transportation Commission (MTC) and the State Legislature. The MTC exercises influence through various grants and recommendations.

How Onsite Parking Requirements are Generated

California requires each jurisdiction—counties, cities and agencies—to develop and maintain 20-year general plans [2]. The process for developing each plan is arduous and lengthy involving all of the stakeholders in the community—citizens, businesses, city staff, and consultants. Once a draft is developed along with an Environmental Impact Report (EIR) on the plan, it is shepherded through various commissions and public hearings with the final decision made by the governing body. Usually this is either the County Board of Supervisors or the City Council.

Between general plans, a jurisdiction can develop specific plans for various sections of the city or county. These can be as small as one parcel. For example, the Orchards Shopping Center [3] on the corner of Oak Grove Road and Ygnacio Valley Road in Walnut Creek was a single-parcel specific plan. Walnut Creek is currently developing two more specific plans—West Downtown Specific Plan [4]and the North Downtown Specific Plan [5]. Besides being smaller, they can be very detailed as to the types of housing or business and the architectural design of the buildings.

Each plan is required to provide and plan for numerous elements of the general plan. Of particular interest to developers is the Land Use element. Once the entire plan is adopted, the jurisdiction starts the process of making the zoning code conform to the new land use designations. Parts of the zoning code [6] determine the requirements for onsite parking.

Residential Plans:

- Multiple family residential: 1.25 parking spaces per studio unit; 1.5 per one-bedroom unit; 2 per two-bedroom unit; 2.25 per 2+ bedroom unit. Each unit will have one covered space.
- Single family residential: two covered parking spaces per dwelling unit.

Commercial Plans:

- Horse stables: one parking space for each four horses boarded on site plus one per employee.
- Eating establishments with full alcoholic beverage service: one parking space for each five permanent seats and one per 75 square feet of floor area available for portable seats and/or tables for the area devoted to eating and drinking plus one per 45 square feet of public assembly area.
- Eating with take-out service: one parking space per 50 square feet of gross floor area (GFA)
- Funeral and interment services: one parking space per 45 square feet of public assembly areas
- Offices, business and professional spaces: in the core area, one per 250 square feet of rentable floor area on the ground floor; one per 285.7 square feet of rentable floor area above the ground floor. Outside the core area, one per 250 square feet of rentable floor area.

This list is not exhaustive or ever representative. It is only to demonstrate the granularity of the code. Who knew that you had to provide one automobile parking space for every four horses?

Hold On There Is More!

As an incentive, to encourage specific types of development the Walnut Creek Zoning Code allows a reduced requirement to provide onsite parking. Eliminating the need to build an underground parking space for one car can be quite an incentive. To encourage more dense development near BART [7], the reduction is 0.25 parking spaces per studio and one bedroom unit; and 0.5 spaces for two-bedroom units. BART-proximate is defined as a parcel, any portion, that is within a half mile from the closest point of the Walnut Creek or Pleasant Hill BART station property. This distance is measured along street frontages using the most reasonably direct, legally permissible path. The determination of whether or not a development meets this requirement is made by the city's Transportation Planning Manager [8].

How Did We Get Those Numbers?

Where do minimum parking requirements come from? No one knows. [9]The only source of data that systematically relates parking demand to land use is a report generated and published by the Institute of Transportation Engineers. This report calculates the parking generation rate—the average peak parking demand observed in case studies—for 64

different categories of land use [10]. For each land use, this publication reports the "parking generation rate," defined as the peak parking occupancy observed in surveys by transportation engineers. [11]

This report is how Walnut Creek concluded that a good horse-boarding facility needed one parking space for every four horses. Most jurisdictions do not have the time and more importantly the money to do extensive research for that determination.

Future of Parking

Dr. Donald C. Shoup's [12] thesis is that we should price parking based on demand. The elimination of minimum parking requirements does not imply ceasing to plan for parking. Rather, planners can focus on the quality of parking, not the quantity. Properly pricing curb parking and eliminating minimum parking requirements will improve transportation, land use, and urban life. [13]

For better or worse, Walnut Creek is one jurisdiction that is moving slowly towards pricing parking based on demand. For example, I am unable to park in front of my own home without paying for a parking permit. It is the requirement for living within a restricted residential parking area. Another example is the reduced requirement near BART. The city is also considering demand-based public parking. Potentially the cost of parking will change throughout the day based on demand.

[1] Better Institutions Blog <http://www.betterinstitutions.com/blog/2016/1/2/map-a-parking-lot-with-all-of-la-countys-186-million-parking-spaces> Retrieved Feb. 18, 2018 citing: Parking Infrastructure: A Constraint on or Opportunity for Urban Redevelopment? A Study of Los Angeles County Parking Supply and Growth, Journal of American Planning Association (2015 Volume 81 - Issue 4).

[2] "State of California: General Plan Guidelines" <http://www.opr.ca.gov/> The Governor's Office of Planning and Research. State of California. Retrieved Feb.18, 2018.

[3] <http://www.walnut-creek.org/departments/community-and-economic-development/planning-zoning/long-range-planning/shadelands-gateway-specific-plan> Retrieved Feb. 18, 2018.

[4] <http://www.walnut-creek.org/departments/community-and-economic-development/planning-zoning/long-range-planning/west-downtown-specific-plan> Retrieved Feb. 18, 2018

[5] <http://walnut-creek.org/departments/community-and-economic-development/planning-zoning/long-range-planning/north-downtown-specific-plan> Retrieved Feb. 18, 2018

[6] Walnut Creek Municipal Code Sec. 10-2.3.206 Off-Street Parking and Loading Spaces Required

[7] The other types of development are Low Income Units and Very Low Income Units.

[8] Walnut Creek Municipal Code Sec.10-2.3.207 Table C Multifamily Residential Off-Street Parking Requirements For Low Income Or Bart Proximate Units

[9] Shoup, Donald C. The Trouble with Minimum Parking Requirements, Transportation Research Part A Vol. 33 (1999, p. 549-574), <https://shoup.bol.ucla.edu/Trouble.pdf> Retrieved Feb. 19, 2018.

[10] Shoup, Donald C., The High Cost of Free Parking, Access, (10, Spring 1997) <https://www.accessmagazine.org/spring-1997/the-high-cost-of-free-parking/> Retrieved Feb. 15, 2018

[11] Shoup, Donald C., The Trouble with Minimum Parking Requirements, supra.

[12] Dr. Shoup, B.E. (Electrical Engineering, Yale), Ph.D. (Economics, Yale) is Distinguished Research Professor, Department of Urban Planning, UCLA

[13] Shoup, Donald, C., The High Cost of Free Parking, supra.

Ken Strongman is a full time mediator helping to resolve conflicts in business, real estate, construction defects, intellectual property, and trusts & estates. He gives back to the community by service on Walnut Creek's Transportation Commission.

The State Wants More In-Law Units: New Policies Favor Accessory Dwe...

Sunday, April 01, 2018



In 2016 and 2017, the California Legislature enacted a set of reform bills aimed at reducing local restrictions on the building of second units such as in-law units, basement apartments, garage conversions and backyard cottages. First, state legislation that took effect January 1, 2017 passed as Senate Bill 1069 (Wieckowski) and Assembly Bill 2299 (Bloom), amended state law governing second units and renamed them "accessory dwelling units" or ADUs. These two bills, now codified in Government Code §65852.2 et seq., encourage local governments to enact their own ordinances allowing and regulating ADUs. In passing this new legislation, the

Legislature expressed its concern that California is facing a severe housing crisis which can be addressed, at least in part, by promoting ADUs as a valuable form of housing:

"[i]t is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance." Government Code §65852.150(b).

Under the new statutory scheme, homeowners who create ADUs in residential zones benefit from relaxed standards for parking requirements, utility connections, fees, lot density, unit size relative to the existing home, and building permits for ADUs. An "accessory dwelling unit" is broadly defined as a detached or attached dwelling unit that provides complete, independent living facilities for one or more persons and that includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the parcel or parcels on which the primary unit is situated. Government Code §65852.2(j)(4). An ADU also includes an "efficiency unit" as defined in Health & S C §17958.1, or a manufactured home as defined in Health & S C §18007. Government Code §65852.2(j)(4).

Government Code §65852.2 provides that cities and counties may adopt ordinances providing for the creation of ADUs in single-family and multifamily residential zones, but are not required to do so. Under the new law, local governments that did not adopt or amend a local ordinance that complies with the new state law by Jan. 1, 2017 have to follow the state law until they approve a one. The law further provides that a local government may not adopt an ordinance prohibiting ADUs outright. Also, if the local government chooses not to adopt its own ordinance, it is obligated to grant a variance or special use permit for any ADU that meets the requirements of the statute. The state created a default ADU approval process by which the local agency must accept any

application for the creation of an ADU and "approve or disapprove the application ministerially without discretionary review... within 120 days after receiving the application." Government Code §65852.2(b).

On the other hand, if the local agency decides to adopt an ordinance, it may not impose standards on ADUs in excess of those specified by statute but it may include less restrictive standards. Government Code §65852.2(a)(6). The following statutory standards apply:

- The ADU cannot be intended for sale separate from the primary residence and may be rented.
- The lot must be zoned single-family or multifamily and contain an existing, single-family home.
- The ADU can either be attached or located within the living area of an existing dwelling or be detached from the existing dwelling (but located on the same lot).
- The accessory structures within which an ADU may be created include a studio, pool house, or similar structure.
- An attached ADU may not result in increased floor area that exceeds 50 percent of the existing living area, and in no event can the increased floor area exceed 1200 square feet.
- The total floor area of a detached ADU may not exceed 1200 square feet.
- The jurisdiction may require owner occupancy for the primary residence or the ADU created through the ministerial ADU approval process.
- The city may regulate rentals of less than 30 days, as San Francisco does.
- Parking requirements for an ADU cannot exceed one parking space per unit or bedroom, whichever is less.
- For units created within an existing space, cities and counties cannot require any additional parking.
- Parking requirements are waived if the home is within one-half mile of public transit, within a block of a car-share vehicle, in an architecturally and historically significant district, or if on-street parking permits are required but not offered to the second-unit occupant.
- No setback is required for an existing garage that is converted to a portion of an ADU.
- Local authorities may designate by ordinance areas where ADUs are permitted, based on criteria such as the adequacy of water and sewer services and the impact of second units on traffic flow.
- Local authorities can require ADUs to stay within the allowable density for the lot.

In addition, Government Code §65852.2(a)(3) further eases the burden on homeowners by requiring local agency standards be objective in nature so that each permit application can be considered "ministerially without discretionary review or a hearing." Any existing local ordinance "shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided" in Government Code §65852.2. Government Code §65852.2(a)(4). In addition, under Government Code §65852.2(e), local agencies must approve a building permit application to create, within a single-family residential zone, one ADU per single-family lot if "the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety."

A third law, Assembly Bill 2406 (Thurmond), which took effect in September 2016, gives jurisdictions the option of allowing homeowners to create a “junior accessory dwelling unit.” This is a unit created within an existing bedroom that has an efficiency kitchen (no gas or appliances requiring 220 volts) and an interior connection to the main house. This can be two doors with separate locks, like adjoining hotel rooms.

Governor Brown signed two more separate bills on October 8, 2017: Senate Bill 229 (Wieckowski) and Assembly Bill 494 (Bloom). Both bills, which went into effect January 1, 2018, clarify and improve various provisions of the law, including allowing ADUs to be built concurrently with a single-family home, opening areas where ADUs can be built to include all zoning districts that allow single-family uses, modifying fees from special districts, and further reducing parking requirements.

Senator Bob Wieckowski (D-Fremont), who represents the 10th District, which includes southern Alameda County and northeast Santa Clara County, and who sponsored Senate Bill 229, recently introduced Senate Bill 831, a new bill which addresses some issues brought to light after the passage of SB229 and SB1069. SB831 eliminates all local fees for an ADU; creates a temporary amnesty program to evaluate existing unpermitted units; holds local agencies accountable through the HCD; and deems ADU permit applications to be automatically approved if an agency has not acted upon the application within 120 days of its submittal.

Although still in its infancy, California’s ADU reform laws have encouraged people to build more ADUs, and build them safer and better. Since the passage of SB1069 in 2016, applications for ADUs have skyrocketed in major urban areas in California, including Los Angeles, San Diego, Oakland, San Francisco, San Jose and other cities across the state. Los Angeles has seen the most dramatic jump, from only 90 applications in 2015 (prior to the new law going into effect) to 1,970 received between January- November 2017.

*After over 28 years in private practice, **Marie Quashnock** has advised real estate clients on a wide range of transactions, including sales contracts, lease arrangements, and debt and equity financing. Quashnock also possesses broad civil litigation experience in a variety of areas, focusing primarily on real estate and business litigation. She was named a Super Lawyer by Northern California Super Lawyer Magazine for two consecutive years, 2009 and 2010. Quashnock was on the Board of the CCCBA Real Estate Section from 2013-2017 and led the Section in 2017. She has been a partner at Alvis Quashnock and Associates in Brentwood since March 2013.*

Solving California's Housing Gap Requires Legislation that Respects...

Sunday, April 01, 2018



In a state where homeowners make up the lowest percentage of residents since the 1940s and most tenants spend more than 30 percent of their income on rent [1], housing affordability is a matter of statewide concern as documented by more than 100 bills introduced by state legislators last year, 15 of which were signed into law by Gov. Jerry Brown.

These laws include two funding mechanisms. One of the funding bills, SB 2 named the Building Homes and Jobs Act, added a \$75 charge to many recordable documents. This year, half of the money raised by the act is earmarked for local

planning efforts and the other half of the money is earmarked for assistance to help homeless back into housing and to help those at risk of becoming homeless to stay in their homes.

The other bill, SB 3 named the Veterans and Affordable Housing Bond Act of 2018, goes to voters in November for approval of a \$4 billion general obligation bond. Most of the money would serve to subsidize the cost of building higher-density and affordable units and to provide veterans with subsidized home loans. The rest of the money is for a variety of purposes ranging from home-building grants for below-market income families to financing for housing for agricultural workers.

The legislative focus last year and remaining in 2018, was on limiting local oversight of housing proposals and in some cases, even punishing communities that fail to meet new state mandates. This emphasis stymies both local ordinances designed to provide a framework for the look and location of buildings within a community and efforts to build bridges to more affordable housing within communities divided about the effects of allowing more housing.

Three of the new laws, SB 167, AB 678, and AB 1515, add more teeth to the Housing Accountability Act (HAA), which limits the basis on which a jurisdiction can reject a residential development when it is consistent with planning and zoning laws. The revisions include increasing the standard of proof a jurisdiction must meet to justify denial of a project from the former standard of "substantial evidence in the record" to the new standard of "a preponderance of the evidence." The three bills also include a raft of new remedies for violation of the HAA, including a court order compelling a jurisdiction comply with a developer's proposal within 60 days of a court's ruling of failed by a jurisdiction to show by a preponderance of the evidence that a housing project failed to meet minimum requirements. Violations of the 60-day order start at \$10,000 per unit and increase to \$50,000 per unit for bad faith.

One of the most concerning of the new laws for local jurisdictions is SB 35. The new law allows developers to bypass compliance with the California Environmental Quality Act (CEQA) and other public hearings for housing projects meeting certain affordability criteria in jurisdictions that have failed to either meet state-mandated housing goals or provide required reports.

The developer may only select a site already zoned by the jurisdiction for the amount of housing proposed, but this puts a virtual freeze on decisions to rezone more land for multifamily housing since the mere act of rezoning the land to multifamily use extinguishes the power of the jurisdiction to weigh in on what the building will look like, its setback from the road and even its height and size.

In most communities, residents fear the effect of any new development, and their say in its look and feel is critical to making such development acceptable.

Stripping a community of that power to require a promenade, a façade that fits the surroundings or to avoid shadowing a beloved park means that jurisdictions must think twice before subjecting land to SB 35 by rezoning it for multifamily use.

While SB 35's sponsor Scott Wiener (D-San Francisco) posits that such measures are necessary to assure some communities do not "opt out" of meeting state-required housing goals [2], the position oversimplifies the reasons local communities do not meet such mandates.

For instance, local counties and cities have been (rightfully) encouraged to halt sprawl into the hillsides surrounding Contra Costa County and to preserve open space for recreation and wildlife by pointing development inward toward transit and downtowns. This means more traffic has to be accounted for closer to the urban or suburban core. Most downtowns in Contra Costa County are hemmed in by decades of existing construction and infrastructure like roads, overpasses and utility facilities. Demolition of existing buildings to make room for new projects is often financially infeasible, particularly in areas where the cost of real estate is extreme as it is in many parts of Contra Costa and its neighboring counties.

One of the bills introduced this year in the current legislative session, AB 2923, proposes as a solution encouraging development of BART parcels but does so again at the expense of local communities by proposing what amounts to a bypass of local planning processes.

The League of California Cities, the advocacy group for California's city agencies, suggests that legislators consider a broader picture and create more tools for local governments to fund infrastructure and affordable housing. The League suggests these initiatives could include a restored form of redevelopment and a lowering of the threshold for passage of funding measures for investment in infrastructure and affordable housing.

Threads of cooperation weave through several of the bills passed last year and provide an example of the kind of teamwork that the legislature and local communities must build upon to meet common goals. AB 73 allows local jurisdictions to pre-plan neighborhoods in exchange for housing assistance funds. Similarly, SB 540 provides for pre-planning of what are called Workforce Housing Opportunity Zones, which are designed to bring housing and workplaces together close to public transportation. Zoning remains in place for five years after approval of a Workforce Housing Opportunity Zone during which

proponents can bring housing projects forward within the zone.

The gap between income and housing costs is unlikely to narrow in this legislative session or next, and a workable solution requires federal, state and local governments to work together to provide housing that enhances affordability while preserving the look and feel of the community not only for existing residents but also for those who intend to move into the new housing and thereupon join the community.

Inga M. Miller is a real estate and business attorney and is Vice-Mayor of Orinda. She serves as co-editor of *Contra Costa Lawyer*. Contact Inga Miller at (925) 402-2192 or inga@millerpropertylaw.com or visit www.millerpropertylaw.com.

[1] A 2018 Guide to New Housing Law in California, the California League of Cities, file:///H:/CCLawyer/2018/April%202018/Housing-Brochure-Final.pdf

[2] <http://sd11.senate.ca.gov/news/20170914-senator-wiener%E2%80%99s-housing-streamlining-bill-sb-35-approved-assembly-part-broad-housing>

Engineering a Solution to Contra Costa Building Foundations

Sunday, April 01, 2018



Most of us who live in the Bay Area know of buildings and homes that have cracks in walls (often around windows and doors) and sloping and uneven floors that relate to cracked slabs and failed foundations. These are often due to “expansive soils” that adversely affect our properties.

Buildings, both large and small, are affected and if not addressed, these conditions can often lead to other problems including water damage.

Every geology has its challenges. The following will briefly outline some of the common problematic local soil conditions,

and how they are sometimes addressed, and their consequences mitigated.



First, we must defer to engineers, both soils and structural, to determine: what is underneath the building; the loads of the building; and how to build the foundation to withstand what nature may throw our way. For example, if the soils engineer establishes that the building will be above sandy soils, which are prone to liquify, both the soils engineer and the structural engineer are likely in response to design more and heftier support both within and below the foundation.

In our area, soils tests commonly find clay type soils, and together with other soil types these present challenges for engineers and builders. According to the Contra Costa County’s, *“Findings in Support of Changes, Additions and Deletions to the Statewide Building Standards Code”* (Ordinance No. 2016-22): “The area is replete with various soils, which are unstable, clay loam and alluvial fans being predominant. These soil conditions are moderately to severely prone to swelling and shrinking, are plastic, and tend to liquefy.”

Therefore, local engineers must attempt to design new buildings (and fixes for existing buildings) taking into consideration that there are a variety of layers of different types of

soils supporting the structures. Different types of soils react differently to moisture, earthquakes, and other events and forces. It is this difference that causes what is sometimes referred to as “differential settlement.”

Differential settlement occurs in what is called the “active zone” which is the surface of the soil where most building foundations begin and end when they are not specially engineered.

Issues are compounded when existing buildings with these surface-level foundations have been modified and end up with two different types of foundations. Geological forces affect each one differently, and unless the foundations are properly integrated, as in the case of a recent project, the building can literally crack open.



Solutions to these challenges have been designed by engineers and utilized by general contractors to permanently stabilize buildings, both large and small, new and old. These solutions include elements that attempt to connect the building to what soils engineers refer to as a “competent load-bearing strata” (referred to above as bedrock) which usually can be found below the active zone. Traditionally, to connect the

building to competent load-bearing strata, the engineers would require that 14- or 36+-inch, round holes be drilled around the perimeter and sometimes within the footprint of a building, usually to bedrock and then down another 10 or 15 feet below the building. Then, a cage of reinforcing steel (rebar) would be lowered into the hole; after which, the hole would be filled with concrete to create a “drilled concrete pier,” also known as a “caisson.”



More recently, the drilled concrete pier has sometimes been replaced by a steel pier (about four or five inches in diameter), especially in the case of an existing structure. These steel piers are either hydraulically driven or drilled deep into the ground beneath the building, beneath the expansive and the active soil zone into what a soil engineer has determined is the likely level of competent load-bearing strata, and then down a specified number of feet further into the earth. Because of the installation methods used in each method, steel piers are sometimes less intrusive, less costly and quicker to install than drilled concrete piers.

Once the steel piers are either driven or drilled into bedrock, brackets are installed to connect the foundation to the pier.



The weight of the building and the foundation itself is transferred from the unstable and expansive soils in the active zone, through the piers to the competent load-bearing strata. Moreover, the steel piers and brackets are designed in many cases to lift the foundation and thereby sometimes relevel the floors.



Similar foundation repair, underpinning and the use of adjustable posts *within* the footprint of a building, can be called for in areas that have settled or moved.



In some existing foundation situations, the structural engineer will recommend that portions of the foundation be removed and replaced with stronger foundations, or better foundation connections. This type of work is intended to gain rigidity in the foundation and lessen the impact on the structure of differential soil movement within the active zone. Underpinning and

foundation repair projects on existing structures can better prepare a building and the foundation for an earthquake.

Foundation design, underpinning, and earthquake preparation (seismic retrofit) can alleviate problems and prevent future problems. This work can bring peace of mind and add equity beyond the construction costs.

Craig Nevin has a statewide law practice specializing in real estate and construction

litigation and transactions. He was formerly Associate General Counsel for a large developer in Orange County, is a former President of the CCCBA Real Estate Section, and a former Adjunct Professor of Real Estate at John F. Kennedy University College of Law. He recently formed a construction and development corporation, All-Cal Construction & Real Estate Services, Inc., which can be found at: All-Cal.com.

The Contra Costa County Office Market: Now and in the Future

Sunday, April 01, 2018



While much of the greater Bay Area is still in the midst of an office leasing and construction frenzy, the Contra Costa office market remains a relatively calm suburban backwater in leasing activity. As an example, during 2017, San Francisco witnessed 9.5 million square feet of gross office leases, including the large Dropbox 732,000 square foot monster deal. Class A rental rates are now in the range of \$80-95 per rentable square foot (rsf). San Francisco has a 7 percent overall vacancy rate with very few available blocks of large space. In contrast, Class A rents in Concord and San Ramon range from \$30-

35/rsf and Class A downtown Walnut Creek office rents range from \$48-60/rsf. There is still fully-serviced Class B office space in Walnut Creek Shadelands which ranges from \$21-24/rsf.

Rental rates have gone up significantly during the past three to four years, in some cases 30-50 percent, as vacancy rates slowly dropped and Contra Costa landlords readied for an invasion of relocation tenancies from across the San Francisco Bay and/or through the tunnel. However, for the most part, there have been few TransBay relocations and very little tech growth. Our 680 Corridor remains primarily made up of CPAs, financial planners, law firms, and local offices of national companies.

A major trend that is emerging in corporate America is utilizing office space as a significant strategy to attract and retain talent. Recruiting has become more difficult as unemployment rates have dropped, and competition for the cream of the labor crop can be fierce. Companies, including law firms, are re-examining how their office design, layout, type of building and location support keeping their employee talent "happy." There are even new corporate designations like "Director of Employee Happiness," as highly-satisfied employees generally have much higher productivity, lower absenteeism and lower turnover. Also, as the cost of real estate per employee can be 10-20 percent of the overall cost of the employee and a fraction of wages, monies spent on the workplace can be a wise investment with a substantial rate of return. Companies are providing a number of alternative work environments from touchdown spaces, private pods, collaboration lounges, meeting rooms, and leisure amenities like foosball, game rooms and beer bars.

The Millennial generation may not have a 9 to 5 mentality, with employees able to work anywhere and anytime, and the lines are often blurred between the job and personal life. Checking e-mails while on vacation and ordering from Amazon at work seem like routine functions to the younger generation who grew up on the Internet. Millennials also want to work in an amenity-rich environment, either downtown with easy access to restaurants and retail or as part of a corporate campus loaded with employee amenities.

Law firms in major cities have been making the shift towards the new paradigm with one or two office sizes for all, benching for contract attorneys, and having three or four associate attorneys share one corner office. Today's law firms are also more concerned with costs, and it is not uncommon to outsource the IT department totally, eliminate the law library, and relocate back office functions such as accounting to lower-cost regions if the size of the operation makes this possible.

In a number of regions in the United States, there is still new office construction, and the legal industry is often at the forefront of relocation to the newest office building in town equipped with all the bells and whistles that go with being in a brand-new state-of-the-art office complex. While this is happening in a number of cities across the United States, out here, in the suburbs of Contra Costa, there have been no new office buildings constructed and none are planned for perhaps years to come. Land prices of what in the past might have been a great office building site have shot up to astronomical levels as apartment and retail developers have purchased redevelopment opportunities as quickly as they have come onto the market. Our office rents still have a dramatic way to go up before new office projects make sense, and as a result, we can anticipate a continuing increase of existing office building rental rates with this long-term lack of new construction.

New commercial development along the 680 corridor

Here is a brief overview of the multi-family and retail development now underway: The 375,000 square foot retail shopping center, The Veranda, in Concord, is fairly leased up, with a new wine and dine IMAX Theater, Cost Plus, Super Duper Burgers, T.J. Maxx, and 365 by Whole Foods.

In San Ramon, The Shops at Bishop Ranch has had a flurry of leasing activity and is anticipated to be fully leased prior to this November's pegged completion with 75 merchants, 18 of which offer food service, including six sit-down establishments; there is also a large health club and spa and The Lot, a 42,000 square foot ten-screen wine and dine luxury theater complex.

For the hotel and extended stay world, The Marriot Residence Inn on Pringle Ave at North California Blvd is expected to be completed in fall 2018 with 160 rooms.

There are thousands of new apartment and condo units either under construction or anticipated to open this year, including The Walnut Creek Transit Village at the BART Station, with 596 apartment units scheduled for 2019 first phase completion; The Lyric at 1500 North California, now almost 60 percent preleased with one bedroom units at \$3,800 and two-bedrooms up to \$5,800 a month; The Landing on Ygnacio Valley has 178 units and will be finished this spring; Riviera Avenue Condos will have 48 units; Riviera Apartments – 30 units; 2211 North Main – 52 apartments; 1716 Lofts on North Main will feature 42 units, and 1380 North California – 112 units.

Takeaways for law firms

With no new office construction in sight, start early in the renewal process, no matter what size law firm you have. For under 5,000 square-foot firms, a 12-18 month lead time is suggested, and with rental rates expected to continue their upward trend, locking in a lower rate earlier is to the tenant's advantage. For 10,000 square foot and larger law firms, strategic lease renewal planning might start a full two years prior to lease

expiration.

Engage your own tenant representation broker, who will be paid by the landlord, not you, but will be looking after your side of the equation. It can cost a Class A office landlord \$40-50/square foot to replace a tenant, and it is up to your tenant rep to get a portion of this back to you in lease concessions for not vacating. Don't let the landlord keep all the savings! Use your lease renewal as a window of opportunity to re-evaluate your office layout and design. How will your space serve to attract and retain employees, especially as it won't be too many years before Millennials and Gen Z make up the majority of your workforce? What do they want and how can you make their being at work enjoyable and satisfying?

Plan for flexibility by considering taking on excess space and subleasing future expansion, so you can grow without being forced to relocate. Have expansion options, and conversely, be able to demise and sublet or early terminate a portion of your space if your practice heads in this direction.

We who live and work in Contra Costa County are most fortunate in avoiding the long commute, and being able to access the beauty of our Mt. Diablo Valley and other scenic corridors, and taking advantage of the many retail amenities within the region.

Jeffrey S. Weil has specialized in the sale and leasing of commercial properties since 1976, including exclusive tenant representation of lease renewals, lease restructuring, office facility relocation, laboratory and research & development, office property sales and build-to-suits. He is Executive Vice President of Colliers International. Reach him at 925-279-5590 or jeff.weil@colliers.com or visit www.officetimes.com. Contact him for no-obligation, no-cost advice on any aspect of commercial real estate.

Take the Initiative and Reach Out!

Sunday, April 01, 2018



At four separate events in February and early March 2018, I had the opportunity to chat with some of the newest members of our association.

While each event was unique, two were more “social” than the others: a happy hour gathering at Telerific Barcelona; the first annual Lunar New Year Dinner; an address/presentation at the “Bridging the Gap” program; and a presentation/Q&A with new law students at John F. Kennedy University School College of Law.

I was encouraged to see many of our county’s newest attorneys and law students at these events. They took the initiative to step out of their comfort zones, and into less-familiar arenas. I’m glad they did, and I hope they continue to do so. Speaking with these groups, I’ve learned something which is obvious: many law students and new attorneys want to get involved in the legal community, however, they may not know how best to do so. To all of them, I say, there is no right or wrong way to get involved.

Social events like the happy hour gatherings, Lunar New Year Dinner, and upcoming events like the Food From The Bar Comedy Night and Walk-A-Thon Food Drive are great ways for all members, regardless of years of practice, to get to know each other, to network, and to build camaraderie and relationships. For example, at our Lunar New Year Dinner, I sat at a table with, among others, two law students, two judges, and two other CCCBA Board Members. One law student mentioned that she wanted to help other law students to understand that these events (and CCCBA membership) are extremely valuable. These events allow her to meet and talk with other attorneys, and more importantly, judges in our county in low-pressure social settings. This interaction was important and valuable to her, and I am glad she took the time and effort to attend.

Of course, many CCCBA events are educational and offer MCLE credit. Matthew Collis, Leader of our Barristers/Young Lawyers Section, put together a fantastic Bridging the Gap program this year. I was inspired to see a great group of attorneys new to Contra Costa devote an entire day to learning more about the CCCBA and our legal community. They gained valuable insight via presentations by Hon. Christopher Bowen, and other Section Leaders and speakers, and enjoyed a lunch and courthouse tour with Hon. Steven Austin.

To law students/new attorneys:

My best advice is to take initiative and reach out! You are in control of your own success! Take a chance, and call a CCCBA Board Member, Theresa Hurley our Executive Director, and/or any Section Leader to get to know more about his/her practice. (Law Students: You can join sections for only \$5 per section!) Go to social events, and bring another law student or new attorney too! Sign up to volunteer at an event, or to write an article for the Contra Costa Lawyer magazine. At the very least, take advantage of our

Member Only Benefits, and make the most of your membership!

To seasoned attorneys:

Similarly, I encourage and /challenge you to take initiative and reach out! Think back to your law school days, or your first years as an attorney, and remember how it may have been a stressful time in your life. I encourage you to reach out to the Barristers and Law Student Sections when thinking about planning events, or when you have a project that may be of interest to them. Consider working with the CCCBA to become a mentor to a more junior attorney and/or law student. If a law student/junior attorney offers to buy you coffee, consider treating them to lunch instead. No one has unlimited time, however, all of us can and should assist and encourage each other, which will increase the public trust of attorneys and help the profession overall.

*For over 21 years, **James Wu** has protected companies by advising them on best-practices to comply with employment laws, and to reduce the risks of employment-related claims and lawsuits. He is also a defense litigator for employers when claims do arise. To learn more, visit www.jameswulaw.com and www.linkedin.com/in/jamesywu*

Solutions to Contra Costa's Traffic Woes

Sunday, April 01, 2018



Coffee Talk is a regular feature of the Contra Costa Lawyer magazine. We ask a short question related to an upcoming theme and responses are then published in the Contra Costa Lawyer magazine. This month for the Real Estate Development issue, we asked:

Would you be willing to give up your car to address parking and traffic problems in our

county?

NO! Will not consider until we have public transportation in the Greater Bay Area and within Contra Costa County like they do in New York City and even then it will take a great deal of convincing.

Beth W. Mora, MORA EMPLOYMENT LAW

Hell, no.

Anonymous

Yes, if there were ample public transportation options and I could get to where I needed to be. I never needed a car in Budapest, Hungary. Until I moved to the U.S., I never even learned to drive, neither did my mother or most of my family. We could use buses, trams, trolley buses, metro, trains, and even a funicular to take us everywhere. We walked a lot, too, and it kept us fit to a large extent. Oh, but I wax nostalgic: Budapest is a European city, developed organically when most people travelled by foot.

Marta R. Vanegas, J.D., LL.M., Attorney at Law

Law Offices of John F. Martin, Walnut Creek, CA 94597

NO! I love my Subaru. Public transportation is not sufficient in Central Contra Costa County. JZ

JOEL ZEBRACK, Attorney / Mediator

I like driving so much, and get so many benefits, and problems, from my car. I realize what may be coming to reduce danger, but want to continue being able to drive for now.

John Diaz Coker

The Silver Lining Behind Local Planning Department Challenges

Sunday, April 01, 2018



Inside this issue of the Contra Costa Lawyer, we see how the state and local jurisdictions are addressing the ever-increasing demand for space in the East Bay—for housing and cars. The increased congestion in Central Contra Costa is palpable; it seems to have increased exponentially in the 11 years since I arrived here, and I regularly hear comments about the I-680, Highway 24, and Highway 4 corridors seeming more like Los Angeles County than Contra Costa. Decreasing rain fall and worsening air quality in our area add to that L.A. feeling.

In spite of this pressure cooker environment, I find reasons to be optimistic among this month's articles. Two of the authors, Inga Miller and Ken Strongman, volunteer their time, for Orinda and Walnut Creek, respectively, to help address the planning challenges that our county and cities face. Strongman and Miller are only two of the many busy individuals who volunteer on commissions, boards, and councils across the county to tackle these difficult issues. It is inspiring to see such commitments to public service in local development and planning.

Adding to the difficulty of these volunteers' jobs are the statewide policies discussed in articles by Miller, Amara Morrison, and Marie Quashnock. This tension between the state and local control seems necessary and appropriate, however. Ultimately, I believe our communities benefit from Sacramento's guidance for how we may best accommodate difficult but inevitable changes in local planning.

Another point of personal inspiration for me is the work of non-profit Bike East Bay, featured this month. Replacing cars with bikes wherever possible seems essential to maintaining and improving our environment, air quality, and quality of life. I can personally attest to the benefits of bicycle commuting (provided there is a safe corridor available): fitness, stress relief, financial savings, and much more smiling.

Bar Soap

Sunday, April 01, 2018



It has been a while since I penned a Bar Soap column. It seems the more news there is to write about, the more anxious I get and the more difficult it is to settle down and write the column. I should do like Herb Caen. That is, write something every day and then decide if it is worth mentioning in a column, as opposed to gathering information in a file for weeks on end, then having to sort through it for inspiration.

This is a habit that I better develop soon because I am inundated with reports on verdicts and about to have a lot more fodder for my Jury Verdicts report. As you all know, I have been whining for years

about the need for the court system to provide preparation of monthly trial statistics. The good news is that I am told I have a sympathizer within the system and that we will soon resume receipt of our monthly statistics.

Let's start our Bar Soap discussion with the topic of civility. Our legal profession is often mentioned in a negative light. I am sure you all have stories of meeting someone, mentioning you are a lawyer, only to be barraged with bad lawyer jokes. Okay, admittedly, there are some good lawyer jokes, but let's stay on track. Why is it we are seen in such a negative light? I meet with people on a daily basis who have legal issues requiring a legal professional to help them sort it out. I often mention we are a nation of laws. We have a very well-defined system of laws and many attorneys, judges and support staff to ensure the system operates fairly, efficiently and justly. In most cases the proper result is reached. In most jury trials, the jury actually gets it right. Getting back to the question, the answer is often as simple as the lawyer in a particular case acted like a jerk. It is rarely helpful and in most cases hurtful to the client for the lawyer to act like a jerk. I was taught to respect the opposition even if you disagree with an attorney's position on a particular issue.

One often hears the lament: "There are too many lawyers." My response is always: "There are not too many good lawyers." Keep your client's interests in mind at all times, and win, lose or draw, accept the result. There may be a time when you have to lick your wounds and move on. And maybe check your malpractice coverage.

I very much enjoyed the February issue mention of new laws. Speaking of laws, anyone notice the huge number of motorists focusing on their mobile devices? I thought there was a law against that. Come to think of it, there is. I hear the traffic commissioners have no shortage of such cases on a daily basis in their respective courtrooms. Traffic accidents and traffic deaths are on the rise and distracted driving is a big cause. Are we becoming a nation of people who obey laws we agree with but disobey laws that are inconvenient or unpopular? I am not sure of the answer. But I think it bears mentioning and perhaps a discussion. Think speeding, cell phone use, jay walking, running red lights, and on a less dangerous front but an annoying lapse, littering.

I do know it has been too long between Bar Soap columns. I mentioned the MCLE Spectacular was coming up in my last column and Yikes, it has been several months since the event. At any rate it was "Spectacular." The most attendees ever. The same goes for our Bar holiday party and the Annual CCCBA Installation Lunch. Congratulations to the new President James Wu. Goodness, I thought Phil Andersen just started and he is already our past president.

The annual High School Mock Trial competition has already come and gone. It is a very worthwhile event. I volunteer each year to help, along with a significant number of our regular judges, retired judges and local attorneys. The kids work very hard preparing, and I must say, the performances are incredible.

Lots of people are on the move, either to new adventures or on the rise within their own firms and organizations. I already mentioned our new 2018 Bar President James Wu, but again congratulations. A big congratulations to Virginia George who is now the Honorable Virginia George, Judge of the Contra Costa Superior Court. Virginia and I worked together in the DA's Office a few years back, and my mother was the teacher of a number of Georges at Alhambra High School, I think including Virginia.

I saw a mention of Nick Casper on a social media site. Turns out Stan Casper is slowing down and his son Nick is taking on the management of the firm. Although one would not think anyone at the Casper, Meadows, Schwartz & Cook firm is slowing down, witness the nice ad for the firm on the back page of our 2017-2018 Bar Directory. Don't even have to change the name of the firm. Congratulations Nick on your management role. Of course, be careful what you wish for. I often think I am a practicing lawyer, but probably should say I am a law firm manager who occasionally has time for the actual practice of law.

As one might expect with a new DA, lots of retirements and promotions at my old place of employment. Keep an eye out as there is a race for DA.

I noticed my friend Delia Isvoranu is a partner at Duane Morris LLP. Nice move Delia. My friend Dominique Yancey is a Deputy DA, the President of the 100 Club and now a Fire Commissioner with San Ramon Fire. I particularly am impressed with the Fire Commissioner gig, as I am a commissioner with ConFire. Of course we have more engines and trucks over at ConFire, so there Dominique!

Sad to hear of the passing of The Honorable Sam Mesnick (Ret.). Judge Mesnick was on the bench in Richmond during my days as a Deputy DA. He presided over a number of my preliminary examinations. A gentleman every time I appeared in his courtroom.

Although I never appeared opposite him, I often saw attorney Paul Bonnar in the courthouse over the years. Paul recently passed away in Palm Desert. His involvement in community and legal organizations was extraordinary. Sad to learn of his passing and always ironic we only learn of his incredible history in an obituary.

Edmund Regalia was a legend in the legal community. A founding member of Miller Star Regalia, Ed recently passed away in Walnut Creek. Like Paul Bonnar, you have to read Ed's obituary to get a sense of his incredible contributions to the legal community, as well as his zest for life.

And last but not least, we note the passing of Keith Howard. Keith was an accomplished

attorney and a volunteer in many community organizations. Again, I cannot do justice to the man in this little column. Read his obituary to get a sense of the incredible man.

Keep those cards and letters coming and I will try to get a Bar Soap column out for you on a more regular basis.

Bike East Bay

Sunday, April 01, 2018



I recently had the pleasure of learning about Bike East Bay, a local non-profit organization dedicated to the promotion of “safe, fun, and accessible” bicycling in our communities. With the traffic issues that flow from real estate development, Bike East Bay plays an important role in local planning.

Bike East Bay employs a three-pronged approach. First, the organization advocates for an “extensive and seamless network of bike facilities ... for people of all abilities and experience,” pushing for street design that integrates safe bicycle access, and working to increase funding for bicycle-friendly improvements and projects. Second, Bike East Bay works to educate and increase awareness for bicycling in the communities. Third, it strives to engage with all East Bay communities in the planning process and serves as a “hub” for identifying strategies to increase cycling.

In addition to its work in Alameda County, Bike East Bay has a number of campaigns currently pending in Contra Costa. Bike East Bay is partnering with local organizers in Richmond, Concord, Walnut Creek, and Lafayette to implement and integrate safe bike lanes, paths, and trails into street and traffic planning. Among the organization’s recent achievements are re-designs of Detroit Avenue in Concord, and California Boulevard, Mt. Diablo Boulevard, and Olympic Boulevard in Walnut Creek to include protected or buffered bike lanes. And, there is an effort to connect the Iron Horse Trail with the Lafayette-Moraga Trail with a two-way “cycle track.”

Bike East Bay provides many ways to get involved in creating bicycle-friendly communities. Visit bikeeastbay.org to learn how to donate, join, attend classes, or volunteer.

Lunar New Year Celebration [photos]

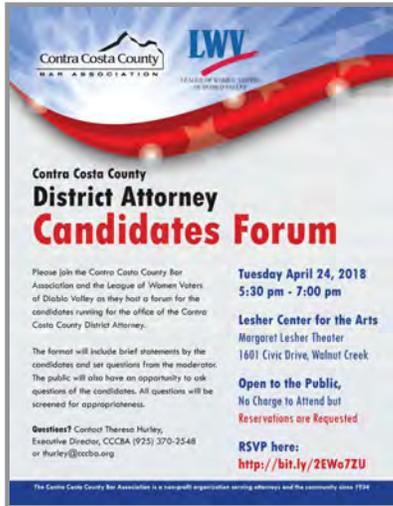
Sunday, April 01, 2018

CCCBA hosted its first Lunar New Year celebration on February 22. This social occasion included the bench and the bar.

[metaslider id=15527]

District Attorney Candidates Forum, April 24, 2018

Sunday, April 01, 2018



Contra Costa County District Attorney Candidates Forum

Tuesday April 24, 2018

Leshner Center for the Arts, 1601 Civic Drive, Walnut Creek

Free and open to the public

2018-candidates-forum 2018-candidates-forum

Women's Section Wine Tasting Fundraiser 2018

Sunday, April 01, 2018



Thursday, April 19, 2018

5:15 - 7:30 pm

Crowne Plaza Hotel, Concord, CA

[Register Now](#)



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[Update on Housing Program to Counter Urban Development - Interview with Winston Kelly Clark - Address the Housing Crisis](#)



Spotlight

[Take the initiative and research that](#)
of our speakers points in February and early March 2013. I had the opportunity to:

 [Sheela Ghosh](#)
I recently had the pleasure of learning about Sheela Ghosh, a local nonprofit organization.

 [Conrad interviews with Gov. Edward](#)
[Brown](#), [Governor Edmund G. Brown Jr.](#)
On December 22, 2012, Conrad

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