



Scenic Pacifica
Incorporated Nov. 22, 1957

PLANNING COMMISSION Staff Report

DATE: June 15, 2015

ITEM: 2

SUBJECT: Adoption of a resolution finding that the Calera Parkway Project, part of the 2015-2020 Capital Improvements Program is Consistent with the General Plan.

DISCUSSION

Background: This item was continued on May 18, 2015 and June 1, 2015. On May 18th the Planning Commission adopted a resolution finding the Capital Improvement Program consistent with the General Plan except for the Calera Parkway Project (CPP). The CPP consistency determination was continued with direction to staff to research and attempt to provide historical information on the intent of the language in the General Plan (minutes included in the meeting packet). The Planning Commission also requested information on the status of legal actions regarding the CPP.

Revised Project Description: Since the last time the Commission considered this item, the City Manager and Public Works Director have modified the Calera Parkway Project description in the CIP (see Attachment 2). The modified description acknowledges that the City plans to conduct a public engagement process regarding the Calera Parkway Project in 2015-16 and also reflects the fact that a final decision on the City's preferred physical operational and traffic safety improvements to this area of Highway 1 has not yet been determined by the City Council.

Historical Information: The documents listed below and attached are the historical data related to the General Plan and the CPP. Included are document excerpts and minutes. Staff has referred the Commission to page references where applicable.

1. City of Pacifica General Plan Background Report, 1978. Circulation chapter. See page V-9 for discussion regarding improvements needed to Highway 1. This document references a 1977 MTC Plan stating that a portion of Highway 1 needs additional capacity, although overall capacity increase is not a project objective as explained by the Public Works Director on May 18th.

2. Draft EIR prepared for the General Plan, 1978. Traffic discussion. Page EIR-9 states that “the four-lane arterial portion of Highway 1 in Pacifica is now at design capacity.” Page EIR-16 includes discussion of Traffic related mitigation measures including encouraging MTC’s proposed safety and operational improvements on Highway 1 and Sharp Park Road and advocating initiating further MTC study of highway needs.
3. The General Plan itself. This was not copied as it is available on-line and the Planning Commission is familiar with this document.
<http://www.cityofpacific.org/depts/planning/default.asp>
4. Local Coastal Land Use Plan. The Local Coastal Land Use Plan can be found on the City’s website at <http://www.cityofpacific.org/civica/filebank/blobload.asp?BlobID=7043>.
5. Minutes and Resolution of the City Council approving the General Plan, July 28, 1980. One previous comment referenced minutes from study sessions; however, study session minutes are not maintained. There is no relevant discussion contained in these documents.
6. Rockaway Beach Specific Plan, 1986 with 1992 amendments. This document is available on-line on the City website:
<http://www.cityofpacific.org/civica/filebank/blobload.asp?BlobID=5746>. Circulation section beginning on page 17.
7. Mori Point General Plan amendment EIR information. In 1988 the City Council approved a General Plan Amendment and certified an EIR for the project. Although the project itself was ultimately not carried out the GP amendment was effectuated. The amendments to the GP text are incorporated into the document available on-line. Attached is the Traffic, Circulation, and Parking discussion from the EIR. Page 99 includes discussion of Access Alternatives. Page 118 discusses widening options for Highway 1 including additional travel lanes. Item 10 on page 118 states the following:

The only improvement to Highway 1 incorporating appropriate interchanges and pedestrian facilities and providing acceptable long-range peak hour operations in the central Pacifica area would be construction of a six-lane freeway starting at the Sharp Park interchange and extending south to Fassler Avenue.
8. Caltrans CPP EIR. The entire document can be found on the Caltrans website: <http://www.dot.ca.gov/dist4/envdocs.htm#sanmateo>. Consistency with the General Plan is discussed on page 7 -8 of the CCP Final Project Report. Those pages are attached.

Litigation Summary: The consistency of the CPP with the General Plan and Local Coastal Land Use Plan has been the subject of two court cases.

The first case was *Loeb v. City of Pacifica*, filed in July 2013 by Peter Loeb who was represented by Hal Bohner, Esq., against the City. (Case No. CIV522741). The First Amended Complaint, filed July 26, 2013, alleged that the CPP is inconsistent with the General Plan and Local Coastal Land Use Plan for multiple reasons, including that the CPP would increase the capacity of Highway 1 contrary to language contained in the General Plan. The suit sought a court order prohibiting the City from providing any support for the CPP (e.g., seeking funding by the San Mateo County Transportation Authority). The suit also sought an award of attorney's fees.

The City filed a demurrer (motion to dismiss) asserting (1) the CPP is consistent with the General Plan and Local Coastal Land Use Plan because it advances several of the plans' policies (e.g., to improve the safety of the highway) and is not prohibited by any policies, and (2) the suit is not "ripe" because the City Council has not made a final, administrative decision regarding the CPP and in particular its consistency with the General Plan and Local Coastal Land Use Plan (e.g., in connection with approval of any discretionary permit, such as a required Coastal Development Permit).

The Superior Court addressed the second issue, ruling that the suit was not ripe, and did not reach the first issue. Thus, the Superior Court dismissed the suit. Plaintiff Peter Loeb did not appeal.

The second case is *Pacificans for a Scenic Coast v. The California Department of Transportation et al.* filed in September 2013 in San Mateo Superior Court by an association of individuals represented by Brian Gaffney and Celeste Langille (Case No. CIV523973). The suit alleges that The California Department of Transportation's (Caltrans) Environmental Impact Report (EIR) for the CPP, adopted in August 2013, violated the California Environmental Quality Act (CEQA). The suit named the City and the San Mateo County Transportation Authority as co-defendants on the ground that they have supported Caltrans' project. Among the alleged insufficiencies of the EIR was the claim that the Caltrans improperly concluded that the CPP is consistent with the General Plan and Local Coastal Land Use Plan, also based on assertions similar to those now stated.

Caltrans and the City submitted briefing and offered oral argument opposing the plaintiffs' claims. The City's brief defended the analysis in the EIR regarding the consistency of the CPP with the General Plan and Local Coastal Land Use Plan.

The Superior Court issued a ruling rejecting all of the plaintiffs' claims. Caltrans has submitted a proposed Statement of Decision to specifically set forth the bases for the Court's ruling (as requested by the Court) as well as a proposed Judgment. The Superior Court has yet to finalize its decision.

Analysis:

As discussed, the City has asserted in two suits that the CPP is consistent with the General Plan and Local Coastal Land Use Plan, and has made consistent assertions in related correspondence and staff reports (e.g., the June 9, 2014, staff report to the City Council, which was previously provided to the Planning Commission). The following is a brief summary of grounds supporting this position.

The City's General Plan is its supreme planning document, providing an underlying framework to guide land use and planning decisions. The courts recognize that these comprehensive planning documents reflect a range of competing interests, and that local agency bodies are in the best position to make determinations regarding consistency. As a result, the courts accord great deference to an agency's determination concerning consistency with its own general plan or similar comprehensive planning documents.

A challenger to a consistency determination has an extraordinarily high burden. The courts presume that an agency's consistency determination is correct. The challenger must establish that the local agency acted arbitrarily, capriciously, or without evidentiary basis. A court will only reverse a consistency determination if no reasonable person could have reached the same conclusion.

The courts have also explained that consistency does not mean an "exact match" with a general plan. A project should be in harmony with a general plan, but it need not strictly conform to every detail or policy. This principle complements the fact that general plans are broad planning documents, with multiple and often competing policies, and no project could satisfy every general plan policy.

As part of the Planning Commission's charge, Government Code Section 65103(c) requires the Commission to annually review the City's capital improvement program for its consistency with the General Plan. Here, the CCP can be found to be consistent with the General Plan.

First, as an overarching matter, the General Plan contemplated that Highway 1 would be improved by Caltrans (including widening and landscaping) pursuant to proposals by Caltrans, the Association of Bay Area Governments and the Metropolitan Transportation Commission. The General Plan encouraged efforts to work with Caltrans to shape the project improvements (e.g., to improve safety of the highway and local streets, and to reduce impacts to adjacent property caused by widening) but did not dictate or mandate particular outcomes. (See, e.g., General Plan, pp. 43, 73, 75c, 79.) Similarly, the Local Coastal Land Use Plan discussion of Highway 1 project plans encourages working with these agencies to shape the Highway 1 improvements, but does not dictate that improvements shall be constructed in a particular manner and that there may not be any deviation. (See, e.g., Local Coastal Land Use Plan, pp. C-112, 113.) Thus, these planning documents recognize that Highway 1 proposals would include

widening and landscaping, would have mixed impacts, and were not set in stone, and that the City would undertake efforts to shape the improvements but was not forever bound to any particular result.

Second, the General Plan includes particular policies that are consistent with the CPP. For example, the Circulation Element of the General Plan includes the following policies: (1) to provide safe access consistent with the level of development, (2) to improve pedestrian and bicycle access, (3) to improve safety of the local circulation system, and (4) to promote orderly growth in land use and circulation. (General Plan, p. 13, Circulation Element, Policy nos. 4, 9, 11 and 15.) In addition, the Scenic Highways Element includes a policy to encourage multiple recreational uses along scenic highways and routes other than auto. (General Plan, p. 15, Scenic Highway Policy no. 4.)

Finally, the General Plan emphasizes the importance of improving the operation and safety of Highway 1. For example, the General Plan states that improved pedestrian and bicycle access should be part of the Highway 1 operational and safety improvements (p. 41), that the lack of capacity of this segment of Highway 1 “hampers emergency access,” which widening and other improvements can help to address (pp. 75c, 79), and that the Project should improve traffic flow (p. 80). (See also General Plan, pp. 89, 91, 92, 93 (generally discussing Caltrans’ plans to improve the operation and safety of the highway).) The CPP provides such operational and safety improvements.

Evidence supports the conclusion that the CPP is in furtherance of these provisions of the General Plan. For example, there is evidence that the Project will improve the safety of this segment of Highway 1, provide for improved alternative modes of transportation, e.g., bicycle and pedestrian travel, and increase the capacity of this 1.3-mile segment for current and projected traffic volumes without increasing the overall capacity of the highway.

Third, evidence also supports the conclusion that the CPP is consistent with the Local Coastal Land Use Plan, which states that highway improvements should increase the safety of existing intersections along Highway 1, including access to the quarry (opposite Reina Del Mar Avenue) and Rockaway Beach Avenue. The Local Coastal Land Use Plan also states that Highway 1 should be considered a multi-modal travel corridor and pedestrian, bicycle, bus transit, and emergency vehicle access should be included in any planned improvements. (Local Coastal Land Use Plan, pp. C-112, 113.) Moreover, the proposed project design protects and/or improves coastal views, another goal of the Local Coastal Land Use Plan.

As discussed above, when a public agency has found, based on certain policies, that a project is consistent with its general plan, the courts will uphold the consistency determination *irrespective of other policies with which the project may not be consistent*. Thus, even though

the CPP may not advance every policy in the General Plan and Local Coastal Land Use Plan, that does not compel an inconsistency conclusion.

In sum, there are solid grounds for the Planning Commission to find that the CPP is consistent with the General Plan and Local Coastal Land Use Plan.

RECOMMENDED COMMISSION ACTION

Move that the Planning Commission **ADOPT** the attached resolution entitled, “A Resolution of the Planning Commission of the City of Pacifica finding that the Calera Parkway Project, part of the 2015-2020 Capital Improvements Program is Consistent with the General Plan and Local Coastal Land Use Plan.”

Attachments:

1. Planning Commission Resolution
2. Revised Calera Parkway Project Description
3. May 18, 2015 staff report which contains the following attachments:
 - a. Council Agenda Summary Report dated June 9, 2014
 - b. Council meeting minutes - June 9, 2014
 - c. Resolution 23-2014 denying the appeal
 - d. Resolution 24-2014 adopting the CIP
 - e. Information submitted by Hal Bohner on May 1, 2015 consisting of the appeal and supporting documents filed May 11, 2014
4. Historical information described above, items 1 - 8
5. Email and information submitted by Mr. Leo Leon
6. Email and information submitted by Mr. Jim Misener
7. Email and attachment from Mr. Mark Stechbart

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PACIFICA FINDING THAT THE CALERA PARKWAY PROJECT, PART OF THE 2015-2020 CAPITAL IMPROVEMENTS PROGRAM, IS CONSISTENT WITH THE GENERAL PLAN AND LOCAL COASTAL LAND USE PLAN

WHEREAS, Government Code Section 65103(c) requires that the Planning Commission “annually review” the City’s Capital Improvement Program (CIP) for consistency with the City’s adopted General Plan;

WHEREAS, at its regular meeting of May 4, 2015, the Planning Commission reviewed the City of Pacifica 2015-2020 Capital Improvement Program and considered whether it is consistent with the City’s General Plan and Local Coastal Land Use Plan, accepted public testimony thereon, and continued this item to May 18, 2015; and

WHEREAS, at its regular meeting of May 18, 2015, the Planning Commission further reviewed the City of Pacifica 2015-2020 Capital Improvement Program and considered whether it is consistent with the City’s General Plan and Local Coastal Land Use Plan, including additional information provided by staff, and accepted public testimony thereon; and

WHEREAS, at its regular meeting of May 18, 2015 the Planning Commission found the City of Pacifica 2015-2020 Capital Improvement Program to be consistent with the City’s General Plan and Local Coastal Land Use Plan, excepting the Calera Parkway Project. Discussion of the Calera Parkway Project was continued with research direction to staff;

WHEREAS, at its regular meeting of June 15, 2015, the Planning Commission further reviewed the Calera Parkway Project, part of the City of Pacifica 2015-2020 Capital Improvement Program and considered whether it is consistent with the City’s General Plan and Local Coastal Land Use Plan, including additional information provided by staff, and accepted public testimony thereon; and

WHEREAS, the Calera Parkway Project includes operational and traffic safety improvements to Highway 1 which final design has yet to be approved and will be subject to further discretionary review (e.g., Local Coastal Land Use Permit).

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the City of Pacifica does hereby find that the Calera Parkway Project, part of the City of Pacifica 2015-2020 Capital Improvement Program, is consistent with the City of Pacifica

General Plan and Local Coastal Land Use Plan, based on the understanding that the final design has yet to be approved.

* * * * *

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Pacifica, California, held on the 15th day of June 2015.

AYES, Commissioners:

NOES, Commissioners:

ABSENT, Commissioners:

ABSTAIN, Commissioners:

Richard Campbell, Chair

Tina Wehrmeister, Planning Director

APPROVED AS TO FORM:

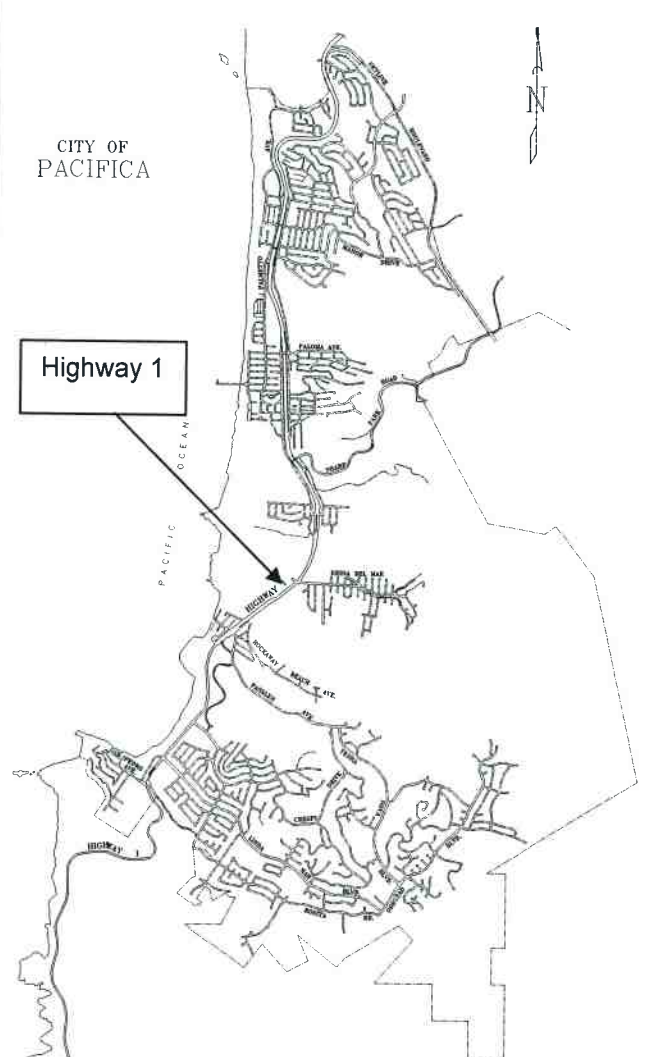
Michelle Kenyon, City Attorney

CITY OF PACIFICA

CAPITAL IMPROVEMENT PROGRAM

Project Name: Calera Parkway **Project No.:** 0024

Fund: Highway 1 Improvement Fund **Dept. /Mgr.:** Engr./Ocampo

PROJECT DESCRIPTION	GENERAL LOCATION
<p>This project has several components:</p> <ul style="list-style-type: none"> - Community outreach and engagement regarding congestion on Highway 1 and potential solutions. - Continued staff participation in meetings with the San Mateo County Transportation Authority and Caltrans in order to ensure that the City's interests are represented as the Community outreach process proceeds. - May include future participation in physical operational and traffic safety improvements to Highway 1 as determined by the City Council. The Council's stated intent is to not make a final decision on necessary improvements until the community outreach process is complete. 	<p>Highway 1 from Westport Drive to Fassler Avenue.</p> 
PURPOSE/BENEFIT	
<p>The Project may provide operational and traffic safety improvements to both northbound and southbound Highway 1 to facilitate traffic more effectively and safely through the intersections. This will improve the level of service and decrease pollution.</p> <p>The current 15-16 FY budget allocation for this project will focus on community outreach and engagement in order to assist the City Council in making a final decision on the preferred option for safety and functional improvements to Highway 1.</p>	

ATTACHMENT 2

CITY OF PACIFICA

CAPITAL IMPROVEMENT PROGRAM

Project Name: Calera Parkway

Project No.: 0024

Starting Dates	Duration	Plan Status
2002	On-going	Active

Estimate Cost		Sources of Funding		
		Source	Amount	FY
Planning & Design	\$2,001,000	Highway 1	\$1,000	
Land Acquisition	\$5,000,000	Federal	\$	
Construction	\$7,000,000	State	\$	
Miscellaneous	\$1,000,000	Measure A	\$15,000,000	
Total Project Budget	\$15,001,000	Project Progress		
Completed/Spent	\$1,000	Preliminary Design	95%	
Current Year	\$0	Final Plans/Specification	65%	
Remaining	\$15,000,000	Construction	0%	
		Maintenance/Operation Budget Impact		
		\$ _____/year		

Budget:

Current year budget: \$6,150

Budget Fund: Highway 1

Purpose:

Departmental Expenses

Contractual Services

Amount:

\$1,000

\$5,150

\$

Notes: