

## *Use of a Previously Certified EIR in Redevelopment Plan Adoption*

by Alex Chiu and Robert Pearman

An essential element in the process of adoption of a redevelopment plan under the California Community Redevelopment Law is the environmental review process, typically culminating in an environmental impact report (EIR) for the proposed plan. One issue that can arise is the appropriateness under the California Environmental Quality Act<sup>1</sup> of relying on analyses in a previously certified EIR when conducting environmental review for a subsequent redevelopment plan adoption.

### **I. Facts**

Assume that six months ago, the City Redevelopment Agency certified the EIR for the Harbor Program. The Agency is now preparing the draft EIR for the Old Town Program. A portion of the area to which the Harbor Program applies also is part of the area to which the Old Town Program applies (the Common Area). It is assumed that the activities planned in the Common Area are the same under each Program. It also is assumed that the notice of determination for the Harbor EIR was timely filed and that over 30 days have transpired since such filing.

### **II. Issues and analysis**

*A. Whether the environmental impact analysis of the activities in the Common Area set forth in the Harbor EIR may be incorporated by reference into the Old Town EIR.*

"Environmental impact report" means a detailed statement setting forth the matters specified in Sections 21100 and 21100.1 [which set forth the required contents for an environmental impact report]; provided that information or data which is relevant to such a statement and is a matter of public record or is generally available to the public need not be repeated in its entirety in such statement, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the environmental impact report shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building...." [emphasis added] PRC Section 21061.

Section 21061 also provides that an EIR is an "informational document." Because a portion of the area to which the Harbor Program applies also is part of the area to which the Old Town Program applies, then it follows that the Harbor EIR, 1) contains information and data that are relevant to the Old Town EIR, 2) as a certified EIR, is a matter of public record or is generally available to the public, then 3) the Harbor EIR may be cited as the source for conclusions stated in the Old Town EIR.<sup>2</sup>

*B. Conditions that Must Be Met to Incorporate by Reference the Harbor EIR into the Old Town EIR.*

Under PRC Section 21061 and Guidelines Sections 15150(b) and (c), compliance with the following must occur:

(1) The incorporated part of the Harbor EIR must be briefly summarized where possible or briefly described if the data or information cannot be summarized.

(2) The relationship between the incorporated part of the Harbor EIR and the Old Town EIR must be described.

(3) The Old Town EIR must state where the incorporated documents will be available for inspection, and the Harbor EIR must be made available to the public for inspection at a public place or public building.

Again, we assume that the activities in the Common Area are the same under both the Harbor and Old Town programs. In the event of any differences, further analyses of the impacts of the activities in the Common Area under the Old Town Program would have to be set forth in the Old Town EIR.

*C. If the Agency Incorporated by Reference the Harbor EIR, Whether the Harbor EIR Would Once Again Be Subject to CEQA Challenge.*

Under PRC Sections 21167 and Section 21167.2, any action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment, or that an EIR does not comply with the CEQA provisions, shall be commenced within 30 days after the filing of the notice of determination, unless the provisions of Section 21166 are applicable.

Under PRC Section 21166, no subsequent or supplemental EIR shall be required, unless one or more of the following events occurs: substantial changes are proposed in the project or substantial changes occur with respect to the circumstances under which the project is being undertaken, either of which will require major revisions to the EIR, or new information, which was not known and could not have been known at the time the EIR was certified as complete, becomes available. Of these foregoing provisions, none would require a subsequent or supplemental EIR simply because the Harbor EIR, or a portion thereof, is incorporated by reference into the Old Town EIR.

Accordingly, assuming that over 30 days transpired since the filing of the Harbor EIR notice of determination, under PRC Section 21167.2 the Harbor EIR is

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### **CERTIFIED EIR**

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conclusively presumed to comply with CEQA and the incorporation by reference will not cause the Harbor EIR or Harbor Program to be subject to CEQA challenge.

However, if the Harbor EIR did not address the cumulative effect of the Harbor Program and the Old Town Program, then the Old Town Program may constitute a change in circumstances [Section 21166(b)], or new information [Section 21166(c)]. Under such circumstances, a subsequent or supplemental EIR may be required.

### **III. Conclusions**

In general, it is appropriate under CEQA to incorporate an EIR for one redevelopment plan when conducting environmental review for another redevelopment plan, where there is common area and activities between them. ■

1. Public Resources Code (PRC) Sections 21000, et seq. (CEQA).

2. Also supporting this conclusion is Section 15150(a)(e) of the State CEQA Guidelines [14 California Code of Regulations Sections 15000, et seq. (the Guidelines)].