

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 24, 2022

Via Email

Christian Murdock, AICP, Deputy Director of Planning
City of Pacifica Planning Department
540 Crespi Drive, Pacifica, California 94044
publiccomment@pacifica.gov

RE: Proposed Final EIR for Pacifica General Plan Update

Dear Mr. Murdock,

This office previously submitted comments on behalf of the Pedro Point Community Association (PPCA) on March 8, 2022 and on June 6, 2022.

Attached please find additional comments by PPCA regarding the City of Pacifica's May 25, 2022 Final EIR and CEQA Findings for the proposed Pacifica General Plan Update.

Sincerely,



Brian Gaffney

cc: Pedro Point Community Association

I. Section 8.5 of the Proposed General Plan Update Is Internally Consistent and Contradicted by Substantial Evidence Regarding the Risk of Fire Hazards.

A general plan must be internally consistent, both among the elements and within each element. (Govt. Code § 65300.5; *Concerned Citizens of Calaveras Co* (1985) 166 Cal.App.3d 90, 97-98.) This requirement applies to maps and drawings as well as text. (*Citizens Assoc. v. Inyo* (1985) 172 Cal.App.3d 151; *Environ. Council v. Bd. of Sup.* (1982) 135 Cal.App.3d 428.)

The General Plan Update Section 8.5 narrative and Figure 8-7 [Fire Hazards] exclude the best available information and mislead the reader about fire hazards in the City’s Local Responsibility Areas [LRA]. Figure 8-7 excludes any high or very fire areas in the LRA in Pedro Point, and thus mislead the reader to think this hazard does not exist in the LRA. Section 8.5 portrays the very high fire risk as within the “Sphere of Influence” but not the City’s responsibility. The General Plan Update is contradicted by credible substantial evidence in the City’s 2014 Draft General Plan and in the City’s proposed City LCLUP for Coastal Act certification of Very High Fire Hazard Severity Zone [VHFHSZ] and the Very High Threat areas in, and adjacent to, the City’s LRA in Pedro Point.

II. The Erroneous Wildfire Information in the General Plan Update May Violate Coastal Act section 30253.

Coastal Act section 30253 requires new development to minimize risks to life and property in areas of fire hazard. The General Plan Update will serve as Pacifica’s “land use constitution” and guide development for years to come.

By excluding information about very high fire risk in the City’s area of control and “very high” threats in areas in and adjacent to Pedro Point, the City will not take these risks into consideration when considering reasonably foreseeable development in this location. Thus the City is likely to approve new development in areas which do not minimize risks to life and property in areas of fire hazard.

III. The EIR’s Analysis of Wildfire Impacts Is Inadequate.

The EIR’s analysis of wildfire impacts is inadequate in the following ways:

- 1) The EIR’s Environmental Setting Is Inadequate.

As PPCA previously commented, CEQA requires that an EIR present an accurate and complete description of the environmental setting in the vicinity of the project as it existed before commencement of the project. The environmental setting must be sufficiently comprehensive to allow the impacts “to be considered in the full environmental context.” (CEQA Guideline 15125, subd (c).)

The fire maps at both EIR Figure 3.11-2 and EIR Figure 3.14-1 omit critical

baseline wildfire information. These figures exclude information both about the Very High Fire Hazard Severity Zone [VHFHSZ] and the Very High Threat areas in, and adjacent to, the City's LRA in Pedro Point. This information was included in the City's 2014 Draft General Plan as Figure 8-5 and provided as Exhibit 6 to Terrell Watt's March 2022 comments.

The EIR inaccurately claims "All of the VHFHSZs within the Planning Area are designated State Responsibility Areas (SRA)."

Christine Boles has also alerted the City that this baseline wildfire information - VHFHSZ and Very High Threat areas in the City's LRA in Pedro Point - was included in the City's recent submission to the California Coastal Commission of the proposed Pacifica LCLUP for Coastal Act certification. The City's "certified" LCLUP draft at Figure 5.4 [Fire Hazards] shows a clearly designated Very High Fire Hazard Severity Zone and "Very High Threat" within the City's LRA (Local Responsibility Area) in Pedro Point. The City's June 12, 2020 "certified" LCLUP draft also states

The California Department of Forestry and Fire Protection (CDF) maps areas of significant fire hazards in the state. These areas are identified based on weather, terrain, fuels (e.g., type of ground vegetation), and other factors. According to the CDF:

- A Very High Fire Hazard Severity Zone is designated for much of Pedro Point Headlands, directly adjacent to the Pedro Point neighborhood.
- Pedro Point Headlands has large areas considered to have "high" or "very high" threat of fire.

EIR Figure 3.14-1 is dated in the bottom right: "California Department of Forestry and Fire Protection, 2020; City of Pacifica, 2019; San Mateo County, 2019; Dyett & Bhatia, 2019." Thus, EIR Figure 3.14-1 is not the best available information, given that it is older than the City's submission to the Coastal Commission.

Further, Debra Etienne (at Comment C7-4) documents baseline information where forest and development interface in Pacifica. This information is not included in the EIR's wildfire environmental setting.

There is no legitimate reason for omitting this baseline information from the EIR, particularly as a Very High Fire Hazard Severity Zone is critical to evaluating significant wildfire impacts. In the absence of an accurate and complete baseline of wildfire threat locations, it is impossible for the City to adequately analyze if reasonably foreseeable development flowing from the General Plan Update would 1) expose people to significant risk from wildland fires, 2) exacerbate fire risk, or 3) expose occupants to uncontrolled wildfire spread.

2) The EIR Fails To Adequately Analyze Project Related Wildfire Impacts.

The EIR Response to Comments acknowledges that the DEIR is required to analyze whether the project would exacerbate fire risk or expose occupants to

uncontrolled spread of a wildfire. While fire risk and uncontrolled spread of wildfire are mentioned in the headings of Impact 3.14-2 and Impact 3.14-3, there is no discussion of these impacts in the narrative sections that follow.

3) The EIR's Wildfire Impact Section Fails To Properly Analyze Wildfire Impact Significance First And Then Analyze Mitigation Measures.

Under Wildfire Summary of Impacts, the EIR concludes that “potential impacts associated with implementation of the Proposed Project include the impediment of an adopted emergency response plan or emergency evacuation plan, exacerbation of wildfire and associated risks and therefore danger to life and property, installation or maintenance of infrastructure that may exacerbate fire risk, or wildfire-induced slope instability and drainage changes.” The EIR fails to disclose if these potential impacts will be significant prior to mitigation. It only goes on to claim that these impacts would be reduced to less-than-significant levels through “regulatory compliance and with implementation of proposed policies and/or additional mitigation measures.”

Without discussing if the project will cause significant wildfire impacts, Impacts 3.14-2 and 3.14-3 simply conclude that compliance with Proposed Project policies would reduce potential fire hazards to a less than significant level. Thus, there is no discussion of project wildfire impact significance prior to mitigations.

In addition, the City's Response to Comment C123-28 is inadequate as it does not address CEQA's requirement that 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.

4) The EIR Fails To Adequately Respond To Comments.

Despite the information about Very High Fire Hazard Severity Zones contained in the City's 2014 proposed General Plan and the City's 2020 “certified” LCLUP, the Response to Comments erroneously claims, without explanation, that “the DEIR identified that there are no VHFHSZ within the City limit.”

Given what the City submitted to the Coastal Commission, Master Response 5 is wrong in claiming that the wildfire data and maps information referenced in the DEIR was “the latest and most current available at the time the NOP was released and remains the most current available as of publication of this FEIR.”

The Response to Comments also fails to provide adequate responses to wildfire issues raised in Comment C54-7 (Boles), Comment C54-9 (Boles), Comment C46-23 (Watt), Comment C1-1 (Zeavin), and Comments C7-1 & C7-4 (Etienne). Ignoring information submitted by the City to the Coastal Commission in 2020 about Very High Fire Hazard Severity Zones in the coastal zone, and blindly relying on maps which erroneously absolve the City of responsibility for wildfires is not the good faith, reasoned analysis supported by factual information with CEQA Guideline 15088 requires.

IV. The EIR's Evacuation Route Analysis is Flawed and Significant New Information Was Released After the DEIR Comment Period.

DEIR Impact 3.14-1 concludes that Implementation of the Proposed Project would not substantially impair an adopted emergency response plan or emergency evacuation plan, and that the Impact is "Less than Significant." In reaching this conclusion the DEIR relies heavily on evacuation routes. In discussing the impact of the proposed General Plan Update, the DEIR states:

The Proposed Project provides for improved emergency access through policies that promote mobility connections between communities; provide additional access routes; require new streets and developments meet adopted emergency access standards; and ensure adequate fire, police, and emergency service in line with any new development, including in Central Pacifica where service times do not currently meet NCFAs standards, and in areas that have less than two evacuation routes north of the VHFHSZ (Proposed General Plan Implementing Policy SA-I-104)

Implementation of the following Proposed Project policies will ensure that inadequate emergency access does not occur, and will result in a less than significant impact.

There is no description or figure in the General Plan Update or DEIR released to the public in March 2022 of where these "areas that have less than two [i.e. only one] evacuation routes north of the VHFHSZ" are located. Thus, the EIR's environmental setting is inadequate.

It is only in June 2022 with the release of the City's Response to Comments does the General Plan Update include Figure 8-8, titled "Pacifica Neighborhoods with Fewer Than Two Evacuation Routes." For the first time, the City reveals that Pedro Point, Vallemar and Fassler/Rockaway are so constrained in the event of an evacuation. Remarkably, the Figure source and dates are: City of Pacifica, 2020; San Mateo County, 2020; Dyett & Bhatia, 2020. So, the City had the information when it released the DEIR for comment. However, not only is General Plan Update Figure 8-8 omitted from the Draft EIR, it is even excluded from the City's Final EIR for this proposed project.

In addition, the EIR's discussion violates CEQA's requirement that the first step in an EIR's analysis of a proposed project's environmental effects is to evaluate impact significance, followed then by analysis of mitigations. Without discussing if the project will cause significant evacuation impacts, DEIR Impact 3.14-1 simply concludes that compliance with Proposed Project policies would reduce evacuation hazards to a less than significant level. Thus, there is no discussion of project evacuation impact significance prior to mitigations.

Also, the EIR avoids the required analysis of the feasibility of proposed mitigation SA-I-104. SA-I-104 proposes to reduce impacts in "Areas that Lack

Emergency Access” by developing a plan to “widen critical rights-of-way that do not provide adequate clearance for emergency vehicles, and for areas that are not feasibly accessible to emergency vehicles, develop a contingency plan for reaching and evacuating people in need of treatment. This initiative should include a plan to open access to or otherwise serve the Pedro Point, Fassler/Rockaway, and the Vallemar neighborhoods.”

There is no EIR discussion of why or if mitigation SA-I-104 is feasible, what the contingency plan will consist of, or when it will be developed. The EIR does not disclose how it would be possible to “provide additional access routes” in areas like the Pedro Point neighborhood that have only one evacuation route, and which the City designates a Very High Fire Hazard Severity Zone. Further, SA-I-104 is not included in the City’s MMRP. In fact, the City’s CEQA Finding is that “considerations” make infeasible the mitigation measures or project alternatives identified in the Final EIR.

The discussion of Impact 3.11-6 - Implementation of the Proposed Project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. (Less than Significant) – suffers from the same CEQA flaws as discussed above for Impact 3.14-1: the environmental setting is inadequate, the analysis of impacts does not consider impact significance without mitigations, and there is no discussion of mitigation feasibility.

Impact 3.11-6 even states that “Roadway improvements under the proposed General Plan will reduce the effect of additional traffic on emergency response times” without considering the Figure 8-8 information that Pedro Point, Vallemar and Fassler/Rockaway have only one route in the event of an evacuation. Impact 3.11-6 relies on Impact 3.3-2 for support that the General Plan will reduce the effect of additional traffic on emergency response times, but Impact 3.3-2 instead discusses emissions of criteria air pollutants, not emergency response times.

V. The City Fails to Adequately Respond to Comments of the Bay Area Air Quality Management District (BAAQMD)

The City fails to comply with CEQA Guideline 15088 in responding to comments of the Bay Area Air Quality Management District (BAAQMD). The City does not describe the disposition of each significant environmental issues raised by the BAAQMD. The Response does not provide detailed reasons and reasoned analysis why each BAAQMD comment and suggestion was not accepted.

The BAAQMD commented (A1-1) that the City should evaluate whether the GP Update would support California’s longterm climate goals of achieving carbon neutrality by 2045. The Response to Comments fails to even mention carbon neutrality.

The BAAQMD commented (A1-1) that the GHG impact analysis should include an evaluation of the General Plan’s consistency with the California Air Resources Board’s most recent AB 32 Scoping Plan and with the State’s 2030, 2045, and 2050 climate goals. The City’s Response fails to address whether and how the proposed General Plan is or is not consistent with the 2017 Scoping Plan and with the State’s 2030,

2045, and 2050 climate goals. The Response to Comments only mentions the Scoping Plan in the following context: DEIR p. 3.4-63: "The Proposed Project would result in GHG emissions of 1.59 MTCO_{2e} per capita in 2040, which meets the CARB Scoping Plan per capita reduction targets."

The City's Response fails to explain how it concluded that "the Project would meet its SB 32 target of 40% mass emissions reductions below 1990 levels in 2030" given that the Pacifica 2014 CAP concluded that Pacifica's emission levels in 2005 would be approximately 15 percent above 1990 levels.

The BAAQMD commented (A1-2) that references to the Scoping Plan should be updated to the 2017 Scoping Plan. The City's Response only states that in 2014, ARB released the First Update to the Climate Change Scoping Plan, referencing EIR p. 3.14-16.

The BAAQMD commented (A1-3) that the General Plan include additional feasible measures to minimize GHGs within the City, including expanding the requirements for no natural gas use to all new residential and commercial construction, with no exemptions for gas cooking and residential fireplaces. The City's Response is inadequate and misleading. The Response is that "the City is exploring this option as part of a parallel Reach Code initiative." In contrast, the City's Reach Code states that "Natural gas can be used (if desired) for cooking appliances and fireplaces." The Reach Code also permits use of natural gas appliances. Further, all ADU are exempt from Pacifica's Reach Code requirements. Thus, the City's Reach Code is contrary to the measures sought by the BAAQMD. Rather than acknowledge this discrepancy, the Response misleads the reader that the City is potentially complying with the measures BAAQMD sought.

The BAAQMD commented (A1-3) that that the General Plan include additional feasible measures to minimize GHGs within the City, including meeting the vehicles miles traveled (VMT) requirement under SB 743 per the California OPR "Technical Advisory On Evaluating Transportation Impacts in CEQA." The City's Response directs the reader to Response C46-30. There the City in relevant part states that "Attachment X also shows how VMT mitigation strategies listed in the technical guidance on SB 743 implementation published by the Governor's Office of Planning and Research." Neither the Final EIR, the draft EIR or the redlined GP Update include an Attachment X.

VI. The City's Statement of Overriding Considerations Violates CEQA.

The City fails to comply with CEQA Guideline 15093, subd. (b) by stating the specific reasons why the purported benefits of Statements 1 through 9 (PDF 3473-74) outweigh the unavoidable environmental risks of significant, unavoidable Impact 3.3-1.

The City fails to support its statement of overriding considerations with substantial evidence in the record in violation of CEQA Guideline 15093, subd. (b). The City only vaguely states that substantial evidence supporting the various benefits of the project can be found somewhere in public records on the General Plan update process, but fails to state specifically what constitutes this substantial evidence.

VII. The CEQA Findings are Inadequate.

The City makes the CEQA finding “pursuant to CEQA Guidelines section 15091(a)(3)” that specific considerations “make infeasible the mitigation measures or project alternatives identified in the Final EIR.” There are many hundreds of mitigation measures in the Final EIR that are summarized in Table ES-3. See FEIR Attachment H, pp. E-11 through E-131. There are three project alternatives. The City fails to explain the rationale for its finding of infeasibility in regards to each of the mitigation measures and project alternatives identified in the Final EIR as required by CEQA Guideline 15091(a). The City’s CEQA Finding also fails to describe the specific reasons for rejecting each identified mitigation measures and project alternatives as required by as required by CEQA Guideline 15091(c).

The City’s CEQA Guideline 15091(a)(3) finding is not supported by substantial evidence in the record.

VIII. The Mitigation Monitoring & Reporting Plan is Inadequate.

The City must adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures. CEQA Guideline 15091(d). Mitigation Measure MM-GHG-3 is not fully enforceable as it is voluntary. Mitigation Measure MM-TRA-2 is not fully enforceable as it is voluntary. Mitigation Measure MM-TRA-1 has no program for reporting or monitoring in the MMRP. The City has no program for reporting on or monitoring the hundreds of “proposed policies” that it claims would reduce impacts. None of the five mitigations listed in the MMRP have been made “fully enforceable” through either permit conditions, agreements, or other measures.

IX. 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. In its June 6, 2022 comment PPCA pointed out numerous instances of significant new information requiring EIR recirculation. There are additional grounds for recirculation, including:

- 1) The CI-I-50 Transportation Demand Management has been substantially changed. (FEIR p. 3.3-26, pdf 301);
- 2) Elimination of Mitigation Measure CO-I-20 Water Efficient Landscaping.
- 3) Addition of new mitigations MM-GHG-1, MM-GHG-2, and MM-GHG-3. (FEIR pdf 377-378).

Each of these changes are not mere clarifications. The changes deprive the public of a meaningful opportunity to comment upon substantial adverse environmental effects and feasible ways to mitigate or avoid these impacts.

X. Evidence Before the City Demonstrates that Additional Development Is Reasonably Foreseeable, But Has Not Been Considered by the EIR.

In March 2022 Pedro Point Community Association (PPCA) commented the Draft EIR was flawed as it did not analyze what is reasonably foreseeable, including 1,892 additional housing units per 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 City's Master Response 3 dismissed this reasonably foreseeable development as "maximums" and "theoretical" and thus refused to correct the fundamental CEQA flaws raised by PPCA.

The Coastal Commission SB9 Memo provides further evidence that lot splits and SB9 projects are not speculative. It summarizes that, pursuant to Gov. Code § 66411.7 for projects outside the coastal zone, local governments must now ministerially approve lot splits that create no more than two new lots in single-family residential zones in designated urban areas when certain criteria are met. When the criteria are met, discretionary review is prohibited. The Coastal Commission SB9 Memo further concludes that "approval of the types of lot split and residential development projects contemplated by SB 9 is likely to increase residential density in urban areas, both in terms of the overall number of residential units and in terms of the nature of the built environment itself."

Pacifica Resolution NO. 11-2022 finds that duplex and lot split projects authorized under SB 9 are a form of state mandated housing that allows for expanded housing options, and adopts Interim Guidance, Rules, and Regulations to facilitate such development in Pacifica.

The Association of Bay Area Government's (ABAG) Final Regional Housing Needs Allocation (RHNA) Plan, Methodology and Timeline demonstrate that additional housing not considered by the EIR is not theoretical and that the City knew of these requirements at the time of preparing the General Plan Update and EIR.

Thank you for your careful attention to these issues.