

## DEVELOPMENT RIGHTS

WINTER 2008

**Soon Every  
Project Will Need An EIR***by Benjamin M. Reznik***Ben Reznik**

**M**aybe it's just me, but it seems that recently there has been a rash of requests for full environmental impact reports (EIRs) from community groups, project opponents and elected officials all over southern California, but particularly in Los Angeles. Is it that each one of these projects truly has potential adverse environmental impacts that cannot be mitigated with proper conditions to a

level of insignificance (the legal standard for requiring an EIR)? Or is it simply that many people do not understand when an EIR is legally required? I think it's the latter.

**Understanding the EIR Process**

I have heard opponents and elected officials say "We just want to know what the full environmental impacts are and that's why we want an EIR." When advised by the city's professional staff that there are no adverse impacts or that they have been mitigated, they still insist "How do we know unless we have a full EIR?" They are under the impression that a full EIR is the only process that will provide an adequate environmental review. They may not realize that environmental impacts are reviewed and analyzed by city staff for virtually every private development project whether or not a full EIR is required! A developer has to first file an environmental assessment form (known as an EAF) in which the project is described and potential environmental impacts are analyzed by city staff. If they determine that no impacts are created, then a "negative declaration" (ND) is issued and the project proceeds to public hearings. If city staff determine that potential adverse impacts do exist, but that certain mitigation measures will reduce these to a level of insignificance, then a "mitigated negative declaration" (MND) is issued and the project proceeds to public hearings. In each instance the ultimate decision of whether these levels of environmental clearances are appropriate is made by the final decision maker (usually either a planning commission or the elected body.) However, if city staff determine that some potential adverse impacts exist that cannot be mitigated, then a full EIR is legally required.

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**GLUEE  
Goes Hollywood!**

**T**hey're putting up our name in lights at Hollywood & Vine! Not really, but certainly symbolically. Over the last three years, the Government, Land Use, Environment & Energy Department (GLUEE) at JMBM has represented almost every major developer building projects at or near the four corners of Hollywood & Vine, one of the world's most recognizable addresses. Most recently we were able to assist our client, The Clarett Group, in obtaining Los Angeles City Council approval for its landmark development immediately adjacent to the famed Pantages Theater. ■

**BLVD6200**

**N**amed for its address on Hollywood Boulevard, BLVD6200 will be an exciting mixed-use development situated on both sides of the avenue just east of the historic Pantages. When completed the \$400 million project will encompass 1,000 apartment units as well as retail and dining venues. Although BLVD6200 will incorporate 2,696 parking spaces within its walls, The Clarett Group believes its proximity to a Metro Red Line station will be a major attraction for the many young professionals which it hopes to attract as tenants. Ten percent of the project's units will be allocated to affordable housing. BLVD6200 is the most ambitious, privately financed, large-scale development in Hollywood. The project is being built on property leased for 99 years from the Nederlander



BLVD6200.

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### Evaluating Climate Change Through CEQA—Will SB 97 Clear the Haze?

by Ian M. Forrest



Ian Forrest

**A**dopted approximately one year ago, the ramifications of California's Global Warming Solutions Act of 2006, commonly referred to as Assembly Bill or AB 32, are being felt by California's development community. AB 32 will likely affect the price of fuels, electricity, and raw building materials, as well as the urban fabric, design, and "feel" of our cities.

#### AB 32 and CEQA

AB 32 establishes a goal of reducing California greenhouse gas emissions (GHGs) to 1990 levels by 2020—roughly a 30 to 35% decrease from the current levels. Governor Schwarzenegger further mandated that by 2050, GHG emissions are to be "capped" at 80% below those 1990 levels. Imagine maintaining your current levels of economic prosperity emitting 35% less carbon—then using 80% less than that!

While AB 32 makes no specific reference to CEQA, the Office of California's Attorney General (AG) Jerry Brown Jr. has determined that climate change should be considered under CEQA (a mandate implicitly confirmed with the enactment of Senate Bill (SB 97, discussed below). The AG recently settled a suit against San Bernardino County and a challenge to the expansion of a ConocoPhillips petrochemical refinery in Rodeo, California. Both challenges were brought on the basis that the projects' environmental impact reports (EIRs) required by CEQA failed to adequately address impacts of global warming.

#### Evaluating GHG Emissions in CEQA Documents

That climate change must be evaluated under CEQA leaves environmental practitioners with numerous open questions. For example, what are the key environmental areas affected by climate change and what constitutes a "significant impact" upon climate change and how can it be mitigated? To date, when designing an appropriate strategy to address climate change under CEQA, most experts agree that: (1) GHG emissions from any given project will be individually limited but cumulatively considerable; and (2) the climate change section in CEQA documents should provide the regulatory and scientific background on climate change in California. The consensus, however, seemingly ends there.

The AG further asserts that lead agencies must quantify the GHG emissions from the proposed project, making a determination whether or not those emissions will result in cumulatively significant impacts. Lead agencies must then identify and adopt all feasible mitigation measures to minimize the project's effect on global warming.

Other practitioners allege the AG's assertions go beyond CEQA's mandates and that under the "regular" rules established by the CEQA Guidelines and applicable case law, lead agencies are not required to evaluate "speculative" environmental impacts such as climate change. At the other end of the spectrum, still others have asserted that any new emissions generated by a project should be considered significant, thus requiring mitigation. The confusion inherent in these approaches, coupled with the fear that climate change based CEQA litigation could grind development in California to a halt, partially led to the adoption of SB 97.

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The Orsini II in downtown Los Angeles.



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Organization, Inc., which owns several venues for live performances, including the Pantages. The theater opened as an Art Deco outpost in Hollywood in 1930. It served as a combined live theater and movie palace and from 1949-59 was the site of the Academy Awards. It received a \$10 million restoration in 2000.

Named as one of New York City's top 15 real estate development companies, The Claret Group is recognized for its high-quality residential and mixed-use developments in metropolitan New York and Washington D.C.

The company expects to break ground on BLVD6200 in early 2008.

GLUEE represented Claret throughout all of its negotiations with local Hollywood neighborhood interest groups, the Los Angeles City Planning Department, Community Redevelopment Agency and the City Council to obtain the necessary entitlements for this important project which will anchor the eastern edge of Hollywood Boulevard's renaissance.

Other significant Tinsel Town projects in which our group is involved include:

### **The Broadway Building:**

GLUEE represented The Kor Group in negotiating entitlements allowing the conversion of what had been the historic Broadway Department store on the southwest corner of Hollywood and Vine into 96 luxury condominiums. The 10-story building, that had been vacant for years, first opened in 1927. Kor's conversion also incorporated a 1939-era eight-story building next door, to which it added two stories. The Broadway's loft style units range from 900 to 2,000 square feet with finished kitchens and bathrooms. Most of the condominiums have been sold at prices in the \$500,000 to \$600,000 range.

### **W Hotel:**

The Southeast corner of Hollywood & Vine will be the location of the area's first five-star hotel to be built in many generations. Gatehouse Capital Corp. has received approval to construct a 300-room W Hotel along with 150 luxury condominiums on the site. The condos will be serviced by the hotel and its staff. Also to be incorporated into the \$500 million project will be a restaurant, spa, fitness facility and roof-top bar. Adding to the excitement of the overall project will be 375 high-end apartments with supportive ground floor retail being built by Legacy Partners. GLUEE first represented the capital partner which provided

equity for the W Hotel and condominiums and then represented the developer in negotiating signage rights for the high-profile site.

### **7060 Hollywood Boulevard:**

GLUEE initially represented Alliance Realty which purchased this 13-story office building intending to convert it into a residential and commercial condominium project. We were successful in obtaining Los Angeles city approval for the adaptive reuse of the building, at which time the owners sold the property to The LeFrak Organization, a major New York based real estate development firm founded in 1901. LeFrak has decided to completely retrofit the building maintaining it as an office facility. GLUEE continues to work with the company on obtaining entitlements to expand the project's ground floor and secure signage rights.

### **Yucca & Argyle:**

Our client purchased a Class "C" office building on the northeast corner of Yucca and Argyle streets in Hollywood with the intent to demolish the property and build a contemporary condominium development on the site. The proposed project will be 15 stories including 11 floors containing 87 residential units and four floors of above ground parking. There will also be two levels of underground parking. A fitness center will be incorporated at street level. ■

## **Los Angeles' First Condominium Hotel Approved**

**T**he GLUEE team was instrumental in gaining Los Angeles City Council approval for The Emhurst, the Southland's first true condominium hotel.



The Emhurst Building in Koreatown.

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Groundbreaking for the 242-room property located on the corner of 7th Street and Hobart Avenue in Koreatown was held on October 31st. In addition to condominiumizing all of its guest rooms, The Emhurst is designed as a totally self-contained live/work environment. Incorporated within the walls of its two 16 and 21-story towers are retail stores and restaurants, as well as a health club and office facilities. The objective of the Korean American developers is to attract Korean-based companies whose executives travel regularly between Seoul and Los Angeles. ■

### Focusing on Downtown

**B**en Reznik and his GLUEE team have been an integral part of a pioneering effort to build rental housing in downtown Los Angeles. For the past eight years, they have worked closely with Geoff Palmer and his firm to build over 3,000 multifamily housing units in the areas immediately adjacent to the Harbor (110) freeway. These apartments are incorporated in the Medici, Visconti and Orsini projects. The first two phases of the Orsini have been completed and GLUEE is in negotiations with the Los Angeles Community Redevelopment Agency for the construction of the third phase of the project.

Palmer has also purchased the site of the now closed Orthopaedic Hospital on South Flower Street, near USC, where he intends to build 1,000 apartment units. GLUEE is currently working on entitlements for this development.

All told, Palmer has plans on the drawing boards for another 1,500 multifamily units in downtown, bringing the total to over 4,500! ■

### GLUEE Covers the Westside

**L**os Angeles isn't the only city in which we ply our trade. Currently we're actively involved in projects in Beverly Hills, Santa Monica and Westwood.

#### Beverly Hills:

JMBM continues to provide land use counsel to Candy & Candy, owners and developers of 9900 Wilshire Boulevard in Beverly Hills. As discussed in detail in our last issue of *Development Rights*, our firm played a pivotal role in the \$500 million acquisition of the high profile site which formerly housed the flagship Robinsons-May department store at the western gateway to Beverly Hills. We are

working closely with local Beverly Hills law firms in undertaking EIR work, securing plan amendments and otherwise providing land use and real estate counsel. Subject to the approval of the Beverly Hills City Council, 9900 Wilshire will contain 252 luxurious and environmentally responsible condominium residences contained within two mid-rise buildings and two four-story loft buildings.

#### Santa Monica:

GLUEE has been retained by the purchaser of the Santa Monica Studios site on the north side of Olympic Boulevard just west of Bundy Drive. The developer has plans to build a mixed-use project incorporating 600 units of workforce housing.

#### Westwood:

Currently under construction on what was formerly a parking lot belonging to the Westwood United Methodist Church is a new Belmont Village. The six-story assisted living facility will be the fifth to be built by the Texas-based company in the Los Angeles area and the third to be entitled by JMBM's GLUEE Department. The newest project is situated directly next to the church between Warner and Holmby avenues on Wilshire Boulevard in Westwood. When completed, Belmont Village will contain 118 assisted living units and 54 independent living units with appropriate support facilities for its senior population. The first phase of construction involves the building of a 274-car, 3.5-level subterranean garage to replace the church's previous parking and to accommodate Belmont Village residents, guests and employees. ■



Belmont Village in Westwood.

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**Project EIRs...** continued from page 1

### Abusing the EIR

Given all of this, when project opponents or elected officials demand a full EIR even in situations where impacts are fully mitigated, or where an EIR has been previously performed, one has to wonder whether they are truly concerned with the environment or are simply seeking to use this process as a means to delay and ultimately kill a project. The recent lawsuit filed by Home Depot against the City of Los Angeles in connection with its efforts to open a store in Sunland-Tujunga is just one example.

In 2005, Home Depot purchased a building in Sunland-Tujunga which formerly housed a K-Mart. The company applied for and was granted an over-the-counter permit to undertake a major renovation of the existing facility. Local residents challenged the permit on the grounds that no EIR was performed and persuaded a zoning administrator to revoke it. When Home Depot appealed, the North Valley Area Planning Commission restored the permit. Under continued pressure from community groups, who didn't want the store in their neighborhood, the full Los

Angeles City Council overrode its Planning Commission and imposed a retroactive requirement that Home Depot complete an environmental review. The home improvement chain is now suing the city over its actions.

In a case being handled by our office called *Monterey Hills v. City of Los Angeles*, our client plans to build a 24-home subdivision in the El Sereno area. The subdivision was approved by the City Council in 1993 after it certified an EIR and imposed over 100 conditions dealing with environmental issues. In 2004, the city approved some modifications to the project and recertified the EIR. Then in 2006, when the developer sought a grading permit to construct the public street, sewers and storm drains required for the project, opponents convinced the City Council to withhold the permit and require a Supplemental EIR. The Council asked the departments of City Planning, Public Works and Building & Safety, as well as the City Attorney, to review this request. All four advised the Council that there was no legal basis for requiring a Supplemental EIR and that permits should be issued. Even the Board of Public Works has concurred with these opinions. Undeterred, the

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## JMBM

## I N T H E N E W S

- **Malcolm C. Weiss** was quoted in an article titled, "How California Land-Use Planning Became A Weapon Against Warming," which appeared in the December 5, 2007 edition of *Greenwire.com*

- **Michael Yaki** was mentioned in an article titled, "Asian Americans Flex Political Muscle In Wider Bay Area," which appeared in the December 2, 2007 edition of the *San Francisco Chronicle*

- **Benjamin M. Reznik** was quoted in an article titled, "Closing Time: Days Are Numbered For 400 Vendors At The Valley Indoor Swap Meet," which appeared in the November 21, 2007 edition of the *Los Angeles Daily News*

- **Benjamin M. Reznik** was quoted in an article titled, "Mayor Revives Plans for L.A. Inclusionary Zoning Ordinance," which was published in the November 5, 2007 edition of the *California Real Estate Journal*

- **David P. Waite** and **Malcolm C. Weiss** spoke on panels at the second annual ULI Coachella Valley Conference, co-sponsored by the Firm. A notice of the conference appeared in the November 5, 2007 edition of the *California Real Estate Journal*

- **Michael Yaki** was quoted in an article entitled, "City College Trustees OK 2 Chinatown Buildings," which was published in the October 20, 2007 edition of the *San Francisco Chronicle*, and in related articles on the same day in *Sing Tao*, *Chinese Times*, *World Journal*, and *Ming Pao*. He was also on NBC-11 San Francisco news on October 17, 2007 and on KTSF26 on October 20, 2007 speaking about the same topic

- **Benjamin M. Reznik** was mentioned in the October 25, 2007 *Los Angeles Times* "In Brief" section in an article titled, "City Denies Permit for Elephant Developer." ■

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## Project EIRs... continued from page 5

Council has decided to ignore the counsel of its own departments and continues to hold this project hostage using (abusing) the EIR process.

These two cases are worth tracking as they demonstrate how far an elected body is willing to go in order to defeat unwanted projects in their areas. ■

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## Addressing Global Warming... continued from page 2

### SB 97 To The Rescue?

On August 24, 2007, SB 97 was passed, exempting certain state-funded development projects from legal challenge for failure to adequately evaluate climate change impacts under CEQA. In addition, SB 97 also requires the California Office of Planning and Research (OPR) to prepare and develop CEQA guidelines for the evaluation of GHG emissions. SB 97 mandates that the California Air Resources Board certify and adopt the guidelines by January 1, 2010. Given the current lack of an officially sanctioned approach to analyzing GHG emissions, any regulatory guidance will be welcome. ■

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