This month’s blog was contributed by Mike Bullock, an engineer by training and long-time environmentalist and Sierra Club member. Mike served as chair of the San Diego Chapter’s Transportation Committee for 9 years.

For years now (8 actually), yours truly, along with other activists in San Diego County, California have been pushing our county government to get serious about reducing greenhouse gas emissions. This effort has involved the Sierra Club litigating with the County over the latter’s attempts to come up with a responsive Climate Action Plan. The first suit gave us a win, and required the CAP at issue to be redone. The County appealed the local ruling, but the California Supreme Court refused to hear it.

There were ups and downs and lessons learned, but perseverance – and a great legal team – made all the difference. I’ve put together a brief account of how we pulled it off. So, keep reading . . . BUT FIRST, CIRCLE May 15th. This is the day on which we expect a ruling on our second lawsuit. After losing the first round, the County came up with a new CAP which was, if anything, worse than the first one. And so, we’ve been in court again. Essentially, the County wants to continue to allow big new housing developments to go in without paying much attention to meeting its GHG emissions reduction objectives by reducing vehicle miles traveled (VMT). If you’d like to listen in, the oral arguments are currently scheduled to begin at 10:00 AM PDT on Friday, May 15th.

Our Encounter with the Courts

Go back a few years to 2011. I’ll be mentioning a woman named Malinda Dickenson a lot. Late that year, she agreed to meet with me at the Beach Break, a well-known hangout in my neighborhood, about a 5-minute bike ride from my house. I brought my climate-literacy-transportation-policy slides, printed out on paper. I had no idea Malinda was a lawyer. She wanted to meet me, since I was the Transportation Chair in the Club’s San Diego Chapter. She was a vegan. I got a hamburger. She listened. When I was done she told me she practiced property and environmental law. I was impressed with how she reacted to my slides. She got it. Even the parking. Even the climate destabilization. Even the math. She seemed to like numbers. It was odd. She said she was a lawyer.

Several months later she called me with an ask to attend a meeting with the County. Their Draft CAP was not yet released. She took charge of the meeting. We got zero satisfaction. We tried. We sent letters and emails. We got nowhere. Malinda then asked me to read the released Draft CAP and to write a letter. She wrote the cover letter, and we were off to the races. After a grueling 2 years, we won in Judge Taylor’s San Diego Superior Court.

But the County appealed and we eventually found ourselves at the appellate level. On our day in court we heard very dramatic arguments against that first CAP. Unfortunately,
almost no one was there to take it in. I got emotional several times. The judge asked for an example of a feasible mitigation measure to reduce VMTs that the County had ignored. Malinda presented DAP (Dividend Account Parking), a car parking system that makes sense. I need to digress here and describe DAP, a concept and proposal to improve the way we pay for the use of parking.

The transportation sector is the largest contributor of GHGs (as we should all know). We need to rein it in by various means, including road use charges (RUCs have been proven to be feasible as alternatives to the gas tax in a State of California study); better funding of public transit; bike and pedestrian-friendly projects; and car parking policy reform. DAP originated from the realization that parking isn’t free; it’s paid for in various hidden ways. For example, it is often bundled into a rent payment or provided as a “benefit” to employees. This creates a situation where cost is there for those that use the parking and for those who don’t, equally. In the DAP system, the cost is tied directly to using the parking. A person can keep their money if they decide not to drive and therefore not use the parking.

DAP unbundles parking from wages, rents, and the costs of goods and services. Under DAP, the cost of using the parking is no longer hidden within other payments, such as a rent or a wage, making rents larger and wages smaller. The parking is operated as a business for the financial gain of the people that are losing money due to the way parking is currently designed. It provides for an automated system which maintains value-based pricing for each parking spot and enables car drivers and alternate transportation users alike to share in the proceeds. It is, compared to the inferior forms of pay parking, as Uber is to cabs.

DAP was baked into both lawsuits as the primary mitigation the County could undertake to reduce GHG emissions. The system was first defined at an Air and Waste Management Association Conference in a peer-reviewed paper, back in 2010. In that paper, the system was called “Intelligent Parking”. The document is hosted by the Sierra Club and can be viewed here. 

Now back to the court, and back to Malinda. When she got done, the most conservative member of the 3-person panel calmly commented, “that sounds like feasible mitigation to me.” We won, 3-0.

I cried tears of relief. When the County lawyers spoke, I felt we would lose. When Malinda spoke (she was our designated speaker), I felt we had a chance. At the end, it was clear that the County would lose.

But in losing, the County was able to stymie the development of a system that could have been benefiting the environment and County employees over the past 4 years. The downtown County employees that drive to work get a parking place worth about $400 a month. Those too poor to drive are not asked if they would like cash (even just $200 a month would be nice) or their “free parking.” Frankly, they get a very bad deal. They get nothing because they can’t use the parking. And we rich people don’t seem to care. By the
way, DAP is better than a per-month parking charge; it is “per minute.” It is a better mouse trap. It would be disruptive, in a good way. It is value-priced, shared, convenient (good phone app) and sends earnings directly to the employees.

**Is a Win in Court Enough?**

Now it is 2020 and it may be too late for any of this to even matter because we need large reductions in our GHG emissions by 2030. We do love our “free” parking; more than life itself, as it turns out.

The substance of our suit was to force the county in its CAP to describe how it would reduce emissions associated with new housing projects. But I worry. Limiting sprawl is important. Stopping the County’s move to allow builders to buy carbon credits from anywhere in the world to mitigate local GHG emissions from these projects is also important. But we’re killing the climate with our everyday driving habits and current sprawl. The climate-change math showing a path to large reductions in GHG emissions by 2030 simply doesn’t work if we ignore VMT throughout our counties. Living in the midst of a destabilizing climate seems to have no meaning for most of the active players, let alone for the rest of us. I would love to live in their world. Except that it is not reality.

Well, we can’t give up. I will be listening on May 15th. How will the County defend the indefensible? Will Judge Taylor’s ruling stand up? You have something better to do as we shelter in place?

The Club lawyers will not ignore the parking issue in the court room. They do not knowingly give away winning cards.

I should add that the Sierra Club’s case is now in the capable hands of Jan Chatten Brown and her son and law partner Josh Chatten Brown. They came onto the team, joining Malinda, after our win against the first CAP in Superior Court. With that win in hand, Malinda dropped out. The Chatten-Browns replaced Cory Briggs, who financed getting the case filed, and who likewise dropped out after the first litigation. Cory knew Malinda because he used to sue the City of San Diego and Malinda would always defend San Diego in those cases. Malinda won all the cases against Cory. So, Cory knew Malinda was a smart and hard-working lawyer.

For the first litigation, taxpayers of San Diego County paid out about $920,000 to the 4 Club lawyers. The County, is a multi-billion-dollar operation, but $920,000 would be a big deal to many cities. I often lament that there have been no challenges to the bogus (says me) CAPs of other cities down here. But I know of no Chapters which have filed suits dealing with driving or parking, perhaps because stopping sprawl is an obvious and well-understood priority. Ditto for renewable electricity. The CAPs often refer to Community Choice Energy, but say nothing that will reduce driving sufficiently by 2030. No one likes to think about the pricing of parking or the pricing of driving. Well, I don’t either except that there is no other way to solve the problem.
My Problem with Climate Action Plans

In my view, CAPs are either Climate-Stabilization Plans or they are Climate-Destabilization Plans. Sadly, they are **all** the latter. That may be legal but there is a requirement under the California Environmental Quality Act (CEQA) for an Environmental Impact Report (EIR) to “report” the “Impacts” of the discretionary action being taken and it so happens that ending most life forms on the planet is the kind of thing that qualifies as an “Impact.” This information is kept from the decision makers because the authors of the EIRs use boiler plate to explain climate change. That boiler plate does not explain how climate destabilization comes about or where it leads. It mentions species extinction, without mentioning that one of the species is our own. We should demand Climate Stabilization Plans, not Climate Action Plans. If the “Actions” are too little too late, all is lost.

After 2030, if we fail, things may not look so different. By 2030, 416 PPM atmospheric CO₂ is likely to be around 450 PPM, and still rising. That may look like no problem when the weather is behaving. However, most climate scientists will come out and say we will have gone past too many tipping points. Even if we stopped emitting CO₂ in 2030, the warming feedbacks would not stop. For example, the warmer it gets, the more the permafrost melts and the more methane is released. Methane is a powerful greenhouse gas and will cause more warming. More warming will accelerate the melting of the permafrost. And this cycle will not stop. There are other tipping points. A warmer ocean can’t hold as much CO₂ in solution. It will start to emit CO₂. That CO₂ will cause warming which will warm the ocean even more; and so on.

There are no bounds, at least none that are meaningful to us. At some point, heat waves will start killing off crops, wildlife, livestock, and humans. The food shortages will become severe and we will just be getting started on the road to extinction. There may be armed guards at the grocery stores and suicide pills issued by a government that can only minimize our misery; it can’t save our shrinking human habitat.

When it comes time to settle this case, it will be time to listen to the engineers. I worry. My fear is that humanity (my 5 grandchildren) will once again lose. The County and the litigants will agree on the least disruptive approach and ignore parking. Most will then applaud loudly. The results will not reduce driving except to and from sprawl developments. This means things will only get less worse. But we need things to actually get better. A lot better. We need significantly less total vehicle miles traveled. Fast. Remember 2030? Remember the math? Numbers don’t lie. Electrification of our cars will happen but it will not come fast enough. I have done the math.

Again, if you’d like to listen in on this historic battle between climate activists and San Diego County, follow this link: [https://www.courts.ca.gov/41610.htm](https://www.courts.ca.gov/41610.htm)

Oral arguments are currently scheduled to begin at 10:00 AM PDT on Friday, May 15, 2020.
By the way, Malinda, the “mother of this case” has agreed to have lunch with me after things open up. I am looking forward to that. I hope we can celebrate the fact that we got something going that eventually changed things for the better, with enough scale to matter.

**Ending Thoughts, COVID-19 lessons**

1. Bad things, like a million deaths from COVID-19 or billions from Climate Change, leading to extinction, CAN HAPPEN.
2. Ignoring science (viruses, climate change), math, and systems engineering (which develops the systems of action that meet the science requirements), can be deadly.
3. Facing death, unthinkable things (no sports, value-priced parking, a road use charge) need to become requirements.