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result, owners decided to put their projects on hold or abandon construction, because either the project lost financing backing or the onset of the recession eliminated the anticipated market. JMBM and the Hollywood Chamber met with State Senator Curren Price in January 2011 to discuss the serious implications of the lawsuits that threaten Hollywood's growth, even when the developer ultimately prevails. Senator Price lauded these amendments as changes that would strengthen CEQA, and agreed to sponsor the bill in the 2011 Senate term.

CEQA is the foundation for environmental law in California, and its primary objective is to require disclosure of any significant environmental effects of proposed projects and mitigation of these effects to the extent feasible. CEQA also provides strict timelines and expedited litigation schedules for cases involving a challenge to such environmental reviews. However, the law allows for lenient extensions by judges, and the one-year time limit to proceed to hearing is often extended to over two years. In recent years the State legislature considered numerous amendments to CEQA to further expedite the litigation schedule and eliminate

frivolous claims to allow more certainty for owners and developers in the process. However, the amendments did not ultimately provide a timely resolution of pending lawsuits.

As a result of CEQA lawsuits, owners decided to put their projects on hold or abandon construction, because either the project lost financing backing or the onset of the recession eliminated the anticipated market.

The amendments suggested by JMBM and the Hollywood Chamber provide three key objectives. First, the proposed

language creates a strict schedule for the public agency to complete the administrative record in a timely manner by eliminating lenient extensions of the 60-day limit that often exceed six months. Second, the proposed language reduces the time for a case to proceed to a hearing from one year to nine months, and limits extensions of time periods for tasks prior to the hearing to ensure that this time frame is feasible. Finally, the proposed language allows the real-party-in-interest, who is often the property owner or developer, to participate in the mediation process, and to terminate mediation and proceed to litigation if the mediation is not producing timely results. The existing language allows the local agency or petitioner to continue mediation without results indefinitely. These amendments are currently under consideration by the State Senate in Senate Bill Number 735. ■

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Court Decision Changes CEQA Related Traffic Impact Analyses by Neill E. Brower

A recent court decision has already changed the way many public agencies evaluate traffic impacts in analysis reports prepared to satisfy the California Environmental Quality Act ("CEQA"). On December 16, 2010, the Sixth District of the California Court of Appeal issued its decision in *Sunnyvale West Neighborhood Association v. City of Sunnyvale*, invalidating an environmental impact report (EIR) for a major roadway extension project. *Sunnyvale* should be considered as a logical extension of case law regarding the proper baseline for CEQA analysis and the end of the future baseline

scenario as the only basis of a traffic impact analysis.

Prior to *Sunnyvale*, an accepted practice for traffic impact analysis involved crafting a future baseline scenario, usually based on the anticipated year of project build-out, and evaluating project impacts based on the difference between future conditions with and without project-related traffic. This approach makes intuitive sense, as under very few circumstances would traffic levels and street configurations plus project traffic represent an accurate picture of the project's ultimate effect on local and

regional roadways. The *Sunnyvale* decision even recognized this.

However, CEQA Guidelines require an evaluation of the effects of a project on "the environment." Generally, "the environment" means the physical conditions that exist in an area during publication of the Notice of Preparation (NOP) or, if no NOP is published, the time that environmental review began.

Exceptions to this general rule are uncommon, but can occur when: (1) the physical conditions that existed at the

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Q. What impact will the Governor's plan to eliminate redevelopment agencies have on your department?

A. This would be very challenging for us in the current environment. We need to figure out how to adopt ordinances allowing us to continue LACRA's work if that legislation passes in Sacramento.

Q. You mentioned major project units. What's your definition of a major project?

A. No specific definition has been created; however, the process could function in a situation where a project, though small, could be highly complex or where a major project in one geographic area would be of regional significance.

Q. What are the chances that the city's parking requirements will be relaxed for specific types of projects; e.g. senior housing?

A. We're in the process of looking at the parking issue specifically in the case of TODs where the Federal authorities require that on-site parking be reduced. ■

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time of NOP publication somehow did not represent a normal or typical state; (2) the project involves an expansion of an existing use, such as a mine, with varying levels of operation over time; (3) the project involves a slight change to a previously approved project for which the lead agency had already certified an EIR or other CEQA document; or (4) illegal development has occurred in past, and the lead agency wishes to capture and disclose the impacts of that development in addition to the project. In each case, the document must clearly and explicitly state the reasons for deviating from the general rule, explain the basis for the selection of the baseline used and how that baseline was derived, and provide substantial evidence to support these decisions. Even where an alternative baseline is justified and reasonable, the failure to clearly explain the process for selecting and crafting that baseline can be fatal.

In *Sunnyvale*, the EIR analyzed the traffic, air quality, and noise impacts of the project against the City's projected 2020 General Plan build-out, rather than against conditions that actually existed at the project site. The EIR explained the 2020 baseline by stating that the City anticipated completing the project at that time. However, no indication existed that the City could actually complete the project by 2020, or even that the City could complete the project at all. In fact, communications among City staff indicated that no foreseeable funding for

the project existed. Consequently, the court ruled that the use of a future baseline was not justified, and that even if it had been, the City failed to support its choice of baseline with substantial evidence in the record.

In each case, the document must clearly and explicitly state the reasons for deviating from the general rule, explain the basis for the selection of the baseline used and how that baseline was derived, and provide substantial evidence to support these decisions.

The lessons? Absent a clear and compelling reason to do otherwise, developers should ensure the lead agency publishes an NOP and pegs the analysis—all of the analysis—to that date. Also, a

redeveloper who will use trip credits from the preceding use should carefully consider issuing an NOP while the existing use remains in operation.

In most cases, the traffic impact analysis for a typical development project should compare existing traffic conditions to existing conditions plus project traffic. A second analysis that adds other related projects' traffic to the existing conditions and project traffic likely remains necessary to evaluate cumulative traffic impacts. Finally, mitigate the most severe impact of the two analyses for each significantly impacted intersection.

Where conditions that exist at publication of the NOP do not represent typical or normal circumstances at a project site or its surroundings, or are likely to change rapidly between the NOP and the time the lead agency would actually consider the project, the developer and lead agency must ensure that the analysis clearly and explicitly sets forth the decision-making process for adopting an alternative baseline. ■

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