

RESOLUTION NO. 40-2022

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA DENYING THE APPEAL AND UPHOLDING THE ACTION TAKEN BY THE PACIFICA PLANNING COMMISSION ON JUNE 11, 2022, ADOPTING RESOLUTION NO. 2022-014 TO RECOMMEND CITY COUNCIL ADOPTION OF A GENERAL PLAN UPDATE AND CERTIFICATION OF AN ENVIRONMENTAL IMPACT REPORT (FILE NO. 2009-001).

WHEREAS, on June 6 and June 11, 2022, the Planning Commission of the City of Pacifica held a public hearing to consider adoption of a General Plan Update (GPU) and certification of an environmental impact report (EIR) assessing the potential environmental impacts from adoption of the GPU; and

WHEREAS, on June 11, 2022, the Planning Commission of the City of Pacifica adopted Resolution No. 2022-014 by a vote of 5-0 (with two abstentions) to recommended that the City Council of the City of Pacifica adopt the GPU (File No. 2009-001) and certify the EIR; and

WHEREAS, a timely appeal was filed on June 21, 2022, by Mark Hubbell and Christine Boles (“Appellants”) with the appropriate appeal fee (“Appeal”); and

WHEREAS, the Appeal raises several issues and challenges the Planning Commission’s action to adopt Resolution No. 2022-014 on June 11, 2022; and

WHEREAS, pursuant to Pacifica Municipal Code (“PMC”) section 9-4.3602, the appeal was heard and determined according to the procedures set forth in Section 9-4.3208 of Article 32 of Title 9, Chapter 4; and

WHEREAS, the City Council of the City of Pacifica did hold a duly noticed public hearing on July 11, 2022, at which time it considered all oral and documentary evidence presented, and incorporated all testimony and documents into the record by reference.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Pacifica does hereby find as follows:

1. The above recitals are true and correct and material to this Resolution.
2. In making its findings, the City Council relied upon and hereby incorporates by reference all correspondence, staff reports, and other related materials.

BE IT FURTHER RESOLVED that the City Council of the City of Pacifica does hereby deny the Appeal based upon all of the reasons set forth in the Staff Report and upholds the Planning Commission’s action to adopt Resolution No. 2022-014 on June 11, and makes the following findings pertaining to its denial of the Appeal of the Planning Commission’s action:

Basis 1. The City impermissibly evades the EIR’s CEQA errors by hiding behind “a citywide assessment” that does not assess project-specific impacts of potential future projects and therefore lack [sic] substantial evidence supporting a fair argument that the project may have significant adverse impacts.

Findings for Basis 1:**Programmatic Environmental Impact Report (EIR) Complies with CEQA**

Appellants have provided no evidence or explanation of the claims made about the FEIR in this basis for the Appeal. The California Environmental Quality Act (“CEQA”) is codified in the Public Resources Code (“PRC”) Section 21000 *et seq.* CEQA’s provisions and requirements are further clarified and implemented by the CEQA Guidelines codified in the California Code of Regulations (“CCR”) Title 14, Division 6, Chapter 3, Section 15000 *et seq.* (hereinafter “CEQA Guidelines”). Where there is substantial evidence, in light of the whole record before the lead agency (i.e., the decision making body considering a discretionary action or project), that a project may have a significant effect on the environment, an environmental impact report (“EIR”) shall be prepared. PRC Section 21080(d). As used in CEQA, the term “substantial evidence” means fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. PRC Section 21080(e)(1). Substantial evidence does not include argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment. PRC Section 21080(e)(2).

City staff concluded that the GPU and SPSP, if adopted, would have the potential to cause a significant effect on the environment and initiated preparation of an EIR. The City issued the first Notice of Preparation of an EIR on February 16, 2012, as part of the initial effort to adopt the GPU. However, as noted in the above-referenced background on the GPU, the City did not adopt the GPU started in 2009. The City then expanded the EIR prepared for the GPU to include review of potential impacts to the environment from the SPSP and released the DEIR for public review and comment in January 2022.

CEQA provides for different types of EIRs to be prepared to best fit the type of project being undertaken. These types of EIRs are listed in CEQA Guidelines Sections 15160 through 15170. Among the various types of EIRs is a “program EIR,” sometimes called a “programmatic EIR,” as described in CEQA Guidelines Section 15168 (Attachment E to the staff report). The City has prepared a program EIR for the GPU.

As indicated in Attachment E to the staff report, a program EIR may be prepared where a series of actions can be characterized as one large project and those actions are related either:

- geographically;
- as logical parts in the same chain of contemplated actions; or
- in connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program; or
- as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

These criteria are applicable to the GPU. The GPU contemplates implementation of the policies contained therein, future adoption of zoning to be consistent with the GPU, review of specific actions by the City for consistency with the GPU, and potentially other activities related to the GPU. Together, these comprise a series of actions that are part of the GPU. Because the GPU would become the General Plan for the City of Pacifica, the series of actions would be related geographically. They would also be logical parts in the same chain of contemplated actions beginning with adoption of the GPU and followed by implementation of specific policies contained in the GPU. Furthermore, all follow-on

actions pursuant to the GPU would be considered individual activities carried out under the authorizing authority contained in the GPU and similarly mitigated with the policies contained in the GPU. Therefore, preparation of a program EIR is appropriate for the GPU and consistent with CEQA and the CEQA Guidelines.

CEQA Guidelines Section 15168 also lists advantages of a program EIR. These include “consideration of cumulative impacts that might be slighted in a case-by-case analysis.” Just such a situation would result from the Appellants’ claim that the FEIR prepared by the City should have performed an analysis of project-specific environmental impacts. An attempt to focus on project-level impacts would not result in a robust cumulative impacts analysis for the GPU overall and would have the potential to miss reviewing important environmental impacts.

Appellants assert that the EIR is deficient on the basis that the City did not assess specific projects in particular locations. However, practically and logically, there cannot be an accurate assessment of the environmental impacts of specific projects at particular locations without having specific projects to evaluate. Such projects do not exist at this time, and thus, are not reasonably foreseeable. Rather than performing the type of analysis identified by the Appellants, the FEIR utilizes reasonable assumptions of future development activity citywide in reliance on the GPU and evaluates potential environmental impacts therefrom. This type of analysis conducted by the City is consistent with another stated advantage of a program EIR in CEQA Guidelines Section 15168, which is to “allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.”

Utilizing this approach as provided in the CEQA Guidelines, the City identified in the FEIR that most potential environmental impacts would be less than significant after considering compliance with existing laws and regulations, and implementation of the various policies contained in the GPU. The FEIR did conclude, though, that potentially significant impacts to the environment could occur in the following resource areas: Energy and Greenhouse Gases; and, Transportation. Potentially significant impacts to Energy and Greenhouse Gases can be mitigated to less than significant levels with incorporation of mitigation measures, both of which would be applied citywide (i.e., programmatically) in a manner fully consistent with the CEQA Guidelines. However, impacts to Transportation would be significant and unavoidable due to the increase in vehicle miles traveled (VMT) that would result from adoption of the GPU. Although Transportation impacts would be significant and unavoidable, CEQA still requires the imposition of mitigation measures to reduce potential impacts to the maximum extent feasible. The FEIR includes feasible mitigation measures that would substantially lessen potential significant effects to the environment from this impact.

Lastly, the Appellants’ claim the City is “hiding behind” a citywide assessment is unfounded and does not acknowledge CEQA’s explicit authorization of utilizing program EIRs. CEQA Guidelines Section 15168 expressly provides for use of a program EIR to determine if later activities would require additional environmental review. For instance, if a later activity would have effects that were not examined in the program EIR, a new initial study would be prepared leading to either an EIR or a negative declaration (which includes a mitigated negative declaration). Later analysis may tier from the program EIR, which means to continue a more detailed analysis from the more general baseline of analysis provided in the program EIR.

Therefore, Appellants incorrectly claim that the City’s preparation of a program EIR would result in insufficient analysis of potential impacts from the GPU. Rather, the City’s preparation of a program EIR

is squarely consistent with the provisions of CEQA Guidelines Section 15168; provides for improved analysis of cumulative impacts from the GPU including program wide (i.e., citywide) mitigation of potentially significant impacts from the GPU; and, provides a foundation from which future project-specific actions by the City can be evaluated to determine whether additional environmental review may be necessary.

Substantial Evidence Supports the EIR

Appellants claim that the FEIR prepared by the City lacks “substantial evidence supporting a fair argument that the project may have significant adverse impacts.” However, this “fair argument” standard is relevant in the event an EIR is not prepared, which circumstance does not exist here. As background, a lead agency under CEQA will usually initiate preparation of an initial study following preliminary review of a project to determine whether any significant impacts on the environment would occur. CEQA Guidelines Section 15063. However, a lead agency may forego preparation of an initial study if it has concluded that a project would clearly require an EIR. CEQA Guidelines Section 15060(c). The City reached this conclusion early in the GPU process and commenced preparation of a DEIR. It has since prepared an FEIR that complies with CEQA and the CEQA Guidelines and that supports its conclusions of significance on the basis of substantial evidence as defined in CEQA Guidelines Section 15384. Therefore, the City has properly determined that preparation of an EIR would be appropriate for the GPU and prepared the DEIR and FEIR in compliance with CEQA.

The correct standard in determining the adequacy of an EIR is provided in California Public Resources Code section 21168.5, and states in an action to set aside an agency's decision under CEQA, Courts must look at “whether there was a prejudicial abuse of discretion.” A prejudicial abuse of discretion is established where a public agency “has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.” Public Resources Code section 21168.5. Under this standard, a court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392; see also id. at p. 407.) Here, Appellants contend that the EIR is deficient by not evaluating specific projects at specific locations, thereby running afoul of CEQA. However, CEQA does not require analysis of speculative future projects. (See *In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1172 [“Where, as here, an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA.”])

Basis 2. This Program EIR must analyze what is reasonably foreseeable from the proposed GP Update, and fails to do so in a number of areas, including, but not limited to fire and landslide maps that are inaccurate and that are lacking implementation policies, inadequate traffic analysis and mitigation measures, inadequate evacuation information, etc. as required per state and CEQA law including California Government Code Title 7, Division 1, Chapter 3, Article 5.

Findings for Basis 2:

Appellants have not provided evidence or explanation of the claims made about the FEIR in this basis for the Appeal. All EIRs, including a program EIR, must evaluate the reasonably foreseeable direct, indirect, and cumulative impacts on the physical environment that would result from a project. CEQA Guidelines Section 15126.2. The FEIR prepared by the City has complied with this obligation by evaluating such potential impacts in all resource areas required in CEQA Appendix G. This includes an analysis of wildfire

(FEIR Chapter 3.14) and geology, soils, and seismic risk (FEIR Chapter 3.6). These FEIR chapters are based on substantial evidence in the record to support their analysis and conclusions, including but not limited to a fire threat level map based on data from the California Department of Forestry and Fire Protection as presented in Figure 3.14-1, and various geologic hazard maps based on data from the California Department of Conservation, California Geological Survey, and/or U.S. Geological Survey in Figures 3.6-1 through 3.6-3b. These maps provide a conservative assessment of the broad wildfire and geologic risks present in the City of Pacifica for purposes of the FEIR's analysis.

The maps were created using data from authoritative sources as indicated in each figure. Figure 3.14-1 was created primarily based on fire threat data retrieved from the California Department of Forestry and Fire Protection ("Calfire") in 2020. The data source is the Calfire Fire Threat map which is published at a statewide scale. The City remapped the Calfire Fire Threat map at a citywide scale using the geographic information system (GIS) dataset for the Fire Threat map.

Similarly, the City used authoritative sources to create FEIR Figures 3.6-1 through 3.6-3b. As confirmed in the Department of Conservation comments on the DEIR, authored by Dr. Erik Frost – a senior engineering geologist in the Seismic Hazards Program of the California Geologic Survey – the DEIR includes figures depicting the most up-to-date Earthquake Zones of Required Investigation produced under the Alquist-Priolo Earthquake Fault Zoning Act and the Seismic Hazards Mapping Act, as well as the most recent Tsunami Hazard Area maps for evacuation planning. Dr. Frost's comments do suggest inclusion of a map of past landslides in Pacifica in addition to FEIR Figure 3.6-3a which depicts the relative density of existing landslides. The comment suggests the additional map as a complement to the maps included in the DEIR and does not call into question the accuracy of the data in Figure 3.6-3a. Dr. Frost's comments also suggest the addition of a new figure to the FEIR demonstrating past mapped debris flows in Pacifica. Staff responded to this comment by incorporating Figure 3.6-3b into the FEIR. Staff created Figure 3.6-3b using available GIS data from the California Geologic Survey website. Subsequent to publication of the FEIR in the Planning Commission agenda packet on June 6, 2022, staff learned from Dr. Frost that the GIS data for debris flows were incomplete and he recommended use of "plate" maps, or non-GIS paper-based maps that included debris flow data for the entire city. Staff has since updated the corresponding figure in the Safety Element of the GPU even though Figure 3.6-3b in the FEIR continues to include the GIS-based map with partial data. Neither suggested inclusion by Dr. Frost of a map of past landslides or debris flows affects the conclusions in the FEIR. As demonstrated in Figures 3.6-1 and 3.6-2, and as confirmed in Dr. Frost's comments, the FEIR includes accurate information about the extent of seismic hazard zones including but not limited to Alquist Priolo, landslide, and liquefaction hazard zones. These areas cover nearly the entirety of the City of Pacifica and conservatively reflect the potential geologic hazards in Pacifica. Moreover, as analyzed in FEIR Chapter 3.6, various policies in the Land Use and Safety Elements of the GPU would reduce the potential environmental impacts from geologic risks to less than significant levels. Therefore, there is sufficient evidence to conclude that the wildfire and geologic hazard maps prepared by the City in the FEIR are accurate and sufficient to support an analysis of potential wildfire and geologic hazards that may occur within the context of adoption of the GPU.

An EIR is not required to have implementation policies. However, where an EIR has identified one or more potentially significant environmental impacts, an EIR must include feasible mitigation measures to reduce the impact(s). CEQA Guidelines Section 15091. The FEIR recommended by the Planning Commission for certification by the City Council included a Mitigation Monitoring and Reporting Program (MMRP) (Attachment J to the Planning Commission staff report from June 6, 2022). Therefore,

the FEIR recommended by the Planning Commission fulfilled this CEQA requirement in relation to all potentially significant environmental impacts resulting from adoption of the GPU.

The FEIR also includes analysis of transportation impacts in Chapter 3.2 to address the impacts identified in Section XVII of CEQA Appendix G. The City's analysis relied primarily on a vehicle miles traveled (VMT) methodology. Automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion, shall not be considered a significant impact on the environment pursuant to CEQA. Public Resources Code Section 21099(b)(2). However, the FEIR did consider level of service to the extent necessary to determine if adoption of the GPU would conflict with the San Mateo County Congestion Management Program (CMP), and concluded that no potentially significant impact would occur. The FEIR's analysis of other transportation impacts concluded adoption of the GPU would have significant and unavoidable impacts related to VMT and the FEIR included mitigation measures MM-TRA-1 and MM-TRA-2 to reduce potential impacts to the maximum extent feasible. Appellants have not clarified why the City's traffic analysis is inadequate.

Appellants provide that the FEIR contains inadequate evacuation information as required by CEQA, but does not state the reason for this assertion. Not only is this analysis provided in the EIR, it is supported by substantial evidence. The required analysis of emergency evacuation is found in CEQA Appendix G, Section XX.a, which requires an analysis of whether a project would "Substantially impair an adopted emergency response plan or emergency evacuation plan." The City analyzed this issue in compliance with CEQA in FEIR Section 3.14 "Wildfire," specifically in the analysis of Impact 3.14-1. After analyzing the potential impacts, the FEIR concluded that the impact would be less than significant under the GPU.

The Appellants' claims regarding California Government Code Title 7, Division 1, Chapter 3, Article 5 is not specific, and the City is unable to evaluate these claims. The referenced body of law is entitled "Authority for and Scope of General Plans" and is codified in Government Code Sections 65300 through 65303.4. These sections of law spell out the requirements for cities to have general plans; the requirement that they be integrated and internally consistent; and required elements. The GPU prepared by the City contains all elements required by Government Code Section 65302 except for the Housing Element, which the City intends to separately update as part of the 6th Cycle Regional Housing Needs Allocation (RHNA) process as provided in state law.

Basis 3. A Program EIR does not justify deferring analysis of GP Update impacts to a later tiered EIR or negative declaration (see CEQA Guideline [sic] 15152).

Findings for Basis 3:

Appellants provide that the City has erroneously deferred analysis of General Plan impacts for future study. However, as noted in discussion of Appeal Basis No. 1, a program EIR is intended to support future tiering for environmental review of projects that will occur later as part of the overall program. Furthermore, CEQA Guidelines Section 15152 referenced by Appellants provides, in pertinent part, as follows:

Tiering is appropriate when the sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site-specific EIR or negative declaration. Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such

analysis to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.

* * * * *

Where a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval, **such as a general plan or component thereof** (e.g., an area plan or community plan), the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.

(emphasis added.) The Appellants' citation to CEQA Guidelines Section 15152 actually supports the City's position because the law identifies general plans as a circumstance in which tiering is appropriate. Courts have opined that "[t]iering is properly used to defer analysis of environmental impacts and mitigation measures to later phases when the impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases." (See e.g., *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431.)

Therefore, the City has evaluated potential environmental impacts at an appropriate level for a program EIR and established a baseline for future environmental review through tiering when detailed, site-specific information is known and can be adequately analyzed under CEQA.

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PASSED AND ADOPTED at a special meeting of the City Council of the City of Pacifica, California, held on the 11th day of July, 2022.

AYES, Councilmembers: Beckmeyer, Bier, Bigstycck, O'Neill, Vaterlaus.


NOES, Councilmembers: n/a.

ABSENT, Councilmembers: n/a.

ABSTAIN, Councilmembers: n/a.



Mary Bier (Jul 19, 2022 14:26 PDT)
Mary Bier, Mayor

ATTEST:



Sarah Coffey, City Clerk

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney









For Signature: ResolutionNo40-2022_DenyingAppealAndUpholdingPlanningCommissionAction_GeneralPlan

Final Audit Report

2022-07-19

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