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July 10, 2014

Via Email and Hand Delivery

Lee Diaz
City of Pacifica
Planning Department
1800 Francisco Boulevard
Pacifica, CA 94044
diazl@ci.pacifica.ca.us

RE: Pacifica General Plan Update Project Draft Environmental Impact Report

Dear Mr. Diaz,

This office represents the Pedro Point Community Association and its members in regards to the City of Pacifica's General Plan Update and Draft EIR ("DEIR"). Attached hereto please find comments from this office about the Draft EIR's compliance with CEQA (the California Environmental Quality Act), Public Resource Code §§21000 et seq. Submitted herewith are comments from Grasseti Environmental Consulting. In responding to comments, please respond separately to each of these two comments.

For the reasons below, this DEIR is inadequate under CEQA, and thus prevents informed public participation and decision making. The DEIR fails to include an adequate project description, improperly segments the project, fails to include an adequate environmental setting description, and fails to adequately analyze project impacts and mitigation measures.

Because the Draft EIR is fundamentally and basically inadequate, meaningful public review and comment are precluded. Once the Draft EIR is fixed it must be recirculated for review and comment.

Please include both this office and Grasseti Environmental Consulting in further communications regarding this proposed project. Please provide us with a copy of the Final Environmental Impact Report for this project. Thank you for your careful attention to this matter.

Sincerely,



Brian Gaffney

cc: Pedro Point Community Association
Richard Grasseti

I. The Project Description is Inadequate.

"[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*San Joaquin Raptor Rescue Center v. County of Merced* [San Joaquin Raptor II] (2007) 149 Cal.App.4th 645, 655 quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199.) The project description must include a general description of the project's technical, economic and environmental characteristics, considering principal engineering proposals and supporting facilities. (CEQA Guideline 15124, subd. ©.) The EIR must include detail *sufficient* for evaluation and review of environmental impacts. (CEQA Guideline 15124, emphasis added.) Even where an EIR is adequate in all other respects, a "truncated project concept" violates CEQA. (*San Joaquin Raptor/Wildlife Rescue Ctr. v. Cnty. of Stanislaus* (1994) 27 Cal. App. 4th 713,730; *County of Inyo, supra*, 71 Cal.App.3d at 200.)

1) This DEIR does not designate which areas are proposed to be changed under the Project. For example, which areas will be designated Coastal Residential Mixed Use ? Reference to Figure 2.2-1 is insufficient as the size of the map and the similarity of colors prevent the public from determining whether sites are Coastal Residential Mixed Use, or Office Commercial, or Service Commercial, or Low Intensity Visitor-Serving Commercial. Without this specific information, public disclosure is impeded as it is impossible to assess the conclusion Coastal Residential Mixed Use will result in 50 new units. EIR Table 2.4-2. The DEIR does not disclose if all of these 50 units will be at the undeveloped Pedro Point site, or how many will new units could be permitted at this site.

2) The EIR states that the project is necessary to "eliminate obsolete text and policies" (DEIR p.2-7), but the EIR doesn't identify what text and policies are obsolete and thus will be eliminated as part of the Project.

3) While the EIR states that the Plan includes twelve elements, including the Housing Element, the Housing Element is not produced for public review. Not producing the housing element as an attachment to the GP Update impedes understanding of the proposed Project, and therefore Project impacts. It is one thing for the housing element to be produced separately, but the EIR does not state where it is available for review in conjunction with the GP Update. Residents of Pacifica have reported that the Housing Element has not been available at Pacifica libraries or on the City's website. The separation of the Housing Element from the General Plan update appears to be

impermissible project segmentation. It is impossible to assess the General Plan claim that the Housing Element is consistent with the General Plan without access to this Element. General plan consistency is required by California planning and zoning law. Related to the absence of the Housing Element, this DEIR does not analyze the consistency of the Housing Element with the rest of the General Plan.

II. The EIR's Environmental Setting is Inadequate.

An EIR must present an accurate and complete description of the environmental setting in the vicinity of the project as it existed before commencement of the project. (*San Joaquin Raptor I, supra*, 27 Cal.App.4th at 722.) The environment consists of the “physical conditions which exist within an area which will be affected” by a project. (Pub. Res. Code § 21060.5.) A complete description of the “pre-existing environment” (*San Joaquin Raptor I, supra*, 27 Cal.App.4th at 723) is critical to establish a baseline for analyzing whether the project’s impacts are significant. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952; CEQA Guidelines 15125 & 15126.2(a).) The environmental setting must be sufficiently comprehensive to allow the impacts “to be considered in the full environmental context.” (CEQA Guideline 15125, subd ©.) As the *County of Amador* court stated, “ the question is whether the EIR contains a sufficient description of the baseline environment to make further analysis possible.” (*Id.* at 954.)

1) Simply identifying the undeveloped Pedro Point site as “vacant/undeveloped” does not adequately describe the site such that the EIR can evaluate the direct, indirect and secondary effects of the proposed Project.

2) The EIR’s description of the environmental setting is insufficient to allow analysis of flooding and tsunami impacts. There is no mention of conditions in the undeveloped Pedro Point Site. Also, Figure 3.5-1 is flawed as it doesn’t show the field as subject to flooding. This affects the EIR’s analysis of impacts including, *inter alia*, whether the project will substantially alter the existing drainage pattern of the San Pedro site resulting in substantial erosion and/or flooding, or place future housing within a 100-year flood hazard area and/or redirect flood flows.

3) The DEIR is inconsistent. It states that the City had a population of 39,000 in 2010 (DEIR p. 3.1-6) but also states a current population of 37,230. (See EIR Tables 3.1-2 and 2.4-1). Also, the EIR states an “average household size of 2.6 persons,” but also that the City has an average household size of 2.7 persons. (Compare EIR pp. 3.1-6 & 3.13-13.) Resolving this discrepancy is

important because the EIR assumes stability of average household size in determining population under Project bail out (DEIR p.2-18) and growth-inducing impacts (DEIR p. 5-4).

4) Certainly more was possible from this EIR's description of existing conditions. The DEIR (p. I-3) references the Pacifica General Plan Existing Conditions and Key Issues (July 2010) (hereinafter GP Existing Conditions). Review of this other document reveals discussion of neighborhood character, including Pedro Point (GP Existing Conditions p. 2-160), discussion of historical development (GP Existing Conditions p. 2-5), housing density by neighborhood (GP Existing Conditions p. 2-26), existing zoning and zoning maps (GP Existing Conditions pp. 2-48 to -53), and sites available for potential housing development of **405 units** (GP Existing Conditions p. 3-12). In contrast, this DEIR omits this critical background information, despite that the information is readily available. The environmental baseline information must be in the EIR not solely in some other referenced document.

III. The EIR's Analysis of Impacts Is Flawed.

An EIR must evaluate all significant environmental effects of a proposed project. (§§ 21100(b) (1), 21061; CEQA Guidelines 15126(a), 15143.) Both direct and indirect impacts must be analyzed, in the short term and the long term. (CEQA Guideline 15126.2.) "Significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence." (CEQA Guideline 15143.) EIRs "should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences." (*Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1123; CEQA Guideline 15151.)

Bare conclusions without explanation of the factual and analytical basis is not sufficient analysis of an environmental impacts. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404; *City of Maywood v. Los Angeles Unified* (2012) 208 Cal.App.4th 362, 393.) Further, failure to adequately explain the reasons why an impact is insignificant violates CEQA. (*Protect The Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111-12.)

1) This EIR violates CEQA when it "does not separately evaluate subcomponents of the proposed Plans nor does it assess project-specific impacts of potential future projects under the proposed Plans." (DEIR p. I-4- I-5) Given the specifics involved in the proposed General Plan,

CEQA requires that the DEIR provide correspondingly detailed analysis of potential impacts. “The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.” (CEQA Guidelines 15146.) In addition, an EIR on a project such as the adoption or amendment of a general plan “should focus on the secondary effects that can be expected to follow from the adoption or amendment.” (CEQA Guidelines 15146, subd. (b).)

2) The sufficiency of the information contained in an EIR is reviewed in light of what is reasonably feasible. (CEQA Guideline § 15151; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733.) At minimum, an EIR “must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*Laurel Heights, supra*, 47 Cal.3d at p. 405.) This DEIR is required, but failed to, provide sufficient analysis of impacts. Simply calling it a program EIR will not suffice under CEQA given that is reasonably feasible to provide greater specificity.

3) The City knew that analysis of impacts from redesignating the Calson property was important to the public. The EIR concedes as much, noting that scoping comments raised issues including viable land use designations for Calson property, hydrology and flooding, incorporation of current Coastal Commission guidance, sea level rise and coastal erosion, relationship between preserved open space and biological resources, barriers to wildlife movement, and evaluation of biological resources in potentially sensitive areas. (Draft EIR, p. E-5 & E-6)

4) While CEQA requires analysis of indirect or secondary impacts, which are caused by the project and occur later in time or farther removed in distance (DEIR p. 1-7), the DEIR’s discussion of indirect Project impacts is troublingly scant. Under Impact 3.7-4 (implementation of the proposed General Plan would not interfere substantially with the movement of species or wildlife corridors), the DEIR states only that development at the undeveloped San Pedro site could potentially result in indirect impacts to the wildlife utilizing nearby creek habitat, including from fuel spills and/or leaks which could make their way into the riparian corridor of San Pedro Creek. (DEIR p. 3.7-60) This is insufficient for three independent reasons: (1) there is no discussion of the impacts from interference with species movement; (2) there is no disclosure of whether the impact is adverse or significant; and (3) there is no discussion of how this impact will be mitigated. The EIR must include analysis of how adverse the Project’s adverse impacts will be. (*Galante Vineyards,*

supra, 60 Cal.App.4th at 1123.) Without this analysis, the EIR does not provide decisionmakers with information to make a decision which “intelligently takes account of environmental consequences.” (Ibid.)

5) While the DEIR (p. 3.7-60) states the proposed General Plan includes numerous trail improvements, several of which could adversely affect these wildlife movement corridors, the DEIR does not disclose whether this impact will be significant, and does not discuss how this impact will be mitigated.

6A) The DEIR fails to analyze significance first and then analyze mitigation measures. The first step in an EIR’s analysis of a proposed project’s environmental effects is to evaluate significant project impacts, followed then by analysis of mitigations. (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2014, §13.2).) This EIR skips that first step; the DEIR is flawed as it only discusses the significance of impacts *after* applying mitigation measures. An EIR “must determine whether any of the possible significant environmental impacts of the project will, in fact, be significant.” (*Protect Historic Amador, supra*, 116 Cal.App.4th at 1109; CEQA Guideline 15126.) Review of Table ES-3 shows that the DEIR repeats this error - determining significance of impacts only after applying mitigation - for almost every impact it analyzes. Table ES-3 lists each impact with no discussion of its significance. Likewise, the discussion of impacts in the body of the DEIR largely does not analyze project impact significance before applying mitigation measures. For example, Impact 3.7-7, cumulative impacts to special status species, states that

Implementation of the proposed General Plan may result in a considerable incremental contribution to cumulative impacts, because the majority of undeveloped areas in Pacifica (about 50 percent of the Planning Area), have habitat types known to support special-status species. Development other than intensification would be a substantial conversion of natural habitat conditions. However, implementation of the proposed General Plan policies, as outlined in the impact analysis above, would reduce potential cumulative impacts to biological resources to a less than significant level.

Thus, there is no analysis of whether this impact is significant without mitigation measures, and instead only a conclusion of insignificance by reference to undefined Project policies. By circulating a Draft EIR for public review that did not disclose if impacts before mitigation measures

are significant or not, the DEIR thwarts informed public participation and does not serve CEQA's information disclosure purpose.

6B) Relatedly, proposed Project policies are listed as if the Project will mitigate itself and then little or no mitigation measures are included in the DEIR. In *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, the court considered an EIR which likewise incorporated proposed mitigation measures into its description of the project and then concluded that any potential impacts from the project will be less than significant. The court held that "avoidance, minimization and/or mitigation measures" characterized in the EIR, are not "part of the project." "By compressing the analysis of impacts and mitigation measures into a single issue, the EIR disregards the requirements of CEQA." (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-56.)

"Absent a determination regarding the significance of the impacts ...it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered." (*Id.* at 656.) This flaw affects the EIR's other procedural requirements, including (1) consideration of a range of specifically targeted mitigation measures, including analysis of whether the project itself could be modified to lessen the impact, (2) the discussion of potentially feasible alternatives that, if adopted, would avoid or substantially lessen the otherwise significant environmental effects of the proposed project, and (3) what should be included a mitigation and monitoring plan. (*Ibid.*)

The failure of the EIR to separately identify and analyze the significance of the impacts ...before proposing mitigation measures is not merely a harmless procedural failing. Contrary to the trial court's conclusion, this short-cutting of CEQA requirements subverts the purposes of CEQA by omitting material necessary to informed decision-making and informed public participation. It precludes both identification of potential environmental consequences arising from the project and also thoughtful analysis of the sufficiency of measures to mitigate those consequences.

(*Lotus, supra*, 223 Cal.App.4th at 658.)

7) The DEIR does not analyze the impacts of changing land use classifications. For example, while the Coastal Residential Mixed Use (CRMU) designation is described in the project description (DEIR pp. 2-12 to -13), the DEIR includes no discussion of impacts from this land use. Thus, the public can not assess the proposed Project's impacts, modifications to the proposed Project which would lessen impacts, or assess alternatives in comparison.

8A) The DEIR's project description includes guiding policies for each of the proposed Pacifica General Plan. See Section 2.5 Key Plan Guiding Policies. (DEIR p. 2-20 et seq.) Yet, these policies are not analyzed in the EIR for their potential impacts. The purported "impact analysis" simply reiterates the "project description" and avoids any analysis of the proposed Project's impacts. For example, the DEIR's project description states that the policy regarding Coastal Development is to "Ensure that development maximizes beach and coastal open space access and is oriented as much as possible to each particular coastal environment in use, design, and intensity." (DEIR p. 2-21.) This proposed policy is not mentioned again in the DEIR except as a purported "mitigation" to visual impacts. (DEIR p. 3.9-21.)

8B) In fact, coastal development is not discussed at all in the EIR except in regards to Alternative 2, where the DEIR vaguely states that "coastal development, depending on site specifics, could result in coastal flooding, coastal erosion and sea level rise." (DEIR p. 4-21.) This statement is not disclosure of Project potential impacts as (1) the site specifics of reasonably foreseeable coastal development permitted by the proposed Project are known and thus must be analyzed in this document, (2) the DEIR does not state if coastal flooding, coastal erosion and sea level rise impacts will be adverse or significant, and (3) there is no discussion of mitigation measures including changes in the proposed Project to avoid or minimize such impacts.

9) The analysis of traffic impacts is likewise flawed for including Project policies as mitigations. For Impact 3.2-1, traffic at intersections along SR 1 and SR 35 in Pacifica, the DEIR states that traffic deterioration from LOS E, approaching capacity, to an unacceptable LOS F "would be considered an impact."¹ (DEIR p. 3.2-30.) Presumably, this impact is significant, but the DEIR does not state.

For the Plan Buildout (2035) four of the five CMP intersections would operate at unacceptable LOS F during the AM peak hour. Two intersections, Hickey Boulevard and SR 35 and Linda Mar Boulevard and SR 1 would deteriorate in LOS from E to F between the Existing and Plan Buildout (2035) Conditions. Four of the five intersections would operate at LOS F during the PM peak hour. While three of these

¹ The DEIR does not disclose why impacts below LOS D are not considered significant given that the City of Pacifica uses a Level of Service standard of LOS D for City streets. (DEIR p. 3.2-21.) LOS F is defined as "heavily congested traffic flow with traffic demand exceeding capacity. Speeds may drop to zero." (DEIR p. 3.2-21.)

intersections operate at LOS F today, the intersection of Linda Mar Boulevard and SR 1 would decline from LOS E to F. resulting in a **significant** impact.

(DEIR p. 3.2-30, emphasis added.) Yet, the incorporation of Project policies as mitigation measures is taken to the absurd where the EIR states that “the Plan includes a policy to accept LOS F as an interim measure before improvements are planned, designed and implemented. (DEIR p. 3.2-31) In essence, the DEIR tells the reader that the traffic impacts are significant except for a policy that declares the impacts not significant. This does not meet CEQA’s requirement of disclosure of significant impacts.

10) The DEIR does not properly analyze growth inducing impacts. An “EIR must discuss growth-inducing impacts even though those impacts are not themselves a part of the project under consideration, and even though the extent of the growth is difficult to calculate.” (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 368.) This includes consideration of a project’s potential to foster economic or population growth, future development, or construction of additional housing. (Pub. Res. Code § 21100, subd. (b)(5); CEQA Guidelines 15126, subd. (d), 15126.2, subd. (d).)

This DEIR does not discuss if the proposed Project will foster economic or population growth, future development, or construction of additional housing. The DEIR only states that the Planning Area will accommodate a population of approximately 39,800 people in 2035 and that this is an increase (DEIR p. 5-4), but does not analyze whether the proposed Project will “foster” or facilitate this growth. Instead, the DEIR pretends that this growth is something that the planning area will accommodate, and the Project has no role in inducing such growth.

Further, there is no discussion of whether the Project will foster economic growth or additional housing. The DEIR discussion is limited to other jurisdictions. (See DEIR p. 5-5 [“Indirect growth-inducing impacts such as those associated with job increases that might affect housing and retail demand in other jurisdictions”].)

IV. The DEIR Fails to Adequately Analyze Mitigation Measures

In addition to assessing a project’s significant and cumulative impacts, an EIR is also required to set forth and analyze mitigation measures to eliminate or minimize each significant impact. (Pub. Res. Code §§ 21002, 21002.1(a) & (b); CEQA Guidelines §§ 15126(e), 15126.4.) Mitigations must be designed to minimize, reduce, rectify or compensate for the project’s impacts.

(CEQA Guideline § 15370.) Analyzing “the manner in which [the] significant effects can be mitigated or avoided” is one of the main functions of an EIR. (Pub. Res. Code § 21002.1(a).) As with all aspects of an EIR, the discussion of mitigation measures must be "prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to intelligently take account of environmental consequences. . . . The courts have looked. . . for adequacy, completeness and a good faith effort at full disclosure." (CEQA Guideline § 15151.)

1) The DEIR fails to propose and adequately discuss mitigation measures. It simply includes Project policies (part of the project description) as reduction of impacts.

2) The DEIR does not disclose how the policies will reduce impacts. There is only a cut and paste of a list of policies with no explanation of how or why these policies will reduce impacts.

3) An EIR is inadequate where mitigation efforts largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92, citing *San Joaquin Raptor II, supra*, 149 Cal.App.4th at 670.) Formulation of mitigation measures should not be deferred until some future time, but measures may specify performance standards which would mitigate the Project's effects. (CEQA Guideline 15126.4(a)(1)(B).) The policies presented in the DEIR as means of reducing impacts are simply deferrals of mitigation measure formulation without performance standards.

4) Where the DEIR concludes that impacts are significant and unavoidable (see e.g. Impacts 3.2-2 & 3.2-3), the DEIR has not adequately analyzed mitigations that would reduce impacts to less than significant, including changes in the proposed Project.

V. The EIR Will Need to Be Recirculated for Additional Responsible Agency and Public Comment

Because significant new information will need to be added to the EIR before certification to address each of the issues identified above and in the comment letters of Peter Baye and Grasseti Environmental Consulting, the City of Pacifica will be required to recirculate the DEIR. (CEQA Guideline 15088.5.) Recirculation is also required because this draft EIR is so fundamentally and basically inadequate that meaningful public review and comment is precluded. (*Mountain Lion Coalition v. Fish & Game Com.*(1989) 214 Cal.App.3d 1043).