

CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Request that City Join Amicus Brief in the case of *Friends of Mammoth v. Town of Mammoth Lakes*, Third District Court of Appeal No. C029659

MEETING DATE: February 3, 1999

PREPARED BY: City Attorney

RECOMMENDATION: That the City join the amicus brief in the case of *Friends of Mammoth v. Town of Mammoth Lakes*, Third District Court of Appeal No. C029659.

BACKGROUND: *Amicus* briefs are filed in various actions which involve matters of wide ranging concern to provide information and additional argument to the court in order to assist the court in understanding all of the issues and arrive at a conclusion.

This case involves an important issue related to the City's ability to use program EIRs in redevelopment projects and other areas. Program EIRs are used for redevelopment plans in accordance with CEQA guideline 15180 and Public Resources Code § 21090. A program EIR provides for general review of the entire plan as one project with further, more detailed, review occurring as each aspect of the plan is ultimately implemented.

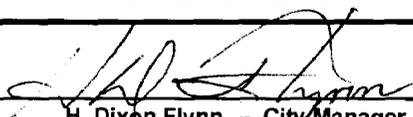
In this case the city of Mammoth Lakes had approved a redevelopment plan and program EIR. The plan had 72 potential elements ranging from housing, commercial and infrastructure development to a façade improvement program. The EIR addressed the plan elements in a rather general manner, leaving the task of detailed review to future EIRs which would address the plan elements as they were implemented.

The Friends of Mammoth Lakes sued to stop implementation of the plan by alleging a failure to comply with CEQA. The alleged failure involved the somewhat limited review performed by the city in the program EIR. The Friends asked the court to make a finding that the city was required to thoroughly review each of the 72 elements in detail as part of the plan approval process. The trial court ruled in the city's favor, finding that the program EIR approved by the city was legally appropriate and consistent with the relevant provisions of the Public Resources Code and CEQA Guidelines. The Friends have since appealed to the Third District Court of Appeal.

This case is important to the City of Lodi and cities in general for two distinct reasons:

1. It is important for cities, in preparing redevelopment plans or similar planning or programmatic documents, to be able to engage in a program level of environmental review. A requirement of more detailed review at the plan stage would significantly complicate the task and increase the cost of preparing program EIRs, particularly for redevelopment. If every conceptual proposal within such a

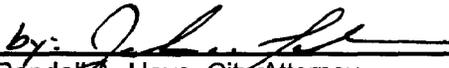
APPROVED: _____


H. Dixon Flynn -- City Manager

1. plan had to be thoroughly studied at the preliminary planning stage fewer proposals would actually make it into the plans because few proposals can be sufficiently well-defined to facilitate detailed review at such an early stage. The net result would be more expensive, smaller plans that provide cities fewer options in the elimination of blight;
2. Cities, as the lead agencies responsible for CEQA compliance, need reliable guidance from the CEQA Guidelines and predictable judicial interpretations of those Guidelines. The CEQA Guidelines propounded by the state specifically provide for program level review of redevelopment plans and that such review should analyze proposals at a general level of detail. The CEQA process for cities would be greatly complicated if cities were unable to rely on the legality of these Guidelines.

FUNDING: Not applicable.

Respectfully submitted,

by: 

Randall A. Hays, City Attorney

Via Facsimile to 415-512-8750

AUTHORIZATION TO JOIN AMICUS BRIEF

(Amicus participation through City Attorney as listed counsel)

To: Landels Ripley & Diamond, LLP
Michael H. Zischke

Pursuant to the City's policies regarding joinder in friend of the court briefs, you are authorized to add the name of the City of Lodi to the amicus brief in Friends of Mammoth v. Town of Mammoth Lakes, under my name as the City Attorney.

The City understands that you are preparing this brief on a pro bono basis under the supervision and guidance of an attorney from the League of California Cities' Legal Advocacy Committee. The City further understands that there will be no cost to the City associated with joinder in this case.

This authorization extends only to adding the City's name to the amicus brief you are preparing in the case in the Third District Court of Appeal. You must obtain supplemental authorization to add the City's name to any further briefing efforts.

Randall A. Hays
Signature

Randall A. Hays
City Attorney name

46785
City Attorney State Bar Number

P. O. Box 3006
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City/State/Zip

(209)333-6701
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Peggy
I will call you this AM about this. RA

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CITY ATTORNEYS OFFICE

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Michael H. Zischke
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January 21, 1999

To: All California City Attorneys

From: Michael Zischke, Landels Ripley & Diamond LLP

Re: Request to Join in Amicus Brief Supporting a City's Ability to Use a Program EIR for a Redevelopment Plan – Friends of Mammoth v. Town of Mammoth Lakes, California Court of Appeal, Third Appellate District, Case No. C029659 (on appeal from Mono County Superior Court Case No. 12308) – City Decisions to Join Requested by Friday, February 12

We request your City's amicus assistance regarding the Third District Court of Appeals' consideration of an important case dealing with the level of specificity required when a City prepares a program EIR for a redevelopment plan. The Mono County Superior Court upheld the EIR prepared by the Town of Mammoth Lakes, and that decision is now being appealed primarily based on the argument that the level of review in the program EIR was not sufficiently specific or detailed.

This decision is significant for California cities because an adverse decision could make it much more difficult for cities to use program EIRs, both in redevelopment as well as other contexts. The League of California Cities' Legal Advocacy Committee has reviewed this case, and urges cities to participate in an amicus brief in support of the Town of Mammoth Lakes.

The following provisions of this memorandum briefly describe the case, explain in more detail why the case merits city attention, and concludes providing forms for cities to indicate their support and agreement to join in the amicus brief.

A. Brief Description of Case

This case arises out of the Town of Mammoth Lakes' June 1997 decision to approve a redevelopment plan and to certify an accompanying program environmental impact report. Following incorporation in 1984, the Town had begun to explore redevelopment under the Community Redevelopment Law based on findings that many areas of the town were characterized by aging and potentially unsafe buildings, inadequate and worn-out roadways, lack of affordable housing, aesthetic nuisances, and other problems. The redevelopment area



evaluated in the plan covers three separate parts of the Town of Mammoth Lakes comprising 1,139 acres.

In the process of studying redevelopment, the Town had considered some 72 possible different development proposals that might be implemented through a redevelopment plan to alleviate the conditions of blight. These proposals were discussed in general in both the EIR and the redevelopment project report. When the EIR was prepared and the plan was adopted, the proposals were not defined in detail and had not been approved by the Town. The Town prepared a program EIR pursuant to CEQA Guideline 15180 and Public Resources Code Section 21090, which specified that a redevelopment plan is to be considered as a single project. In particular, Guideline 15180(b) states that an EIR in a redevelopment plan "shall be treated as a program EIR."

After the June 1997 approval of the Plan and the program EIR, Friends of Mammoth and several individuals filed a petition for writ of mandate challenging the adequacy of the EIR's environmental review. Their primary contention in this case, and on this appeal, is an argument that the program-level of EIR review by the Town was improper and inadequate, and that the Town should have reviewed each of the 72 possible development proposals in specific detail before adopting the redevelopment plan. Friends of Mammoth also made a broad-ranging attack on most other aspects of the EIR, linking these other challenges to the basic argument that more specific review of particular development proposals is required in a program EIR for a redevelopment plan.

In a statement of decision issued on May 5, 1998, Judge Edward Denton of the Mono County Superior Court upheld the EIR and denied the petition for writ of mandate sought by Friends of Mammoth. Friends of Mammoth has appealed that decision and filed their opening brief, and the responding brief from the Town of Mammoth is due on February 16, 1999. We intend to file the brief of joining California cities also on or before February 16, 1999.

B. League of California Cities' Review of this Case

This matter has been reviewed by the League of California Cities' Legal Advocacy Committee, and the Legal Advocacy Committee is urging that cities participate as Amici Curiae. At the request of the League, our firm will prepare an amicus brief of joining California cities without cost to the League or any of the joining cities.

C. Why this Case Merits City Attention and Amicus Support

This case merits city support for two reasons, which will be the primary focus of the amicus brief of the joining California cities. First, it is important for cities, in preparing redevelopment plans or similar planning or programmatic documents, to be able to engage in a



program level of environmental review. A decision from the Court of Appeal finding that more specific environmental review of particular projects within the redevelopment plan is required would significantly complicate the task of preparing program EIRs and program EIRs for redevelopment in particular. Redevelopment plans will become far more difficult and expensive to study under CEQA, because of the greatly increased level of detail required in an environmental review. As a result, fewer proposals would be included in redevelopment plans because fewer proposals would be sufficiently well-defined to perform an environmental review. As a result redevelopment projects would likely be smaller and cities would have less flexibility in finding ways to eliminate blight.

Second, and more generally, cities as the lead agencies responsible for CEQA compliance on their own planning projects need reliable guidance from the CEQA Guidelines, and predictability in judicial interpretation of those Guidelines. The CEQA Guidelines governing redevelopment plan EIRs and program EIRs specifically state that a redevelopment plan EIR should be a program EIR, and that program EIRs should analyze proposals at a general level of detail. The CEQA process for cities will be significantly complicated if cities are not able to rely on these Guidelines.

D. Request for Support

On behalf of the Town of Mammoth and the League of California Cities' Legal Advocacy Committee, please join in an amicus brief supporting the position of the Town of Mammoth Lakes on these issues. We have enclosed forms to authorize such amicus participation, as follows:

1. It will be easiest if joining cities sign on the brief through their respective city attorneys, and the first attached form provides for participation in this manner. This simplifies the process of participating, because the city is represented by its own counsel on the amicus brief.

2. In the alternative, we will be counsel of record for some joining California cities (including those cities that we already represent on other matters and that wish to join in this brief). However, with respect to cities that we do not currently represent, if the city wishes to appear on the brief represented by our firm we will need to promptly check for possible conflicts of interest, and the representation in this case would be subject to the consent and waiver which is included on the second form.

3. We ask that City Attorneys return this form by mail or fax so that we receive it by Friday, February 12. Our fax number is 415-512-8750.



California City Attorneys
January 21, 1999
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E. For Further Information

A copy of the Superior Court's Statement of Decision is attached. If you would like any further information regarding this case, please feel free to contact Mike Zischke at Landels, Ripley & Diamond at 415-512-4608. You can send email inquiries to mhz@landels.com. You could also contact Peter Tracy, Town Attorney for the Town of Mammoth Lakes, at 760-872-1101, or Daniel McHugh of the League's Legal Advocacy Committee at 909-798-7595.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. H. Zischke", is written over the typed name.

Michael H. Zischke

MHZ/ds
Enclosures

FILED

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
MONO COUNTY SUPERIOR COURT
IN AND FOR THE COUNTY OF MONO

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FRIENDS OF MAMMOTH, an unincorporated association, ANDREA M. LAWRENCE, PATRICIA SAVAGE, and PAT ECKHART,

Petitioners,

vs.

TOWN OF MAMMOTH LAKES REDEVELOPMENT AGENCY and TOWN OF MAMMOTH LAKES, and DOES 1-100, inclusive.

Respondents.

CASE NO: 12308

STATEMENT OF DECISION

[CCP § 632, CRC 232]

Petitioners, Friends of Mammoth, Andrea M. Lawrence, Patricia Savage, and Pat Eckhart, filed their Petition for Writ of Mandate and Injunctive Relief on July 17, 1997 challenging the adequacy of the environmental review, including the environmental impact report (EIR), for the Town of Mammoth Lakes Redevelopment Project ("Project") under the California Environmental Quality Act ("CEQA"). Respondents, Town of Mammoth Lakes and Town of Mammoth Lakes Redevelopment Agency, answered and were joined by intervenors, Mammoth Mountain Ski Area, Mammoth Mountain Land Corp., and Intrawest Mammoth Corporation, in defending the environmental review. Upon application, Citizens for Mammoth was granted leave to file a brief as amicus curiae.

Respondents' certified record of proceedings was lodged with the Court. All parties and amicus curiae filed briefs, and a hearing on the merits of the Petition was held March 10, 1998. Following argument, the Court took the matter under submission. Upon consideration of the record, briefs, and arguments, a tentative decision was issued March 19, 1998. Pursuant to Respondents' timely request, the Court now makes this statement of decision.

1 FACTUAL BACKGROUND

2 The following facts appear in the Town's record of proceedings and are provided here as
3 background for the Court's decision.

4 In 1960, Mammoth Lakes was a small community of 390 people. It has since grown to a
5 permanent population of over 5,000 due in large part to its recreational resources, particularly skiing.
6 The Town incorporated in 1984. The record depicts this growth as lacking planning and coordination
7 and indicates many areas of the Town are now characterized by aging, deteriorating, potentially unsafe
8 buildings, many of which do not meet current building codes and modern seismic standards; inadequate
9 or worn out roadways, water systems, utilities, storm drains, snow storage facilities, parking areas, and
10 transportation systems; properties of limited usefulness due to irregular sizes and shapes; stagnant
11 property values; hazardous waste conditions; commercial properties suffering from high vacancy and
12 turnover rates; lack of affordable housing; and aesthetic nuisances. Reports in the record conclude that
13 Mammoth Lakes suffers from blight as that term is defined in the Community Redevelopment Law. (See
14 generally A.R. 9:0872-75; see also A.R. 9:0896-0939 regarding blight.)¹

15 While the Town's permanent population remains relatively small, it typically hosts over a million
16 visitors during the ski season. Compared to other mountain resort communities, however, the Town
17 receives little sales and property tax revenue. Respondents initiated the redevelopment process to remedy
18 the deterioration of certain areas of the Town which has been aggravated by the heavy demands and the
19 lack of financial resources to meet those demands. (See generally, A.R. 9:0872-75.)

20 In March, 1992, the Town formed the Mammoth Lakes Redevelopment Agency. (A.R. 10:1276.)
21 In March, 1996, the Town hired redevelopment consultants, directed Town staff to develop a project area
22 and begin the redevelopment planning process, and sent letters to business and property owners
23 announcing the Town's intentions. (A.R. 10:1276.) In May, 1996, the Town Council designated a
24 survey area to study the feasibility of redevelopment. (A.R. 10:1315.) In April and May, 1996, the Town
25 held public informational workshops on redevelopment. (A.R. 10:1276.) In June, 1996, the
26

27 ¹The Court adopts the parties' form of citation to the record of proceedings (administrative
28 record), including volume and page number. "A.R. 1:0002" would be volume 1, page 2 of the record.

1. Redevelopment Agency appointed a 7 member citizen advisory group. (A.R. 10:1277.) On June 19,
2 1996, the Redevelopment Agency approved the Project Area boundaries and directed staff to prepare
3 the Redevelopment Plan Report, Redevelopment Plan, and the Draft Environmental Impact Report.
4 (A.R. 10:1321.) In March, 1997, the Town held another public informational workshop on
5 redevelopment and published notice of the availability of the Draft EIR. (A.R. 10:1280; 10:1389-91.)
6 In late April and early May, 1997, the Town mailed notice of a public hearing on the adoption of the
7 Redevelopment Plan and the certification of the draft EIR to property owners and residents and business
8 owners within the Project Area. (A.R. 10:1400 et seq.) The hearing was held on June 4, 1997. (Id.)

9 On June 18, 1997, the Board of Directors of the Town of Mammoth Lakes Redevelopment
10 Agency adopted Resolution Number 97-07 approving the Redevelopment Plan and the Redevelopment
11 Plan Report and certifying the Environmental Impact Report for the Redevelopment Project. (A.R.
12 22:2744.) The Board made findings as required by Public Resources Code section 21081 and adopted
13 a reporting and monitoring program as required by section 21081.6. (A.R. 22:2748-98.) Also on June
14 18, 1997, the Town Council adopted Resolution Number 97-35 approving the Redevelopment Plan and
15 the Redevelopment Plan Report and certifying the Environmental Impact Report for the Redevelopment
16 Project. (A.R. 22:2814.) The Council made findings as required by Public Resources Code section
17 21081 and adopted a reporting and monitoring program as required by section 21081.6. (A.R. 22:2818-
18 69.) On July 2, 1997, the Town Council adopted Ordinance Number 97-08 approving and adopting the
19 Redevelopment Plan for the Redevelopment Project. (A.R. 22:2870.)

20 The Redevelopment Project Area, which includes residential, commercial, institutional, industrial,
21 and some open space lands, covers 1,139 acres in three separate parts: a main area of about 908 acres;
22 Subarea 1, a small industrial park along Commerce Way, of approximately 31 acres; and Subarea 2, at
23 the airport, of approximately 200 acres. (A.R. 9:0873-74; 9:0888-91; 24:2998, map.) The
24 Redevelopment Plan's stated purposes are to spur economic growth, provide financial assistance for
25 development of new tourism facilities and affordable housing, remove hazardous wastes and blighted
26 structures and sites, provide public parking and snow storage areas, provide facade improvements in
27 commercial areas, and improve land utilization and land use planning. (A.R. 9:0875-77.)

28

1 **DISCUSSION**

2
3 **1. Standard of Review**

4 As the Petition challenges quasi-legislative, law-making decisions, judicial review in this case is
5 governed by Public Resources Code section 21168.5.² (*Western States Petroleum Assoc. v. Superior*
6 *Court*, 9 Cal.4th 559, 566-68 (1995); *Langsam v. City of Sausalito*, 190 Cal.App.3d 871, 878-81
7 (1987).) The Court has limited its inquiry to whether there was a prejudicial abuse of discretion. “Abuse
8 of discretion is established if the agency has not proceeded in a manner required by law or if the
9 determination or decision is not supported by substantial evidence.” (§ 21168.5.)

10
11 **2. Preparation of a Program EIR**

12 Petitioners’ primary contention in this matter, as framed by the pleadings, briefs, and argument.
13 is that Respondents committed procedural error by preparing and certifying a “program EIR” pursuant
14 to Guideline 15168³ for the Redevelopment Project. This Court disagrees. The subject EIR was properly
15 prepared as a program EIR pursuant to that regulation.

16 Section 33352(k) of the Community Redevelopment Law (Health and Safety Code § 33000 et
17 seq.) requires preparation of an EIR for a redevelopment plan. CEQA section 21090 provides that all
18 activities pursuant to a redevelopment plan shall be deemed to be a single project, subject to section
19 21166. Section 21166 provides that when an EIR has been prepared for a project, no further report shall
20 be required unless a) substantial changes are proposed in the project, b) substantial changes in
21 circumstances occur, or c) new information not previously known or available becomes available.
22 Guideline 15180 parallels section 21090 and further provides that an EIR on a redevelopment plan should
23 be treated as a program EIR. Guideline 15168, governing program EIRs, provides that if later activities
24 pursuant to a project would have effects not examined in the program EIR, further environmental
25 documentation must be prepared.

26
27

²All further statutory references are to the Public Resources Code unless otherwise indicated.

28 ³The CEQA Guidelines are found at 14 CCR § 15000 et seq.

1 Apparently, Petitioners read section 21166 (governing when further review is required) as
2 foreclosing further environmental review in situations where such further review would be required under
3 Guideline 15168 (governing program EIRs). The Redevelopment Plan includes some 72 individual
4 development proposals. The EIR provides a general discussion of those 72 proposals but defers detailed
5 analysis of their environmental impacts to a future date, as necessary under Guideline 15168. Because
6 the EIR concerns a redevelopment plan, Petitioners contend that section 21166 will foreclose this future
7 review and, therefore, the EIR must address the environmental impacts of all 72 proposals now. The
8 Court rejects this contention.

9 Respondents approved a redevelopment plan, which is necessarily a general document. They did
10 not take any action to approve the 72 development proposals. The statutory and Guideline scheme
11 outlined above sets the stage for a continuing process of environmental review. Most, if not all, of the
12 72 proposals presently included in the Redevelopment Project are merely ideas or techniques to
13 accomplish the elimination of blight and further the Town's General Plan. To attempt at this early date
14 to detail the environmental impacts of ideas would require speculation as to precisely what those ideas
15 actually involve. The environmental analysis would have to be based on that speculation. But an analysis
16 of anything is only as good as the data upon which it is based. An EIR is supposed to be an informational
17 document. An EIR based upon hypothetical data regarding the 72 proposals would not inform anyone.
18 A program EIR avoids this problem. The Court therefore concurs with Respondents that the statutes
19 and Guidelines must be read together and harmonized and that environmental review of a redevelopment
20 plan must culminate in a program EIR.

21 The Court reads Guideline 15168 as implementing sections 21090, 21166, and Guideline 15180
22 in the context of redevelopment plans. Guidelines 15162 and 15163 provide for detailed future
23 environmental review of individual projects consistent with these statutes and regulations. The concept
24 of a program EIR, being a creature of the Guidelines, is to implement the statutes by assuring further
25 environmental review as time goes by and the individual proposals for the Redevelopment Plan move
26 forward. Petitioners' contention of a conflict between the statutes and the Guidelines is without merit.
27 (See *Masonite Corp. v. Superior Court* (1994) 25 Cal.App.4th 1045, 1052-53; *Al Larson Boat Shop,*
28 *Inc. v. Board of Harbor Com'rs of City of Long Beach* (1993) 18 Cal.App.4th 729, 741-42; *Santa Cruz*

1 *County v. City of Watsonville* (1985) 177 Cal.App.3d 831, 841.)

2 A redevelopment plan must be flexible and the attendant environmental concerns must likewise
3 be addressed to a proper degree at the proper time. Concerning plans for further environmental review
4 at a latter date, the Court notes that no city council, redevelopment agency director, or court can commit
5 others of similar responsibility to future environmental review. On this, the Court agrees with Petitioners.
6 The Court disagrees with Petitioners that such future review is not otherwise insured. The reason is
7 found in the concept of tiering at sections 21093 and 21068.5 and Guideline 15385. The Redevelopment
8 Plan is a financing vehicle for the objects and goals of the Mammoth Lakes General Plan. Accordingly,
9 the General Plan EIR was followed, or tiered, by the subject Redevelopment Plan EIR. As the individual
10 redevelopment proposals begin to be defined, they must be consistent with the General Plan and the
11 Redevelopment Plan and the environmental impacts must have been considered in the respective EIRs
12 or section 21166 and the Guidelines will require further environmental evaluation, and, depending on the
13 specific impacts, may require subsequent or supplemental EIRs. If, however, that evaluation results in
14 a determination of consistency, then the object of addressing potential environmental effects will also
15 have been met. (See *Long Beach Savings & Loan v. Long Beach Redev. Agency* (1986) 188 Cal.App.3d
16 249.)

17 The Court finds that Respondents proceeded in the manner required by law by preparing a
18 program EIR and in the analysis that was done of the 72 development proposals. The Court further finds
19 that Respondents determinations with respect to this issue were supported by substantial evidence in the
20 record.

21
22 **3. Project and Environmental Setting Descriptions**

23 Petitioners assert a number of errors with respect to the EIR's descriptions of the project and
24 environmental setting. The Court holds that the EIR complies with CEQA and that such determinations
25 as were made with respect to these descriptions were supported by substantial evidence. The particular
26 bases for this decision follow.

27

28

1 A. Description of Kind of EIR Prepared

2 Petitioners have failed to cite authority for a requirement that the EIR describe the type of EIR
3 that it is. Nevertheless, the Court finds that the description of the kind of EIR is complete and that any
4 user of the EIR is fully informed. (See A.R. 31:4963-67; see also *Laurel Heights Imp. Assoc. v. Regents*
5 *of Univ. of Calif.* (1988) 47 Cal.3d 376, 392 regarding EIR as informative document.)

6
7 B. Description of Blight

8 The Court finds the EIR description of the environmental setting with respect to blight complies
9 with CEQA. Under Guideline 15148, citation in an EIR to source documents is proper and encouraged;
10 the record reflects that Respondents employed this technique with respect to blight. (See A.R. 31:4647,
11 31:4673, 31:4970-72, 5:0149-50, 5:0274-75, 5:0161, 5:0166, 5:0168, 5:0174-90, 11:1551-65; see also
12 Guidelines § 15006(o).)

13
14 C. Description of Economic Characteristics of Project

15 Petitioners' contention that the description of existing economic characteristics of the Town is
16 inadequate under Guideline 15124(c) is rejected. That Guideline concerns the project description, not
17 existing characteristics. The EIR complies with the requirements of that section. (A.R. 31:4648-63.)
18 Further, as noted by the Intervenors, the Court must be guided in its review by the rule of reason. (See
19 *San Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal.App.3d 584, 594;
20 *Kings County Farm Bureau v. City of Hanford* (1990) 21 Cal.App.3d 692, 712.) Respondents acted
21 reasonably.

22
23 D. Description of Environmental Setting

24 The Court's review of the EIR has revealed that it clearly establishes Respondents' compliance
25 with Guideline 15125, both in descriptiveness and brevity. Chapter 4, beginning at A.R. 31:4668, of the
26 FEIR discusses the environmental setting. Regional land use is discussed on pages 04668-69. County
27 employment is discussed on page 04694-95. Area aesthetics are discussed on pages 04705-06. Regional
28 air quality is discussed on pages 04747-52. Regional water quality and drainage, including Hot Creek,

1 are discussed on pages 04759-66. Regional geological conditions are discussed on pages 04775-84.
2 Regional police services are discussed on page 04791-92. Regional fire services are discussed on page
3 04793-94. (See citations at C., supra, regarding rule of reason.)
4

5 E. Description of Uses of EIR

6 The Court notes that the use of a program EIR by other agencies is a matter of speculation given
7 the lack of definition of individual projects within the Redevelopment Plan. Respondents have complied
8 with Guideline § 15124(d). (A.R. 31:4603-04.)
9

10 F. Prejudice

11 As to the prejudice that must be shown by Petitioners, this Court notes the magnitude of the
12 Town and public participation in the entire process that is demonstrated in the administrative record.
13 There is simply no showing that either the project description or the environmental setting description
14 in the EIR negatively affected informed decision making or public participation. (See section 1., supra;
15 see also *Laurel Heights Imp. Assoc. v. Regents of Univ. of Calif.* (1988) 47 Cal.3d 376, 392.)
16

17 4. Incorporation of Other Environmental Review Documents by Reference

18 Petitioners further object that the environmental review documents that the Town incorporated
19 by reference into the EIR were not incorporated properly. The gravamen of Petitioners' Petition in this
20 regard is predicated upon the second clause of the first paragraph of section 21061. That clause directs
21 that the environmental data or information incorporated "shall be briefly described, that its relationship
22 to the environmental impact report shall be indicated, and that the source thereof shall be reasonably
23 available for inspection at a public place or public building." (§ 21061.) The Court has reviewed the EIR
24 (A.R. 31), including the following parts cited by Respondents: 31:4604-08, 31:4668, 31:4668, fn.1,
25 31:4676, 31:4678, 31:4681-85, 31:4689-95, 31:4705, 31:4759, 31:4775-90, and 31:4791-4814. In the
26 Court's judgment, considering the herein previously approved use of a tiered, program EIR and the
27 aforementioned cites to the EIR, there is sufficient compliance in all respects with section 21061, as well
28 as Guidelines 15006 and 15150.

1 Petitioners' subsidiary concerns with the age of certain reports incorporated by reference and
2 perceived similarities with the case of *Emmington v. Solano County Redevelopment Agency* (1987) 195
3 Cal.App.3d 491 are rejected. The Court has carefully read the applicable parts of the record and
4 considered the cases cited to support Petitioners' allegations of procedural error; the Court finds no error.
5 The proper test of the EIR is its informative sufficiency for decision makers and the public; the EIR
6 passes this test. (See section 1., supra; see also *Laurel Heights Imp. Assoc. v. Regents of Univ. of Calif.*
7 (1988) 47 Cal.3d 376, 392.)

8
9 **5. Other Contentions**

10 The remaining concerns developed and argued by Petitioners do not provide a basis for granting
11 the Petition. The Court observes that while these issues were raised in Petitioners' Petition and Opening
12 Brief, they received little attention in Petitioners' Reply Briefs and oral argument. The Court addresses
13 them here accordingly.

14
15 **A. Analysis of Impacts in Relation to the Existing Environment**

16 Petitioners contend that the EIR fails to analyze impacts in relation to the existing environment.
17 Respondents answer, correctly, that the EIR properly analyzes the *relationship* between the
18 Redevelopment Project and the General Plan and also analyzes environmental impacts on the existing
19 environment. There has been a legally appropriate analysis of impacts and Respondents' determinations
20 are supported by substantial evidence in the record. (See Health & Safety Code § 33331; Guidelines §
21 15125(c) and OPR Discussion thereof; *Santa Cruz County v. City of Watsonville* (1985) 177 Cal.App.3d
22 831, 841; A.R. 31:4668-4814.)

23
24 **B. Consistency Between the Project and the General Plan**

25 The Court finds that impacts due to conflicts between the Redevelopment Plan and the General
26 Plan have been properly analyzed in the EIR and that Respondents' determinations in that regard are
27 supported by substantial evidence. (Guidelines Appendix G; see e.g., A.R. 31:4721, 31:4745, 04848.)

1 C. Evidence Supporting Analysis of Impacts

2 The Court has reviewed the briefs and the record with regard to alleged defects in the analysis
3 of particular kinds or areas of impacts. An exhaustive recitation of the record here is not required. The
4 Court simply finds and concludes that there is in the record substantial evidence to support Respondents'
5 determinations regarding the following impact areas: floods, aesthetics, traffic, solid waste, hazardous
6 waste, public services, geothermal, fish, wildlife, vegetation, cultural, and historic. The Court further
7 finds that, with respect to these analyses, Respondents have proceeded as required by law.

8
9 D. Mitigation Measures

10 As to mitigation measures, the Court likewise finds that Respondents have proceeded as required
11 by law and that Respondents' determinations are supported by substantial evidence in the record. In
12 particular the Court finds that Respondents have fully complied with the findings requirements of section
13 21081. (See A.R. 31:4743-46, 22:2744, 22:2756, 22:2768, and volumes 29 and 30; see also
14 *Sacramento Old City Ass'n v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-29.)

15
16 E. Cumulative Impacts Analysis

17 The Court finds the analysis of cumulative impacts compliant with CEQA and the determinations
18 of Respondents supported by substantial evidence in the record. Respondents' election to proceed under
19 Guideline 15130(b)(1)(B) and utilize the General Plan EIR was proper. (Guidelines 15130; § 21100(e);
20 see A.R. 31:4821-23.)

21
22 F. Alternatives Analysis

23 The Court finds the analysis of alternatives compliant with CEQA and the determinations of
24 Respondents supported by substantial evidence in the record. (Guideline 15126(d).) The requirements
25 for analysis of alternatives is governed by the rule of reason (see section 3. C., supra), and the substantial
26 evidence test applies in reviewing an agency's determination of whether an alternative is feasible.
27 (*Citizens of Goleta Valley v. Bd. of Sup. of County of Santa Barbara* (1990) 52 Cal.3d 553, 565.) The
28 Court further notes that the Redevelopment Plan was approved only with provisions for a number of

1 mitigation measures. (Guidelines 15021(a)(2), *Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986,
2 996; see A.R. 22:2744, Resolution No. 97-07; A.R. 22:2783-98, Attachment D to Resolution, Mitigation
3 Monitoring and Reporting Checklist.) The Court finds Petitioners' attacks on the various alternatives
4 analyzed in the EIR to be without merit.

5

6 G. Responses to Comments

7 Citation of the particular responses to comments challenged by Petitioners and the reasons the
8 Court finds the responses adequate is unnecessary here. The Court finds that Respondents have complied
9 with CEQA in this respect and that such determinations as were made are supported by substantial
10 evidence. The Court notes that under Guideline 15088, a disposition need only be described for a
11 *significant* environmental issue raised. Responses to comments should show a good faith, reasoned
12 analysis but need not be exhaustive. (*Towards Responsibility in Planning v. City Council* (1988) 200
13 Cal.App.3d 671, 683.)

14

15 6. Remaining Issues

16 In all respects not otherwise discussed above, the Court finds the challenged environmental
17 review, including the EIR, of the Redevelopment Plan adequate and proper under CEQA and further
18 finds that substantial evidence supports the findings and determinations made by Respondents and that
19 Respondents have committed no prejudicial abuse of discretion in the matters of which Petitioners
20 complain.

21

22

DISPOSITION

23

24 PETITION DENIED. JUDGMENT SHALL BE FOR RESPONDENTS.

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March 5, 1998
Date


N. EDWARD DENTON
Judge of the Superior Court