HALLMARKS OF INFRASTRUCTURE SUCCESS

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by Robert A. James

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Enhancing the quality of life and economic opportunity in any region will require investments in social infrastructure—facilities for civic life, health care, education, and social services—as well as transportation infrastructure—transit, highways, surface streets, and parking. These projects entail considerable risks in design, approval, and execution, and must compete with investments elsewhere in the public and private sectors. Attracting economic and political support of all types for infrastructure will be critical to achieving the region's potential.

Bay Area Council Economic Institute trustee and infrastructure development lawyer Rob James, a partner in Pillsbury Winthrop Shaw Pittman LLP, identifies the following hallmarks of projects that tend to realize the greatest success in navigating the risks and meeting the competition.

- ***Alignment*** of host governments, funding sources, and other participants. Tension among players is inevitable, as they will place different values on project locations, employment opportunities, initial versus life-cycle cost, alternative uses of land and capital, and traffic and environmental impacts. The critical test is whether they can resolve those differences in a principled manner and keep them resolved, rather than making expedient compromises that will not stand the test of time.
- ***Siting of infrastructure*** that enhances its value to the community, enabling the project to capture some of the value being created. This capture can occur either through development of the proponents' adjacent property for commercial, parking, and residential use, or through tax assessments on the larger neighborhood that is benefitted. The most value may be realized in locations where costs and land use impacts are greater, but where greater usage occurs and the parties and the community reap larger rewards.
- A ***land assemblage plan*** that can be accomplished while enlisting and retaining support from the necessary constituencies. Use of existing property rights may be attractive to some participants, while negotiated acquisition or exercise of eminent domain powers may be needed for other desirable locations.
- A ***resilient and sustainable business model*** that is viable in all parts of the business and real estate cycles. In addition to macroeconomic changes, project sponsors should envision and manage the prospect of underuse, competing facilities, and transforming technologies.

- An ***entitlements and communications strategy*** that anticipates the real environmental, land use, community impact, and economic issues associated with the infrastructure, and that addresses them prospectively and effectively. Environmental impact studies and public outreach should face the genuine concerns early on and head on, rather than setting up and disposing of strawman arguments.
- ***Funding sources*** that are either concentrated and resistant to changes in economic and political trends, or diversified and capable of being drawn on in different mixes.
- A ***project structure*** with powerful incentives for high quality performance, allocations of project risks to those parties best able to control and absorb them, and staged investments for responding to changed conditions. Carrots and sticks that are large can lead to "scorekeeping" and recurring disputes for owners and contractors, while standards and deductions that are modest may not lead to desired behaviors.
- A ***rational procurement policy*** that considers design-build, public-private partnership, leasing, and other alternative project delivery methods, eliciting the interest of the best contractors, vendors, and funding sources. The goals wherever possible should address total cost of ownership over the long term, quality of service, and value for money, not only initial expense.

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