

Development Rights

JMBM
Fall 2010

Ben Reznik Selected as one of California's "Top 100" Lawyers

Benjamin M. Reznik, Partner and Chairman of the Government, Land Use, Environment & Energy (GLUEE) Department at Jeffer Mangels Butler & Mitchell LLP (JMBM), has been selected to join the prestigious ranks of California's "Top 100" lawyers by the *Daily Journal*, the state's largest legal news provider. The list was published in the September 22 issue of the publication.

Chairman of JMBM's Government, Land Use, Environment & Energy Department honored by inclusion in the *Daily Journal's* prestigious list.



Associates has led to the development of over 3,500 residential units in downtown Los Angeles. He is currently working with Palmer on the entitlement of an additional 1,400 residential units near the USC campus. Reznik has also been instrumental in winning lawsuits which will have broad impacts on development issues including inclusionary zoning and the ability of cities to adopt development moratoria.

Reznik's other current high profile cases include efforts to bring a new shipyard to the Port of Los Angeles as well as his representation of a partnership led by Hudson News, Magic Johnson Enterprises and Dale Mason Cochran (widow of Johnnie Cochran) in their pursuit of retail concessions at Los Angeles International Airport. ■

As Chair of the Firm's GLUEE Department, Ben's practice emphasizes real estate development entitlements, zoning and environment issues, including frequent appearances before city planning commissions, city councils and other governmental boards and agencies on behalf of real estate development firms and various industries. For more information, contact Ben at 310.201.3572 or BMR@jmbm.com

"Ben has become one of the most effective lawyer lobbyists in the state and we are gratified that his accomplishments are being recognized with this high honor," said Bruce Jeffer, managing partner of JMBM. "Since joining our firm in 1997, Ben has successfully shepherded some of the most complex and controversial projects in the state. He knows how to deliver. Congratulations to Ben from all of us at JMBM."

A graduate of the USC Gould School of Law, Reznik has been practicing law in Los Angeles since 1976. Over his career, he has represented a wide diversity of clients ranging from major real estate developers to internationally recognized companies in pursuit of their corporate projects. His work on behalf of G. H. Palmer

ADA Alert: New Regulations Now in Effect

by *Martin H. Orlick and James O. Abrams*

On July 23, 2010, the U.S. Attorney General signed into law important revisions to the Department of Justice's (DOJ) Regulations implementing the Americans with Disabilities Act. The new regulations include substantial and far reaching revisions to the Americans with Disabilities Act Accessibility Guidelines (ADAAG), which are now known as the 2010 ADA Standards for Accessible Design (2010 Standards). On September 15, 2010, the new Regulations/2010 Standards were published in the Federal Register, thereby triggering two important implementation dates: March 15 of 2011 and March 15 of 2012.

Compliance with the new Regulations will be required beginning March 15, 2011, with the exception of (1) the new obligations of hotels to modify their reservation policies relating to individuals with disabilities, and (2) the 2010 Standards. These two components will be mandatory effective March 15, 2012; however, compliance with the 2010 Standards is permitted as of September 15, 2010, and any public accommodation or commercial facility that is newly constructed, altered, or undergoes "readily achievable barrier removal" prior to March 15, 2012, should include consideration of the new 2010 Standards and incorporate them as appropriate.

The new Department of Justice's Regulations/2010 Standards affect all U.S. hotels, financial institutions, shopping centers, retail stores, recreational facilities, and other properties such as restaurants that are classified as a

Continued on Page 2

ADA Alert continued from cover

“public accommodation” or a “commercial facility” under the American with Disabilities Act of 1990 (ADA).

The new 2010 Standards impose both technical requirements, (i.e. the specifications a property must meet to be fully accessible), and scoping requirements (i.e. the number of rooms or elements in a facility which must be fully accessible).

The new 2010 Standards affect all U.S. hotels, financial institutions, shopping centers, retail stores, recreational facilities, and other properties such as restaurants that are classified as a “public accommodation” or a “commercial facility.”

Existing property owners will need to review their facilities to ensure they are in compliance with the appropriate standards (either the 1991 or the 2010 Standards) and retrofit where necessary to meet them. Developers of new hotel properties will need assurance from their design and construction companies that these new obligations and restrictions will be worked into their plans. Among other things, the 2010 Standards will require that most recreational facilities and the primary path of travel in employee work areas be accessible — and this is just the tip of the iceberg. The 2010 Standards may well require changes to ATM machines and other bank facilities.

Similarly, all public accommodations must review their policies and procedures, auxiliary aids and

Continued on Page 5

Area Planning Commissions Need Help by Benjamin M. Reznik

In the City of Los Angeles we have seven Area Planning Commissions (known as “APCs”), each consisting of five volunteer members appointed by the Mayor and covering a distinct geographical part of the city. These APC commissioners need not and, in fact, do not possess any special training, knowledge or experience in land use matters, and certainly are not familiar with the body of land use and zoning laws applicable to many of their decisions. Pursuant to the city charter and zoning code, the APCs are empowered to decide many important cases. In many instances, the decision of the APC is final — meaning there is no further right of appeal to the City Council. The only remedy left is litigation and that, all too often, is too expensive for modest projects. The impact of a negative APC decision can be devastating to an applicant, as it can result in significant financial losses — sometimes millions of dollars. Yet, despite all this, the City of Los Angeles does not provide legal counsel to guide APCs during the hearing and in their deliberations on the merits of a case. Planning Department staff is present at the hearings, but no one from the City Attorney’s Office is present to make sure that the law is followed.

The results in many instances are predictable. Decisions have been rendered which are not supported by the evidence, which are contrary to the law, and which — in some circumstance — are “results oriented.” This is extremely unfair and prejudicial to people who purchase properties in reliance on what the law permits them to build, only to be told by an APC that their application is denied. I have firsthand knowledge of many such unfortunate experiences involving clients. In a recent case, one of the APCs ignored the advice of the Department of Building & Safety and of the Planning Department, where a restaurant was permitted to use the

existing “grandfathered” number of parking spaces for this site. Statements made by some of the commissioners at this hearing demonstrated that they did not care what the law was or how the city has always applied it because they, the commissioners, did not like the result. So this APC ruled that the building permit must be revoked. JMBM filed a lawsuit and the court ruled in our client’s favor. Now our client is able to proceed against the city for damages caused by the illegal revocation of the building permit.

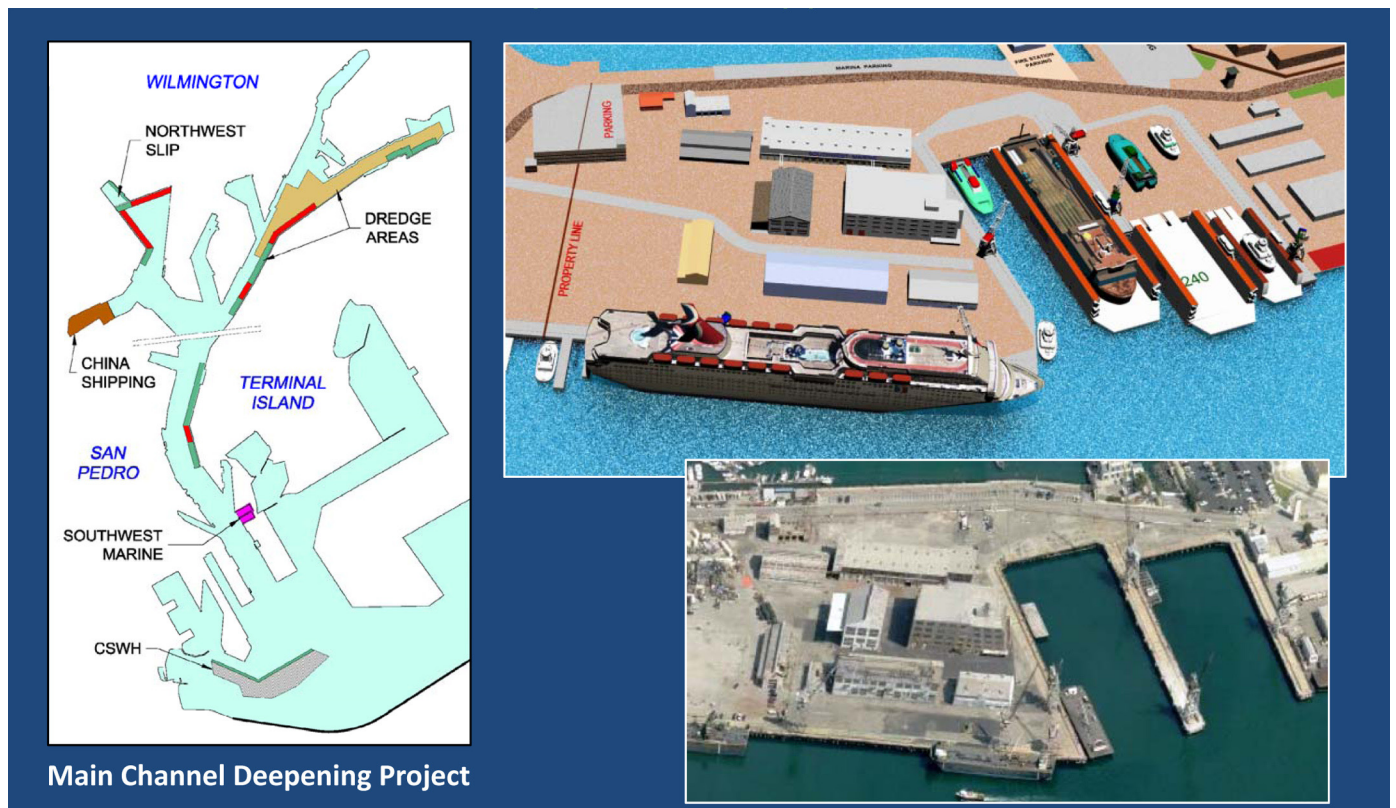
Staff is present at the hearings, but no one from the City Attorney’s Office is present to make sure that the law is followed.

The reason that the City Attorney does not provide the APCs with legal support at the hearings is due to budgetary constraints; however, one has to wonder whether in the long run it may be less costly for the city to provide the attorneys. ■

Our team has experience representing a wide range of industries, businesses, trade groups and individuals at every level of government, particularly in the state of California. Our political and regulatory background means we understand how government works, making us effective advocates for our clients’ interests.

Benjamin M. Reznik is Chairman of the Firm’s Government, Land Use, Environment and Energy Department. For more information, contact Ben at 310.201.3572 or BMR@jmbm.com

Gambol Industries, Inc.'s Open Letter to the Los Angeles City Council



Development of the Proposed Gambol Shipyard at the Former Southwest Marine Site
Privately Financed Shipyard on Abandoned Port Site

From Robert Stein, President Gambol Industries, Inc.

For more than three years, JMBM's client, Gambol Industries, Inc. has been negotiating with the Port of Los Angeles to develop a ship repair and ship building facility in an unused portion of the port. Gambol proposes to invest approximately \$75 million in private capital, which will create more than 1,000 direct and indirect jobs. The Port of Los Angeles however, continues to resist Gambol's efforts, prompting the company's president, Robert Stein, to circulate an open letter to members of the Los Angeles City Council. The following is an edited version of his letter:

We thought we had a good idea three years ago when we proposed re-opening the historical former Southwest Marine (SWM), site for use as a ship building and repair yard. The site has been a shipyard since the 1920s, but in recent years, has been unused and in decay. Believe it or not, neither the ports of Los Angeles nor Long Beach currently house such a facility. This necessitates those needing these services to sail down to San Diego or up to San Francisco. This is unacceptable for the nation's largest port complex!

For reasons best known to its staff, the Port of Los Angeles continues to resist our efforts. Initially their reasoning related to the Main Channel Deepening Project (MCDP) which the port is undertaking with the assistance of the Army Corp of Engineers. They claim they need the Southwest Marine facility to store the dredged materials which they want to relocate behind a rock dike to be installed across the face of the SMW site. Once this process is undertaken it will preclude the ability to develop a world class ship building and repair facility in San Pedro Bay.

Gambol has always maintained there is a better alternative to solving the problem of containing the dredge materials. We proposed constructing a vertical steel wall containment system which would accommodate the same amount of dredge material and preserve 50% of the slips as open water to be used by a shipyard. The costs of this process would be comparable to the port's proposed containment system.

Continued on Page 4

Open Letter continued from page 3

Recently, another opportunity presented itself, which makes even more sense: the Port of Long Beach is seeking 2.5 million cubic yards of dredge material for its Middle Harbor Redevelopment Project (MHRP). It will need this in early 2011, which is well within the time frame of Los Angeles harbor's MCDP. Providing this material to the Port of Long Beach will preclude the need to build a rock dike or a steel wall, open up all the SWM slips and save the Port of Los Angeles \$25 to \$30 million. The cost of transporting the dredged materials a few miles will surely be a mere fraction of these savings. Additionally, air quality around the ports will be enhanced, and there are obvious environmental benefits in creating and preserving open water. Unfortunately, despite these obvious benefits, the Port of Los Angeles disputes the value of this cooperative plan and continues to maintain that it will delay its MCDP!

Another reason given by the Port of Los Angeles for rejecting Gambol's plan is the port's claim that it needs to completely fill the SWM due to hazardous sediments located at the bottom of the slips. At the request of the Port and with the supervision of the Department of Toxic Substances Control (DTSC), we tested the sediments and found them to be non-hazardous, effectively removing another objection to our proposal.

Regardless, the Port Authority continues to resist our efforts. A variety of rumors are circulating as to why it has taken this position. One of them has to do with the possible relocation of wet fish processors from Fish Harbor to SWM.

We have no interest in speculating about the reasons for this resistance. However, after spending millions of dollars working with the Port of Los Angeles, Gambol stands ready and willing to bring ship building back to Los Angeles. ■

CHRISTINE ESSEL, CEO OF CRA/LA SPEAKS AT JMBM BUSINESS ISSUES FORUM: INSIDE LOOK

Christine Essel, the newly appointed Chief Executive Officer (CEO) of the Los Angeles Community Redevelopment Agency (CRA/LA), was the featured speaker at a recent JMBM "Business Issues Forum" hosted by Ben Reznik. Ms. Essel has taken command of an agency whose governing board she chaired in the 1990s. She brings with her 30 years experience in planning and development as senior vice president at Paramount Studios where she also served as the senior vice president of Government and Community Affairs. The following is a brief summary of Ms. Essel's remarks:

As I see it, the challenge in this new assignment is to root out dysfunctionality in an agency which is viewed as being unfriendly. It appears to be a good time to undertake this process, because we're seeing limited development in our spheres of influence which provides an opportunity to evaluate our role. We are dealing with a "good news/ bad news" scenario. The good news is CRA/LA still has \$700 million in the bank! The bad news is that with most development on hold, our revenue stream — which relies on tax increment financing — has been significantly curtailed. Additionally, the State is taking \$85 million from our budget this year. We are also in the process of reducing our 261 member staff through early retirement. We expect 40 senior staff to be leaving by January 1, 2011.

My objective going forward is to position CRA/LA as an integral part of the economic recovery in Los Angeles. In this regard we have established an Industrial Incentive Program as well as an Economic Development Opportunity Fund and are actively involved in the process of planning

and developing the Green Technology Corridor. CRA/LA is also participating in development of 32 Transit Oriented Development (TOD) locations.

I want to reach out to development and financial communities with the message that there is a new and improved CRA/LA anxious to work closely with them in bringing economic vitality back to our city. I see myself as a change agent overseeing the transformation of CRA/LA. But in order to accomplish this, I need the voices of the development and financial communities to be heard. I hope I can count on your support! ■

If you would like to be added to the mailing list for future GLUEE events, please email jh7@jmbm.com



Members of JMBM's Land Use Department and Christine Essel at the Business Issues Forum. From left: Alex DeGood, Ben Reznik, Christine Essel, Liz Smagala, Sheri Bonstelle and Neill Brower

ADA Alert continued from page 2

services, and operations to be sure that they comply with the new Regulations — including the new rules regarding service animals and the obligation to admit disabled individuals who use Segway Personal Transporters® — when they become effective March 15 of 2011.

You can avoid the surprise of an ADA lawsuit by acting early.

The U.S. DOJ is enforcing ADA compliance through audits, voluntary compliance programs and, in some cases, through lawsuits. In some states, like California, accessibility advocates and their plaintiff lawyers, have brought ADA lawsuits against thousands of California businesses, including hotels.

You can avoid the surprise of an ADA lawsuit by acting early to bring your properties into compliance.

The new ADA regulations can be downright confusing to navigate alone. Please call on us to help interpret the Department of Justice's regulations and understand how both they and the 2010 Standards will affect both the physical and operational aspects of your business. ■

Martin H. Orlick is a senior member of Firm's Global Hospitality Group® and a partner in the Firm's Real Estate Department. He has helped clients with more than 300 ADA cases for hotels and other businesses. He is also a member of the American College of Real Estate Lawyers (ACREL). For more information about ADA compliance and defense, contact Marty at 415.984.9667 or MOlick@jmbm.com

James O. Abrams is a senior member of the JMBM Global Hospitality Group® and the former President and CEO of the California Hotel & Lodging Association. Jim has advised hundreds of lodging operators about, and written and lectured extensively on, all aspects of accessibility laws that apply to the hospitality industry. For more information, contact Jim at 415.398.8080 or JAbrams@jmbm.com

UPDATE: Los Angeles City Council Approves Ban on New Supergraphics in Hollywood by Sheri Bonstelle



The right to install a supergraphic on a side of a building in Hollywood has been an ongoing struggle between owners and the City for years. The attorneys at JMBM have extensive experience in representing hotel owners and sign companies in obtaining appropriate City Council approval. Call us to see how we can help.

The Los Angeles City Council voted unanimously in September to ban the installation of new “supergraphic” advertising displays in Hollywood, while grandfathering in currently planned signs and allowing for designated “sign districts.”

The new Hollywood outdoor advertising regulations, which prohibit large vinyl signs on facades of hotels and other multi-story buildings, reflect an earlier U.S. 9th Circuit Court of Appeals ruling allowing a citywide ban of the signage.

The ordinance still permits digital billboards up to 300 square feet in specific areas in Hollywood along Vine Street and Hollywood, Sunset and Cahuenga Boulevards. Up to 16 supergraphic signs received City Council approval under the previous regulations and will be installed in several locations in Hollywood, including signage for projects entitled by JMBM land use attorneys. ■

Sheri Bonstelle is an attorney in the Firm's GLUEE Department. Sheri's practice focuses on land use and construction matters. Sheri is both a lawyer and an architect. For more information, contact Sheri at 310.712.6847 or SBonstelle@jmbm.com