

## eComment received on 7/16/23

a. REPORT 23-0412 STUDY SESSION TO DISCUSS HOUSING ELEMENT RELATED ZONING CHANGES, INCLUDING ZONING TEXT AMENDMENT (TA 23-02), TO EFFECTUATE PROGRAMS IN THE HOUSING ELEMENT. (Community Development Director Carrie Tai)

eComment from *Concerned Resident*

07-16-2023 03:41 pm

The City's Plan to Initiate CEQA Review Only After the Development and Approval of General Plan Updates is Unlawful.

As discussed in the June 20th Planning Commission Staff Report, the City intends to conduct its CEQA review after Housing Element adoption "as part of the required zoning amendments." Meaning, the City is proposing to adopt Housing Element and associated changes to the Land Use Element of the General Plan before complying with CEQA.

The City's rationale appears to be that CEQA is only required to be completed before it adopts the zoning ordinance changes that will be adopted to conform with the General Plan changes. This piecemealing approach violates both the letter and spirit of CEQA. (The Resolution approved by the Planning Commission on June 20, 2023, also failed to comply with the City's own flawed CEQA strategy as it recommended zoning ordinance changes - not just General Plan changes).

CEQA must be integrated into planning processes and guide development of the plan itself - not tacked on at the end as a post-decision rationalization. Pub. Resources Code § 21003(a). Information developed as part of the CEQA process must be available during the decision-making process to inform and influence the development of the proposed general plan amendments, which clearly include changes in development and land use designations. Here, the City is clearly finalizing its decision to change the zoning designation on certain parcels and memorializing that decision in the General Plan undated, but claiming CEQA is not necessary until it makes zoning ordinances changes, which will now be required to maintain conformance with the General Plan. This is clearly an unlawful post hoc rationalization of decisions that have already been made. *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 395 ("the later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project").

According to the City, the initial adoption of the 2021-2029 Housing Element on December 21, 2021, did "not approve any development or change any land use designations; therefore, the City determined that it was exempt from California Environmental Quality Act (CEQA). . ." (emphasis added). And now the City claims that "revisions to the Housing Element continue to be consistent with the initial finding that the Housing Element is exempt under CEQA per Section 15061." See Staff Report 23-0370, June 20, 2023 Planning Commission Meeting. This is clearly not accurate; the City is now proposing to make changes to the land use designations in the Housing Element. The fact that the City is delaying the process of making conforming changes to the zoning ordinances is irrelevant.

After the land use designations are changed in the General Plan, the zoning changes are fait accompli. By statute, zoning actions must be consistent with the general plan, (Gov. Code, § 65680), and “the propriety of virtually any local decision affecting land use and development depends upon consistency with the application general plan and its elements.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570. Once the general plan designations are changed, the City has already decided what zoning decisions must be made - even if it hasn't finalized the process of amending zoning ordinances.

CEQA must not be used to rationalize or justify a decision already made, and that is exactly what the City's proposal to perform CEQA analysis only after the adoption of the Housing Element and General Plan land use designations will do.

The General Plan updates that the City is proposing (to implement the Housing Element and State Housing Law) will make changes to the General Plan's land use map, modify land use designations, and modify allowed uses and densities - clearly triggering CEQA. The City's attempt to move forward with these changes - while promising to perform its environmental review later (when it amends zoning ordinances) is unlawful and will undermine the entire Housing Element adoption and approval process. While the City may feel pressured to expedite the process because it has missed State deadlines for finalizing the Housing Element and required zoning changes, the answer is not to create more legal risk for the City by failing to comply with CEQA.