

DEVELOPMENT RIGHTS

SUMMER 2007

JMBM Plays Key Role In Acquisition Of \$500 Million Development Site

JMBM played a pivotal role in the recent acquisition of a high profile site at the Western Gateway to Beverly Hills. The property at 9900 Wilshire, which formerly housed the Robinsons-May Department Store, was purchased by JMBM's client, international real estate developer, CPC Group, for a record \$500 million. Working together with the New York office of Jones Day, JMBM helped guide CPC Group through entitlement analysis, acquisition, financing and closing.

"It's an honor to be a part of such a creative and energetic development team and participate in the acquisition of this landmark property," said Ben Reznik. "This project will raise the bar and set new standards for high-end luxury housing."

Subject to Beverly Hills City Council approval, this development will include 252 luxurious and environmentally responsible condominium residences situated within two 12-story buildings and two four-story loft buildings. The 830,000 square feet of residential space and 20,000 square

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Addressing Global Warming In California Through CEQA

by John Bowman and Ian Forrest

Global warming is at the forefront of California's environmental concerns. In late 2006, California's legislature enacted Assembly Bill (AB) 32, effectively negating any remaining scientific debate regarding whether global warming is a natural or man-made phenomenon. AB 32's legislative findings recognize global warming as a threat to the health, safety, and vitality of California's economy and identified the potential adverse impacts of global warming including the exacerbation of air quality problems, a reduction in the quality and supply of water from the Sierra snowpack, a rise in sea levels resulting in the displacement of coastal businesses and residences, and damage to marine ecosystems. California is addressing global warming head on, a fact which will impact developers and their projects.

This proactive environmental stance will inevitably affect California's Environmental Quality Act (CEQA). In evaluating global warming's effects under CEQA, indirect project impacts must be considered to the extent they are "reasonably foreseeable." In this regard, CEQA recognizes

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A new vision for the vacant Robinsons-May Department Store in Beverly Hills. *Shimahara Illustration/Richard Meier & Partners*

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P U B L I C A F F A I R S

Traffic Mitigation: Should It Impact Affordable Housing Set-Asides?

by Benjamin M. Reznik



Ben Reznik

It is common knowledge that in order for a city to legally require the inclusion of affordable housing in a project, it must do so in a manner that demonstrates a legal nexus exists for such a requirement. Recently, the City of Los Angeles adopted a resolution requiring that new multi-family projects in Warner Center provide an unsubsidized 25% of its units for people who work within 3 miles of the project and earn no more than 80% of median income. The legal nexus, or justification, given for this was traffic reduction. Additionally, if the prospective tenant or buyer works for a government agency, is a nurse, teacher or works in other community service fields, the three mile radius does not apply.

Did the city perform a study to support the nexus between affordable housing and traffic reduction? No. The idea was all based on anecdotal evidence and so-called "logic".

Did the city perform a study to support the amount of the unsubsidized set aside at 25%? No. As one councilmember told me, that was the amount he felt was needed in order to have an impact on traffic in Warner Center; anything less was too little.

The first project which was to be subjected to this new requirement was a development proposed by one of our clients for the swap meet site on Eton Street in Warner Center. Needless to say, we raised many legal challenges to this requirement. Ultimately, the matter was negotiated at City Council and a compromise reached with our client to set aside a much smaller percentage of affordable housing units in his development. In so doing, however, the legal issues were never resolved. These are left for the next Warner Center developer to fight.

Did the city perform a study to support the amount of the unsubsidized set-aside at 25%? No.

The Warner Center case forged new ground as the city attempted to impose affordable housing requirements that lacked the traditional legal nexus. To do so, it needed to manufacture a new and creative approach. However, creativity is not a substitute for the law. The city is ignoring its own

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JMBM's Land Use Practice Group is proud to have been selected by

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to provide land use and environmental legal due diligence in its recent joint venture transaction with **LandSource Communities Development.**

This \$2 billion deal includes assets in Arizona, California, Nevada and New Jersey, including the Newhall Land & Farming project.

MacFarlane Partners is one of the leading real estate investment management firms in the United States, with \$11.7 billion in real estate assets under management.

inclusionary housing study commissioned recently which demonstrates that an unsubsidized affordable housing set aside requirement even at 10% (for the very low income category) is not economically viable and requires some form of subsidy or incentive. To bypass these factual realities, the city tried to link the need for affordable housing with traffic reduction. But, as indicated, it did so without a single shred of evidence to support it. It became abundantly clear at the various hearings that the city staff was flying by the seat of its pants. As one of the council members said in frustration: "If we want to impose affordable housing let's do so for the right reasons. Let's not call it traffic reduction."

It will be interesting to watch as some of the other projects in the pipeline for Warner Center come forward and have to deal with these issues. ■

Benjamin M. Reznik is Chairman of the Government, Land Use, Environment & Energy Department at Jeffer, Mangels, Butler & Marmaro LLP. Mr. Reznik's practice emphasizes real estate development entitlements, zoning and environmental issues, including frequent appearances before city planning commissions, city councils and other governmental boards and agencies on behalf of real estate development firms. For more information, please contact him at 310.201.3572 or BMR@jmbm.com.

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F O R U M

President Of L.A. City Planning Commission Speaks At JMBM's Business Issues Forum

JMBM featured Jane Ellison Usher, president of the Los Angeles City Planning Commission, at its most recent *Business Issues Forum*. The breakfast Forums are presented several times a year by the firm's Government, Land Use, Environment & Energy Department and feature public officials whose decision-making impacts upon the real estate and business climate of Los Angeles and the Southland. Most recent Forum speakers included Deputy L.A. Mayor Bud Ovrom, L.A. Planning Director Gail Goldberg and Gloria Jeff, Manager of L.A.'s Department of Transportation (DOT).

JMBM's crowded conference room heard Ms. Usher detail the 14 principles which the Planning Commission recently adopted under the heading of "Do Real Planning". The objective she said was to make the Commission more than a body that simply approves or disapproves projects. "We need to establish a basic framework upon which development and planning in Los Angeles can occur." The 14 principles can be separated into two "baskets"—Administrative and Land Use Policies.

Under the Administrative category, Ms. Usher emphasized the need to eliminate systemic bottlenecks, promote professional planning, provide sound planning advice and materially change the intake process. Several land-use policy questions need to be asked including: will

the project be built to human scale and be both acceptable and compatible with its surroundings? Does it have architectural relevance and can it meet LEED or "green" certification standards? On the issue of density, Ms. Usher noted that in general the Planning Commission supports density, but only in very specific areas including adjacent to transit stops. "We need to encourage development which will help the jobs/housing balance, which is sadly out of whack right now. We also need to examine some of the DOT strategies such as road widening which are the current pro forma way of dealing with traffic mitigation." Ms. Usher also mentioned that her Commission was focused on eliminating urban blight, such as above-ground power lines and will deal with the Mansionization issue. "Bulk, mass and scale ratios need to be clearly established so these massive homes don't encroach on their neighbors," she said.

Finally, Ms. Usher noted that implementing the Planning Commission's 14 principles would require a partnership between the public and private sectors. "We're empowering the Planning Department's staff, under the leadership of Gail Goldberg, to take ownership of these principles. The Department added 20 new planners last year and we hope to have an additional 35 in place by the end of 2007. Developers can also assist the process by coming to the Planning Commission with the right level of detail for the project they're proposing. They need to ask themselves questions such as, is this project appropriate for the location? Will it enhance and benefit the community? If the answers to these questions are "yes," they should be prepared to make a strong case because our Commission will be taking a cold hard look at every project that comes before it," she concluded. ■

Some readers of this publication have received a copy of Jane Usher's 14 Principles presentation in PowerPoint form. If you have not received it and would like a copy, please communicate with Ben Reznik at BMR@JMBM.com.

Ms. Usher detailed 14 principles, which the Planning Commission recently adopted . . .



Ben Reznik welcomes Jane Ellison Usher at JMBM's Forum.

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feet of retail space will cover one-third of the eight-acre site, with the remaining two-thirds of the property dedicated to community space, waterscapes and a sculpture garden, with a public garden facing Wilshire Boulevard.

"We greatly appreciate JMBM's role in helping us acquire such a brilliant site," said Christian Candy, founder of CPC Group. "The firm's first-hand knowledge of the local market and its responsiveness to the demands of the deal were invaluable."

The 9900 Wilshire development will be managed by a London-based development team including interior designers Candy & Candy. The Richard Meier design has already received significant recognition and numerous awards, including the U.S. Green Building Council's "Visionary Leadership Award," the Los Angeles Business Council's 36th Annual Architectural Award and the Westside Urban Forum's "Urban Solutions Award." In addition, the Environmental Media Association has recognized 9900 Wilshire for combining outstanding architecture with environmental sustainability. ■

JMBM HOSTS MANAGER OF L.A.'S DEPARTMENT OF TRANSPORTATION

Gloria Jeff, Manager of L.A.'s Department of Transportation, was JMBM's guest at a recent *Business Issues Forum*. She noted that the city has one of the world's most sophisticated transportation management systems, which is constantly being updated to meet the growing population of people and cars. She emphasized the need for the expansion of creative land use planning which will allow for more development along major transportation corridors. "The importance of transportation to curing the current jobs/housing imbalance cannot be overemphasized," she said. ■



Ben Reznik and GLUEE members welcome Gloria Jeff, Manager of L.A.'s Department of Transportation, to JMBM's L.A. office.

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that the preparation of environmental impact reports (EIRs) will involve some degree of forecasting. On the other hand, an EIR is not required to address environmental impacts that are "too speculative" for evaluation. Exactly how these CEQA principles are to account for global warming in practice, however, leaves more questions than answers.

California is addressing global warming head-on

CEQA practitioners are now seeing global warming issues raised in public comments to draft EIRs. Additionally, legal challenges to the sufficiency of EIRs have been filed. For example, in one currently pending California case, the complaint alleges that the EIR for a housing project in Riverside County failed to adequately address emissions of carbon dioxide and other greenhouse gases from the project's traffic and increased energy consumption. In another recent case in Sacramento, a trial court ruled that it is not necessary to analyze greenhouse gas emissions in an EIR.

Another basis for challenging the sufficiency of the EIR concerns the extent to which the document considers the potential effects of global warming upon the project itself. For example, an action has been filed challenging the EIR supporting the construction of 11,000 homes and five million square feet of office space in northern California. Challengers allege that the EIR fails to account for the effects of global warming, including how projected rising water levels may threaten the levees protecting the development. Global warming's effects on snowpack, precipitation and sea levels could also be used to challenge Water Supply Assessments and the siting of coastal development based upon the current high tide line.

Because CEQA is primarily a disclosure statute, it generally does not make policy but rather is responsive to current environmental knowledge and evolving practices. However, legislation affecting the practice of CEQA has been proposed and, with the current statewide focus on global warming, more legislative proposals are expected. For example, AB 224 (Wolk, Jan. 29, 2007) would require the California Department of Water Resources and the regional water quality control boards to include climate change effects in their studies of future water supplies.

Given the dynamic status of the law, what strategies can developers employ to avoid costly delays based upon climate change lawsuits? First, developers should internally evaluate their projects estimating their exposure to a CEQA

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challenge. Depending upon the scope of the project, developers may also consider design modifications such as the incorporation of mixed-uses in order to reduce vehicle trips or incorporating innovative new energy conservation systems now available on the market.

Developers should strategize with their environmental consultants early on so as to proactively account for greenhouse gas emissions and ensure that the potential effects of global warming are adequately addressed in their project's environmental documents. Developers and their consultants should also remain current with case law and proposed legislation that could affect how global warming manifests itself within the CEQA process.

JMBM has considerable experience counseling developers on CEQA matters and defending the sufficiency of environmental documents. For more information about JMBM's experience with CEQA and global warming in California, please contact John Bowman or Ian Forrest. ■



John Bowman

John M. Bowman is a Partner in the Government, Land Use, Environment & Energy Department at Jeffer, Mangels, Butler and Marmaro LLP. Mr. Bowman draws upon his background as a city planner in representing a broad spectrum of clients involved in the real estate development process. He specializes in zoning, subdivisions, community redevelopment, historic preservation and the California Environmental Quality Act. For more information, please contact him at 310.785.5379 or JBowman@jmbm.com.



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I N T H E N E W S

- In May 2007, **Ken Ehrlich** was the featured speaker on environmental law at the Continuing Education of the Bar's (CEB) Annual Fundamentals of Real Estate seminar. Ken's presentation included recent developments in environmental law and an overview of selected areas of his practice
- **Ben Reznik** was quoted in the April 30, 2007 issue of the *San Fernando Business Journal* in an article titled, "Affordable Housing Bringing to Light Another Issue"
- **Malcolm Weiss** was quoted in the April 16, 2007 issue of *Inside Energy with Federal Lands* in an article titled, "Calif. Businesses Ask State to Consider Non-trading Carbon Market Policies"
- **Ben Reznik** and **Derek Jones** were quoted in the April 26, 2007 issue of Santa Monica's *The LookOut News* in an article titled, "Council Passes Emergency Ordinance to Halt Wave of SROs"
- **Malcolm Weiss** and Cantor Fitzgerald Brokerage, L.P. co-hosted an Environmental Issues Forum on April 30, 2007 in San Francisco. The presentation titled, "AB 32: Requirements, Challenges, and

Opportunities," is the third in a series of California Global Warming Forums and was mentioned on *Forbes.com* on April 6, 2007, as well as several blog sites via BusinessWire

- **Ben Reznik** hosted a Business Issues Forum client breakfast at the Firm on April 20, 2007 featuring Jane Usher, President of the Los Angeles City Planning Commission
- **Ben Reznik** was quoted in the February 19, 2007 issue of the *San Fernando Business Journal* in an article titled, "Affordable Housing Bid Crumbling"
- **Michael Yaki's** op-ed piece, "The Jingoism 500," was published in the *New York Times* on February 17, 2007
- **Kerry Shapiro** was mentioned in the January 1, 2007 issue of the *California Planning & Development Report* in an article titled, "Court Demands Public Hearing On Vested Right Determination" ■

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W E L C O M E S N E W M E M B E R S

The Government, Land Use, Environment & Energy Department (GLUEE) at Jeffer, Mangels, Butler and Marmaro LLP is proud to announce the addition of two new associates and the return of a former associate to JMBM's Los Angeles office.

Associate **Ian M. Forrest** focuses on environmental compliance and litigation, CEQA, energy, land use, and zoning matters. As a former environmental consultant, Mr. Forrest has worked in various capacities, including the drafting of siting studies and CEQA documents to facilitate the permitting and implementation of over 55 development and environmental projects. He has served as a technical point of contact in support of negotiations with planning commissions, local municipalities, and community groups concerning permitting, variances, and environmental mitigation measures. Mr. Forrest has also worked with non-governmental organizations such as the International Emissions Trading Association and the World

Business Council For Sustainable Development on issues of emissions trading and climate change.

Associate **Dafna Hopenstand** focuses on all aspects of environmental litigation and regulatory and administrative matters. She also works on land use and zoning issues, where her experience includes providing counsel on large mixed-use, residential, and commercial projects and consulting on CEQA matters. Prior to joining JMBM, she worked as a land use attorney on projects throughout the country.

Associate **Timothy D. Martin** returns to JMBM bringing 10 years of experience as a professional environmental policy analyst for major national environmental organizations, including the Natural Resources Defense Council. Mr. Martin's practice emphasizes land use and environmental policy. ■

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The Development Rights publication is published three times a year for the clients, business associates and friends of Jeffer, Mangels, Butler & Marmaro LLP. The information in this newsletter is intended as general information and may not be relied upon as legal advice, which can be given by a lawyer based upon all relevant facts and circumstances of each particular situation.

Our experience ranges from individual properties to billion dollar portfolios. Large or small, routine or complex, if a legal matter has your attention, it deserves ours too.

FORWARDING SERVICE REQUESTED

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