

**LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation**  
**446 Old County Road, Suite 100-310**  
**Pacifica, California 94044**  
**(650) 219 3187 Phone**  
[brian@gaffneylegal.com](mailto:brian@gaffneylegal.com)

June 6, 2022

*Via Email*

Christian Murdock, AICP, Deputy Director of Planning  
City of Pacifica Planning Department  
540 Crespi Drive, Pacifica, California 94044  
[publiccomment@pacifica.gov](mailto:publiccomment@pacifica.gov)

**RE: Response to DEIR Comments and Proposed May 25, 2022 Final EIR for Pacifica General Plan Update**

Dear Mr. Murdock,

Attached please find additional comments by the Pedro Point Community Association regarding the City of Pacifica's Response to Comments and Proposed May 25, 2022 Final EIR for the Pacifica General Plan Update. To date, Pedro Point Community Association has only had time to review and respond to a portion of the City's Response to Comments and proposed Final EIR - given the May 20<sup>th</sup> release of the Response to Comments and the volume of the material (3670 page document with an 1125-page Appendix H).

Sincerely,



Brian Gaffney

cc: Pedro Point Community Association  
[bermanl@ci.pacifica.ca.us](mailto:bermanl@ci.pacifica.ca.us), [hausers@ci.pacifica.ca.us](mailto:hausers@ci.pacifica.ca.us),  
[domuratg@ci.pacifica.ca.us](mailto:domuratg@ci.pacifica.ca.us), [fergusona@ci.pacifica.ca.us](mailto:fergusona@ci.pacifica.ca.us),  
[godwinj@ci.pacifica.ca.us](mailto:godwinj@ci.pacifica.ca.us), [leald@ci.pacifica.ca.us](mailto:leald@ci.pacifica.ca.us), [gwright@ci.pacifica.ca.us](mailto:gwright@ci.pacifica.ca.us)

## Master Response 2: Programmatic EIR and Level Of Detail Of Analysis

The issues raised by PPCA are not whether the City should utilize a Program EIR to review the proposed General Plan (GP) Update, or the advantages of a Program EIR. These are strawman arguments that Master Response 2 pose. Instead, the issues raised by PPCA - which Master Response 2 avoids addressing - are that a Program EIR does not excuse the City from adequately analyzing reasonably foreseeable significant environmental effects of the proposed GP Update, and that a Program EIR does not justify deferring analysis of GP Update impacts to a later tiered EIR or negative declaration. See CEQA Guideline 15152.

PPCA previously commented that designating an EIR as a program EIR does not by itself decrease the level of analysis required in the EIR. (*Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511.) 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*, 47 Cal.3d at p. 405.)

The City’s Response to Comments does not respond to this prior PPCA comment, noting at Response to Comment C123-14 only that “this background information is noted.” Master Response 2 impermissibly tries to evade the EIR’s CEQA errors by hiding behind “a citywide assessment” that “does not assess project-specific impacts of potential future projects.” This Program EIR must analyze what is reasonably foreseeable from the proposed GP Update, and fails to do so. The fact that later project-specific CEQA analysis will be conducted does not relieve this EIR from fully complying now with CEQA.

## Master Response 3: Buildout And Regional Housing Needs Allocation (RHNA)

PPCA and others commented that the EIR was flawed as it does not analyze what is reasonably foreseeable - 1,892 housing units to comply with the Regional Housing Needs Allocation, additional building of Accessory Dwelling Units (ADUs), additional development allowed by SB 9, and additional building by reasonably foreseeable lot splits.

The Response to Comments dismisses these reasonably foreseeable development as “maximums” and “theoretical” and thus does not correct the CEQA flaws raised by PPCA. In addition, PPCA does not refer to maximums or point to anything which is speculative or simply theoretical.

Remarkably, the Response to Comments attempts to justify the absence of the needed analysis as the reasonably likely housing PPCA points to “would exaggerate impacts” and “result in mitigation measures requiring the construction of road and utility infrastructure.” It goes without saying that CEQA does not excuse analysis for these

reasons; they are exactly why detailed analysis is required before the decision makers approve a proposed project like the General Plan Update.

The Response to Comments further justifies the absence of needed analysis by claiming that the General Plan Update “is a technical update to the 2014 Draft General Plan Update prepared previously” and that the scope of the General Plan Update does “not include substantial land use changes outside of the Sharp Park Specific Plan area or include community engagement to inform such changes.” This is just false. The currently proposed GP Update will include redesignating numerous sites throughout the City including redesignating the San Pedro Avenue property.

Master Response 3 admits that the City knew of the RHNA numbers in May 2021 eight months prior to release of the draft EIR. The City does not explain why these reasonably foreseeable housing changes purportedly “were beyond the scope of the Proposed Project” and the draft EIR.

Master Response 3 also admits that the City knows “that additional land use changes, community engagement and environmental analysis will be needed.” Yet, through Master Response 3 the City reveals that it intends to adopt a legally **inadequate** EIR – that willfully ignores the RHNA, ADUs, SB9 development and lot splits – because this will somehow “provide a better basis” and “a useful programmatic starting point for consideration” of the known additional land use changes. This Response violates CEQA Guideline as it does not constitute good faith, reasoned analysis.

Nor does the City’s promise - that the analysis of the RHNA and ADU housing impacts will be conducted later in a Housing Element CEQA document’s cumulative impact assessment – comply with CEQA. This future analysis does not absolve this EIR from analyzing now what is reasonably foreseeable.

#### Master Response 4: Undeveloped San Pedro Avenue Sites

The City’s Response notes that public comments raised the issue that the CRMU designation is not consistent with the Coastal Act. The Response notes Coastal Act sections 30221, 30222, 30240, 30240, 30251, 30253. The City provides no response regarding section 30222.

It is important to note that this Master Response 4 only points to a portion of the Coastal Act inconsistencies raised by PPCA members Cherie Chan and Bruce Ferry. Likewise at Response to Comments C53-3 through the C53-13 the Final EIR fails to address the Coastal Act inconsistencies as required by CEQA.

There is no substantial evidence to support the City’s assertion that “All existing open space areas are preserved and scenic resources are protected under the Proposed Project” given what is proposed by the GP Update for the undeveloped San Pedro Avenue site.

The Response claims that existing statutes “coupled with the beneficial impacts of the Proposed Plan policies listed above, reduce impacts to less than significant” without explaining how or why impacts are reduced to insignificance.

## Master Response 6: ESHA

As in Master Response 4, Master Response 6 concludes that compliance with federal and state environmental laws will reduce impacts to insignificance – even though those same laws the City asserts can be ignored now as part of the GP Update approval.

Remarkably, rather the City contests the determination of the California Coastal Commission that the undeveloped San Pedro site is an ESHA. Such a position runs contrary to well-established CEQA norms for how a lead agency must consult with responsible agencies and how an EIR must consider compliance with the Coastal Act.

## City Response to Comments of the California Coastal Commission

The City fails to comply with CEQA Guideline 15088 in responding to comments of the California Coastal Commission (“Commission”). The City does not describe the disposition of significant environmental issues raised by the Commission. The Response does not provide detailed reasons and reasoned analysis why the Commission’s specific comments and suggestions were not accepted.

The Commission commented (A6-1) that the 2022 General Plan Update, the 2022 Sharp Park Specific Plan and the associated EIR must be consistent with the [currently] certified LCP - and not the LUP update submitted to, but not certified by, the Commission. The City’s Response did not respond at all to this Commission comment regarding the need for consistency between the 2022 General Plan Update and the currently certified LCP.

The Commission further commented (A6-1) that once an updated LUP is certified by the Commission, the City’s GP/SPSP would have to be updated to then be consistent with the updated LCP. The City’s Response represented the City’s contrary view that “to the extent the General Plan Update proposes any policies beyond those which were sent to the California Coastal Commission for review and certification,” only then would a subsequent LCP amendment be necessary to “make the LCP consistent with the General Plan.” Thus, while the Commission urges a GP Update to be consistent with the current LCP, the City – *without explanation* – proposes the reverse: to subsequently amend the LCP to make it consistent with the GP.

The Commission further commented (A6-1) that it makes “the most sense to coordinate timing of the GP/SPSP for after the LUP is certified, given the outstanding nature of the LUP certification.” The City fails to provide any response to this comment.

The Commission commented (A6-2) that “policies proposed in the GP/SPSP that correspond to coastal resources cannot contradict the certified LCP and thus [the] Coastal Act” and that “concerns regarding [GP policy] inconsistencies with the Coastal Act that have been noted to City staff over the years.” The Commission specifies that specific GP policies “need to be made fully consistent with the currently certified LCP, and thus Coastal Act,” pointing to GP policies in Chapter 6 ‘Open Space and Community Facilities,’ Section 6.3 ‘Coastal Access’; Chapter 7 ‘Conservation,’ Sections 7.1-7.3 ‘Water, Biological, Land and Soil Resources’; and Chapter 8 ‘Safety,’ Sections 8.1-8.3 and 8.5-8.6 ‘Seismic and Geologic Hazards, Flooding and Drainage, Coastal Resilience, Fire Hazards, and Public Safety and Emergency Management’ (and any other relevant

policies). The City fails to provide detailed reasons and reasoned analysis why the Commission's specific comments and suggestions were not accepted, claiming that the Commission's comment does not pertain to the merits of the DEIR.

In addition, the Commission's March 1 2022 email attached over 90 pages of prior comments to the City. See Planning Commission June 1, 2022 Special Meeting Agenda & Staff Report, PDF 1522 – 1614. These Commission comments raise significant environmental issues regarding *inter alia* Project visual impacts of development on community character and on views, Project impacts on public access and recreation, geotechnical and coastal hazards impacts, the efficacy of proposed GP policies, and GP consistency with the Coastal Act. (A6-3) The City failed to respond to any of these issues, noting only that the "correspondence is received." PDF 813. The City's response certainly did not describe the disposition of significant environmental issues raised in these 90 pages, and did not provide any reasons why specific Coastal Commission comments and suggestions were not accepted.

#### Recirculation of the EIR is Required.

The City is required to recirculate the EIR for further comments and consultation as it has added significant new information. Significant new information has been added to the EIR after the comment period on the draft EIR. This changes include *inter alia*

1) Elimination of CO-I-46 despite that the Final EIR repeatedly relies upon this mitigation to determine impacts related to the alteration of drainage patterns, flood flow, stormwater runoff, and exceeded capacity of stormwater drainage systems would be less than significant.

In the General Plan released for public review in January 2022, Policy CO-I-46 is "Shoreline Protection. Continue to prohibit new development requiring shoreline alterations." This policy is cited also in the Draft EIR as a required mitigation for the following impacts:

Impact 3.5-3 (substantially alter existing drainage patterns, including through the alteration of the course of a stream or river or through the addition of impervious surfaces);

Impact 3.6-2 (substantial soil erosion or topsoil loss impacts);

Impact 3.7-2 (substantial adverse impact on riparian habitat or other sensitive natural communities);

Impact 3.7-3 (substantial adverse wetland impacts).

The draft EIR also states that CO-I-46 "would help to protect biological resources on a large scale." DEIR p. 3.7-65. In addition, the California Department of Fish and Wildlife commented on September 8, 2020 about shoreline protection in regards to the proposed GP Update

Yet, *without explanation*, shoreline protection has been entirely gutted in the Final EIR and CO-I-46 is now reclassified as "Mineral Resources. If significant mineral

resources are discovered with regional agencies to determine a course of action to protect the resources and, if applicable, extract them in an environmentally sensitive manner.”

2) The Coastal Commission determination, based on a biological study, that the whole of the San Pedro site constitutes ESHA

3) the acknowledgement – for the first time - that the proposed Project fails to meet the City’s SB32 emissions reduction target (FEIR redline p. 3.4-36);

4) the addition of an AB 32 2040 Mass Emission Reduction Target of 63,683 Metric tons CO<sub>2</sub>e/year in Table 3.4-3 and Table 3.4-4 and Table 3.4-5;

5) the addition of Table 3.4-1: Emissions Targets Pursuant to SB 32;

6) the addition of City of Pacifica SB32 Thresholds at Table 3.4-2;

7) the elimination of Table 3.4 CAP GHG Emission Projection and Reduction Targets;

Each of the above changes, are not mere typographical corrections or clarifications as the City claims. The changes above deprive the public of a meaningful opportunity to comment upon substantial adverse environmental effects and feasible ways to mitigate or avoid these impacts. Pursuant to CEQA Guideline 15088.5 the City is required to recirculate the EIR for public comment and agency consultation.