

## EIRs Abused in Opponents' Attempts to Block Development

By BENJAMIN M. REZNIK

**M**AYBE it's just me, but it seems that recently there has been a rash of requests for full environmental impact reports, or 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 required as opposed to a different method of environmental review? I think it's the latter.

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 total 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 envi-

ronmental assessment form in which the project is described and potential environmental impacts are analyzed by city staff workers. If they determine that no impacts are created, then a "negative declaration" is issued and the project proceeds to public hearings. If city staff workers 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" is issued and the project proceeds to public hearings.

In each instance the ultimate decision 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 determines that some significant potential adverse impacts exist that cannot be mitigated, then a full EIR is legally required.

### Abusing the process

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 con-

cerned 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.

**These two cases demonstrate how far an elected body is willing to go in order to defeat unwanted projects**

In 2005 Home Depot purchased a building in Sunland-Tujunga that formerly housed a Kmart. 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 that 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. Underterred, the council has decided to ignore the advice of its own departments and continues to hold this project hostage using and 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.

*Benjamin M. Reznik, is chairman of the government, land use, environment and energy department at the law firm of Jeffer Mangels Butler & Marmaro in Los Angeles.*