



HAYWARD AREA PLANNING ASSOCIATION

Vol. XXXII No. 3

## *The HAPA News*

December 4, 2010

### *HAPA-CATS Seasonal Gathering*

HAPA and CATS members are invited to a joint gathering and potluck dinner on Saturday, December 11, 5:30 p.m. until 9 p.m. Please bring your favorite dish to share. We're looking forward to seeing you at 2787 Hillcrest Ave., Hayward. Please email or call 510-538-3692 to let us know whether or not you are coming if you haven't already.



#### *Highlights of this Newsletter:*

##### *HAPA and City Win Big Case Against CSU East Bay*

- Judge Roesch decision
- Letter to President Qayoumi
- Public Records request

##### *Quarry Village Developments*

- Quarry Village inches ahead
- Proforma and Private Placement Memorandum
- Solar Energy
- Cut & Fill

##### *South Hayward BART Station Area Transit-Oriented Development*



*Introduction to Roesch Decision* - On October 28, Superior Court Judge Frank Roesch issued a decision supporting the City of Hayward and Hayward Area Planning Association on every major cause of action. After almost three years of effort, we have finally stopped the proposed parking structure for the campus. It will take CSU East Bay a long time to do another EIR, and even then it would face the same problems as the one we just stopped.

However, stopping the structure does not solve the problem. It is clear from comments I have heard indirectly from campus administrators that they really do not understand the Beeline Bus concept. After the decision came out, I sent President Qayoumi a strongly worded letter (below). I also sent in a request for more information under the California Public Records Act (also below.) I am trying to persuade the student government to ask for a study of transit access. Steve Murtaugh has a Facebook page "Beeline Bus Advocates." Go on Facebook and search it. Call Steve at 581-9848 with questions. I am looking into getting our local legislators, their fellow legislators in Sacramento, and key legislative staff to understand the shuttle proposal and to put pressure on the Chancellor's office to persuade CSU East Bay to study the shuttle.

# *HAPA and City Win Big Case Against CSU East Bay*

[bolding added]

Case No. RG09-480852

Consolidated with RG09-481095

## **ORDER GRANTING PETITION FOR WRIT OF MANDATE**

The merits hearing on the matter of the Petition for Writ of Mandate came regularly before the Court on September 9, 2010, Judge Frank Roesch presiding. ...

This case involves a single Environmental Impact Report ("EIR") prepared by CSU in the evaluation of a programmatic "Master Plan" long-range planning document, and in the evaluation of two specific projects for California State University East Bay ("CSU-EB"): the Harder Road Parking Structure ("HRPS"), a new five-story parking structure, and Pioneer Heights IV ("PHIV"), a set of four new student dormitory buildings. ... The EIR describes CSU's projected plans to double the size of the student population at CSU-EB within the next 20 years as well as CSU's plans for the near-term construction of the two specific projects. ....

### **1. FIRE AND EMERGENCY RESPONSE SERVICES**

On the question of whether CSU adequately considered fire and emergency services impacts of the Project, the Court finds that it did not. ...

### **2. TRAFFIC IMPACTS**

#### **A. CSU Improperly Postponed Analysis of the Impacts on Small Residential Streets**

The EIR is inadequate with respect to its traffic impact analysis concerning small residential streets. ...

**B. The TDM [Transportation Demand Management] Program in TRANS-1A is Not Sufficient Mitigation Of Traffic Impacts** The TDM program described in the EIR does not mitigate the significant traffic impacts that were identified. Instead, the EIR improperly defers decisions about mitigation in a manner that does not satisfy the requirements of CEQA, i.e. it does not provide specific information to evaluate the Project, does not provide for a fully enforceable mitigation commitment, and does not reduce the identified impacts to a less-than-significant level.....

### **3. AIR QUALITY**

The EIR's analysis of air quality issues, including greenhouse gas issues, is inadequate. .... Petitioners are correct that CSU's evaluation and analysis fail because they are substantially founded upon the premise that the TRANS-1A mitigation measure will lead to a specific result. The court has determined that TRANS-1A is illusory as a mitigation measure and it follows that the EIR analysis of air quality impacts founded upon an illusory mitigation measure is not adequate. ...

### **5. PARKS & RECREATION IMPACTS**

CSU did not have substantial evidence to support its determination that the projects would not have a significant effect on parks and the EIR did not adequately disclose significant impacts, particularly on neighboring parks such as Garin Regional Park. CSU also failed to respond adequately to concerns about the environmental impacts of building a new set of four dormitories just outside a trailhead to Garin.

### **6. THE RANGE OF ALTERNATIVES EVALUATED IN THE EIR WAS NOT ADEQUATE AS TO HRPS ...**

Petitioners argue that CSU's Master Plan EIR and the project EIR for the parking structure failed to properly evaluate transit alternatives to either of those EIRs. CEQA requires the lead

agency to describe a reasonable range of alternatives .... If an alternative is identified as feasible, it must be considered in some detail; even for alternatives rejected as infeasible, the agency must have substantial evidence for such rejection....

Here, CSU indicated in the EIR that a transit alternative was an infeasible alternative to the parking structure project. It did so primarily on the ground that the TDM would not eliminate the need for the parking structure, so a less far-reaching "transit only" alternative could not eliminate the need for the parking structure either. Because of the inadequacy of the TDM plan CSU did not have substantial evidence for rejecting a transit alternative as infeasible. It likewise follows that rejection of this alternative ... was a failure to examine a reasonable range of alternatives as required by CEQA. ...

## **7. STATEMENT OF OVERRIDING CONSIDERATIONS**

The findings underpinning the Statement of Overriding Considerations are not supported by substantial evidence in the record..... here [the] statement of overriding considerations is invalid for a reason that [it] does not require us to reweigh benefits and detriments, or to inquire into the statement's factual basis. A statement of overriding considerations is required, and offers a proper basis for approving a project despite the existence of unmitigated environmental effects, only when the measures necessary to mitigate or avoid those effects have properly been found to be infeasible. ....

The court has concluded above that the TDM is not a valid mitigation measure. Moreover, other traffic mitigation measures such as those suggested by Petitioner **HAPA** are not described as infeasible in the specific response to **HAPA's** comments or in the "Master Responses."

The strongest "evidence" in the record that could support the finding of infeasibility of the **HAPA** proposal is a vague statement that an "optimistic assessment that everyone who could take transit will take transit is not necessarily a reliable basis for infrastructure and transit resource planning." Not only does this statement suggest that there *are* occasions when such an assessment is a reliable basis to be used, but more importantly, the statement is directed at the question of whether increased transit use would *negate* the entire HRPS project, rather than directed to the question of whether the **HAPA** proposal is infeasible as a mitigation of the environmental effects of the HRPS.

A proposed mitigation measure need not eliminate the need for the entire project, but only need offer a means of eliminating or decreasing the significant environmental effects of the project. Irrespective of whether the entire project would be unnecessary with implementation of **HAPA's** proposed "real transit" plan, the **HAPA** proposal would appear to be, at least, a facially reasonable mitigation of the significant environmental effects of the parking structure. CSU cannot dismiss the **HAPA** proposal as infeasible absent substantial evidence of its infeasibility amounting to more than simply characterizing it as "overly optimistic." The finding by CSU that there are no feasible mitigations other than the TDM is thus unsupported by substantial evidence both because the TDM is illusory, and because the **HAPA** mitigation proposal (among others) was dismissed without the necessary substantial evidence to justify a finding that it is not a feasible mitigation. ...

Based upon the foregoing, the Court **GRANTS** the Petition for Writ of Mandate. Therefore, let a peremptory writ of mandate issue commanding Respondent to set aside its certification of the EIR, its Notice of Determination, and its approval of the Master Plan project, the HRPS project, and the PHIV project. ...

**IT IS SO ORDERED.**

Date: October 28, 2010

Frank Roesch...JUDGE OF THE SUPERIOR COURT



## *Letter to CSU East Bay President Mo Qayoumi*

Dear President Qayoumi:

November 3, 2010

I would like to stop agreeing to disagree and start working with you about how to provide better access to the campus.

My research shows the feasibility of fast, free, frequent shuttle access to the campus from the Hayward BART station, and its ability to meet the need. No evidence to the contrary has ever been presented.

Last time around, VP Dalton cut off my access to Ellen Poling just after she agreed to study transit, and told me (and others) to communicate through Jim Zavagno. I sent him emails, he never answered; end of communications. I can supply the email record if you want details.

If you want to make progress, you have to retain competent consultants who know something about transit--not Fehr Peers or most other pavement-based consultants using 4 step modeling. You would have to go to someone like Don Shoup or Todd Litman, whose work was misused in the Master Plan. Diana Dorinson could also do the job; she vetted my analysis. She is a young local transportation analyst with a degree from MIT.

I don't think your opposition to economically cost-effective, sustainable transit is due to hypocrisy; I think it is due to ignorance, based on the dominance of a car-subsidizing culture. You are trusting the wrong people for advice, people who are also part of that culture.

I don't think you are really opposed to something that would work better, but also it is only one of a large number of issues, and certainly not the biggest, on your plate.

For my part, it is my passion and my academic interest. I am committed to economically affordable and environmentally sustainable systems. As a result, I have some expertise, and I would like to help CSU East Bay Hayward.

Litigation won't solve anything. If you hunker down and push on, I will keep fighting, and you'll probably eventually succeed. Or we can solve the problem.

Sincerely,

Sherman Lewis

Professor Emeritus, CSU East Bay, Hayward

President, Hayward Area Planning Association

[www.quarryvillage.org](http://www.quarryvillage.org)



### *Public Records Request*

[HAPA letterhead]

President Mo Qayoumi

November 20, 2010

CSU East Bay ///

Dear President Qayoumi:

The Hayward Area Planning Association requests copies of public records under the California Public Records Act (Government Code §6250 et seq.), either computer files or hard copy as convenient for you, within California State University East Bay's possession or control as described below, prepared after March 11, 2010. Please provide me, by e-mail or letter, the cost for obtaining copies of these records. Public records include but are not limited to documents, memos, spreadsheets, cost estimates, financial models, financial analyses, accounts, emails, meeting packets, and minutes of meetings.

Persons and entities included in this request include, but are not limited to, you, Don Sawyer, Linda Dalton, Colin Ormsby, Shawn Bibb, James Zavagno, Gary Banks, Christopher Brown, University Parking Services, Enterprise Operations, the Foundation, and the PTAC [Parking and Transportation Advisory Committee].

This request excludes the report of June 18, 2010, the Communique of Sept. 27, 2010, and the parking website at <http://www20.CSUEastbay.edu/af/departments/parking/>.

1. **The Parking Structure.** Public records involving CSU East Bay, the CSU administration in Long Beach, consultants, and students, pertaining to bid documents showing the engineer's estimate and bids received for total contract construction hard costs for the **parking structure** and related construction. Any construction estimates including soft costs. Records substantiating the claim in the Sept. 27, 2010, Communique that "you will see construction start in the very near future..." Records substantiating "design work on the new parking structure." Records related to the report, "Parking structure planned for Hayward Campus" of June 18, 2010 found at <http://www20.CSUEastbay.edu/news/2010/05/parkingstructure-052710.html>. Public records relating to the removal of <http://www20.CSUEastbay.edu/af/departments/parking/plans> from the web site and to the litigation as it relates to the parking structure. This request excludes construction drawings and lengthy specifications, but includes summary sheets.

2. **Parking charges.** Records relating to cost estimates for parking, sources and uses of funds, bond interest rates and term of years, financial models, any financial analysis used as a basis for higher parking charges, any records revealing the difference between parking charges with and without a parking structure.

3. **Transit access and the CSU East Bay Shuttle.** Records relating to revenues from parking fines and their use for a shuttle, any contract or agreement with a shuttle operator, records about operating expenses and ridership, and other records about shuttle funding sources, funding uses, and ridership. Records relating to use of BART, the shuttle, AC Transit, off-campus parking, and walking to access the campus.

4. **Demand for parking.** Records relating to parking inventory, counts of parked cars, and estimates of parking needs. Records relating to the claim that "...the demand for parking outstrips supply" at <http://www20.CSUEastbay.edu/af/departments/parking/alt-trans/CSUeb-shuttle-qa.html>.

5. **Transportation Demand Management (TDM).** Records showing any effort to implement the purported commitment to TDM in the EIR. Records relating to what to do if the parking structure is not built.

Sincerely, s/ Sherman Lewis, President Hayward Area Planning Association.

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## *Quarry Village Inches Ahead*

### *City Pushes Sales of Caltrans Houses to Tenants*

One of our major challenges is to get control of the land now owned by CalTrans. Although nothing has actually happened, a whole lot has really happened. As for actual happenings, no land has been sold. As for really happenings, consider this:

- The 1971 lawsuit, *La Raza Unida*, was finally settled early in 2010.
- The long-running negotiations between Steve Ronfeldt, representing the CalTrans tenants, and the City of Hayward and CalTrans, were successfully concluded.

- The Alameda County Superior Court approved a long, complicated stipulation laying out how all the tenants would be treated as the land and houses are being sold.
- The City, Alameda County, City of San Leandro, and AC Transit decided exactly how to spend the money from the sale of the surplus right-of-way (called the LATIP).
- The City of Hayward applied to the California Transportation Commission (CTC) to rescind the State Route designations for the arterial portions of state routes in Hayward: SR 92 Jackson St., SR 185 Mission north of Jackson, and SR238 Foothill Blvd./Mission south of Jackson.
- In July 2010 the CTC approved the LATIP, the rescission of state routes, the abandonment of the SR 238 bypass freeway, and the housing program for the CalTrans tenants.
- Jeff McLaughlin, 583-4258, Housing Manager, City of Hayward, has been contacting tenants.
- The City is trying to meet with CalTrans to take the next steps for the tenants.

The schedule:

January 2011- Deadline to choose Lump Sum Settlement or Opportunity to Purchase.

February 2011- Cal Trans property single family property sales begin.

April 2011- Decisions on Bunker Hill area property dispositions.

May 2012- Escrows or home purchase must be completed.

June 2012- End of settlement process.



## *Proforma and Private Placement Memorandum*

I have been working with Dave Jacobson, a real estate investment consultant, on developing a professional proforma. I have had to develop a lot of information by going to various consultants. For the land improvements, my major consultant has been Jim Toby of Lea & Braze of Hayward. For building, my major consultant has been Andrew Silverman of Zeta Communities. The proforma spreadsheet has many tabs; the summary tab is on cash flow. Cash flow summarizes how the whole thing works financially. It starts at the top with all of the revenues laid out for a 7 to 12 year period. Then comes land purchase, entitlement, and design. Then comes land improvements.

The next major section deals with housing and other “vertical construction.” in the initial phases, all the spending shows huge deficits, so the next part of the proforma shows how all of this spending is financed by investments and loans and how those investments and loans are paid off, interest is paid, and profits are distributed. We finally reached the bottom line, which shows the internal rate of return for the investors.

This rate of return is highly influenced by the cost of mass grading, housing cost, interest rates, and the interplay between the prices of the units and how fast they can be sold. For a mid-length estimate of 36 units sales per quarter, we show an internal rate of return of about 20%. This is not very high, and our housing prices are definitely higher than the current, depressed market. Obviously, we will have to wait for the market to recover, probably in 3-5 years. Meanwhile, we need to find investors so we can get control of the land.

We just started work on a Private Placement Memorandum (PPM), following SEC rules, to make our pitch to investors. It will include the proforma, the site plan, acreage data, phasing, engineering report, market study, the opportunity, the risks, and more. Please send \$2 million!

## *Solar Energy*

The goal of Quarry Village buildings is to be self-sufficient in energy, using no fossil fuels. The concept is called zero net on the grid, which means that over the course of a year the project will take energy off the PG&E grid about equal to what it is able to generate onto the PG&E grid. For a long time, the plan was to have a combination of hot water panels and photovoltaic (PV) panels on the roof.

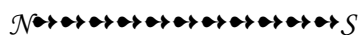
Recently, I discovered PVT Solar, a new company that combines thermal and PV panels. For most of the array on the roof, the PV panels have a space underneath that heats air that moves upward to a top row of thermal-only panels. The hot air then goes to a heat transfer module which heats water and air for the house. The system meets about 75% of the hot water need with the rest supplied by a heating element in the top of the solar hot water tank. The system provides only 20% of the space heat need, the rest of which can be met by adding a heat pump. The heat pump, oddly enough, can also work in reverse to cool the air. Because the PV panels also generate hot air, the overall system is more efficient than two separate solar systems. Almost the whole system can go on a flat roof with the panels on tilt racks and the equipment underneath.

I have been talking with PVT Solar and conferring with Davis Energy, an energy consulting firm in Davis, about the QV energy system, and now I have a pretty comprehensive spreadsheet. If we use natural gas, the whole system is energy self-sufficient with less than 3KW of DC (Direct Current) capacity on the roof. Three floors of living space can be served under one roof.



## *Cut & Fill*

The quarry site is going to take a lot of grading. I keep trying to reduce it, and the engineers keep telling me I need to do more. They seem to think that water drains downhill, and this creates all kinds of problems for a large area that is too low to drain. The solution seems to be to lift up the main quarry floor to be a low hill that drains north towards the creek and south toward Carlos Bee Blvd. On the west side is a knoll which can be higher or lower depending on the amount of fill we need. The engineers have run a very sophisticated AutoCAD volumetric computation which tells us that we need to cut about 130,000 cubic yards. This amount of cut also seems to be pretty close to the amount of fill we will need. The grading makes almost the whole project ADA compliant with very slight grades. The small southern part, visible from Carlos Bee Blvd., and below 300 ft. elevation, will be graded only for building pads.



## *South Hayward BART Station Area Transit-Oriented Development*

The City and BART have \$30 million from the State's Proposition 1C infill infrastructure bond for this Transit-Oriented Development (TOD). About \$23 million of it is for a 7-level parking structure. I made a detailed proposal for using some of this money for an alternative based on shuttles. As I worked on this alternative, it got more and more complicated. I started off with three shuttles: Industrial, Tennyson, and Fairway Park. Of these, only the Industrial shuttle turned out to be cost-effective while the other two, ironically, provided much more access to BART than is likely ever to happen. I realized people need a place to park in order to ride the

shuttles. For the Industrial shuttle, I proposed a park & ride lot at the corner of Industrial and Huntwood. This lot would be close to the station, only 4 minutes away via Dixon St. The TOD as now planned greatly increases the amount of parking in the TOD area, which makes no sense to me if it is supposed to be transit-oriented.

This thinking led to trying to figure out how to make available to BART riders the parking planned for Safeway and housing. The solution is to “unbundle” the parking: Instead of renting a unit and parking spot combined, unbundling allows a family to rent them separately for exactly the same cost. That way, if they don’t need the parking, they can save a lot of money. Based on two big projects, one in Berkeley and one in Arlington VA, which have unbundled parking, I estimated that about 45% of the residents would not want to rent the parking. They would have access to most of what they need at the Safeway or reachable by BART, or by using car share or car rental. Then BART riders could use the vacant spaces.

Then it seemed logical to have parking leases and fees for whatever people were willing to pay. Typically at BART stations this is about \$1 a day. All of the parking could be shared using the idea of willingness to pay. If vacancies are too high, the parking charge would go down. If too few vacancies, the charge would go up. Now, here is where things really get slick. We can use the surplus revenues from the parking charges to pay the operating costs of the Industrial shuttle. It turns out that the parking charges are about enough to pay for the shuttle.

When people use BART, they are calculating the sum combination of time and money to get access to the system. If it is too expensive, they drive - all the way. The problem might be that the parking charges would get too expensive and the shuttle would be too slow, so that BART would lose riders. However, a careful analysis shows that on average parking and shuttle take about the same amount of time - 8 to 9 minutes. The shuttle time stays pretty constant through the day and the ride would be free. Parking at the station would cost \$1, and early in the day is faster because there are vacant spaces close to the station entrance.

As the parking fills up, the driving time to find a space and the walking time and elevator time to get to the station gradually increase. Part way along in this process, the free shuttle becomes more efficient than parking and paying at the station. Furthermore, slick idea number 2, these two modes of access can achieve a dynamic equilibrium so that if there is not much demand for parking, the shuttle will stay at a base level. With development, however, demand for parking will increase, producing more parking revenue, supporting more shuttle service, increasing access to BART in a sustainable way. Notice that building a parking structure limits the amount of access that can be provided while shared parking and shuttle can support more growth.

This past summer, the BART consulting firm produced a report that claimed that my idea would not work. Their conclusion was based on irrelevant data. They did not actually look at how the cost and time to park increases during the day, the routes used to the station, and how the shuttle is faster and cheaper than parking at the station. So now I am starting to talk to people in Fairway Park, the City, and at BART to get a better analysis.

I congratulate Robert Raburn on his election to the BART board. He has been a long-time leader for bicycling as head of the East Bay Bicycle Coalition and is a great advocate for biking and transit.

**Sherman Lewis, President**  
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