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SUBJECT: COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT FOR PACIFICA GENERAL PLAN UPDATE PROJECT

Dear Mr. Murdock:

Grassetti Environmental Consulting (GECo) is submitting this comment letter on behalf of the Pedro Point Community Association (PPCA). As Principal of GECo, I have prepared these comments based on my 40 years of experience preparing and reviewing California Environmental Quality Act (CEQA) documents.

A copy of my CV is attached.

Summary of Findings

The PPCA requested a thorough evaluation of the potential effects of the General Plan Update ("GPU" or "the Project") on the undeveloped San Pedro Avenue Site ("the Site" or "San Pedro Avenue Site"). This letter identifies deficiencies in the General Plan Update Draft EIR ("DEIR") with respect to the Site. It is based on my reading of the proposed GPU and DEIR, as well as a review of sensitive resources and hazards from available sources. General deficiencies are described first, followed by some specific comments on the adequacy of technical analyses.

Under CEQA, the GPU DEIR must focus not only on the direct impacts, but also on the secondary effects that will follow from adoption of the General Plan update (CEQA Guideline 15146). The City is not relieved from considering reasonably foreseeable impacts of the Project on specific parcels, including the Site here.

Given the voluminous information provided by experts on the undeveloped San Pedro Avenue Site, including extremely detailed evidence presented in the California Coastal Commission 2020 Staff Report on the Rhodes Mixed Use Development ("CCC Staff Report") proposed for the Site, this GPU and DEIR must consider that information, submitted herewith.

The land use designations are the heart of the General Plan. Because the General Plan serves as "the constitution for all future developments" within the City once a

land use for a site is designated, applicants have certain development rights. Therefore it is essential that the City of Pacifica ("City") fully consider environmental values and constraints prior to re-designating parcels, not after a parcel is re-designated. This GPU fails to do that, and, as detailed below, the DEIR fails to adequately or accurately assess impacts of the proposed re-designation of the undeveloped San Pedro Avenue Site.

Inadequacy of Project Description

The DEIR must present a clear and stable project description. The DEIR's project description is inadequate because it fails to narratively or graphically identify which specific areas/parcels would be re-designated or changed by the Project. Instead, the DEIR focuses solely on general buildout numbers, as if site conditions were uniform throughout the City.) This failure makes it very difficult for the reader to understand how various areas of the City would be affected by implementation of the proposed Project.

DEIR Land Use Chapter 3.1 does include a very small- scale map of existing land use designations, which, critically shows the undeveloped San Pedro Avenue Site land use designation as "Commercial" but omits consideration that the Site is zoned "Commercial Recreation". The General Plan states, "The land directly west of the Pedro Point Shopping Center was identified as a commercial recreation site in the previous General Plan, and has been zoned for general commercial uses." By failing to include this information, the DEIR does not serve its informational disclosure requirement. The public should not be forced to ferret out information and connect the dots to understand the Project and its impacts. This combination of incomplete and incorrect information renders the DEIR Project Description useless as the basis for determining impacts of the proposed GPU.

Given the limited number of sites proposed for designation changes in the GPU, the DEIR should clearly identify them narratively and graphically, and include discussion of reasonably foreseeable impacts and mitigations to those sites.

Further, the DEIR project description compares the Project to the existing plan, but does not provide the necessary information on existing on-the-ground conditions from which to conduct the impact assessment. With limited exceptions, CEQA does not permit plan-to-plan analyses. Per the CEQA Guidelines (Section. 15126.2) "In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced." In order to adequately evaluate environmental impacts, the DEIR must identify which parcels are undeveloped, what their existing physical condition is, and how conditions would change with reasonably foreseeable development allowed under the proposed Project. The actual impacts would be the difference between the existing undeveloped state and full development of a site under the new designation.

Inadequate Project Objectives

The DEIR's stated Project Objectives (pp. 2-9 and 2-10) are so general and vague that they cannot be effectively used to fulfill their primary purpose, namely to guide development and assessment of an adequate range of alternatives. This deficiency is reflected in the Alternatives chapter (p. 4-2), which substitutes three different "criteria" for use in developing and selecting project alternatives (although those criteria are similarly vague and generic).

Inadequacy of Impact and Mitigation Discussion

The DEIR fails to disclose that the undeveloped San Pedro Avenue Site is currently zoned commercial recreation, with a floor area ratio (FAR) of 0.2, which means that total development footage cannot exceed 20% of the site area. This current designation promotes non-intensive recreational use of the Site, retaining most of the Site in open space. If, for example, a 2-story recreational facility were constructed, only 10%of the San Pedro Avenue Site would be disturbed, and sensitive resources and environmental hazards on the remainder of the Site could be avoided.

The GPU would re-designate the Site as Coastal Residential Mixed Use, which would allow housing or commercial uses at an FAR of 0.5 (DEIR Figure 2.1-2 and table 2.3-1). That FAR does not include roads or parking, which could result in further environmental impacts. The DEIR fails entirely to address potential Project impacts at this Site, and never even mentions the Site in its impact analyses.

For most topics, the DEIR only provides over-generalized statements of impacts, lists plan policies, and then assumes – without explanation - that the policies would effectively reduce all impacts to less-than-significant levels, without any analysis of the pre-policy impact or the actual applicability and effectiveness of the policies to the impact. In contrast, for traffic, the DEIR does conduct an intersection-specific assessment. This shows that it is possible for the DEIR to conduct a site-level analysis for the areas where changes in land use are proposed. The DEIR should be revised to conduct those analyses for all of the resource categories.

In short, the DEIR fails to go through CEQA's required steps of first disclosing impacts and whether those impacts are potentially significant, and only then discussing proposed mitigation measures including their feasibility. As the court stated in *Trisha Lee Lotus v. Department of Transportation*:

> "The purposes of Section 21801 are that there be some evidence that the alternatives or mitigation measures in the EIR were considered by the decision-making agency and, as the Supreme Court stated in a similar situation, that there be a disclosure of the analytic route the…. agency traveled from evidence to action." And, "The EIR does not, however, include any information that enables the reader to evaluate the significance of these impacts." (p.13) "Caltrans compounds this omission by incorporating the

> proposed mitigation measures into its description of the project and then concluding that any potential impacts from the project will be less than significant. As the trial court held, the "avoidance, minimization, and/or mitigation measures", as they are 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." (p. 15).

Here, the proposed changes in land use designations would cause the loss of biological resources, recreational resources, and flood storage from the Site. The DEIR must first disclose and analyze those impacts, determine the significance of each impact, and then discuss whether and how general plan policies and mitigation would reduce the impact. The applicability of policies must be identified, as well as their effectiveness. If policies are assumed to be mitigation, then they must be presented in a manner that assures their implementation on any particular site.

California courts have made it clear[1] that cities are not obligated to implement all of the General Plan's policies applicable to a site, therefore the GPU's proposed policies cannot be assumed to mitigate for development of a site under the GP. Further, applicable measures must be included in a Mitigation Monitoring and Reporting Program.

At a planning level, a more effective, enforceable, monitorable, mitigation would be to change the undeveloped San Pedro Avenue Site land use designation to Open Space or retain the 0.2 FAR Commercial-Recreation designation, rather than the proposed intense 0.5 FAR designation.

However, given CEQA's requirement to compare impacts of a project (or plan) to existing on-the-ground conditions, impacts of development even at an FAR of 0.2 must be assessed, and mitigated to the extent feasible. This is particularly important given CEQA's infill exemptions. It is likely that, for some of the sites, no additional CEQA review will occur, and the impacts will not be addressed at all. This DEIR's lack of detailed analysis would allow the City to play a shell game in deferring analysis that may never occur, and thereby fails to meet CEQA's purpose of full disclosure.

In summary, the DEIR fails to address the impacts of land use changes proposed under the GPU because it concludes that GPU policies would mitigate any undisclosed impacts. In essence, the DEIR claims that the Project would mitigate itself – despite the fact that there may be significant unmitigable impacts of

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[1] An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." [Citation.]' [Citation.] State law does not require perfect conformity between a proposed project and the applicable general plan...." (*Friends of Lagoon Valley, supra,* 154 Cal.App.4th at p. 817, 65 Cal.Rptr.3d 251.)

implementing the proposed land use designations on a given site, as is the case for the undeveloped San Pedro Avenue Site.

A City may approve a project if it "substantially complies" with the planning policies – full compliance is not required. This means that assuming full implementation of policies is a best-case scenario, not a likely scenario as required for CEQA review.

Also, many of the plan policies are couched in language such as "to the extent feasible", "strive to", "study", "consult with", 'coordinate with" and similar vague, non-committal terms that fail to assure that mitigation will be implemented or, if implemented, will be successful in reducing a project's impacts to a less-than-significant level. There are numerous examples of this in the Plan, including Policies CO-G-3, CO-I-1, CO-G-4, CO-I-19-23, SA-I-29, SA-I-109, SA-I-12, and many, many more. In addition, as can be seen in these examples and many others, in many cases, the City relies on policies that assume mitigation by other agencies and jurisdictions over which it has no control. Under CEQA mitigation measures must include performance standards, rather than just aspirational goals or deferred studies. The DEIR must also translate these policies to enforceable measures before it can consider any potentially significant impacts to have been mitigated to less than significant.

The City is required to comply with SB379 as stated in Chapter 1.2, General Plan Requirements: "*Climate Change Adaptation and Resiliency Legislation (SB 379)…requires the safety elements of general plans to be reviewed and updated to include climate adaptation and resiliency strategies.*" SB379 further requires the identification of hazard zones that can serve as mitigation areas for said hazards. Despite this requirement, the GPU and the DEIR fail to identify any properties in Pacifica for such mitigation. It is also insufficient to only set "Coastal Resiliency Policies" but not designate appropriate resiliency sites/areas; areas like the undeveloped San Pedro Avenue Site would qualify to be designated as hazard mitigation sites due to its many hazard vulnerabilities and ESHA designation.

In addition to rendering the DEIR inadequate, these omissions subvert the basic purpose of planning, which is to plan so that appropriate land uses can be located so as to avoid or minimize environmental impacts. Rather than plan for sensitive sites such as the undeveloped San Pedro Avenue Site, as detailed below, the City is proposing to adopt non-protective land uses (at the Site, Coastal Residential Mixed Use) and then use general policies (full compliance with which is not mandatory) relying mostly on deferred studies to reduce impacts. This approach (and the underlying DEIR) is inadequate because it uses magical thinking - in theory, the plan policies reduce all impacts to less than significant in spite of on-the-ground evidence to the contrary – rather than evidence-based analyses.

Criteria of Significance/Topics Addressed

As detailed in specific comments below, the DEIR fails to focus its impact analysis to reasonably foreseeable types of impacts. Instead, the impacts are just the same questions in the standard Initial Study checklist. This is an EIR, not an Initial Study. This DEIR is required to identify and focus on impacts of importance, not the items in the CEQA Initial Study checklist. For example, impacts and mitigation measures should be called out for each special-status species that may be affected by buildout of the plan.

Specific Comments

We have reviewed the Land Use, Hydrology, Geology, Recreation, and Alternatives sections of the DEIR with respect to CEQA adequacy. Our comments on those sections are summarized below. We understand that biological resources issues are addressed under separate cover in an expert letter from Dr. Peter Baye, coastal ecologist. The general issues of lack of adequate impact/mitigation analyses, as detailed above, apply to all sections; some representative specific examples of these deficiencies that appear in the sections that we reviewed in detail are presented below.

Biological Resources

As noted in a letter submitted separately by Dr. Peter Baye, the site is valuable habitat for a number of special status species. In addition, habitat values and flooding hazards for the adjoining Rhodes development site, which extend onto the San Pedro Avenue Site, are presented in painstaking detail by expert technical specialists in the California Coastal Commission's Staff Report for the proposed development of that site (CDP Application 2-19-0026, dated 2/18/2021), which was never referenced or considered in this DEIR. Willful omission of this critical information on its face renders this DEIR invalid.

This DEIR does not accurately disclose the San Pedro Avenue Site's conditions as part of the environmental setting, disclose project impacts, nor discuss the effectiveness of plan policies as mitigation.

For example, Figure 3.7-3 in the Biological Resources chapter shows this Site as having no sensitive or critical habitat values, yet evidence by Dr. Peter Baye as well as that provided by the Coastal Commission's expert biologists shows that it does have sensitive species and habitats. The CCC Staff Report for the adjacent Rhodes project site considers that entire site to be an Environmentally Sensitive Habitat Area ("ESHA"), and similar habitat exists on the San Pedro Avenue Site, making it likely that that Site also would be ESHA. Similarly, the DEIR focuses on the National Wetlands Inventory while excluding detailed wetlands mapping of this Site, thereby rejecting on-the-ground analyses in favor of large-scale remote mapping (see Figure 3.7-2). The CCC Staff Report on the Rhodes site further identifies the undeveloped

San Pedro Avenue Site as "likely wetlands" (see Figures 1a and 1b, on p. 134 of the CCC Staff Report).

Similarly, as described in the CCC Staff Report, a California Red Legged Frog ("CRLF") was found in the drainage separating the undeveloped San Pedro Avenue Site from the Rhodes site, and would clearly have important habitat on the San Pedro Avenue Site (see CCC Staff Report Figure 2, on p. 134). Further, given that the frog was found at the upstream end of the drainage on the Site, and likely traveled up that drainage to the point where it was encountered, it is likely that a much greater portion of the San Pedro Avenue Site is CRLF habitat than shown on that figure.

The lower portion of San Pedro Creek also has been found to be habitat for the special-status tidewater goby (see Baye report referencing Sutter and Kinziger, 2019). This habitat may be adversely affected by contaminated runoff that would result from development of the undeveloped San Pedro Avenue Site. This impact also must be addressed in the DEIR.

Finally, the proposed site designation fails to meet CCC policies, as summarized in the 2020 Staff Report for the denied Rhodes Project (emphasis added):

> "In short, the portion of the site within the Commission's permitting jurisdiction is all ESHA and undevelopable for the proposed range of uses and structures. Although some provisions in the LCP allow for reductions to habitat buffers in the event that the buffer renders the site undevelopable, in this case it is the actual ESHA area that is affected by development (and not the buffer from it), and the City has approved development in the portion of the property that is within its jurisdiction and subject to the LCP. The Commission finds that there is no location on the site that is outside of ESHA and sufficient to protect the habitat, as required by the Coastal Act, and, as such, there aren't siting and design conditions available to the Commission to correct this Coastal Act inconsistency. Therefore, the Commission finds the proposed project inconsistent with the Coastal Act's sensitive habitat protection requirements cited above, requiring project denial."

Given the evidence already provided to the City that much, if not all, of the undeveloped San Pedro Avenue Site is environmentally sensitive habitat and likely qualifies as an ESHA, the DEIR must investigate to what extent those conditions exist on the Site. It is entirely possible that the whole Site is ESHA, and therefore should be designated as such in the General Plan. Alternatively, designating it for residential mixed-use development likely assures a significant environmental impact will occur, and the DEIR must disclose those potential impacts. It should be noted that this is not a disagreement among experts, as the DEIR provides NO evidence supporting its finding that the proposed land use designation for that Site would not result in a significant impact, and the City is in receipt of substantial evidence to the contrary.

Land Use Environmental Setting

Chapter 3.1, overall: The list of General Plan Policies that purportedly reduce impacts fails to describe how or to what degree impacts are reduced. Please add this analysis for Impacts 3.1-1, 3.1-2, and 3.1-3, considering that not all General Plan policies are required to be implemented by the City.

With respect to the undeveloped San Pedro Avenue Site please address the clear non-compliance of the GPU's high intensity land use designation with the policies of promoting wetlands preservation (CO-I-4), minimizing impacts of coastal development on vegetation (CD-I-16), Open Space Conservation and Habitat Protection (LU-I-13), Open Space Preservation (OC-G-5), Protection of Creeks and Riparian Areas (CO-G-9), Other Environmentally Sensitive Areas (CO-G-11) , and Protection of Biological Resources with New Development (CO-I-26). Please revise the land use designation for consistency with the policies.

As noted in its Staff Report for Application CDP-2-19-0026[2], the California Coastal Commission has declared areas adjacent to the Rhodes property as an ESHA, Further, the July 7, 2014 comments of ecologist Dr. Peter Baye are that the seasonal wetlands at the undeveloped San Pedro Avenue site and the zone bordering the CRLF habitat of the swale meet the definition of ESHA. Dr. Baye has provided additional evidence of the suitability of much of the Site as CRLF habitat in his March 2022 letter. Dr. Baye further provides substantial evidence that development of the site may adversely affect the special-status tidewater gobi which occurs at the lower end of San Pedro Creek. Please revise the land use designation for consistency with Verification of ESHA (CO-1-27) and Management of ESHA (CO-I-28), and Habitat Preservation (CO-I-31).

Chapter 3.1 also needs to be revised to address potential land use incompatibilities. As written there is no assessment of any potential incompatibilities of proposed new land uses with existing nearby uses. For example, the DEIR does not disclose if intense residential development of the undeveloped San Pedro Avenue Site will have noise or traffic incompatibilities with surrounding residential land uses. The DEIR also does not disclose if intense residential development of the undeveloped San Pedro Avenue Site would displace flood storage, important habitat, or recreational uses of the Site.

Geology, Soils, and Seismic Risk

CEQA Guideline 15126.2(a) states, "The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected…..Similarly, the EIR should evaluate any potential significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard

[2] CCC Denial of CDP-2-19-0026, Exhibit 11 at https://documents.coastal.ca.gov/reports/2021/3/F16a/F16a-3-2021-exhibits.pdf

maps, risk assessments, or in land use plans addressing such hazard areas." As described below for both geology and hydrology, this DEIR fails to conduct these required assessments.

Figure 3.6-1: The undeveloped San Pedro Avenue Site appears to include areas of Very High and Medium liquefaction potential (DEIR Figures 3.6-1 and 3.6-2). It also may be subject to impacts from coastal erosion, as described on DEIR p. 3.6-14 and elaborated upon in the CCC's Staff Report for the adjacent Rhodes site. Yet the GPU's land use designation seems oblivious to these threats, and the DEIR fails to analyze these reasonably foreseeable potential Project impacts.

Impacts 3.6-1 and 3.6-3: The DEIR provides no analysis of the potential impacts of proposed land use designations shown in the GPU land use map.

It also fails entirely to address whether and how the listed general policies will reduce impacts such as those identified above for the undeveloped San Pedro Avenue Site to less-than-significant levels and then inexplicably finds the impacts to be minimal. The DEIR just lists the policies and concludes that the impacts would be less than significant. There's a big difference between reducing impacts, which is what the policies are aimed at, and reducing them to a less-than-significant level. The DEIR must be revised to analyze the impacts of the proposed changes in land use compared to existing conditions.

Further, please provide monitorable, enforceable mitigation for these potentially severe impacts on the undeveloped San Pedro Avenue Site. The proposed policies mostly involve future studies, which do not suffice as mitigation, particularly in the absence of express performance standards. Please note that Geologic Hazard Abatement Districts do not ensure mitigation, but rather just shift funding responsibilities for mitigation from the City to buyers of subject properties.

Hydrology and Water Quality

The Hydrology and Flooding section introduction states that the section analyzes water resources "in relation to the location of projects comprising the buildout of the Proposed Project [General Plan]." (DEIR p. 3.5-1). However no such analysis is included relative to those projects.

The DEIR also states, "San Pedro Creek has a history of flooding in the Linda Mar area," (p. 3.5-8) but the DEIR provides no information on flooding at the sites where land use is proposed to intensify substantially as a result of the GPU. The PPCA has provided the City with photos of the Site entirely flooded to a depth of several feet, indicating that substantial flooding has occurred on the Site. This flooding occurred again in the 2021-2022 rainy season. The City has been provided with evidence (attached hereto and submitted by PPCA under separate cover) that the Site has been frequently flooded by San Pedro Creek, the adjacent hillsides, is subject to flooding under projected sea level rise, and is subject to tsunami hazards.

The 2014 DEIR for the Pacifica General Plan Update at Figure 3.5-1 showed the Site is subject to flooding from tsunami runup. However, without explanation, that figure has been omitted from this DEIR. Why was this figure deleted? As noted in the DEIR and the CCC Staff Report, tsunami runup is a hazard that will only worsen with sea level rise.

As detailed in the CCC Staff Report on the adjacent Rhodes project site,

> "With respect to coastal hazards, the site would be subject to potential future impacts from the combination of shoreline retreat, sea level rise, wave runup, and inundation. As proposed, the structures are not sufficiently sited and designed to avoid such problems, and the northernmost building includes a basement structure, all of which would be subject to flooding over the expected life of the development. "
>
> "… Commission staff geologist Dr. Joseph Street estimates that with 6.6 feet of sea level rise, wave runup with the 100-year storm could extend about 170 feet inland of the shoreline (i.e., of MHTL) across the beach and flatter ground near San Pedro Creek, northeast of the project site. This provides a more conservative estimate of potential storm wave runup beyond the future shoreline position. If 170 feet of horizontal wave runup distance is added to the projected future shoreline position (with 5.7 or 6.6 feet of sea level rise), the seaward portion of the project site (where Building 1 is proposed which includes the two-story surf shop on the first floor, office and storage space on the second floor, and a 3,500 square-foot basement subgrade) would be affected by wave runup within the 100-year analytic period referenced by the LCP.
>
> "Another option to approximate the future wave runup hazard risk to the site is to add projected sea level rise to the current FEMA 100-year flood elevation. Adding the medium-high risk scenario sea level rise projection (+5.6 to +6.9 feet by 2090-2100) to the current FEMA 100-year flood elevation of the VE zone (representing areas within the 1% annual chance coastal floodplain which have additional hazards associated with storm waves) where the proposed project is located (i.e., at +17 feet elevation) yields a rough estimate of the future 100-year flood elevation in the range of +22.5 to +24 feet NAVD88. Given the existing elevations at the project site (+16 to +21 feet) and the elevations of the topographic lows adjacent to the project site (+16 to +17 feet NAVD88), it is thus possible that future flood elevations in this range affect at least a portion of the project site toward the end of the project life. At the very least, additional, more detailed analysis would be needed to rule out this possibility."

The San Pedro Avenue Site is lower than the adjacent Rhodes project site, rendering it even more likely to be impacted from coastal flooding hazards. This should have

been considered in planning for Site development in the GPU, as well as in determining impacts in the DEIR.

Because the undeveloped San Pedro Avenue Site is located in the Coastal Zone, designation of the Site must be assessed for compliance with Coastal Commission policies with respect to flooding and sea level rise. The Commission's draft polices state that LCP's must integrate sea level rise into planning, using a maximum rise of 6.3 feet, which is based on the best available science as identified in the CCC Staff Report on the adjacent Rhodes project site. The Coastal Commission Guidance is that coastal hazard risks should be avoidable, wherever feasible. Increasing development density on an undeveloped site subject to sea level rise and other coastal hazards is the opposite of this Coastal Commission Guidance. The DEIR fails to even mention this impact.

The DEIR Hydrology discussion fails to even disclose, much led address, the tsunami and sea-level-rise flooding related hazards associated with this Site (see, for example, DEIR Figure 3.5-1, which shows the Site as having no flooding hazards), in spite of detailed evidence of those hazards provided by the California Coastal Commission's experts. The DEIR consistently ignores on-the-ground analyses, in favor of less-accurate generic mapping, rendering the document inadequate.

In the 2014 DEIR for that General Plan Update, the Hydrology section included an impact on sea level rise (Impact 3.5-6). Inexplicably that impact, as well as Impact 3.5-7 in the 2014 DEIR, have been deleted, leaving a jump from Impact 3.5-5 to 3.5-8 in the 2022 DEIR. Given that the undeveloped San Pedro Avenue Site would be subject to extreme flooding from sea level rise and that runoff to and from the project Site would aggravate that flooding (see CCC comments), this issue must be addressed in the stormwater runoff and flooding discussions of this Project and DEIR.

Also, designating this Site for development is in clear violation of sea-level-rise policies in the General Plan Update itself. The fact that the City is willing to adopt a land use plan that is inconsistent with the policies in the very same plan shows that the policies are not effective mitigation.

As mitigation, please revise the land use element of the Project to eliminate the density increases in these areas and respond to the real hazards by reducing densities instead. The DEIR – by suggesting unenforceable policies that conflict with the underlying land use as mitigation measures - does not comply with CEQA requirements for mitigation, which must be both enforceable and verifiable, and must actually mitigate the impact.

Public Services and Recreation

The draft general policies state that access to coastal areas shall be maximized. Yet, this Project would eliminate an informal access trail to the beach, as documented in a set of photos and maps attached to our previous comments. The DEIR entirely

omits coastal access outside of designated parks from its impact analysis. The Project's impacts on access through the Site are not disclosed in this DEIR.

Alternatives

As described previously, the DEIR fails to provide clear objectives as required by CEQA. This makes it impossible to determine if the range of alternatives in the DEIR is appropriate. This deficiency is compounded because project alternatives must reduce impacts compared to the Project and, as detailed above, the DEIR fails to adequately address potential impacts of the Project on nearly all topics.

Further, it appears that the alternatives addressed in Chapter 4 are merely planning options and not actual CEQA alternatives. In fact, the three criteria on DEIR p. 4-2 state that the alternatives were selected to, "bracket the range of choices that have the broadest support from the community", apparently without specific consideration of their potential environmental impacts.

There is no location-specific analysis of flooding in this DEIR alternatives chapter, which results in inaccurate statements that the no-project alternative would increase flood hazards compared to the proposed Project. Certainly this is false at the undeveloped San Pedro Avenue Site. More generally, why wouldn't ongoing flood-improvement projects continue with or without the project?

Planning Issues

As noted above, the proposed Coastal Residential Mixed Use land use designation at the undeveloped San Pedro Avenue Site would subject increased densities of people to geologic and hydrologic hazards, in non-conformance with both City and LCP policies. Further, sensitive ecological resources would be adversely affected, which also undercuts and fails to comply with the policies regarding those resources. As noted in the DEIR's Project Description, the Site's current Commercial Recreation land use designation is most similar to the GPU's proposed Visitor Serving Commercial (VC) designation. The VC designation, "allows uses that create public access to the coastal setting and are adaptable to changing environmental conditions: campgrounds, rustic lodging, concession stands, warming huts, outdoor event sites, and similar uses. Development may occur up to a 0.20 FAR, but must have an overall very low-intensity character on sites of more than one acre. Buildout is assumed at 0.05 FAR, recognizing the large land areas and minimal buildings expected to support recreational uses." (DEIR, p. 2-14.)

It is clear that, given the Site location and constraints, the GPU's policies as applied at the undeveloped San Pedro Avenue Site can only be met by applying the Conservation (C) General Plan designation and associated zoning because of the on-site hazards and identified ESHA.

Conclusions

The DEIR fails entirely as an informational disclosure document because of its assumptions that plan policies would equate to mitigation and its failure to actually analyze the effectiveness and likelihood of implementation of those policies.

Further, with respect to the undeveloped San Pedro Avenue Site, the DEIR ignores voluminous substantial evidence of major flooding hazards and ecological sensitivity of the Site. While an EIR may choose between conflicting experts' opinions, if they are all supported by evidence, it cannot fail to disclose evidence contrary to its own conclusions, which, with respect to both flooding and biological resources on the Site, are entirely unsupported by either evidence or analysis.

It is my professional opinion that, given the extent of the flaws detailed above, which reflect only a partial review of the DEIR's technical sections, this document does not meet CEQA requirements for full disclosure of potential impacts of the proposed project. The DEIR will require substantive revisions - to the project description; environmental baseline; reassessment of potentially adverse biological resources, hydrologic, geologic, and recreational impacts; identification of mitigations; and a revised alternatives analysis – to comply with CEQA

Addressing the deficiencies cited above are especially critical because of the potential for "infill" residential projects to be permitted under CEQA exemptions for such projects as permitted under CEQA Guideline Sections 15182, 15183, and 15183.3. While this DEIR promises further site-specific CEQA review, it is possible that for some developments, no such review could occur. In those cases, given the analytical deficiencies in this DEIR, the impacts will not be assessed in any CEQA document. This sort of CEQA "shell game" would deprive the public and decision-makers of meaningful information and input in the environmental review process.

The DEIR anticipates Initial Studies and Negative Declarations for future compliance with CEQA, but contends that it is not required to currently assess Project level impacts. (DEIR, p. 44.) Such an assertion violates one of CEQA's prime policies; the prohibition against ignoring foreseeable impacts for later analysis is clearly proscribed by CEQA. *Laurel Heights.* Cases citing Laurel Heights continue to disapprove of program or plan-level EIRs that defer impact analysis: "tiering is not a device for deferring the identification of significant environmental impacts that the adoption of a specific plan can be expected to cause." *California Native Plant Soc. v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 623-25.

Therefore, it is my professional opinion that the entire DEIR should be rewritten and recirculated for public review. The current approach of setting plus policies equals mitigation should be discarded and the impacts of the proposed land use changes should be carefully evaluated. Please feel free to contact me at 510 849-2354 if you have any questions regarding the comments herein.

Sincerely

Richard Grassetti
Principal
Grassetti Environmental Consulting

Attachment A: Grassetti Qualifications

Richard Grassetti

PRINCIPAL

Expertise

- CEQA/NEPA Environmental Assessment

Principal Professional Responsibilities

Mr. Grassetti is an environmental planner with 40 years of experience in environmental impact analysis, project management, and regulatory compliance. He is a recognized expert on California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) processes. He also has served as an expert witness on CEQA and planning issues. Mr. Grassetti regularly conducts peer review and QC/QA for all types of environmental impact analyses, and works frequently with public agencies, citizens groups, and applicants. He has managed the preparation of over 80 Federal and state environmental impact assessment documents, as well as numerous local agency planning and permitting documents. Mr. Grassetti also has prepared over 300 technical analyses for these documents. He has analyzed the environmental impacts of a wide range of projects including infrastructure improvements, ecological restoration projects, waste management projects, mixed-use developments, energy development, military base reuse projects, and recreational facilities. In addition to his consulting practice, Mr. Grassetti regularly conducts professional training workshops on NEPA and CEQA compliance, and was a lecturer for over 15 years at California State University, East Bay, where he taught the University's class on environmental impact assessment.

Professional Services

- Management and preparation of all types of environmental impact assessment and documentation for public agencies, applicants, citizens groups, and attorneys
- Peer review of environmental documents for technical adequacy and regulatory compliance
- Expert witness services

- Assisting clients in Federal and California environmental impact assessment process compliance
- Preparation of technical analyses for impact assessments
- Preparation of project feasibility, opportunities, and constraints analyses, and mitigation monitoring and reporting plans

Education

University of Oregon, Eugene, Department of Geography, M.A., Geography (Emphasis on Fluvial Geomorphology and Water Resources Planning), 1981.

University of California, Berkeley, Department of Geography, B.A., Physical Geography, 1978.

Professional Experience

1992-Present	Principal, GECo Environmental Consulting, Berkeley, CA
1994-2012	Adjunct Professor, Department of Geography and Environmental Studies, California State University, East Bay, Hayward, CA
1988-1992	Environmental Group Co-Manager/ Senior Project Manager, LSA Associates, Inc. Richmond, CA
1987-1988	Independent Environmental Consultant, Berkeley, CA
1986-1987	Environmental/Urban Planner, City of Richmond, CA
1982-1986	Senior Technical Associate - Hydrology and Geology - Environmental Science Associates, Inc. San Francisco, CA
1979-1981	Graduate Teaching Fellow, Department of Geography, University of Oregon, Eugene, OR

Professional Affiliations and Certifications

Member and Past Chapter Director, Association of Environmental Professionals, San Francisco Bay Chapter
Member, International Association for ImpactAssessment

Publications and Presentations

Grassetti, R. *Understanding Environmental Impact Assessment – A Layperson's Guide to Environmental Impact Documents and Processes.* 2002 (Revised 2011)

Grassetti, R. *Round Up The Usual Suspects: Common Deficiencies in US and California Environmental Impact assessments.* Paper Presented at International Association for Impact Assessment Conference, Vancouver, Canada. May 2004.

Grassetti, R. *Developing a Citizens Handbook for Impact Assessment.* Paper Presented at International Association for Impact Assessment Conference, Marrakech, Morocco. June 2003

Grassetti, R. *CEQA and Sustainability.* Paper Presented at Association of Environmental Professionals Conference, Palm Springs, California. April 2002.

Grassetti, R. and M. Kent. *Certifying Green Development, an Incentive-Based Application of Environmental Impact Assessment*. Paper Presented at International Association for Impact Assessment Conference, Cartagena, Colombia. May 2001

Grassetti, Richard. *Report from the Headwaters: Promises and Failures of Strategic Environmental Assessment in Preserving California's Ancient Redwoods.* Paper Presented at International Association for Impact Assessment Conference, Glasgow, Scotland. June 1999.

Grassetti, R. A., N. Dennis, and R. Odland. *An Analytical Framework for Sustainable Development in EIA in the USA*. Paper Presented at International Association for Impact Assessment Conference, Christchurch, New Zealand. April 1998.

Grassetti, R. A. *Ethics, Public Policy, and the Environmental Professional.* Presentation at the Association of Environmental Professionals Annual Conference, San Diego. May 1992.

Grassetti, R. A. *Regulation and Development of Urban Area Wetlands in the United States: The San Francisco Bay Area Case Study*. Water Quality Bulletin, United Nations/World Health Organization Collaborating Centre on Surface and Ground Water Quality. April 1989.

Grassetti, R. A. *Cumulative Impacts Analysis, An Overview*. Journal of Pesticide Reform. Fall 1986.

1986, 1987. Guest Lecturer, Environmental Studies Program, University of California, Berkeley.

REPRESENTATIVE PROJECT EXPERIENCE

IMPACT ASSESSMENT REGULATORY COMPLIANCE SEMINARS

Mr. Grassetti has conducted numerous CEQA and NEPA compliance seminars for entities including:

- Alameda County Waste Management Authority
- San Francisco County Transportation Authority
- West Bay Sanitary District
- North Coast Resource Management, Inc.
- Element Power Company
- Tetra Tech Inc.
- Impact Sciences Inc.
- Northwest Environmental Training Center (over 10 workshops)
- California State University East Bay (14 years teaching Environmental Impact Assessment)

PREPARATION OF ENVIRONMENTAL IMPACT ASSESSMENT DOCUMENTS (partial list)

Salt River Ecosystem Restoration Project EIR. GECo managed preparation of an Environmental Impact Report for the restoration of a large area of former marsh and open channel near Ferndale in Humboldt County. The project includes creation of a new seven-mile-long river channel and a 400-acre wetland restoration. Major issues include biological resources, land use, hydrology/flooding, and construction impacts (noise, air quality, traffic.). Client: Humboldt County Resource Conservation District.

Aramburu Island Shoreline Protection and Ecological Enhancement Project Initial Study. Mr. Grassetti managed preparation of an Initial Study for a proposal by the Audubon Society to stabilize the shoreline and improve bird and seal habitat on the 34-acre Aramburu Island site in Marin County. Major issues include biological resources, hydrology/flooding, and construction impacts. Client: Wetlands and Water Resources.

Forward Landfill Expansion Project EIR. Mr. Grassetti managed preparation of an EIR for a 170-acre expansion of the Forward Landfill in San Joaquin County. This is the third EIR that Mr. Grassetti, has prepared for this landfill over a period of 15 years. Major issues include air quality, health and safety, biological resources, and traffic. Client: San Joaquin County Community Development Department.

San Francisco PUC WSIP Projects. Mr. Grassetti assisted in the preparation of the San Francisco Public Utility Commission's Water Supply Improvement Project

Program EIR, as well as two other CEQA documents for smaller projects under that program. Major issues include hydrology, water supply, and fisheries. Client: Water Resources Engineering/Orion Associates.

Parsons Slough Project CEQA Review. Mr. Grassetti is managing preparation of an expanded Initial Study for a tidal sill (dam) project to reduce scour in Parsons Slough, an arm of the ecologically sensitive Elkhorn Slough. This IS may lead to either an EIR or Mitigated Negative Declaration. Major issues include fisheries, marine mammals, water quality, aesthetics, and construction issues (noise). Client: Vinnedge Consulting/ Elkhorn Slough National Estuary Reserve.

Hamilton Wetlands/Todds Road CEQA Review. Mr. Grassetti managed preparation of the CEQA Initial Study for an alternative access road for truck traffic to the Hamilton Wetlands Restoration Project to reduce the project's potential noise impacts. Major issues included noise, biological resources, and cultural resources. Client: California State Coastal Conservancy.

San Francisco Bay Water Trail Program EIR. Mr. Grassetti assisted in the preparation of the EIR for a "water trail" for small non-motorized boats throughout San Francisco Bay. The project involves designation of 115 access sites as well as policies for stewardship and education. Major issues include disturbance of birds, marine mammals, water quality, historic resources, and wetlands. Client: California State Coastal Conservancy.

Dutch Slough Restoration Project/Oakley Community Park EIR. Mr. Grassetti managed preparation of the EIR for a 1400-acre wetland restoration and 80-acre community park on former diked lands in Oakley. Major issues include fisheries, water quality, historic architectural resources, and wetlands. Client: California State Coastal Conservancy.

Vineyard RV Park Expansion Initial Study. Mr. Grassetti managed preparation of the Initial Study for an expansion of a mobile home park in Solano County near Vacaville. Major issues included flooding, biological resources, and traffic. Client: Vineyard RV Park.

Pinole Creek Restoration Project Initial Study. Mr. Grassetti prepared the CEQA Initial Study for a 2.5-mile long creek restoration project in the City of Pinole. Major issues included biological resources, flooding, and water quality. Client: City of Pinole.

Knobcone Subdivision Initial Study. Mr. Grassetti managed preparation of an Initial Study for a 5-unit subdivision in Richmond. Major issues include geologic hazards and biological resources. Client: City of Richmond.

Baxter Creek Restoration Project CEQA Consulting. Mr. Grassetti assisted City of El Cerrito staff in the preparation of an Initial Study for the proposed Baxter Creek Restoration Project. Client: City of El Cerrito.

West of Fairview Subdivision Supplemental EIR. Mr. Grassetti managed preparation of a Supplemental EIR for a 700-unit residential development in Hollister. Major issues include traffic, biology, and utility services. Client: City of Hollister.

American Canyon Initial Studies. Mr. Grassetti managed preparation of two initial studies for commercial and warehouse projects in the City of American Canyon. Major issues include traffic, biological resources, and geology. Client: City of American Canyon.

Pelandale-McHenry Specific Plan. Mr. Grassetti prepared the Specific Plan for an 80-acre residential/commercial development in Modesto. Major issues included land use, traffic, and provision of adequate infrastructure. Client: Meritage Homes

Monte Cresta Roadway Extension Initial Study. Mr. Grassetti prepared an Initial Study/Negative declaration for a roadway extension in San Juan Hills area of the City of Belmont. Major issues included slope stability and growth inducement. Client: City of Belmont

Bethel Island Water Supply Project. Mr. Grassetti prepared an Initial Study for a proposed new water supply system for the community of Bethel Island in Contra Costa County. Major issues included growth inducement, archaeological resources, and biological resources. Client: Bethel Island Municipal Improvement District.

San Francisco Bay Estuary Invasive Spartina Control Project EIR/EIS and Addendum. Mr. Grassetti managed preparation of the programmatic EIR/EIS on a plan to control invasive cordgrasses throughout the San Francisco Bay. Major issues included endangered species, visual resources, water quality, and human health and safety. Mr. Grassetti subsequently prepared an addendum for the addition of a new herbicide to the Spartina Control Program. Client: California State Coastal Conservancy.

Aptos Sanitary Sewer Replacement Project Initial Study. Mr. Grassetti prepared an Initial Study for the replacement of a storm-damaged sanitary sewer pipeline in Santa Cruz County. Major issues included cultural resources and biological resources. Client: Harris and Associates.

Eastern Dublin Specific Plan Supplemental EIR. Mr. Grassetti managed preparation of a Supplemental EIR for an 1100-acre mixed-use project in the City of Dublin. Major issues included traffic, biological resources, public services, noise, and air quality. Clients: Shea Homes and Braddock and Logan Services.

Consolidated Forward Landfill Project EIR Update. Mr. Grassetti managed preparation of an EIR for the expansion and consolidation of the Forward Landfill and the Austin Road Landfill near Stockton, CA. Major issues include toxics, water quality, traffic, biological resources, and air quality. Client: San Joaquin County Community Development Department.

Pleasanton IKEA Initial Study. Mr. Grassetti prepared a Draft Initial Study for a proposed new 300,000 sq. ft. IKEA store in Pleasanton. Major issues included biology, traffic, and visual resources. Client: IKEA Corporation.

Central Contra Costa Household Hazardous Waste Facility Studies: Mr. Grassetti assisted Central Contra Costa Sanitary District staff in the preparation of a Planning Study and subsequent CEQA Initial Study on feasibility, siting, and environmental issues associated with the development of a Household Hazardous Waste collection program and facility in Central Contra Costa County. Client: Central Contra Costa Sanitary District.

Southwest Richmond Flood Control Project IS. Mr. Grassetti prepared the Initial Study and Mitigated Negative Declaration for a proposed flood control project in the City of Richmond. Client: City of Richmond.

Wickland Oil Martinez Tank Farm Expansion Project EIR Management. Mr. Grassetti served as an extension of City of Martinez Planning Department staff to manage all aspects of the preparation of the CEQA review for a 2,000,000-barrel expansion at Wickland's Martinez oil storage terminal. We prepared the NOP, RFP, assisted in consultant selection, and managed the consultant preparing the EIR on this project. Client: City of Martinez.

Austin Road Landfill Expansion Project EIR Update. Mr. Grassetti prepared an Initial Study and Supplemental EIR updating a 1994 EIR for the expansion of the Austin Road Landfill near Stockton, CA. Major issues include water quality, traffic, biological resources, and air quality. Client: San Joaquin County Community Development Department.

Wayside Road Sewer Expansion Initial Study. Mr. Grassetti prepared an Initial Study and Mitigated Negative Declaration for a proposed new sewer system in the Wayside Road area of Portola Valley. Client: West Bay Sanitary District

Los Trancos Woods Sewer Expansion Initial Study. Mr. Grassetti prepared an Initial Study and Mitigated Negative Declaration for a proposed new sewer system in the Los Trancos Woods area of Portola Valley. Client: West Bay Sanitary District

Arastradero Road Sewer Expansion Initial Study. Mr. Grassetti prepared an Initial Study and Mitigated Negative Declaration for a proposed new sewer system in the Arastradero Road area of Portola Valley. Client: West Bay Sanitary District

Lower Orinda Pumping Station Initial Study/Negative Declaration. Mr. Grassetti prepared an Initial Study/Negative Declaration for renovating or relocating a wastewater pumping plant in Orinda, CA. Client: Central Contra Costa Sanitary District.

Shell Martinez Breakout Tanks Project Initial Study. Mr. Grassetti prepared an Initial Study for two proposed new wastewater storage tanks at Shell's Martinez Manufacturing Complex. Major issues included air quality, odors, and visual impacts. Client: City of Martinez.

Shell Martinez Biotreater Facility Initial Study. Mr. Grassetti prepared the Initial Study/Negative Declaration for a proposed new biotreater facility for Shell's Martinez Manufacturing Complex wastewater treatment plant. Major issues included water quality, wetlands, growth-inducement, and cumulative impacts. Client: City of Martinez.

Vallejo Solar Power Plant Initial Study. Mr. Grassetti prepared a CEQA Initial Study/Negative Declaration for a proposed photovoltaic array intended to power a water pumping plant in the City of Vallejo. Major issues included land use compatibility and visual quality. Client: City of Vallejo.

Ranch on Silver Creek CEQA Consulting. Mr. Grassetti prepared the Mitigation Monitoring and Reporting Program and other CEQA compliance tasks for a large residential/golf course project in San Jose. Client: Sycamore Associates.

Morgan Hill Ranch Initial Study Analyses. Mr. Grassetti prepared the Hydrology, Geology, and Hazardous Materials analyses for the Morgan Hill Ranch Mixed Use Project Initial Study. Client: Wagstaff and Associates.

East Bay MUD Water Conservation Study. Mr. Grassetti conducted the field portion of a major water conservation survey for the East Bay MUD service area. Client: Water Resource Engineering.

East Bay MUD Pipeline CEQA Analyses. Mr. Grassetti prepared technical analyses for two EIRs regarding proposed new East Bay MUD pipeline in Sacramento, San Joaquin, and Calaveras Counties. Client: Uribe & Associates.

Sunnyvale Landfill Power Plant CEQA Initial Study. Mr. Grassetti prepared an Initial Study for a proposed landfill gas-fueled power plant at the Sunnyvale Landfill in Santa Clara County. Recommendations for mitigation and further environmental review were prepared. Client: 3E Engineering.

Fremont Redevelopment Project Hydrologic Analysis. Mr. Grassetti prepared the hydrology section for an environmental impact report for four redevelopment projects in Fremont. Client: Wagstaff and Associates.

Ostrom Road Landfill Hydrologic Analysis. Mr. Grassetti prepared the hydrology section for an environmental impact report on the proposed vertical expansion of an existing Class II landfill in Yuba County. Client: ESA Associates.

Pinole Portion of the Bay Trail Hydrologic, Geologic, and CEQA QA/QC Analyses. Mr. Grassetti prepared the hydrologic and geologic analyses for a CEQA Initial Study on a half-mile segment of the Bay Trail in the City of Pinole. Mr. Grassetti also provided CEQA process consulting services on this project. Client: Placemakers.

Kennedy Park Master Plan Hydrologic and CEQA QA/QC Analyses. Mr. Grassetti prepared the hydrologic analyses for an environmental impact report on a proposed park master plan in the City of Napa. Client: Placemakers.

U.S. Navy Bay Area Base Closure and Re-Use Environmental Studies. Mr. Grassetti assisted in the NEPA/CEQA review process for US Navy Base Closures and Re-Use for the San Francisco Bay Area. Work tasks include CEQA compliance overview, internal peer review, quality control reviews, and preparation of technical analyses. Specific projects are summarized below:

Mare Island Naval Shipyard EIR/EIS Studies. Mr. Grassetti prepared the hydrology section of the EIR/EIS on the shipyard closure and reuse program, conducted a peer review of the geology section, and conducted QA/QC review of the entire EIR/EIS. Client: Tetra Tech, Inc.

Oak Knoll Naval Medical Center EIR/EIS Studies. Mr. Grassetti conducted a CEQA/NEPA quality control and peer review of the EIS/EIR prepared for disposal and reuse of the Oak Knoll Naval Medical Center EIS/EIR in the City of Oakland. Client: Tetra Tech, Inc.

NAS Alameda EIR/EIS Studies. Mr. Grassetti prepared the hydrology section of EIR/EIS on reuse of the Naval Air Station, conducted a peer review of the geology section, and conducted QA/QC review of the entire EIR/EIS. Client: Tetra Tech, Inc.

Naval Station Treasure Island EIR/EIS Studies. Mr. Grassetti prepared the hydrology section of the EIR/EIS on reuse of Naval Station Treasure Island, conducted a peer review of the geology section, and conducted QA/QC review of the entire EIR/EIS. Client: Tetra Tech, Inc.

Hunters Point Naval Shipyard EIR/EIS. Mr. Grassetti assisted in the responses to comments and peer review of the EIR/EIS for the Hunters Point Naval Shipyard in San Francisco. Client: Uribe and Associates.

Naval Fuel Depot Point Molate. Mr. Grassetti conducted overall internal peer reviews of several drafts of the EIR/EIS for reuse of the former Naval Fuel Depot Point Molate in Richmond, CA. In addition, he prepared the Noise,

Socioeconomics, and Cultural Resources sections of the EIS/EIR. Client: Uribe and Associates.

CEQA/NEPA PEER REVIEWAND EXPERT WITNESS CONSULTING PROJECTS

Jackson State Forest CEQA Review. Mr. Grassetti prepared a detailed analysis of the CEQA adequacy of the California Department of Forestry's EIR on a new management plan for the 40,000 acre Jackson State Forest. Major issues included forestry practices, water quality, and biological resources. Client: Dharma Cloud Foundation

Los Angeles Airport Arrival Enhancement Project Environmental Assessment NEPA Peer Review. Mr. Grassetti prepared a peer review and expert declarations regarding the adequacy of the NEPA Environmental Assessment for rerouting of flight paths for aircraft arriving at Los Angeles International Airport. Major issues included adequacy of assessment of noise effects on traditional cultural practices of the Morongo Band of Mission Indians. Client: Law Offices of Alexander & Karshmer.

St Mary's College High School Master Plan Peer Reviews. Mr. Grassetti conducted peer reviews of two Initial Studies for proposed expansions of a high school. Major issues included noise and traffic. Client: Peralta Perk Neighborhood Association.

Lawson's Landing EIR Peer Review. Mr. Grassetti conducted detailed per reviews of numerous CEQA documents for the proposed master plan for the Lawson's Landing mobile home park and campground in Marin County. Client: Environmental Action Committee of West Marin.

Coaches Field Initial Study Peer Review. Mr. Grassetti Conducted a peer review of a proposed lighted ballfield project in the City of Piedmont. Mr. Grassetti's review resulted in the Initial Study being withdrawn and an EIR being prepared. Client: Private Party.

Metropolitan Oakland International Airport Development Plan Environmental Impact Report CEQA Review. Mr. Grassetti performed a critical review and assisted in the preparation of comments and ultimately successful litigation regarding the proposed expansion of Metropolitan Oakland International Airport. Major issues included noise, cumulative impacts, and alternatives selection/analyses. Client: Law Office of John Shordike.

San Francisco International Airport Environmental Liaison Office Consulting. Mr. Grassetti conducted various internal peer review tasks associated with environmental studies being prepared for SFIA's proposed runway expansion. Client: LSA Associates, Inc.

El Cerrito Lumber Yard CEQA Peer Review. Mr. Grassetti conducted an internal peer review for an Initial Study on a controversial parcel in the City of El Cerrito. Client: City of El Cerrito.

Sausalito Marina CEQA Critique. Mr. Grassetti prepared a peer review and critique of an EIR for a proposed new marina in Sausalito. Client: Confidential

Sausalito Police and Fire Station CEQA Critique. Mr. Grassetti prepared a peer review and critique of an EIR for a proposed new public safety building in Sausalito. Client: Confidential

Napa Verison Tower CEQA Critique. Mr. Grassetti conducted a peer review and critique for a cellular telephone tower in the City of Napa. Client: Confidential.

Morongo Mining Projects Environmental Reviews. Mr. Grassetti provided CEQA, NEPA, and technical consulting to the Morongo Band of Mission Indians regarding two aggregate mines adjacent to their reservation in Riverside County, CA. Client: Law Office of Alexander & Karshmer.

Napa Skateboard Park Peer Review. Mr. Grassetti conducted a peer review and critique for a neighborhood association on a proposed skateboard park in the City of Napa. Client: Confidential.

Headwaters Forest Project EIR/EIS Review. Mr. Grassetti conducted an expert review of the CEQA and NEPA adequacy and technical validity of EIR/EIS on the Headwaters Forest Habitat Conservation Plan, Sustained Yield Plan, and land purchase. Clients: Environmental Law Foundation; Environmental Protection and Information Center, and Sierra Club.

Global Photon Fiber-Optic Cable EIR Peer Review. Mr. Grassetti assisted in a third-party peer review of an EIR on a proposed offshore fiber-optics cable. Client: Tetra Tech, Inc., and California State Lands Commission.

Coachella Valley Water Management Plan CEQA Peer Review. Mr. Grassetti assisted a consortium of Coachella Valley Indian Tribes in reviewing CEQA documents on the Coachella Valley Water Management Plan. Client: Consortium of Coachella Valley Tribes.

Salton Sea Enhanced Evaporation System Initial Study/Environmental Assessment Peer Review. Mr. Grassetti reviewed the draft IS/EA for a spray project to evaporate excess return flow water from the Salton Sea. Client: Morongo Band of Mission Indians.

Santa Rosa Home Depot CEQA Peer Review: Mr. Grassetti conducted a peer review and provided expert testimony regarding the adequacy of the Environmental Impact Report and associated technical studies for a proposed Home Depot shopping center in Santa Rosa. Client: Redwood Empire Merchants Association.

Mitsubishi Mine CEQA Litigation Review. Mr. Grassetti conducted a review of legal briefs regarding the adequacy of CEQA analyses for a proposed mine expansion in San Bernardino County. Client: Law Offices of Thomas Mauriello.

Alamo Gate Permitting Review. Mr. Grassetti performed a critical review and prepared expert testimony and correspondence regarding the adequacy of CEQA and land use

permitting and studies for a proposed gate on Las Trampas Road, which would preclude vehicular access to a regional park staging area. Client: Las Trampas Trails Advocates.

Cambria Condominiums Environmental and Planning Review. Mr. Grassetti prepared expert reviews of the potential environmental effects and Local Coastal Plan compliance of a proposed condominium development in Cambria, San Luis Obispo County. Client: Law Office of Vern Kalshan.

Mariposa County Planning Policy Reviews. Mr. Grassetti conducted a review of proposed alterations to the Mariposa County General Plan for CEQA compliance. Client: Dr. Barton Brown.

Gregory Canyon Landfill Environmental Processing Review. Mr. Grassetti was retained to review the environmental permitting and CEQA analyses for the proposed Gregory Canyon Landfill in northern San Diego County. Procedural issues include landfill siting requirements and CEQA process compliance. Technical issues include cultural resources, hydrology, endangered species, traffic, and health and safety. Client: Law Offices of Alexander & Karshmer and Pala Band of Mission Indians.

Otay Ranch Development CEQA Review. Mr. Grassetti prepared an expert review of the Environmental Impact Report for the 23,000-acre Otay Ranch project in San Diego County in connection with ongoing litigation. Major issues were CEQA compliance, compliance with the California planning process, biological impacts, cumulative impacts, and alternatives. Client: Law Offices of Charles Stevens Crandall.

Punta Estrella Chip Mill Environmental Report Compliance Review. Mr. Grassetti prepared a review of a proponent's environmental report for a proposed wood chip mill in Costa Rica to determine compliance of documentation with U.S. environmental standards and policies. Major compliance issues included US Clean Air Act and Clean Water Act standards, NEPA standards, and adequacy of overall impacts analysis. Client: Scientific Certification Systems.

Carroll Canyon Burn Facility CEQA Compliance Review. Mr. Grassetti prepared a CEQA process review for a proposed Negative Declaration on a planned contaminated-earth burning facility in the City of San Diego. Client: Law Offices of William Mackersie.

Monterey Bay Marine Lab CEQA Compliance Review: Mr. Grassetti assisted attorneys in review of a CEQA Negative Declaration, NEPA Environmental Assessment, and associated documents for the relocation of the Monterey Bay Marine Laboratory. Issues included the effectiveness of mitigation to cultural and biological resources, the appropriateness of the Negative Declaration versus an EIR, and other CEQA issues. Client: Law Offices of Alexander & Karshmer.

Monterey Ground Water Ordinances CEQA Compliance Review. Mr. Grassetti provided expert CEQA consulting services to attorneys regarding the appropriateness of Monterey County's CEQA processing of proposed ground water ordinances. Client: Salinas Valley Water Coalition.

Jamestown Whistlestop CEQA Adequacy Review. Mr. Grassetti performed an expert review and assisted in successful litigation regarding an Initial Study for a proposed mini mall in Jamestown, Tuolumne County. Client: Law Offices of Thomas Mauriello.

Sunrise Hills Environmental Impact Report Peer Review. Mr. Grassetti performed a critical review of the applicability of the EIR for a proposed 200-unit residential development in Sonora, Tuolumne County. Major issues include grading, erosion, water quality, biological impacts, and visual quality. Client: Sylva Corporation.

Sonora Crossroads Shopping Center Environmental Impact Report Review. Mr. Grassetti performed a review of an EIR for a major new shopping center in Sonora, Tuolumne County. Major issues included geologic and hydrologic impacts. Findings were presented to the Sonora City Council, and pre-litigation assistance was provided. Client: Citizens for Well Planned Development.

Blue Oaks Residential Development CEQA Studies Review and Critique. Mr. Grassetti performed several tasks related to a proposed residential development in western Tuolumne County. Tasks included review of County CEQA procedure, review of Initial Study, review of Draft EIR, and coordination with attorneys. Client: Western Tuolumne County Citizens Action Group.

Yosemite Junction Project CEQA Review. Mr. Grassetti prepared a review and critique of a proposed Negative Declaration for a 40-unit outlet mall in Tuolumne County, California. The Negative Declaration was subsequently denied and the project application rescinded. Client: Sylva Corporation.

Sonora Mining Corporation CEQA Review/Expert Witness Services. Mr. Grassetti conducted a review and critique of CEQA compliance for the proposed expansion of Sonora Mining Corporation's Jamestown Gold Mine in Tuolumne County, California. Client: Law Office of Alexander Henson.

Save Our Forests and Rangelands Expert Review and Witness Services. Mr. Grassetti provided expert review, consulting services, and expert witness testimony on CEQA issues for a successful legal challenge to an EIR and Area Plan for 200,000 acres in the Central Mountain Sub-region of San Diego County. Client: Law Offices of Milberg, Weiss, Bershad, Specthrie, & Lerach.

Attachment B: CCC Rhodes Report and Selected Figures

CALIFORNIA COASTAL COMMISSION
NORTH CENTRAL COAST DISTRICT
455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
PHONE: (415) 904-5260
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WEB: WWW.COASTAL.CA.GOV

F16a

Filed:	12/7/2020
Action Deadline:	6/5/2021
Staff:	JKN-SF
Staff Report:	2/18/2021
Hearing Date:	3/12/2021

STAFF REPORT
CDP APPLICATION

Application Number:	**2-19-0026**
Applicant:	Shawn Rhodes
Project Location:	Undeveloped property located west of the Pedro Point Shopping Center and northeast of San Pedro Avenue (505 San Pedro, APN 023-072-010) in the City of Pacifica.
Project Description:	Construction of a mixed-use commercial and residential development including: (1) a 6,475-square foot two-story building with a surf shop on the first floor, office and storage space on the second floor, and a 3,500-square foot basement for storage; (2) a 3,010-square foot two-story building for storage and surf board shaping; and (3) a 3,346-square foot two-story building with retail on the first floor and two residential units on the second floor; (4) a 4,730-square foot skate park; (5) a 24-car parking lot; and (6) related development.
Staff Recommendation:	Denial

SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes to construct a mixed-use commercial and residential development on a 37,538 square-foot parcel on San Pedro Avenue, west of Highway 1 and south of Pacifica State Beach. Specifically, the proposed development would include a 6,475 square-foot two-story surf shop with office, storage space and basement (building #1); a 3,010 square-foot two-story building for storage and surf board shaping (building #2); a 3,346 square-foot two-story mixed-use building with retail on the first floor and two residential units on the second floor (building #3); a skate park;

and a 24-car parking lot. The project site is a split coastal development permit (CDP) jurisdiction, long and narrow parcel that is approximately 60 feet in width, with the portion of the parcel in the Coastal Commission's jurisdiction located nearest the shoreline and the portion in the City of Pacifica's jurisdiction located inland of that. The Applicant did not agree to a consolidated CDP process, and thus went through the City's permitting process before submitting the subject CDP application to the Coastal Commission. As such, the City authorized a CDP for the portion of the proposed development that is within its CDP permitting jurisdiction, which includes building #3 and a portion of the parking area. The rest of the project is the subject of this CDP application to the Commission. In addition to the subject CDP, there is one open violation case related to this parcel, corresponding to an existing unpermitted wooden skate ramp.

The project site is subject to significant development constraints, including the presence of environmentally sensitive habitat areas (ESHAs) and wetlands immediately adjacent to and running along the western perimeter of the property, as well as the potential for coastal hazard impacts over time. With respect to habitat issues, the site is located immediately adjacent to an unnamed watercourse that constitutes both federal and state delineated wetlands, that serves as habitat for California red-legged frog, and that constitutes ESHA for these reasons. The Commission's staff ecologists have evaluated the ESHA area, which extends over the entirety of the site, and thus all of the proposed development is located within ESHA. The proposed development is not an allowed use in ESHA, and would lead to significant disruption and degradation of ESHA resources, and thus is not approvable under the Coastal Act.

With respect to coastal hazards, the site would be subject to potential future impacts from the combination of shoreline retreat, sea level rise, wave runup, and inundation. As proposed, the structures are not sufficiently sited and designed to avoid such problems, and the northernmost building includes a basement structure, all of which would be subject to flooding over the expected life of the development. Finally, the proposed project does not include any open view corridors, employs large massing with limited articulation, and does not provide for adequate parking facilities (which could impact on-street public shoreline parking in the area).

As a result, the project cannot be found consistent with the ESHA, wetlands, hazards, viewshed, or public access policies of the Coastal Act. Further, the fundamental ESHA inconsistencies mean that there aren't conditions available that could modify the development to be consistent. Thus, the project requires denial. In such a case, the Coastal Act requires the Commission to evaluate whether such a denial might lead to taking of private property without compensation. Staff does not believe that a taking would be engendered in this case. Specifically, as indicated above, the City has already authorized building #3 (i.e., the 3,346-square foot two-story mixed-use building with retail on the first floor and two residential units on the second floor) within the City's CDP permitting jurisdiction, and thus the Applicant has an allowed economic use of the site that is sufficient to address investment backed expectations for the site, including accommodating the only residential development proposed. Thus, the Commission can deny the CDP application without danger of a takings in staff's view, and thus protect

the ESHA and wetland habitat area as required by the Coastal Act. The motion to implement staff's recommendation is found on **page 4** below.

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EXHIBITS

1. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **deny** a coastal development permit (CDP) for the proposed development. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in denial of the CDP and adoption of the following resolution and findings. The motion passes only by an affirmative vote of the majority of the Commissioners present.

> ***Motion:*** *I move that the Commission* ***approve*** *Coastal Development Permit Application Number 2-19-0026 as proposed by the applicant, and I recommend a* ***no*** *vote.*
>
> ***Resolution to Deny CDP:*** *The Commission hereby denies Coastal Development Permit Number 2-19-0026 and adopts the findings set forth below on the grounds that the development will not be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures and/or alternatives that would substantially lessen the significant adverse effects of the development on the environment.*

2. FINDINGS AND DECLARATIONS

A. Project Location

The proposed project is located at 505 San Pedro Avenue, west of the Pedro Point Shopping Center and northeast of San Pedro Avenue in the Pedro Point neighborhood, which is just south of Pacifica State Beach, in the City of Pacifica in San Mateo County (see location map in Exhibit 1). The undeveloped property is a narrow and long parcel (600 feet long by almost 60 feet wide) that is approximately 0.86 acres (37,538 square feet) and relatively flat with the exception of a downslope at the northern end of the property. Immediately to the west of the property lies an unnamed watercourse, and on the northern end of the site there is a stand of arroyo willows. An abandoned railroad berm lies to the north of the property on the seaward side of the stand of willows, and this berm provides a topographic separation between the subject site and Pacifica State Beach and the ocean.

The City of Pacifica Local Coastal Program (LCP) Land Use Plan (LUP) designates the site as Commercial, which allows for a variety of potential commercial uses, including visitor-serving commercial, retail commercial, office, heavy commercial, and light industrial. The LCP then zones the site Community Commercial/Coastal Zone (C-2/CZ), which allows for a range of commercial and visitor-serving uses, and also allows one or more residential units in the same building as a commercial use when located entirely above the ground floor.

The Pedro Point neighborhood is described in the LCP as providing a mix of visitor and neighborhood commercial uses, with a strong residential base. Existing development in

the area consists of the adjacent Pedro Point Shopping Center immediately to the east; a mix of commercial and residential to the south across San Pedro Avenue; Pacifica State Beach to the north; and a large, 1.48-acre vacant parcel to the west directly across from the adjacent watercourse.

B. Project Background

Prior to submission of this CDP application, Commission staff provided comment letters[1] to the City and Applicant describing the split CDP jurisdiction that applied to the site and concerns about the watercourse and thus the potential for sensitive coastal resources to be on or proximate to the site. In addition, Commission staff provided comments on the Mitigated Negative Declaration for the project,[2] again raising habitat concerns, specifically with regard to identification of wetlands, required development buffers, and the potential for the presence of sensitive species, including explicitly requesting that the Applicant complete a one-parameter wetland delineation at that earlier stage in the permitting process.

As noted above, the property spans both Coastal Commission and City of Pacifica CDP jurisdictions. Both Commission and City staff recommended a consolidated CDP process, whereby the Commission would process a CDP for the entire site. However, the Applicant did not agree to the consolidated process. As such, on November 5, 2018, the City approved a CDP for the portion of the proposed project within its jurisdiction, along with various other discretionary permits required by the City.[3] City staff has indicated that all of these permit approvals may need to be amended if the Commission's action does not align with that of the City.

C. Project Description

City-Approved CDP

The City's approved CDP only authorizes the southernmost portion of the proposed project that is within the City's CDP permitting jurisdiction: namely Building #3 and a portion of the proposed parking lot (see **Exhibit 3**).[4] Building #3 is a proposed 3,346-square foot two-story mixed-use building with retail space on the first floor and two residential units on the second floor.

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[1] Dated May 13, 2010, October 30, 2014, and May 8, 2015 (see Exhibit 6).

[2] Dated May 1, 2018 (see Exhibit 6).

[3] These City permits were originally authorized through November 5, 2020. On November 4, 2020, the City authorized a one-year extension (to November 5, 2021) pursuant to provisions in the local conditions of approval. Although Commission staff informed the City that there were significant habitat concerns related to the site, and that staff was tentatively intending to recommend denial of the CDP application applicable to the Commission's jurisdiction, the City concluded that there was no material change in the circumstances regarding the City's original approval, and extended the authorization through November 5, 2021.

[4] The City's approval also included other local but non-CDP discretionary approvals, including a Site Development Permit, Use Permit (to allow residential on the second floor of the mixed-use building), Parking Exception (to allow reduced parking capacity of 24 parking spaces), Sign Exception, and a Heritage Tree Removal Authorization.

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Two of the proposed buildings (Buildings #1 and #2) and the skate park are located within the Commission's jurisdiction. As referenced on the project plans, Building #1, the northernmost building, would be set back approximately 15 feet from the western property line and ranging between approximately 60-100 feet from the northern property line, with the proposed building footprint extending into the arroyo willow thicket. Building #1 is a proposed 6,475 square-foot two-story building with a surf shop on the first floor, office and storage space on the second floor, and a 3,500 square-foot basement for additional storage space. The proposed 4,730 square-foot skate park would be immediately adjacent to the southern end of Building #1 and would be both fenced and roofed. It is proposed to be set back approximately 10 feet from the western property line. Building #2, at the southern end of the skate park, is a proposed 3,010 square-foot two-story building intended to be used for additional storage and surf board shaping, set back approximately 10 feet from the western property line and adjacent to the 24-car parking lot. The Applicant also proposes a paved pedestrian pathway fronted by a retaining wall immediately adjacent to and along the full extent of the western property line, spanning both the City and Coastal Commission jurisdictions, which would connect San Pedro Avenue to an existing coastal access pathway from the northern end of the Pedro Point Shopping Center to Pacifica State Beach. See **Exhibit 3** for the proposed project plans.

D. Standard of Review

As noted above, this proposed project spans both Coastal Commission and City of Pacifica CDP jurisdictions. The standard of review for the portion of the proposed development within the Coastal Commission's permitting jurisdiction (i.e., the subject of this CDP application) is the Chapter 3 policies of the Coastal Act, although the Commission may also consider the policies of the City of Pacifica's certified LCP as non-binding guidance.

E. Biological Resources

Applicable Coastal Act Provisions

The Coastal Act provides protection for sensitive habitat areas, including those that are considered to be on and offshore marine resources, wetlands, and environmentally sensitive habitat areas (ESHAs), including as follows:

> ***30107.5.*** *"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*
>
> ***30231.****The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface*

waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

30233.

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for these purposes to appropriate beaches or into suitable longshore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. (…)

(…)

> ***30240.*** *(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

LCP Policy Guidance

The City of Pacifica LCP emphasizes the Coastal Act's protections for wetlands and environmentally sensitive habitat areas and provides additional guidance on the creation of buffers from such sensitive habitat areas, and allowable uses within buffer areas, including as follows:

> ***LUP Page C-99.*** *A wetland is defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes. In certain types of wetlands, vegetation is lacking and soils are poorly developed or absent. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep water habitats.*
>
> ***LUP Policy 18.*** *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*
>
> *IP 9-4.4302 Definitions.* ***…*** *(f) "Buffer" shall mean an area of land adjacent to primary habitat, which may include secondary habitat as defined by a qualified biologist or botanist, and which is intended to separate primary habitat areas from new development in order to ensure that new development will not adversely affect the San Francisco garter snake and wetlands habitat areas.*
>
> *IP Section 9-4.4403 Habitat Preservation. (a) Intent. The provisions of this section shall apply to all new development requiring a coastal development permit in the CZ District and shall be subject to the regulations found in Article 43, Coastal Zone Combining District. The intent of these provisions is to protect, maintain, enhance and restore the following types of environmentally sensitive habitat as identified in the LCP Land Use Plan…*
>
> *(c) Survey Contents. All habitat surveys shall include, at a minimum, the following information: …*
>
> *(4) Delineation of all wetlands, streams, and water bodies;*

(5) Direct and indirect threats to habitat resulting from new development;

(6) Delineation of the secondary habitat buffer area to be provided along the periphery of the primary habitat; and

(7) Mitigation measures to reduce impacts and to allow for the long-term maintenance of environmentally sensitive habitats.

(e) Development Standards for Wetlands and Wetland Buffer Areas. The following minimum standards shall apply to a wetlands and wetlands habitat area.

(1) No new development shall be permitted within a recognized wetlands habitat area;

(2) Limited new development may be permitted within a recognized wetlands habitat buffer area subject to the following standards: …

(iv) Public access through wetlands shall be limited to low-intensity recreational, scientific, or educational uses. Where public access is permitted, it shall be strictly managed, controlled, and confined to designated trails and paths as a condition of project approval;

(v) Alteration of the natural topography shall be minimized;

(vi) Runoff and sedimentation shall not adversely affect habitat areas;

(vii) Alteration of landscaping shall be minimized unless the alteration is associated with restoration and enhancement of wetlands; …

(ix) New development adjacent to the buffer shall not reduce the biological productivity or water quality of the wetlands due to runoff, noise, thermal pollution, or other disturbances;

(x) All portions of the buffer shall be protected pursuant to Section 9-4.4308, Permanent Environmental Protection;

(xi) Potential impacts identified in the habitat survey shall be mitigated to a level of insignificance where feasible; and

(xii) Mitigation measures identified in the habitat survey shall be considered and made conditions of project approval where necessary to mitigate impacts

(3) In the event that new development is not possible because the size of the buffer has rendered the site undevelopable, the buffer may be reduced in width if it can be demonstrated that a narrower buffer is sufficient to protect

the habitat and new development may be permitted subject to standards established in (e)(2) above.

IP Section 9-4.4308 Permanent Environmental Protection. (b) Findings. The Director, the ***Planning Commission, or the City Council may determine that the proposed development is required to include*** *a continuous and binding land use restriction through either a deed restriction, easement, offer of dedication, or other conveyance, as a condition of project approval based on any of the following findings: … (2) Such a restriction is necessary to protect sensitive coastal resources, including environmentally sensitive habitat, open space, and view corridors…*

Analysis

Both the Coastal Act and the LCP, as guidance, emphasize the need to protect sensitive habitats within the coastal zone, including wetlands and environmentally sensitive habitat areas (ESHAs). In communication with the City of Pacifica, Coastal Commission staff expressed concerns going back over a decade with regard to potential impacts of development on the habitats located on and adjacent to the subject site, indicating that any proposed development should consider measures to avoid or reduce potential impacts on the adjacent unnamed watercourse, which most likely would meet the one-parameter definition of wetlands under the Coastal Act, and stating that a one-parameter wetland delineation should be conducted (see comments in **Exhibit 6**).

Despite the recommendation to conduct a one-parameter wetland delineation at an earlier stage in the process, a delineation of the site and adjacent drainage channel was not prepared for this project until November 2019, after the City of Pacifica had already approved a local CDP for the portion of the project located in their CDP jurisdiction.[5] This delineation showed that the adjacent watercourse that runs along the western edge of the subject property constitutes areas of both federal and state wetlands, with the state wetlands spanning the full length of the watercourse, thus comprising the entire length of the subject property's western boundary. On the northern end of the property, the federal and state wetlands encompass an approximately 0.096-acre arroyo willow thicket that partially extends onto the subject property and takes up approximately 0.048-acres at the northern border of the subject property (see delineation of these features in **Exhibit 5**). The federal and state wetlands present onsite include arroyo willow thicket, perennial rye grass fields, small-fruited bulrush marsh, smartweed patch, the flow channel, and the wetted watercourse channel.

During an initial assessment of the project-related biological information, Commission staff ecologist Dr. Lauren Garske-Garcia identified for the Applicant that the Commission typically applies a minimum wetland buffer of 100 feet. Examining the site-specific circumstances associated with the property known at that time, Dr. Garske indicated that the minimum possible justifiable wetland buffer, if appropriately mitigated,

[5] The delineation was prepared for the Applicant by Coast Ridge Ecology, LLC as part of the CDP application to the Coastal Commission.

would be 50 feet from the edge of the arroyo willow thicket and 25-feet from the remainder of the state wetlands that comprise the entire length of the drainage channel along the property's western edge. The Applicant submitted revised plans in response to this feedback, however, the revised plans did not adhere to these buffer minimums and continued to propose development within this already reduced buffer area. After further research in response to the Applicant's updated submittals and, while Commission staff and the Applicant were in further discussions regarding the ESHA and wetland buffers, interested parties provided information documenting the presence of California red-legged frog in the watercourse area.

California red-legged frog (*Rana draytonii*; "CRLF") is a California special-status species and a federally-listed threatened species due to loss and degradation of habitat, predation, and human disturbance. CRLF are known to occur in San Pedro Creek, which is connected to the subject watercourse by a culvert on the northern end of the parcel, near the arroyo willows. As such, Dr. Garske-Garcia, along with consulting reports that she reviewed, considered the site in question to have moderate potential for CRLF upland habitat and watercourse use, which extends the full length of the property along the western edge (see **Exhibit 5**). However, Dr. Garske-Garcia also recognized the degraded state of the subject parcel and adjacent watercourse as relatively unfavorable when compared to nearby habitats, and no published record had appeared documenting CRLF at this location. Subsequently, Commission staff received documentation from multiple Pacifica residents, including from a San Francisco State University ecologist, in April 2020 demonstrating positive observation of more than one CRLF, including time-stamped photographs from various dates in April showing as many as five CRLF at the same location at one time (see **Exhibit 9**). In addition, Commission staff received letters written by local biologist Peter Baye (dated May 4, 2005 and July 7, 2014) that report ongoing observations of CRLF at the location over a sustained period of time (see **Exhibits 7 and 8**).

Altogether, this evidence points to the watercourse area as being used by CRLF more than just a single frog passing through, and the information provided and reviewed indicates that the area is used as CRLF aquatic and/or dispersal habitat. While the Applicant's consultant argues that the location is unlikely to provide "consistent, stable long-term habitat for [CRLF] over time," CRLF does not have to carry out its full life cycle in the watercourse area itself for the area to have ecological value for this sensitive species. Dr. Garske-Garcia consulted with California Department of Fish and Wildlife (CDFW) and U.S. Department of Fish and Wildlife (USFWS) on this matter, and CDFW confirmed that the information received by the Commission in April was valid, including the species identification. USFWS did not have the 2005 Peter Baye record available digitally but indicated it was likely available in their hard files; however, USFWS staff was not surprised by the recent observations and provided information on recent CRLF observations from nearby San Pedro Creek.

In short, the watercourse running adjacent to the subject parcel constitutes part of a larger habitat corridor for CRLF. In addition, the watercourse likely also supports several other species as a habitat corridor, as it remains green throughout the seasons and compared to adjacent parcels, and connects to San Pedro Creek, the shore, the Pacific

Ocean, a large open space to the west, and a major forested area. Although there have been recent development encroachments, the watercourse provides a connection across the landscape capable of supporting species including birds and small mammals. The Coastal Commission consistently finds this type of important and vulnerable habitat to be an ESHA due to the rarity of the physical habitat and its important ecosystem functions, including that of support for sensitive species, as found in this case by Dr. Garske-Garcia. Thus, the drainage channel adjacent to this site is considered ESHA under the Coastal Act. In addition, per Dr. Garske-Garcia's advice (see **Exhibit 11**, page 11), Commission staff also concludes that the arroyo willow thicket, as well as the small-fruited bulrush marsh both constitute ESHA, and would recommend a buffer of 50 feet at these locations as well[6].

Coastal Act Section 30240 and LUP Policy 18 prohibit non-resource dependent development within ESHA, prohibit any development in ESHA that would significantly disrupt habitat values, and prohibit any development in areas adjacent to ESHA that would significantly degrade those ESHA areas. In addition, Coastal Act Section 30231 protects the biological productivity of coastal streams and wetlands. According to Lief Gould, the USFWS biologist for this region, the USFWS would typically recommend a 300-foot dispersal corridor around similar occupied CRLF habitat. Considering all this and applying a 300-foot corridor (i.e., where the area within the corridor constitutes ESHA due to its CRLF habitat functions), Dr. Garske-Garcia determined that the subject property is all ESHA, and that no level of precaution could avoid the loss of habitat with the proposed project. Even if the 300-foot corridor were centered on the watercourse, it would extend across and beyond the subject parcel. In addition, Dr. Garske-Garcia believes that the 300-foot corridor is the minimum that is acceptable for protecting this ESHA as required by the Coastal Act and that a reduced corridor width is not appropriate. The proposed development in ESHA is not a resource-dependent use and it would significantly disrupt habitat values. As a result, the proposed project is inconsistent with Coastal Act Section 30240. In addition, and for similar reasons, the proposed project is also inconsistent with Coastal Act Section 30231 and 30233.

In short, the portion of the site within the Commission's permitting jurisdiction is all ESHA and undevelopable for the proposed range of uses and structures. Although some provisions in the LCP allow for reductions to habitat buffers in the event that the buffer renders the site undevelopable, in this case it is the actual ESHA area that is affected by development (and not the buffer from it), and the City has approved development in the portion of the property that is within its jurisdiction and subject to the LCP. The Commission finds that there is no location on the site that is outside of ESHA and sufficient to protect the habitat, as required by the Coastal Act. And, as such, there aren't siting and design conditions available to the Commission to correct this Coastal Act inconsistency. Therefore, the Commission finds the proposed project inconsistent with the Coastal Act's sensitive habitat protection requirements cited above, requiring project denial.

[6] At this point however, these buffer recommendations are moot since the entirety of the site constitutes ESHA and are constrained regarding allowable development because of that determination.

F. Coastal Hazards

Applicable Coastal Act Provisions

The Coastal Act requires that new development minimize risks to life and property, assure stability and structural integrity, not contribute to instability, and not rely on shoreline protection in order to be safe from hazards. Section 30253 states:

> ***30253.*** *New development shall do all of the following:*
>
> *(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
>
> *(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. …*

LCP Policy Guidance

The City of Pacifica LCP establishes several requirements for new development to address coastal hazards, including that new development shall minimize risks to life and property, assure stability and structural integrity, and maintain safety and stability over time, including in relation to 100-year storm events and over the anticipated design life of the development, defined by the LCP as generally a 100-year analytical time frame, including:

> ***LUP Policy 26 (Coastal Act Section 30253).*** *New development shall:*
>
> *(a) Minimize risks to life and property in areas of high geologic, flood and fire hazard.*
>
> *(b) Assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*
>
> ***LUP Definition of Net Developable Area.*** *The portion of a site determined by a geologist to remain usable throughout the design life of the project and determined to be adequate to withstand a 100-year hazard event.*
>
> ***LUP Definition of Design Life.*** *The time span during which the designer expects the development to safely exist, generally 100 years.*
>
> ***IP Section 9-4.4404(a) Geotechnical Suitability. Intent.*** *The provisions of this Section shall apply to all new development requiring a coastal development permit in the CZ District and shall be subject to the regulations found in Article 43, Coastal Zone Combining District. The intent of these provisions is to minimize risks to life, property, and the natural environment by ensuring geotechnical suitability for all development.*

> ***IP Section 9-4.4404(c)(6) Geotechnical Suitability.*** *All geotechnical surveys shall, at a minimum, include the following information: Mitigation measures demonstrating that potential risks could be reduced to acceptable levels.*
>
> ***IP Section 9-4.4404(d)(3) Geotechnical Suitability.*** *The density of new development shall be based on the net developable area, as established in the required geotechnical survey.*

Further, the LCP requires that new development be designed to avoid coastal resource impacts, including to prevent impacts from armoring on natural shoreline processes such as sand supply, and prohibits armoring to protect new development, including:

> ***IP Section 9-4.4406(c) Development Standards.*** *The following standards apply to all new development along the shoreline and on coastal bluffs.*
>
> *(2) Shoreline Protection: Consistent with the City's Seismic Safety and Safety Element, new development which requires seawalls as a mitigation measure or projects which would eventually require seawalls for the safety of the structures shall be prohibited, unless without such seawall the property will be rendered undevelopable for any economically viable use.*
>
> ***LUP Policy 23 (Coastal Act 30250(a)).*** *New development, except as otherwise provided in this policy, shall be located within, contiguous within, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources…*

Analysis

Taken together the Coastal Act and the certified LCP, as guidance, require new development to minimize risks to life and property while ensuring stability and structural integrity without contributing significantly to erosion, geologic instability, or destruction of the site or surrounding area (Coastal Act Section 30253, LUP Policy 26). Coastal Act Section 30253, IP Section 9-4.4406(c), and LUP Policies 23 and 26 also provide that new development that would rely on shoreline armoring is prohibited and that adverse impacts of shoreline armoring to coastal resources be avoided, lessened, and mitigated for where unavoidable. In sum, the Coastal Act and LCP require that new development minimize risks to life and property in areas of high coastal hazards, that new development be set back adequately to accommodate a 100-year storm event and ensure stability for the design life of the development, which per the LCP is generally a 100-year period,[7] and prohibit development that would require a seawall to ensure stability during its anticipated lifetime.

[7] Where the policy requires such stability for the expected life of the structure, which the LCP states is the time frame in which the designer expects the development to safely exist, generally 100 years.

The subject site is located approximately 375-feet from the shoreline, outside of the present-day designated FEMA flood zone. Per the Applicant's topographic survey and project plans, ground elevations at the seaward end of the site range from +16 to +21 feet NAVD88,[8] and the finished floor elevation of the most seaward building (proposed Building #1) would be at +20.5 feet NAVD88 with the associated basement at +10.7 feet NAVD88. In other words, the project would include components that are just 7.52 feet above mean sea level. The highest proximate elevation seaward of the subject property is an abandoned railroad berm at about +25 feet NAVD88, which could provide some flood protection for the site. However, this berm is not continuous, and is breached at its eastern end by an access road (Halling Way, at an elevation of approximately +16 feet NAVD88) for the beachfront homes north of the project site. Additionally, the stream bank along San Pedro Creek east of the project site is at an elevation of approximately +17 feet NAVD88. Thus, there is the potential for flood waters to flow from the ocean or San Pedro Creek, through the break in the berm and onto the subject property at some times.

The March 12, 2019 coastal hazards analysis prepared by the Applicant's consultant (GeoSoils) included a wave runup analysis indicating that wave runup could exceed the highest elevation level at the seaward end of the site (+21 feet NAVD88) under a future scenario with 6.3 feet of sea level rise. This elevation is higher than the finished floor elevation of the most seaward building, but the GeoSoils report assumes that the railroad berm would not be overtopped and would protect the project site from flooding. However, the analysis did not consider whether wave runup along the lower elevation access road could affect the project site. The GeoSoils analysis (and a supplemental analysis dated August 20, 2019) also examined future flooding, wave runup, and shoreline retreat projections from the USGS CoSMoS models, with up to 175 cm (5.7 feet) of sea level rise. These analyses found that inundation and wave runup would not affect the site, and that inland migration of the beach would not impinge on the site based on shoreline retreat projections. However, in interpreting the CoSMoS results the analyses did not recognize that the flooding projection tool does not allow for future shoreline retreat and erosion beyond the line of existing development and/or shoreline protection,[9] which in this case is the row of existing structures along Shoreside Drive seaward of the railroad berm (see **Exhibit 2**). Thus, these flooding projections may underestimate future flooding and wave runup at the project site and do not represent a scenario in which the railroad berm is absent and is not being relied on for the protection of new development, inconsistent with Coastal Act and LCP requirements. Commission staff used a separate CoSMoS shoreline retreat tool that takes into account future shoreline retreat and erosion. This tool indicates that the shoreline (the mean high tide line (MHTL)) could retreat to a position inland of the railroad berm and to within about 40 feet of the site under scenarios of 3.3 feet (1 meter) of sea level rise or

[8] NAVD stands for North American Vertical Datum, and generally corresponds to mean lower low water (MLLW) for the current tidal epoch (NAVD88 corresponds to the 1983-2001 tidal epoch). Thus, the seaward portion of the site is roughly 16.82 feet above mean sea level.

[9] Erikson, L.H., Barnard, P.L., O'Neill, A.C., Vitousek, S., Limber, P., Foxgrover, A.C., Herdman, L.H., and Warrick, J., 2017. CoSMoS 3.0 Phase 2 Southern California Bight: Summary of data and methods. U.S. Geological Survey. http://dx.doi.org/10.5066/F7T151Q4.

greater.[10] Under such conditions, the subject property could potentially be subject to wave uprush and flooding.

As a rough approximation to account for the potential combined impacts of inundation, wave runup, and shoreline retreat, GeoSoils (August 2019) added 60 feet of horizontal wave runup distance to the projected CoSMoS shoreline position (with 5.7 feet of sea level rise), and concluded that the project site would still not be at risk. However, this estimate of horizontal runup distance was based on CoSMoS-projected runup onto the steep slope of the railroad berm, not across the gentler slope of the beach or the flatter ground surrounding the project site. Using a similar approach, Commission staff geologist Dr. Joseph Street estimates that with 6.6 feet of sea level rise, wave runup with the 100-year storm could extend about 170 feet inland of the shoreline (i.e., of MHTL) across the beach and flatter ground near San Pedro Creek, northeast of the project site. This provides a more conservative estimate of potential storm wave runup beyond the future shoreline position. If 170 feet of horizontal wave runup distance is added to the projected future shoreline position (with 5.7 or 6.6 feet of sea level rise), the seaward portion of the project site (where Building 1 is proposed which includes the two-story surf shop on the first floor, office and storage space on the second floor, and a 3,500 square-foot basement subgrade) would be affected by wave runup within the 100-year analytic period referenced by the LCP.

Another option to approximate the future wave runup hazard risk to the site is to add projected sea level rise to the current FEMA 100-year flood elevation. Adding the medium-high risk scenario sea level rise projection (+5.6 to +6.9 feet by 2090-2100) to the current FEMA 100-year flood elevation of the VE zone (representing areas within the 1% annual chance coastal floodplain which have additional hazards associated with storm waves) where the proposed project is located (i.e., at +17 feet elevation) yields a rough estimate of the future 100-year flood elevation in the range of +22.5 to +24 feet NAVD88. Given the existing elevations at the project site (+16 to +21 feet) and the elevations of the topographic lows adjacent to the project site (+16 to +17 feet NAVD88), it is thus possible that future flood elevations in this range affect at least a portion of the project site toward the end of the project life. At the very least, additional, more detailed analysis would be needed to rule out this possibility.

In summary, the analysis by GeoSoils found that the project site would be safe from flooding and wave runup; however, the GeoSoils analysis was not based on conservative assumptions for erosion of the railroad berm. Under more conservative assumptions, coastal hazards could impact the subject property within the anticipated life of the proposed development, and therefore the project has not minimized risk as required by the Coastal Act. Thus, modifications to the project would be needed in order to be consistent with the Coastal Act. First, the development would need to be designed to protect from flooding to +23 to +24 feet NAVD88 (e.g., through elevation, floodproofing, or a combination of the two), in order to ensure that the project would be

[10] With 5.7 feet (175 cm) of sea level rise, the shoreline position could retreat to within 65 feet of the project site; with 6.6 feet (200 cm) of sea level rise, the shoreline could retreat to about 40 feet from the project site.

safe from hazards for the full extent of its anticipated life without relying on existing or future shoreline protection. If sufficient elevation or floodproofing is not integrated into the design, adaptation options are needed to ensure that the building can be modified or adapted in the future to minimize flood risk.

Second, as currently proposed, the northernmost and thus most seaward building (Building #1) contains a 3,500-square foot basement for additional storage space. As there is shallow groundwater present, sea level rise could impact the groundwater elevation, which could result in flooding of the structure even sooner. As such, the basement component would need to be eliminated from the proposed development to achieve consistency with the Coastal Act. And third, the Environmental Impact Report prepared for this project for CEQA purposes called for specific structural recommendations that consider the tsunami risks to the site, which would need to be incorporated into the proposed development to achieve Coastal Act consistency.

In short, there are a range of project modifications and adaptation options that could be applied here to minimize risks from geologic or flood hazards. However, the project must be denied because it cannot be found consistent with the Coastal Act's habitat requirements, and thus the Commission does not here require these project changes. Thus, although corrections would be possible absent the habitat inconsistencies, the Commission finds the proposed project has not minimized risks from geologic or flood hazards, and, as a result, it is not consistent with the Coastal Act's coastal hazards avoidance requirements as cited above.

G. Visual Resources

Applicable Coastal Act Provisions

The Coastal Act provides that the scenic and visual qualities of coastal areas are resources of public importance that must be protected, and that new development is required to protect public views and be designed to be visually compatible with the surrounding area. Section 30251 states:

> ***30251.*** *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

LCP Policy Guidance

The LCP reiterates the Coastal Act's protection of the scenic and visual qualities of coastal areas and emphasizes the need for commercial development in the Pedro Point – Shelter Cove neighborhood (i.e., where the project is located) to be oriented to its

coastal setting and compatible with the surrounding character, including through small scale and rustic design, including:

> ***LUP Policy 24 (Coastal Act 30251).*** *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*
>
> ***LUP Pg. C-54 ("Pedro Point – Shelter Cove").*** *Although located very near the shoreline, neither the buildings nor the uses orient to their coastal setting… There are several coastal planning issues to be dealt with in the preparation of a land use plan for this neighborhood: … 3. The problems of orientation and appearance of the commercial areas…*
>
> ***LUP Pg. C-56 ("Pedro Point – Shelter Cove").*** *Small scale, rustic design and ample landscaping throughout the commercial development would complement the existing attractive design elements in the Pedro Point area.*

Analysis

Together, the Coastal Act and the LCP, as guidance, provide that new development must be sited and designed to protect public coastal views as well as to be visually compatible with the character of surrounding areas. Due to geographic specificity, LCP language is particularly relevant guidance with regard to setting and character, and the LCP specifically indicates that commercial development in the Pedro Point – Shelter Cove neighborhood should be small scale and rustic, and better oriented to the coastal setting. The proposed development includes three two-story buildings, each of which is proposed to be stucco siding with only limited building articulation (see simulations in **Exhibit 3**). The proposed buildings include multiple windows but overall are fairly boxy in appearance and lack architectural details that would reduce the perception of visual massing from the street and neighborhood. While the development is adjacent to existing commercial buildings to the east, it abuts a vacant field to the west and is otherwise surrounded by residential structures that are smaller in scale.

The project as proposed would also maximize site coverage, provide limited open view corridors not oriented to the coast, and is not small-scale or rustic as stipulated by the LCP. As a narrow parcel that separates commercial from residential development, and that is adjacent to the old railroad berm and shoreline, proposed development should be designed to visually bridge this transition between the different uses, including in terms of its effect on the shoreline viewshed associated with the adjacent beach. As such, in order to be consistent with the Coastal Act, the buildings would need to be sited and designed to limit the amount of development on-site, include open view corridors to the coast and ocean, reduce massing, and incorporate more rustic architectural details and

articulation that would enable it to appropriately protect public views and to be visually compatible with the surrounding shoreline area and neighborhood.

In short, there are a range of project modifications that could be applied to help limit such range of public view impacts. However, the project must be denied because it cannot be found consistent with the Coastal Act's habitat requirements, and thus the Commission does not here require these project changes. Thus, although corrections would be possible absent the habitat inconsistencies, the Commission finds the proposed project has not been sited and designed in a manner that adequately protects public views and character, and, as a result, it is not consistent with the Coastal Act's public view requirements as cited above.

H. Public Access

Applicable Coastal Act Provisions

The Coastal Act provides that maximum opportunities for public recreational access shall be provided, including in new development projects, taking into account considerations including the location of existing public accessways and parties responsible for maintenance of new public accessways, including:

> ***30210.*** *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*
>
> ***30212(a).*** *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*
>
> ***30252.*** *The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.*

LCP Policy Guidance

The LCP further highlights that public recreational access to the coast must be maximized:

> ***LUP Policy 25 (Coastal Act 30252).*** *The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.*
>
> ***IP Section 9-4.4300 (c) Purpose.*** *Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.*
>
> ***IP Section 9-4.4400 (g) Purpose.*** *Maximize public access to and along the shoreline, while protecting the established rights of private property owners…*

Analysis

The project includes a proposed public recreational access pedestrian pathway spanning the length of the site from south to north, abutting the western property line, along and adjacent to the unnamed watercourse. The walkway would lead from San Pedro Avenue and connect to an existing coastal access pathway at the northern end of the site, near the Pedro Point Shopping Center, leading to Pacifica State Beach. The pathway is proposed to be paved with concrete and covered in artificial sod. As it is located along the western property line, where there is a downslope and significant grade change down to the adjacent watercourse, a concrete retaining wall and wood railing is proposed along the western property line. As such, the pedestrian walkway would not be set back from the property line and is located in ESHA, as previously described.

The only way that access pathways are allowed in ESHA is if they are low-key recreational features that require a location within the resource in order to function at all as an interpretive facility. The pathway in this case does not meet those criteria, including as it proposes hardscape that would significantly disrupt the habitat resources (e.g., as opposed to a pervious pathway absent hardscape that minimizes alteration of natural topography). Therefore, while the intent of the pedestrian walkway would be aligned with Coastal Act public access provisions, its proposed implementation would not be consistent with Coastal Act habitat requirements, and, as such, the proposed walkway cannot be approved in its current form.

In addition, the proposed development is required by the LCP to have 50 parking spaces (47 spaces for the commercial area and 3 spaces for the residential units). However, the City approved a parking exception for the subject development to reduce the required parking to 26 spaces (24 spaces for the commercial area and 2 spaces for the residential units). The Pedro Point neighborhood already experiences highly constrained parking, and there are ongoing conflicts between nearby businesses and public access parking for the beach. Public access parking issues in this neighborhood were recently discussed by the Commission for CDP 2-19-0586 with regard to parking fees at the nearby Pacifica State Beach parking lot, and a CDP application was recently submitted to the Commission to allow for proposed pay parking machines in the parking lot adjacent to the subject site. In short, there are already public access parking deficits in the project area, and at a minimum, the project site needs to account for and accommodate all of its parking needs onsite to avoid exacerbating those issues, including the potential for site users to occupy scarce on-street public parking spaces. As such, a reduction in required parking at this location is inappropriate given existing constraints, and thus the proposed development does not provide adequate parking facilities and would be inconsistent with the public recreational access policies of the Coastal Act.

Again, it would likely be possible to apply project modifications to help address such parking impacts. However, the project must be denied because it cannot be found consistent with the Coastal Act's habitat requirements, and thus the Commission does not here require these project changes. Thus, although corrections would be possible absent the habitat inconsistencies, the Commission finds the proposed project has not been sited and designed in a manner that adequately protects public recreational access, and, as a result, it is not consistent with the Coastal Act's public recreational access requirements as cited above.

I. Violation

A violation of the Coastal Act exists on the subject property including, but not limited to, a wooden skate ramp that was constructed and is operating on the subject property without benefit of a CDP (V-2-21-0002). The CDP application proposes to remove the unpermitted skate ramp and redevelop the subject parcel. If the skate ramp were to be removed, that would resolve this Coastal Act violation. However, Commission staff is recommending denial of the proposed project; if the project is denied, the unpermitted skate ramp will remain. In that case, Commission enforcement staff will address this violation accordingly.

Although development has taken place prior to submission of a CDP application, consideration of the development of the proposed CDP was made by the Commission solely based upon the policies of Chapter 3 of the Coastal Act. Commission review and action on this CDP does not constitute a waiver of any legal action with regard to the alleged violation, nor does it constitute an implied statement of the Commission's position regarding the legality of any development undertaken on the subject site without a CDP, or that all aspects of the violation have been fully resolved. Accordingly,

the Applicant remains subject to enforcement action for engaging in unpermitted development.

J. CEQA

Section 13096(a) of the Commission's administrative regulations requires that Commission approval of a Coastal Development Permit application be supported by a finding showing that the application, as conditioned by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment. In addition, CEQA Guidelines Section 15042 states that "[a] Responsible Agency may refuse to approve a project in order to avoid direct or indirect environmental effects of that part of the project which the Responsible Agency would be called on to carry out or approve."

The City of Pacifica, as lead agency under the California Environmental Quality Act (CEQA), prepared and certified an Initial Study/Mitigated Negative Declaration for the project in 2018. The Coastal Commission, acting as a responsible agency pursuant to CEQA, has reviewed and considered the information contained in the Initial Study/Mitigated Negative Declaration on the project. The findings in the staff report also address and respond to all issues pertaining to significant adverse environmental effects that were raised in public comments received prior to preparation of the staff report.

The Commission incorporates its findings on inconsistency with the Coastal Act at this point as set forth in full. As discussed above, the proposed development is inconsistent with various, applicable policies of the Coastal Act, and is denied on that basis. Section 21080(b)(5) of CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects that a public agency rejects or disapproves. Accordingly, the Commission's denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, does not apply.

K. Takings

As discussed above, the proposed project is fundamentally inconsistent with the sensitive resources, coastal hazards, visual resources, and public access policies of the Coastal Act and certified LCP. In other words, applying Coastal Act policies to the proposed project requires denial of the CDP application. If and when the Commission denies a project, however, a question may arise as to whether the denial results in an unconstitutional "taking" of the applicant's property without payment of just compensation. Coastal Act Section 30010 addresses takings and states as follows:

> *The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant*

> *or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.*

Consequently, although the Commission is not a court and may not ultimately adjudicate whether its action constitutes a taking, the Commission must assess whether its action might constitute a taking so that the Commission may take steps to avoid it. If the Commission concludes that its action does not constitute a taking, then it may deny the project with the assurance that its actions are consistent with Section 30010.

In addition, the Commission has the authority, under Section 30010, to approve some level of development otherwise inconsistent with Coastal Act policies in order to avoid a "taking".[11] In this situation, the Commission finds that the Applicant's proposed project is inconsistent with the Coastal Act and that a denial would not constitute a taking, as the City approved a building and associated parking in the portion of the property within the City's CDP permitting jurisdiction. Therefore, the Applicant has a right to develop the City-approved project (Building #3), and, as such, the Commission's denial does not constitute a taking.

General Takings Principles

The Fifth Amendment of the United States Constitution provides that private property shall not "be taken for public use, without just compensation."[12] Article 1, section 19 of the California Constitution provides that "[p]rivate property may be taken or damaged for public use only when just compensation…has first been paid to, or into court for, the owner."

The idea that the Fifth Amendment proscribes more than the direct appropriation of property is usually traced to *Pennsylvania Coal Co. v. Mahon* ((1922) 260 U.S. 393). Since *Pennsylvania Coal*, most of the takings cases in land use law have fallen into two categories (see *Yee v. City of Escondido* (1992) 503 U.S. 519, 522-523). First, there are the cases in which government authorizes a physical occupation of property (see, e.g., *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419). Second, there are the cases in which government merely regulates the use of property (*Yee, supra,* 503 U.S. at pp. 522-523). A taking is less likely to be found when the interference with property is an application of a regulatory program rather than a physical appropriation (e.g., *Keystone Bituminous Coal Ass'n. v. DeBenedictis* (1987) 480 U.S. 470, 488-489, fn. 18). The Commission's actions here would be evaluated under the standards for a regulatory taking.

In takings cases, the United States Supreme Court ("Court") has identified two circumstances in which a regulatory taking might occur. The first is the "categorical"

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[11] See, for example, *Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 272; and *Surfrider Found. v. Martins Beach 1, LLC* (2017) 14 Cal.App.5th 238, 257–58.

[12] The Fifth Amendment was made applicable to the states by the Fourteenth Amendment (see Chicago, B. & Q. R. Co. v. Chicago (1897) 166 U.S. 226).

formulation identified in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1014. In *Lucas*, the Court found that regulation that denied all economically viable use of property was a taking without a "case specific" inquiry into the public interest involved (*Id.*). The *Lucas* court emphasized, however, that this category is extremely narrow, applicable only "in the extraordinary circumstance when no productive or economically beneficial use of land is permitted" or the "relatively rare situations where the government has deprived a landowner of all economically beneficial uses" or rendered it "valueless" (Id. at pp. 1016-1017 [emphasis in original]) (see *Riverside Bayview Homes, supra*, 474 U.S. at p. 126 [regulatory takings occur only under "extreme circumstances"]).[13]

The second circumstance in which a regulatory taking might occur is under the three-part, ad hoc test identified in *Penn Central Transportation Co. (Penn Central) v. New York* (1978) 438 U.S. 104, 124. This test generally requires an examination into the regulation's economic impact, its interference with reasonable, investment-backed expectations, and the character of the government action. (*Id.* at p. 134; *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005). In *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, the Court again acknowledged that the *Lucas* categorical test and the three-part *Penn Central* test were the two basic situations in which a regulatory taking might be found to occur.[14]

Final Government Determination

Before a landowner may seek to establish a taking under either the *Lucas* or *Penn Central* formulations, however, it must demonstrate that the takings claim is "ripe" for review. This means that the takings claimant must show that government has made a "final and authoritative" decision about the use of the property.[15] Premature adjudication of a takings claim is highly disfavored, and the Supreme Court's cases "uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it" (*Id.* at p. 351). Except in the rare instance where reapplication would be futile, the courts generally require that an applicant resubmit at least one application for a modified project before it will find that the taking claim is ripe for review (e.g., *McDonald, supra*).

In this case, although the Commission denies the project proposed by the Applicant, the City-approved development within the City's CDP permitting jurisdiction, Building #3, a two-story mixed-use building, is already authorized to be constructed on this site. Alternatively, the Applicant could withdraw the City CDP and resubmit a CDP to the Commission for consolidated permit processing, with a revised, reduced scope project

[13] Even where the challenged regulatory act falls into this category, government may avoid a taking if the restriction inheres in the title of the property itself; that is, background principles of state property and nuisance law would have allowed government to achieve the results sought by the regulation (Lucas, supra, 505 U.S. at pp. 1028-1036).

[14] See *id.* (rejecting *Lucas* categorical test where property retained value following regulation but remanding for further consideration under *Penn Central*).

[15] See, for example, *Williamson County Regional Planning Com. V. Hamilton Bank* (1985) 473 U.S. 172; and *MacDonald, Sommer & Frates v. County of Yolo* (1986) 477 U.S. 340, 348.

that better considers the coastal resource constraints on the parcel. Therefore, this denial is not a final adjudication of potential development within the Commission's jurisdiction, and the Applicant is unlikely to be successful in arguing that the Commission's denial is a taking because the takings claim is not "ripe."

Development Allowed to Avoid a Taking

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all reasonable economic use, the Commission may be required to allow some development even if a Coastal Act or LCP policy would otherwise prohibit it, unless the proposed project would violate background principles of state property and nuisance law (e.g. if it constitutes a nuisance under state law). In complying with this requirement, however, a regulatory agency may deny a specific development proposal, while indicating that a more modest alternative proposal could be approved, and thus assure the property of some economically viable use.

As described above, the subject parcel is designated commercial, which allows for visitor-serving, commercial uses. The parcel is currently vacant, with the exception of a wooden skateboard ramp. As the parcel is within split CDP permitting jurisdiction, the City of Pacifica approved a CDP for the southernmost proposed building within the City's CDP permitting jurisdiction, referred to as Building #3 on the project plans. This building is a 3,346-square foot two-story, mixed-use building containing retail space on the first floor and two residential units on the second floor. Because residential development at this location is a conditional and discretionary use under the LCP, the City also approved a Use Permit to conditionally allow for the residential use to be located on the second floor, above a commercial, visitor-serving use. Thus, as the Applicant has the required City approvals to construct the building within the City's CDP jurisdiction on this subject parcel, under the *Lucas* takings analysis, the Commission's denial of the project would not be found to constitute a taking.

Taking under Penn Central

Although the Commission has already determined that the City's approval of the building within the portion of the parcel that is in the City's CDP permitting jurisdiction constitutes an economic use on this property and thus avoids a categorical taking under *Lucas*, a court may also consider whether the permit decision would constitute a taking under the *ad hoc* inquiry stated in *Penn Central*. This ad hoc inquiry generally considers the extent of the applicant's property interest, the regulation's economic impact, the regulation's interference with reasonable, investment-backed expectations, and the character of the government action.

Property Interest

In the subject case, the Applicant purchased the property (APN 023-072-010) for $353,508 on April 26, 2011. On October 12, 2011, a Grant Deed was recorded as document number 2011-127592 in the Official Records of the County of San Mateo's Recorder's Office, effectively transferring and vesting fee simple ownership to the Applicant.

Reasonable Investment-Backed Expectations

In this case, the Applicant's expectation that he could develop some type of structure on the property was both a reasonable and investment-backed expectation. The Applicant purchased the 37,538 square-foot (or 0.86-acre) property for $353,508 in 2011. It was zoned then as it is now for visitor-serving commercial uses, not as open space. At the same time, the Applicant should also have been aware that the parcel was adjacent to a watercourse, and that such watercourses also include additional development constraints via the Coastal Act and the LCP. And, in fact, the Applicant *was* aware of these issues inasmuch as he had had conversations with Commission and City staff prior to acquisition regarding such development constraints as it affected his property (see also below). Thus, the Applicant did have an investment-backed expectation that he had purchased developable property, albeit one that was encumbered by a coastal resource likely to require project modifications, and his investment reflected that future development could likely be accommodated on some portion of the subject parcel, but that such development would need to address potential coastal resource constraints, primarily associated with the unnamed watercourse bordering the site.

The question remains whether the Applicant had an investment-backed expectation to construct three two-story buildings, a skate park, a graded pathway with retaining wall, and a parking lot. In order to analyze this question, one must assess, from an objective viewpoint, whether a reasonable person would have believed that the property could have been developed for the Applicant's proposed use, taking into account all the legal, regulatory, economic, physical, and other restraints that existed when the property was acquired.

When the Applicant purchased the property in 2011, there was no existing development on the site. The property was zoned for visitor-serving commercial uses, as is the adjacent property to the east. The adjacent property on the inland side of the subject lot was developed with commercial buildings. The adjacent property on the seaward side of the subject lot was vacant. Farther seaward, as well as to the south of the subject lot, were residential buildings. Thus, the property was zoned for visitor-serving uses and was located near both visitor-serving commercial and residential uses.

In communication with the City of Pacifica and Applicant,[16] including communications *prior* to the Applicant's purchase of the property, Coastal Commission staff expressed documented concerns in 2010, 2014, 2015, and 2018 with regards to potential impacts of development on the habitat resources located on and adjacent to the subject site, indicating that any proposed development should consider measures to avoid or reduce potential impacts on the adjacent watercourse area, which most likely would meet the one-parameter definition of wetlands under the Coastal Act, and stating that a one-parameter wetland delineation should be conducted. See **Exhibit 6** for prior communications from Coastal Commission staff related to the subject site and site constraints.

[16] Personal telephone communications between Commission staff and Applicant between May 2010 and May 2018.

At the time, Commission staff was not aware of the degree of wetlands and/or habitat resources present at the site because there had been no analysis and no wetland delineation, but the Applicant could have availed himself through the due diligence purchasing process to Commission reports to help understand the site constraints more clearly, including in consultation with City and Commission staff, but he did not. In fact, it was not until November 2019 that the Applicant finally provided the wetland delineation that was long advised, which delineation precipitated discovery more precisely of the constraints that affect this site, as described now in this report.

Consequently, while the Applicant may have had a reasonable investment-backed expectation that he had purchased a lot that could be developed, it was not reasonable to assume that the site could be developed to the extent the Applicant proposes, which in effect would develop the entirety of the site, encroach into required sensitive habitat, and develop all the way up to the bank of a watercourse that he was on notice could contain protected wetlands and sensitive species. In short, while investment-backed, the Applicant's expectation in this regard was not reasonable.

Economic Impact

The *Penn Central* analysis also requires an assessment of the economic impact of the regulatory action on an applicant's property. Although a landowner is not required to demonstrate that the regulatory action destroyed all of the property's value, the landowner must demonstrate that the value of the property has been very substantially diminished.[17] If the Commission were to deny the Applicant the right to all development on the property as a whole, consistent with the requirements of the LCP and the Coastal Act, then the Applicant could argue that the economic impact of the Commission's action was significant enough to constitute a taking. However, in this instance, due to the City's prior authorization for one of the three proposed buildings that is located within the City's CDP permitting jurisdiction, the Applicant has the right to develop the proposed building within the City's CDP permitting jurisdiction, granting him ability to gain some economic benefit from his property. As such, while this decision does not allow for <u>further</u> development on the subject property and is not precisely the development proposed by the Applicant, the right to develop one two-story, mixed-use building provides for an economic use of the property.

Character of the Government Action

This final prong of the *Penn Central* test , namely the character of the government's action, has been downplayed in recent years.[18] Nevertheless, it is still part of the *Penn*

[17] See, for example, *Tahoe Sierra Pres. Council, Inc., supra,* (citing *William C. Haas v. City and County of San Francisco* (9th Cir. 1979) 605 F. 2d 1117 (diminution of property's value by 95% not a taking)); and *Rith Energy v. United States* (Fed. Cir. 2001) 270 F. 3d 1347 (applying *Penn Central*, court finds that diminution of property's value by 91% not a taking).

[18] See, for example, *Lingle v. Chevron U.S.A., Inc.* (2005) 544 U.S. 528, 529 (governmental action that substantially advances a public purpose alone does not insulate the government from a takings claim). See also Lewyn, Michael, Character Counts: The "Character of the Government Action" In Regulatory Takings Actions, 40 Seton Hall L. Rev 597, 599 (2010) stating that Lingle holds that the existence of a

Central analysis, and the Coastal Commission advances a legitimate public interest when it regulates various uses according to the Chapter 3 policies of the Coastal Act, specifically protection of coastal resources. With the Coastal Act, the Legislature sought to protect natural resources and the ecological balance of the coastal zone while allowing for future development consistent with the Act's policies (see, for example, Coastal Act Sections 30001(b), (c), and (d)).

Conclusion

The Commission finds that the project as proposed is inconsistent with the Coastal Act and the certified Pacifica LCP and must therefore be denied. The Commission also finds, however, that the City's CDP authorization for the portion of the proposed project that is within the City's CDP jurisdiction provides for an economic use of the site. Further, given the significant impacts to coastal resources that would result from approval of the project, the inconsistencies with the Coastal Act described above, as well as legitimate questions as to whether there are alternatives to the proposed project currently before the Commission that would minimize impacts to coastal resources, the Commission finds that it is premature to approve any development located in the Commission's retained CDP jurisdiction area in order to avoid an unconstitutional taking of private property at this time. Specifically, this denial is not a final determination by the Commission of the potential for development overall on this site, as it does not preclude the Applicant from withdrawing the City-approved project and resubmitting a new CDP to the Commission for consolidated permit processing as originally recommended and applying for some other development or use of the overall site, such as a smaller-scale development that more carefully addresses the applicable Coastal Act and LCP policies, in particular as they relate to ESHA, wetlands, coastal hazards, public views, and public recreational access. The Commission, therefore, denies the proposed project because it is inconsistent with Chapter 3 of the Coastal Act, and denial of this project will not result in an unconstitutional taking of private property.

3. APPENDICES

A. Substantive File Documents[19]

- GeoSoils Sea Level Rise & Coastal Hazard Analysis, dated March 12, 2019
- GeoSoils Supplemental Memo, dated August 20, 2019

B. Staff Contact with Agencies and Groups

- City of Pacifica
- USFWS

valid public purpose *standing alone* may not justify an otherwise problematic regulation (emphasis in original).

[19] These documents are available for review from the Commission's North Central Coast District office.

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F16a

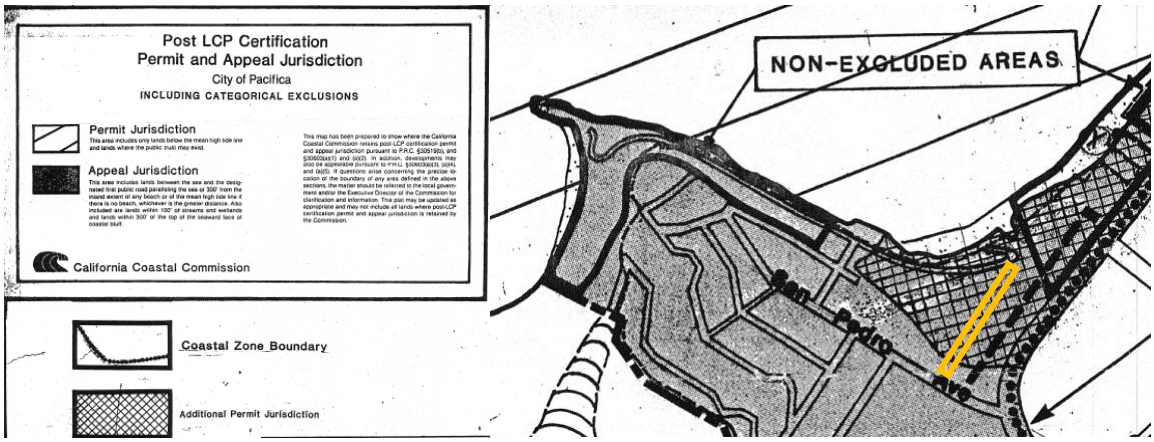
2-19-0026 (RHODES MIXED-USE DEVELOPMENT)

MARCH 12, 2021

EXHIBITS

Table of Contents

505 SAN PEDRO AVENUE – PROJECT LOCATION MAP
City of Pacifica, San Mateo County



505 SAN PEDRO AVENUE – SITE PHOTOS

Scenic Pacifica
Incorporated Nov. 22, 1957

CITY OF PACIFICA
Planning, Building, and Code Enforcement
1800 Francisco Blvd. • Pacifica, California 94044-2506
(650) 738-7341 • www.cityofpacifica.org

NOTICE OF FINAL LOCAL ACTION

California Coastal Commission
Attn: Patrick Foster, Coastal Planner
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

November 20, 2018

VIA CERTIFIED MAIL

RE: **Coastal Development Permit CDP-346-14, 505 San Pedro Avenue (APN 023-072-010)**

Pursuant to Coastal Act Section 30603(d), Coastal Commission Regulations Section 13571, and Pacifica Zoning Code Section 9-4.4304(n), this notice will serve to confirm that the City of Pacifica approved the above-referenced Coastal Development Permit, and to furnish the following additional information:

APPLICANT NAME/ADDRESS: Shawn Rhodes, 5460 Coast Highway, Pacifica, CA 94044

PROJECT DESCRIPTION: (Note: A portion of the site is located within the Coastal Commission's permit jurisdiction; however, the following description is applicable to the project as a whole.) File No. 2014-002 – Construction of three buildings and associated improvements as follows: Building #1 – two-story surf shop building for retail sales, surfboard rentals, lockers, and office/storage space with a storage basement and outdoor shower; Building #2 – two-story building for storage and surfboard shaping attached to a covered skatepark enclosed by an open-work fence; Building #3 – two-story mixed-use building with retail space and office/storage on the ground floor and two residential units on the second story; Off-street parking area for 24 uncovered car spaces and two garage spaces on the first floor of Building #3 for the residential units above with the request for a reduction in off-street parking and covered parking requirements; and, removal of two heritage trees.

DECISION: The subject permit was approved by the Planning Commission of the City of Pacifica on November 5, 2018, based on the required findings contained and adopted in the resolution of approval.

APPEAL PROCEDURES: The appeals process may involve the following:

LOCAL
- ☒ The local appeal period ended on 11/15/2018, and no appeal was filed; or,
- ☐ The permit was appealed to and decided by the City Council, exhausting the local appeals process.

STATE
- ☒ The project IS within the Appeals Zone and the permit IS appealable to the State of California Coastal Commission if the appeal is made in writing to the Coastal Commission prior to the close of business on the 10th working day from the date of receipt of this notice by the Executive Director of the Commission. For additional information, contact the California Coastal Commission, 45 Fremont Street, Suite 2000, San Francisco, CA 94105-2219, (415) 904-5260; or,
- ☐ The project is NOT in the Appeals Zone and the permit is NOT appealable to the Coastal Commission.

Additional information may be obtained by contacting the Pacifica Planning Department at 1800 Francisco Boulevard, Pacifica, CA 94044, (650) 738-7341.

Tina Wehrmeister
Planning Director

Attachments: ☒ Resolution of Approval with conditions ☒ Staff Report(s) ☒ Meeting Minutes ☒ Project Plans

505 SAN PEDRO AVENUE, PACIFICA
WETLAND DELINEATION

PREPARED FOR:

Shawn Rhodes

PREPARED BY:

Coast Ridge Ecology, LLC
1410 31st Avenue
San Francisco, CA 94122

November 2019

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1. SUMMARY

This report presents the results of a formal delineation of waters of the United States, including wetlands, at an undeveloped property (drainage channel) adjacent to 505 San Pedro Avenue, Pacifica, California (APN 023-72-010). The property drainage channel is within an unaccepted city of Pacifica Right of Way. The purpose of the delineation of the drainage channel is to assist the California Coastal Commission in identifying the type and extent of waters subject to federal and state jurisdiction and to inform potential impacts from future development of the adjacent property at 505 San Pedro Avenue.

Fieldwork was performed by Coast Ridge Ecology staff biologists in September and October 2019 using the routine determination method described in the *1987 US Army Corps of Engineers (USACE) Wetland Delineation Manual,* in incorporation with the USACE 2010 *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys and Coast Region (Version 2.0*). Wetland vegetation types were mapped in the field using a Trimble GeoExplorer unit on September 18, October 21, and October 25, 2019.

Field data was analyzed to determine a wetland boundary. A total of 0.088 acres of potentially jurisdictional federal wetlands (i.e. three-parameter) are present within the study area and may be subject to jurisdiction under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. A total of 0.248 acres of potentially jurisdictional state wetlands (i.e. one-parameter) are present within the study area, and may be subject to jurisdiction under the California Coastal Commission. Wetland areas within the study area are composed of freshwater wetlands dominated by water smartweed (*Persicaria amphibia*), arroyo willow *(Salix lasiolepis*), small-fruited bulrush *(Scirpus microcarpus*), and perennial rye grass *(Festuca perennis*). These wetlands are all located within portions of the channel bottom of the drainage channel, with the exception of the one-parameter Arroyo willow wetlands on the north side of the drainage channel, which extend up the channel bank. **Appendix A** provides completed data sheets for the study area. **Appendix B** provides representative photographs.

The drainage channel feature adjacent to the property at 505 San Pedro Avenue is a man-made constructed feature, that is highly degraded due to construction and ongoing maintenance of a City of Pacifica sewer line that runs underneath the feature. The channel has been used as an illegal dumping area for decades and refuse such as gas cans, mattresses, appliances, plastic garbage, concrete rubble, bricks, and other refuse are present within the channel and buried within the soil.

In the city of Pacifica, construction projects within the coastal zone are regulated through the City's Local Coastal Land Use Plan (LCLUP). The City regulates construction projects through the LCLUP, to bring projects into conformance with the California Coastal Act of 1976.

The LCLUP states that "As a general rule, a buffer of at least 100 feet measured from the outward edge of riparian vegetation would be appropriate unless such a width is determined to be unnecessary for protecting the resources of the habitat area". The California Coastal Commission has required buffers of 100 feet from the edge of riparian vegetation in areas where such buffers are feasible. However, it is not unusual for the Commission to allow smaller buffers in urbanized areas where the existing land use patterns do not allow for increased riparian buffer areas.

Based on the existing condition of the drainage channel, and the setback distances, the proposed project would not present a source of physical, chemical or biological disturbance to the wetland habitats including the arroyo willow stand (AW-1). Additional measures to ensure the channel is not impacted by construction activities would include planting of native plant species suitable for the boundary area adjacent to the channel, and installation of appropriate erosion/ sediment controls such as silt fencing, fiber rolls, and erosion control blankets along the top of the bank. These measures would be suitable to protect the resource and improve the quality of this resource.

Any economic use of the subject property would result in a reduction of the recommended 100-foot buffer because of the proximity of any development on the property to wetland habitat. The CCC has established precedent by issuing permits allowing even more intensive uses that resulted in direct impacts to sensitive coastal resources, consistent with the mandate of Coastal Act § 30010 that prevents taking of private property without compensation (see CCC Appeal Numbers A-2-SMC-11-040 & A-2-SMC-11-041 concerning a controversial project near Half Moon Bay that was ultimately approved).

These conclusions should be regarded as preliminary and subject to verification by the U.S. Army Corps of Engineers prior to performing any work that would impact wetland resources on site.

2. SETTING

2.1 SITE DESCRIPTION

The study area encompasses approximately 1.6 acres of land located at 505 San Pedro Avenue (project site) and the drainage channel adjacent to the property in Pacifica, California. The applicant (Shawn Rhodes) is proposing to develop the parcel at 505 San Pedro Avenue, which is 0.86 acres. The adjacent drainage channel is 0.74 acres. The drainage channel is located to the west of the property within an unaccepted city right of way. This delineation was conducted to provide additional information on the drainage channel, in response to California Coastal Commission letter dated July 2, 2019 regarding Coastal Development Permit (CDP) Application Number 2-19-0026 (construction of a mixed-use scheme, including three buildings, a skate park, and a parking lot in Pacifica.

The site is bordered by the Pedro Point Shopping Center to the East, San Pedro Avenue to the south, and residential properties to the north. The area is highly developed, and the property is surrounded by residential and commercial developments on all sides. The Pacific Ocean is located approximately 210 feet to the northwest. Topography on the project site is variable, as is located on an elevated berm-like feature. The top of the berm runs southwest-northeast through the approximate center of the property, and slopes downwards towards the drainage channel on the west side and the shopping center on the east side. Elevations at the study area range from approximately 14 to 23 feet. **Figure 1** shows the project boundaries and location. Photographs of the project site can be found in **Appendix B**.

The drainage channel was created most likely as an irrigation ditch for farming prior to the 1950's. The City of Pacifica constructed a sewer line below the channel, with sewer manholes in two locations within the channel, at some point later (in the 1960's possibly). The channel bed and banks are categorized as 'urban' soil type due the history of disturbance to the channel and its location adjacent to a 5-acre commercial shopping center and parking lot. Urban runoff from the local community of Pedro Point flows into the channel which then empties through a culvert and into San Pedro Creek on the north side of the 505 San Pedro Avenue property.

2.2 PROJECT DESCRIPTION

The property (APN 023-72-010) is located on San Pedro Avenue in Pacifica, California. The property is 0.86 acres in size (37,273 ft.^{2}) and is located on the west side of Highway 1 in the Pedro Point area. The site is located within the coastal zone and is subject to the City of

Pacifica's Local Coastal Land Use Plan. The property is zoned as commercial and is within the Pedro Point – Shelter Cove Land Use Plan Area, and is outside of any special areas delineated in the Local Coastal Land Use Plan (City of Pacifica, 1992). The site is a narrow, rectangular strip of land (755 feet long x 55 feet wide) and is bounded by San Pedro Road on the south, a drainage channel and open field on the west, a strip mall/shopping area to the east and a parking lot on the north. San Pedro Creek and the Pacific Ocean are located further to the north, and northwest of the parking lot. The surrounding area is single family residential homes and small businesses.

The project intends to develop a currently vacant lot into commercial and residential buildings. The development will consist of a 2-story surf shop building with storage basement (3,500 ft^2), a skatepark enclosed within chain-link fencing and a roof (4,730 ft^2), a 2-story storage building for the surf shop (1,540 ft^2), 2 parking lot areas (16,513 ft^2), a 2-story building with retail space at the lower level and 2 residential units above (2,516 ft^2), and various areas of landscaping (7,302 ft^2). The project would be constructed within an upland area that is behind an existing shopping center, and would include a public access easement (pedestrian trail) that would extend along the western boundary of the site, along the top of bank of an adjacent drainage channel. The project area and adjacent drainage channel have been heavily disturbed by grading activities in the past. The adjacent drainage channel would not be directly impacted by the proposed project.

This wetland delineation was conducted on the adjacent drainage channel, which is designated as an unaccepted right of way (identified as 'Chester Way') on the most current San Mateo County Assessor's parcel map.

Figure 1: Project Location for APN 023-72-010

2.3 VEGETATION

Vegetation at the study site (drainage channel) can be categorized into several different natural communities based upon plant species composition. The boundaries between communities can be distinct, or can change gradually over an area. Due to the semi-developed nature of the project site, vegetation types in this analysis are based upon, but do not strictly follow, species alliances described by the California Native Plant Society (CNPS) Manual of California Vegetation. Natural communities on the site include arroyo willow thicket, coastal brambles, eucalyptus grove, kikuyu grass sward, Monterey cypress stand, perennial rye grass fields, small-fruited bulrush marsh, smartweed patch, upland mustards/ruderal and ornamental.

2.3.1 Arroyo Willow Thicket

The arroyo willow thicket community is dominated by arroyo willow (*Salix lasiolepis*). This plant community is found within the drainage at the northeast terminus of the drainage. It is comprised of dense arroyo willow trees. Arroyo willows are a facultative wetland (FACW) plant, found more frequently in wetlands than outside of them.

2.3.2 Coastal Brambles

The coastal brambles plant community is characterized as being heavily dominated by brambles (*Rubus sp.*). Within the study area, this plant community is primarily made up of dense California blackberry (*Rubus ursinus*) vines, with the ornamental species multiflora rose (*Rosa multiflora*) and California privet (*Ligustrum ovalifolium*) occasionally present at lower densities. The coastal brambles plant community is found along the banks of the drainage channel, sometimes extending into the channel itself. California blackberry is a Facultative plant (FAC), found equally often in wetland and upland habitats. Multiflora rose and California privet are considered upland species (UPL). Due to the prevalence of dominant upland species within this habitat, it is not considered a wetland.

2.3.3 Eucalyptus Grove

Two groves of mature blue gum (*Eucalyptus globulus*) trees are present at the western and southwestern portions of the study area. Large blue gum trees make up the overstory of this community, while the understory is primarily composed of eucalyptus duff and English ivy (*Hedera helix*). Blue gum is an upland (UPL) species, and English ivy is considered a Facultative Upland (FACU) species more likely to be found in upland habitats.

2.3.4 Kikuyu Grass Sward

Swards of the invasive Kikuyu grass (*Pennisetum clandestinum*) are present within the bottom of the drainage channel. These areas are completely dominated by Kikuyu grass with no other vegetation present. This species is considered a Facultative Upland (FACU) plant, being found more often in upland habitats. The presence of Kikuyu grass indicates that there is unlikely to be significant soil inundation (and thus wetland habitat) in this portion of the drainage channel.

2.3.5 Monterey Cypress Stand

One stand of Monterey cypress (*Hesperocyperus macrocarpa*) is present within the study area along the western bank of the channel. Vegetative cover within this stand is entirely made up of Monterey cypress, as the density of the trees prevents any understory vegetation from growing beneath them. Monterey cypress is ranked UPL.

2.3.6 Ornamental

The ornamental vegetation community is made up of non-native ornamental plant species that are not widespread enough in natural areas to possess a community designation. Within the study site, areas of ornamental vegetation are dominated by garden nasturtium (*Tropaeolum majus*), English ivy (*Hedera helix*), or cape ivy (*Delairea odorata*). Where present, each species provides nearly 100 percent of the vegetative cover. These areas heavily dominated by non-native vegetation are primarily found along the eastern bank of the drainage channel. All of these plants are considered upland species.

2.3.7 Perennial Rye Grass Fields

This plant community is dominated by perennial rye grass (*Festuca perennis*). Individual curly and green dock (*Rumex crispus/Rumex conglomeratus*) plants are also present at lower densities. Perennial fescue is a Facultative wetland plant (FAC), equally likely to be found inside or outside of wetland habitats. Curly dock is also a FAC plant, while green dock is considered a FACW plant.

2.3.8 Small-fruited Bulrush Marsh

This plant community is dominated by small-fruited bulrush (*Scripus microcarpus*). One small patch of these plants is present within the drainage channel, where they make up 100 percent of the vegetative cover. Small-fruited bulrush is an Obligate wetland species (OBL), only being found within wetland habitats.

2.3.9 Smartweed Patch

This plant community is primarily dominated by smartweed (*Persicaria sp.*). Within the study area, this community is dominated by water smartweed (*Persicaria amphibia*), a wetland obligate species (OBL). Other plant species observed growing beneath and around the smartweed include silverweed cinquefoil (*Potentilla anserina*), dock (*Rumex sp.*), and California blackberry (*Rubus ursinus*). These plants are only found within the wetter portions of the drainage channel.

2.3.10 Upland Mustards and Ruderal Forbs

This plant community is dominated by non-native mustards and other invasive species. Within the study area, this habitat is heavily dominated by wild radish (*Raphanus sativus*), which dominates the vegetative cover along the eastern bank/berm and upland portions of the site. Small patches of fennel (*Foeniculum vulgare*) can also be found within this community. These plants are designated as upland (UPL) species.

2.4 SOILS

Only one soil type is present within the study area: Urban land. Urban land is defined by the USDA NRCS as areas where 85% or more of the ground surface is covered by asphalt, concrete, buildings, and other structures (USDA SCS 1991). **Appendix C** provides a soils map of the study area.

2.5 HYDROLOGY

The project site consists of a vacant lot and does not contain any watercourses or wetland habitats. Aquatic features within a 100-meter radius of the project site include the Pacific Ocean**,** San Pedro Creek **(**approximately 75 meters northeast of the site**)**, and an intermittent drainage channel on the west side of the project site

The drainage channel was created most likely as an irrigation ditch for farming prior to the 1950's. At some point later (in the 1960's possibly), the City of Pacifica constructed a sewer pipe that runs below the open channel for most of the channel's length. Two sewer manholes are located in the channel bottom. During rain events, urban stormwater runoff from the local community of Pedro Point flows into the channel which then empties through a culvert into San Pedro Creek to the north side of the property.

3. METHODOLOGY

This wetland delineation was conducted in accordance with the USACE 1987 *Corps of Engineers Wetlands Delineation Manual* along with the USACE 2008 *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region.* A Level 3 Determination (*i.e.,* a combination of onsite inspection and aerial review) was conducted as defined in the *Wetland Delineation Manual*.

The location of the project site is within the boundary zone between the Arid West Region and the Western Mountains, Valleys, and Coast Region. The climatic conditions and vegetation in Pacifica overlaps with what is described in both supplements. Both regional supplements include coastal areas, and a reasonable justification could be made to support the use of either supplement. The Western Mountains regional supplement was chosen as the appropriate manual based on vegetation and climate; including the following:

Arid West: Generally hot and dry with long summer dry season. Average annual precipitation mostly <15", except along the coast. Most precipitation falls as rain.

Western Mountains, Valleys and Coast: Cooler and more humid with a shorter dry season. Average annual precipitation mostly >20" except near the coast. Much of the annual precipitation falls as snow, particularly at higher elevations.

Average annual precipitation in Pacifica is approximately 32"[1]. Due to heavy fog during the summertime especially, the amount of water available to vegetation is much greater due to fog drip.

3.1 DEFINITION OF TERMS

The following section provides key definitions of terms used in this report that are relevant to the delineation of wetlands and other waters of the US.

Waters of the United States: Title 33, Chapter II, Part 328.3 of the Code of Federal Regulations defines waters of the United States as:

(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
(2) All interstate waters including interstate wetlands;

[1] https://www.ncdc.noaa.gov/cdo-web/datatools/normals

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mud flats, sand flats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters:
    a. which are or could be used by interstate or foreign travelers for recreational or other purposes;
    b. or from which fish or shellfish are or could be taken and sold in interstate or foreign commerce;
    c. or which are used or could be used for industrial purposes by industries in interstate commerce;
(4) All impoundments of waters otherwise defined as waters of the United States under the definition;
(5) Tributaries of waters identified in paragraphs (1) through (4);
(6) Territorial seas; and
(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6).

Federal Definition of Wetlands: In Title 33, Chapter II, Part 328.4 of the Code of Federal Regulations, wetlands are defined as: "Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas." For the purposes of a USACE wetland delineation, an area must meet three diagnostic environmental characteristics in order to be considered a wetland. These three characteristics include the presence of hydrophytic vegetation, hydric soils, and wetland hydrology.

Hydrophytic Vegetation: The USACE 1987 *Wetland Delineation Manual* describes hydrophytic vegetation as "sum total of macrophytic plant life that occurs in areas where the frequency and duration of inundation or soil saturation produce permanently or periodically saturated soils of sufficient duration to exert a controlling influence on the plant species present. The vegetation occurring in a wetland may consist of more than one plant community (species association). Emphasis is placed on the assemblage of plant species that exert a controlling influence on the character of the plant community, rather than on indicator species."

Hydric Soil: Defined by the USACE *Western Mountains Supplement* as "a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part. Most hydric soils exhibit characteristic morphologies that result from repeated periods of saturation or inundation for more than a few days…These processes result in distinctive characteristics that persist in the soil during both wet and dry periods."

> **Wetland Hydrology:** The USACE 1987 *Wetland Delineation Manual* describes wetland hydrology as "all hydrologic characteristics of areas that are periodically inundated or have soils saturated to the surface at some time during the growing season. Areas with evident characteristics of wetland hydrology are those where the presence of water has an overriding influence on characteristics of vegetation and soils due to anaerobic and reducing conditions, respectively."

Navigable Waters of the United States: Title 33, Chapter II, Part 329.4 of the Code of Federal Regulations defines navigable waters of the U.S. as "those waters subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for us to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity." For the purposes of a USACE jurisdictional determination, navigable waters of the United States are considered Traditionally Navigable Waters.

Ordinary High Water Mark (OHWM): Title 33, Chapter II, Part 328.3 of the Code of Federal Regulations defines the OHWM as "that line on the shore established by the fluctuations of water and indicated by physical characteristics, such as a clear, natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter or debris, or other appropriate means that consider the characteristics of the surrounding area."

Mean High Water (MHW): Section 10 of the Rivers and Harbors Act (RHA), which regulates certain activities in navigable waters of the U.S., defines the landward limit of Section 10 jurisdiction as the Mean High Water (MHW) mark. The MHW mark, with respect to ocean and coastal waters, is defined as: "The line on the shore established by the average of all high tides. It is established by survey based on available tidal data (preferably averaged over a period of 18.6 years because of the variations in tide). In the absence of such data, less precise methods to determine the mean high water mark are used, such as physical markings, lines of vegetation or comparison of the area in question with an area having similar physical characteristics for which tidal data are readily available."

In the case of non-tidal waters regulated by the RHA, the MHW is defined as the OHWM.

State Definition of Wetlands: The State defines wetlands more broadly than the federal wetlands program by recognizing that wetlands may have evidence of only one of the three federal parameters. The State definition also conforms to the USFWS definition:

> "Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification, wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports hydrophytes, (2) the substrate is

> predominantly undrained hydric soil; and (3) the substrate is non-soil and is saturated with water or covered by shallow water at some time during the growing season of each year" (Cowardin, 1979).

Additionally, for the purposes of identifying Environmentally Sensitive Habitat Areas (ESHA) regulated by the California Coastal Commission, the California Coastal Act of 1976 further specifies that wetlands are:

> "Land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats" (CCR Title 14, Section 13577).

Although the State definition may require only a single parameter to establish the presence of wetlands (and ESHA), in practice, such decisions are based on a case-by-case interpretation of data that either support or disprove the presumption of whether wetlands are indicated by a single parameter.

3.2 REGULATORY SETTING

3.2.1 U.S Army Corps of Engineers

The US Army Corps of Engineers (USACE) regulates activities that result in the discharge of dredged or fill materials into waters of the U.S. including wetlands, under Section 404 of the Clean Water Act. USACE also regulates dredging, filling, and construction activities in navigable waters under Section 10 of the Rivers and Harbors Act. Activities involving dredged or filled materials require a Section 404 permit, and/or a Section 10 permit, issued by the USACE. Section 404 projects may be authorized under general permits, also known as nationwide permits, or may require individual permits in the case of more complex projects that exceed the threshold for impacts under the nationwide permits.

3.2.2 California Coastal Commission

The California Coastal Commission (CCC) exercises jurisdiction over development activities within the coastal zone. In the city of Pacifica, construction projects within the coastal zone are regulated through the City's Local Coastal Land Use Plan (LCLUP). The City regulates construction projects through the LCLUP, to bring projects into conformance with the California Coastal Act of 1976.

The project site is within the Pedro Point/ Shelter Cove Land Use Plan area, and is not located within a designated environmentally sensitive wetland area (LCLUP 1992). However, in the Plan Conclusions section, under Development Near Wetlands and Creeks; the LCLUP states:

"*Riparian vegetation along all intermittent and year-round creeks shall be protected, enhanced and restored where feasible, and buffer zones required.";* And; *"As a general rule, a buffer of at least 100 feet measured from the outward edge of riparian vegetation would be appropriate unless such a width is determined to be unnecessary for protecting the resources of the habitat area"*

3.2.3 California Department of Fish and Wildlife

The California Department of Fish and Wildlife (CDFW) regulates projects that will:

(1) substantially divert or obstruct the natural flow of any river, stream or lake;
(2) substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake; or
(3) deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. (Section 1602, California Fish and Game Code)

To complete projects which will affect these characteristics of any river, stream, or lake, within the state of California, projects must apply for a Lake or Streambed Alteration Agreement (Section 1600 Series Permit). The jurisdictional boundary of the CDFW typically follows the top-of-bank or the outermost edge of riparian vegetation adjacent to the regulated stream, river, or lake.

3.2.4 Regional Water Quality Control Board

The Regional Water Quality Control Board (RWQCB) has authority over projects that could result in negative impacts to waters of the State and wetlands. The RWQCB, defines "waters of the State" as any surface water or groundwater, including saline waters within the boundaries of the State of California (Cal. Water Quality Control, Division 7, January 2011). In addition, it defines "water quality control" as the regulation of any activity that may affect the quality of the waters of the State, and includes the prevention and correction of water pollution and nuisance.

Under the Porter-Cologne Water Quality Control Act, the RWQCB is authorized to regulate the discharge of waste that could affect the quality of State waters. Regulated discharges include any substances associated with human habitation that are harmful to the aquatic environment, including stormwater runoff associated with construction projects and other activities that could discharge soil, pollutants, or other materials into waters of the State. Projects that could produce pollutants or discharge into waters of the state must apply for a Section 401 Certification from

the California Regional Water Quality Control Board to ensure that any discharges will be in compliance with California's water quality standards.

3.3 DELINEATION METHODS

This wetland delineation was conducted through the analysis of aerial photography, historical records, and other relevant data sources, as well as an onsite survey to characterize vegetation, soils, and hydrology.

3.4 LITERATURE REVIEW

Prior to the field survey, aerial photographs were reviewed for current and historical data on lake levels and vegetation. Soil types were assessed using the online *USDA Natural Resource Conservation Science Web Soil Survey* (NRCS 2019). Historical and current land use data was accessed from various sources, including historical aerial photographs (UCSB 2019).

3.5 FIELD SURVEY

The field delineation for the study area was conducted by Patrick Kobernus of Coast Ridge Ecology on October 21, 2019. Wetland vegetation was mapped by P. Kobernus and CRE Biologist Greg Pfau on September 18, 2019. Weather conditions at the time of the field visits included clear skies, temperatures in the 70's (ºF), and no wind. The onsite inspection evaluated the three parameters that identify and delineate the boundaries of jurisdictional wetlands, including (1) the dominance of wetland vegetation; (2) the presence of hydric soils; and (3) hydrologic conditions that result in periods of inundation or saturation on the surface from flooding or ponding.

Survey methods follow the protocol outlined in the 1987 USACE *Wetland Delineation Manual for Areas Less Than Five Acres in Size*. GPS coordinates of each sample location were recorded in the field with a Trimble GeoExplorer 6000 series unit. Vegetation, soils and hydrology data were taken at each of these points. The completed *Wetland Determination Data Forms for the Western Mountains Region* are located in **Appendix A.**

3.5.1 Vegetation Data Collection

Vegetation data was collected at each sample point taken during the field survey. As per the 1987 *Wetland Delineation Manual* and the 2010 *Western Mountains, Valleys and Coast* Regional Supplement, plants in the tree stratum are defined as woody plants with a diameter three inches or more at breast height (DBH). Saplings/shrubs are defined as woody plants with a diameter of less than three inches DBH, and herbs are defined as non-woody plants regardless of size. Species type and percent dominance of each species was recording at each sample point. The USACE *National Wetland Plant List* was used to determine the wetland indicator status of

plants observed in the study area. Wetland indicator status refers to the probability that a plant will occur within a wetland or upland area. The indicator status categories are defined as follows:

- *Obligate (OBL)*: almost always occurs in wetlands
- *Facultative wetland (FACW)*: usually occurs in wetlands, sometimes may occur in uplands
- *Facultative (FAC)*: equally likely to occur in wetlands or nonwetlands
- *Facultative upland (FACU)*: usually occurs in uplands but may occasionally occur in wetlands
- *Obligate upland (UPL)*: almost never occurs in wetlands
- *No indicator (NI)/ No status (NS)*: no indicator or status assigned due to lack of information

The presence of hydrophytic vegetation data was then determined using the dominance test and prevalence index described in the USACE *Wetland Delineation Manual* and *Western Mountains* Regional Supplement.

3.5.2 Soils

Soil pits were taken at each of the eight sample point sites. Soil pits were excavated to the maximum depth possible and soil color and texture was assessed and recorded onto the Western Mountains data sheets. Soil color was determined by matching samples to Munsell Soils Color Charts (Munsell Colors 2000). Soils were then assessed for hydric features described in the *Western Mountains* Regional Supplement, such as the presence of redoxomorphic concentrations, mucky soils or hydrogen sulfide odor.

3.5.3 Hydrology

Hydrology at each of the sample points was assessed based upon the USACE *Western Mountains, Valleys, And Coast Region* hydrology guidelines. Positive hydrological indicators include the presence of a visible water table, saturation and/or muck, water marks or drift deposits.

3.6 FEDERAL WETLAND BOUNDARY DETERMINATION

A preliminary wetland boundary line, based on the 3-parameter wetland definition was determined based on data points and vegetation mapping. Based upon the location of wetland versus non-wetland sample points, the wetland boundary was determined to correspond to specific discrete locations within the channel bottom (**Figure 2**).

3.6.1 Acreage Calculations

The area for each individual vegetation polygon within the wetland boundary was calculated in ArcMAP 10.2. All vegetation areas were then added to obtain a total area for wetlands within the study area.

3.7 STATE WETLAND BOUNDARY DETERMINATION

The state definition of wetlands requires only a single parameter to be met in order to indicate the presence of wetlands. Hydrophytic vegetation, hydric soils, or wetland hydrology were used to determine the state upland wetland boundary.

Areas of wetland vegetation were identified and mapped using a Trimble GeoExplorer 6000 unit. Vegetation units were mapped based upon the dominant species.

Areas of hydric vegetation were defined using the dominance test, and by assessing the indicator status of the dominant species. Vegetation defined as obligate or facultative wetland by the USACE *National Plant List* was mapped as wetland vegetation.

Wetland acreage was determined using the methods described in Section **3.6.1 Acreage Calculation.**

4. RESULTS

4.1 FEDERAL WETLANDS

A total of 0.088 acres of potential federally jurisdictional wetlands occur within the delineation study area. **Table 1** provides the calculations for the total acreage for wetland areas within the study area. Jurisdictional areas lie within the vegetated central portions of the drainage channel. These areas are within the primary flow of the channel, where the soil remains saturated even after water is no longer visible at the surface. Wetland areas are represented by sample points A2 and A4 within the study area. **Figure 2** provides an illustration of potentially jurisdictional wetlands within the study area. **Appendix B** provides representative photographs of the sample points and study area.

TABLE 1: TOTAL ACREAGE OF WETLAND AREAS WITHIN STUDY AREA

Wetland Type	Federal		State	
	Area (acres)	Area (sq ft)	Area (acres)	Area (sq ft)
Arroyo Willow Wetland				
AW-1	0.025	1109.560	0.096	4193.311
Perennial Rye Grass Wetland				
PR-1	0.010	437.146	0.001	35.026
Small-fruited Bulrush Marsh				
BM-1	0.003	116.769	0.003	120.651
Smartweed Wetland				
SW-1	0.012	508.292	0.004	161.820
SW-2	0.019	833.803		
SW-3	0.019	844.048	0.022	963.699
subtotal	*0.050*	*2186.143*	*0.026*	*1125.519*
Ephemeral Channel				
FC-1			0.106	4605.914
Wetted Channel				
WC-1			0.017	722.949
Total	**0.088**	**3849.618**	**0.248**	**10803.370**

Figure 2: Federal and State Wetlands
505 San Pedro Avenue, Pacifica, CA

Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Legend

- Site Parcel Boundary
- Delineation Point

Waters of the State/State Wetland

- Wetted Channel

Federal Wetlands

- Arroyo Willow Thicket
- Perennial Rye Grass Fields
- Small-fruited Bulrush Marsh
- Smartweed Patch

State Wetlands

- Arroyo Willow Thicket
- Perennial Rye Grass Fields
- Small-fruited Bulrush Marsh
- Smartweed Patch
- Flow Channel

4.1.1 Vegetation

Freshwater wetlands on the study site are composed of a variety of plant species. Areas with the greatest water availability, at the northern end of the drainage, are dominated by arroyo willow and small-fruited bulrush. Wetlands within the primary flow of the channel are dominated by water smartweed and perennial rye grass, with curly and green dock also present at lower densities. Silver weed cinquefoil (*Potentilla anserina*) (OBL) can also be found here beneath the smartweed.

4.1.2 Soils

Within the wetland sample points, soils tended to be dark brown and homogenous with a color matrix of 10YR 3/1 at sample points A2 and A4; and 5YR 3/2 at sample point A1; and 5YR 3/3 at sample point A3. Soil texture ranged from sandy loam at sample points A1, A3, and A4 to sandy clay loam at sample point A2. Several unusual soil compositions were noted at the study site within the channel, due to the site being graded in the past, and the site used as an illegal dumping area. Within each of the sample point areas, concrete rubble, brick, plastic and metal refuse were present on the soil surface and/or within the soil. Soils determined to be wetland soils were based on one indicator (redox dark surface), likely due to a lack of ponding in the channel during most times of year. In addition, dark parent materials and the fact that the drainage feature has only been in existence for a few to several decades likely limits the formation of more hydric soil indicators.

4.1.3 Hydrology

Wetland hydrology indicators at sample points A2 and A4 included mud cracks at the surface of the channel bottom (**Photo 9** in **Appendix B**). No other hydrology indicators were present. No ordinary high water mark was visible in the channel, likely due to a lack of flow through the channel at most times of year.

4.2 STATE WETLANDS

A total of 0.248 acres of potential state jurisdictional wetlands occur within the delineation study area. The acreage of state wetlands exceeds that of the federal wetlands since determination state wetlands is based upon only one parameter (hydrophytic vegetation or hydric soils or wetland hydrology) rather than the presence of all three required by the federal wetland definition. **Table 1** provides the calculations for the total acreage for state and federal wetland areas within the study area.

The entire portion of the channel exhibiting hydrology features was mapped and designated as FC-1. This area qualifies as a state wetland due to hydrology and soil indicators, but vegetation is either lacking or composed of upland plant species in many places. Areas where the hydrophytic vegetation is dominant within the channel satisfy the criteria for federal wetlands.

4.3 ENVIRONMENTALLY SENSITIVE HABITAT AREAS (ESHA)

The CCC defines an ESHA as an area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities." (California Coastal Act §30107.5). The CCC Guidelines contain definitions for specific types of ESHAs, including: wetlands, estuaries, streams and rivers, lakes, open coastal waters and coastal waters, riparian habitats, other resource areas, and special-status species and their habitats. For the purposes of this report, ESHAs include any areas that may meet the definition of any ESHA defined by the CCC guidelines or the City of Pacifica LCLUP. A "special-status natural community" is a natural habitat community that is unique in its constituent components, restricted in distribution, supported by distinctive soil conditions, considered locally rare, potentially supporting special-status plant or wildlife species, and/or that receives regulatory recognition from municipal, county, state, and/or federal entities such as the California Natural Diversity Database (CNDDB). Within the study area, the arroyo willow stand is consistent with the description of Arroyo willow thickets (61.201.01 – Salix lasiolepis), which is listed by CDFW as sensitive plant community. This species is common in coastal California and does not have a rarity ranking. However, based on this classification and that it is often associated with riparian habitat, the arroyo willow stand, would be considered an ESHA. Discrete portions of the drainage channel where one or more wetland parameters are present would also be considered an ESHA.

RECOMMENDATIONS

The proposed project would not result in direct or indirect, temporary or permanent impacts to wetlands, other waters, or any ESHA's. The drainage channel feature adjacent to the property at 505 San Pedro Avenue appears to be a man-made constructed feature, that is highly degraded due to construction and ongoing maintenance of a City of Pacifica sewer line that runs underneath the feature. The channel has been used as an illegal dumping area for decades and refuse such as gas cans, mattresses, appliances, plastic garbage, concrete rubble, bricks, and other refuse are present within the channel and buried within the soil.

The project as proposed would create a retaining wall and public access easement (pedestrian trail) along the western property boundary, and the following setbacks from the wetlands are shown in **Table 2**.

TABLE 2. STATE AND FEDERAL WETLANDS AND SETBACK DISTANCES FROM PROPOSED PROJECT AT 505 SAN PEDRO AVENUE, PACIFICA, CA

		From Retaining Wall/Trail		From Structures (approximate)	
Name	Wetland Type	Distance to closest point(ft)	Distance (ft) max to near edge	Distance to closest point (ft)	Distance (ft) max to near edge
AW-1	Federal Wetland	4.10	13.34	32.9	84.7
AW-1	State Wetlands	0.00	0	29.31	63
BM-1	Federal Wetland	12.47	13.7	26.9	33.67
BM-1	State Wetland	6.16	10.5	23.17	31.5
FC-1	State Wetland	6.35	18.45	19.4	26.3
PR-1	State Wetland	10.86	12.8	23.46	26.19
PR-1	Federal Wetland	12.79	15.7	26.36	28.18
SW-1	State Wetland	2.31	7	15.31	19.95
SW-1	Federal Wetland	5.52	10.4	17.85	25.59
SW-2	Federal Wetland	8.51	21.4	20.61	33.4
SW-3	State Wetlands	0.00	6.13	8.67	18.64
SW-3	Federal Wetland	7.66	12.3	20.9	24.5
WC-1	State Wetland	0.00	5.5	10.06	22

The LCLUP states that "As a general rule, a buffer of at least 100 feet measured from the outward edge of riparian vegetation would be appropriate *unless such a width is determined to be unnecessary for protecting the resources of the habitat area"*. The California Coastal Commission has required buffers of 100 feet from the edge of riparian vegetation in areas where such buffers are feasible. However, it is not unusual for the Commission to allow smaller buffers in urbanized areas where the existing land use patterns do not allow for increased riparian buffer areas.

Based on the existing condition of the drainage channel, and the setback distances, the proposed project would not present a source of physical, chemical or biological disturbance to the wetland habitats including the arroyo willow stand (AW-1). Additional measures to ensure the channel is not impacted by construction activities would include planting of native plant species suitable for the boundary area adjacent to the channel, and installation of appropriate erosion/ sediment controls such as silt fencing, fiber rolls, and erosion control blankets along the top of the bank. These measures would be suitable to protect the resource and improve the quality of this resource.

Any economic use of the subject property would result in a reduction of the recommended 100-foot buffer because of the proximity of any development on the property to wetland habitat. The CCC has permitted more intensive uses that resulted in direct impacts to sensitive coastal resources, consistent with the mandate of Coastal Act § 30010 that prevents taking of private property without compensation (see CCC Appeal Numbers A-2-SMC-11-040 & A-2-SMC-11-041)[2] concerning a controversial project near Half Moon Bay that was ultimately approved).

[2] https://documents.coastal.ca.gov/reports/2013/12/W18a-12-2013.pdf

5. REPORT PREPARATION AND REFERENCES

5.1 REPORT PREPARATION

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Field work and report preparation were completed by Patrick Kobernus (Senior Biologist) and Greg Pfau (Associate Biologist).

5.2 REFERENCES

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MEMORANDUM

To: Jim Browning, U.S. Fish and Wildlife Service, SFWO, Sacramento
From: Peter Baye, Ph.D., coastal plant ecologist
Date: 4 May 2005
SUBJECT: Documentation of California red-legged frog occurrence at Pedro Point, Pacifica, San Mateo County

Jim, I am reporting to USFWS directly the attached documentation of a California red-legged frog population at Pedro Point. The site is a drainage ditch in an historic floodplain of Pedro Creek, recently proposed for residential development. The site is somewhat isolated from Pedro Creek by Highway 1, a road, buildings, and parking lots, but has drainage connections to the mouth of the creek.

LOCATION: Pedro Point Road opposite Grand Avenue, Pedro Point, Pacifica, San Mateo County. Southeast corner of Calson/"Archdiocese" Pedro Point Field.

SETTING: Drainage ditch through blue gum windbreak between commercial shopping plaza and mown grassy field with seasonal wetlands, approximately 0.25 mi from Pedro Creek. See photo attached.

HABITAT CONDITIONS: Road drainage ditch and culvert fed by seasonal to perennial seeps in hillslopes of developed residential area and historic blue gum/Monterey pine plantation. Blue gum-shaded pool less than 3 m diameter, up to 25 cm deep currently, minimal vegetation; mostly flood-deposited sand and silt; abundant non-native wetland vegetation downstream, but no perennial ponds or cattail/tule marsh.

OBSERVED OCCURRENCE: 3 Adult CRLF observed; one within culvert, one at pool edge of concrete culvert support, one submerged at depth of 10 cm. No tree frogs present in pool, but present in downstream portions of ditch system. Photos attached of two CRLF, one highly visible, one obscure (submerged silhouette). Visual observation and photos 5/3/05. Multiple aural detections of diving frogs April; no visual detections in turbid water. No egg masses observed within visible upper 10 cm of water column.

NEARBY OCCURRENCES: Other confirmed CRLF observations in last 2 years at mouth of Calera Creek (Quarry), with San Francisco garter snake, approx 1.5 mile north. Likely

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occurrence in Pedro Creek floodplain wetlands, perennial freshwater marsh. Garter snakes (likely San Francisco ssp.) also present in residential area gardens, yards.

POTENTIAL THREATS: Residential development proposed for adjacent field; likely to require improved drainage. Drainage problems of adjacent Pedro Road may require repair work; some recently implemented.

(a)

(b)

Figure 1: (a) Culvert and scour pool with lobe of flood sediment. (b) Detail of pool and sack-concrete dam. Adult CRLF head emergent at edge of sack-concrete, next to woody debris (sticks) at extreme left. 5/3/05.

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Figure 2. Adult California red-legged frog at edge of sack-concrete dam of culvert. 5/3/05

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Figure 3. Submerged silhouette of second CRLF in pool.

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July 7, 2014

SUBJECT: Draft Environmental Impact Report for The Pacifica General Plan Update Project – SCH No. No. #2012022046

Dear Mr. Diaz,

The comments below regarding the Draft Environmental Impact Report for the Pacifica General Plan Update Project (DEIR) are submitted on behalf of the Pedro Point Community Association, but represent my independent, best professional judgment.

I have reviewed the DEIR sections relevant to assessment of biological resources, land use policies, and selected relevant portions covering hydrology and geology for CEQA compliance and for LCP amendment compliance with the Coastal Act. I have also conducted site visits of the Pedro Point field (also "undeveloped San Pedro Ave site" and described as "vacant" in the DEIR, General Plan and Local Coastal Plan documents) in all seasons since 2000.

My qualifications to provide expert comments are based on nearly 35 years of professional work in coastal wetland and terrestrial ecology, with over 20 years in San Francisco Estuary wetlands, including long-term direct knowledge of the estuarine wetlands, special-status species, and diked baylands in the project area. A statement of my qualifications is attached hereto as Attachment A.

My comments focus on the potentially adverse environmental impacts of proposed changes in the land use designation of the Pedro Point neighborhood.

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Summary of Comments

1. Environmental Baseline: The DEIR provides contradictory information about the vegetation of the Pedro Point field, asserting that it supports "northern coastal scrub", an upland vegetation type absent in the grassy field, and that it supports wetlands. The field supports seasonal wetlands. The DEIR fails to disclose the importance of these wetlands in terms of the environmental setting of San Pedro Creek mouth wetlands in the Coastal Zone (the field is the last remaining historical floodplain of the lower San Pedro Creek Valley that has not been developed in the Coastal Zone) and the local distribution of ESHA (Environmentally Sensitive Habitat Areas) supporting California red-legged frogs.

2. Biological Impacts to Wetlands and Special-status Species: The DEIR fails to analyze any biological impacts caused by conversion of the existing Pedro Point field to a land use designation of "Coastal Residential Mixed Use development". The DEIR fails to programmatically assess impacts at a neighborhood-specific level as it did in the 1980 General Plan, and it fails to consider general impacts of residential development on extensive seasonal wetlands and ESHA in and around the field. The proposed land use change for the field is likely to cause significant impacts to wetlands, wildlife, and special-status species for which no feasible mitigation has been identified, and for which no feasible mitigation probably exists.

3. **Land Use Impacts**. The DEIR fails to analyze land use impacts caused by changing the land use of the field from a general "Commercial" use (1980 General Plan) to a more specific and different "Coastal Residential Mixed Use" designation. This change for the field's designated land use causes significant impacts (conflicts with) to the City's own land use policies and numerous Coastal Commission land use policies that cannot be mitigated, and are not mitigated by the vague, programmatic mitigation measures cited in the DEIR.

4. **Conclusion**. The DEIR fails to disclose important biological resources, and their distribution and relationship to other biological resources and communities in the environmental setting of lower San Pedro Creek. This precludes meaningful public comment and DEIR analysis of significant impacts to biological resources and land use policies that are likely to occur. The DEIR should be recirculated to correct the flawed environmental baseline and defective impact analysis, and should identify reasonable alternatives that either lessen significant impacts, or are otherwise environmentally preferable.

1. Environmental Baseline

The DEIR presents inconsistent and erroneous biological baseline description of the existing conditions of the Pedro Point field and its vicinity. The errors, omissions, and contradictory environmental baseline description results in erroneous conclusions that the project (General Plan) will have no significant biological impacts. Neighborhood-specific assessments of proposed General Plan land use changes are lacking for Pedro Point, its field, and for the DEIR in general.

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Assessment of biological and land use impacts to the Pedro Point neighborhood requires reference to existing *physical and biological* environmental conditions (2014; approximately the time of the EIR's notice of preparation), and the existing *land use* designations from the 1980 General Plan. The existing biological conditions of the Pedro Point field – the last undeveloped lowland open space within the historical floodplain of San Pedro Creek – is inaccurately and inconsistently represented in the DEIR's figures and text. These errors result in underestimation of significant biological impacts, as discussed below.

1.1 Mapped DEIR Wetlands, Vegetation and Habitats – physical and biological baseline

The DEIR provides contradictory and confused (and confusing) information about the existing biological conditions of the Pedro Point field. Figure 3.7-1 (Vegetation; DEIR p. 3.7-3) maps most of the field in the color-code (pale olive green) corresponding with "Northern Coastal Scrub" (an upland vegetation type associated with coastal hillslopes and bluffs), and part of the field color-coded gray as "urban" land use but overlapping with the "wetlands" symbol. This is contradictory and erroneous environmental baseline information. There are in fact *no stands of northern coastal scrub vegetation* at all within or around the Pedro Point field. The shrubs on the railroad berm are ornamental non-native plantings. No part of the field is "urban" cover type, as misrepresented in the figure; *no paved or developed areas with structures exist in the field*. Figure 3.1-1 shows the "Existing land use" color-coded gray as "Vacant/Undeveloped", which is also inconsistent with "urban" land use, but consistent with "wetlands". The map also misrepresents mixed ornamental, non-native, and native coastal bluff scrub vegetation northwest of the field as "beach/intertidal" habitat. The two major color-coded map units for the Pedro Point field, "urban" and "northern coastal scrub" are incorrect.

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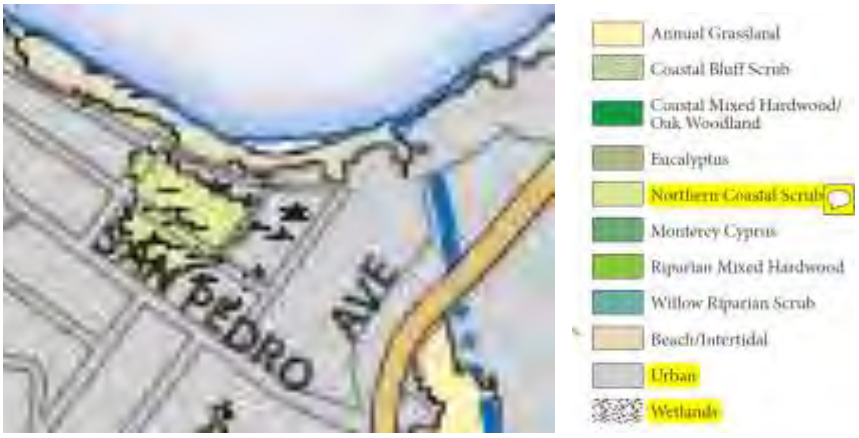

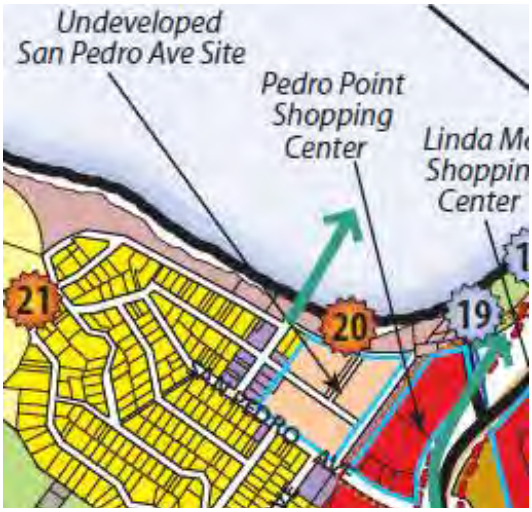

Excerpted section of Figure 3.7-1 of the DEIR "Vegetation" map (above) showing Pedro Point field with paper streets between Dannman and San Pedro Ave. The setting within the Draft Local Coastal Plan (2014) as represented as "Undeveloped San Pedro Ave Site", is shown in a portion of Figure 4.8 (left).

Only one map symbol (pattern) for the vacant/undeveloped Pedro Point field in Figure 3.7-1 is accurate: "wetlands" classified by the U.S. Fish and Wildlife Service National Wetlands Inventory at coarse scale, as shown also in DEIR figure 3.7-2. The Pedro Point field itself is dominated by non-native grasses and herbaceous broadleaf plants, including seasonal wetland and non-wetland vegetation. Both maps omit the distinct seasonal and perennial wetlands of the drainage swale at the east end of the field, which drain to San Pedro Creek through a series of culverts. The drainage swale wetlands, the wetland connectivity to San Pedro Creek mouth, and the extensive perennial wetlands (Freshwater Marsh) of San Pedro Creek are entirely missing from the vegetation map of Figure 3.7-1.

Other errors describing habitat and vegetation are evident in the DEIR's descriptions of existing conditions in the coastal zone. For example, the DEIR confuses coastal strand (beaches and dunes) with coastal bluff scrub, and states that the plant sea-rocket (*Cakile maritima*) is a dominant species of "coastal bluff scrub". Sea-rocket is a non-native species common on sand beaches and low foredunes (like those

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of Pacifica State Beach), but does not occur at all in coastal bluff scrub in Pacifica or elsewhere, let alone as a dominant species. The description of coastal bluff scrub combines species that simply do not occur together in natural or disturbed environments of Pacifica.

1.2. Wetland classification of the Pedro Point field and vicinity: existing conditions

Based on my recent and past site visits, I know that the existing vegetation of the Pedro Point field consists of predominantly annual and perennial, herbaceous, non-native seasonal wetland and upland grassland vegetation. Seasonal wetland grassland occupies a mosaic of depressions, ditches, and swales. Mesic grassland (seasonally wet but lacking a prevalence of wetland indicator plants) occupies portions of the higher elevation zones of the site, primarily to the southwest corner. The wetland depressions are indicated by seasonally high density of toad rush (*Juncus bufonius,* FACW, facultative-wet indicator in arid west), co-occuring with European ryegrass (*Festuca perenne*; syn. *Lolium perenne;* FAC, facultative wetland indicator in arid west) and buck's-horn plaintain (*Plantago coronopus*; FACW, facultative-wet indicator in arid west). Some of the wettest depressions support populations of *Lilaea scilloides* (flowering quillwort). Flowering quillwort is evident only in the wettest years when pools stay flooded for many weeks or months. Accurate wetland plant identification and measurement of the seasonal wetland patches at this site are possible only during winter to spring months. Desiccation, disturbance (trampling, mowing, discing) eliminates or degrades wetland vegetation and precludes accurate identification in fall and summer. Similarly, accurate assessment of wetland hydrology is feasible only during the rainy season, during and within two weeks following major rainfall events.

The USFWS classification of Pedro Point Field wetlands shows wetlands distributed over approximately all of the site, as shown in DEIR Figures 3.7-1 and 3.7-2. Past and current National Wetland Inventory ("NWI") maps consistently apply wetland classifications to approximately all of the field. Two current classifications of the field's wetlands include the codes "PEMah" and "PUSCh", both "palustrine" (freshwater emergent, non-tidal) seasonal, and consistent with the seasonally flooded hydrology associated with surrounding berms. The "U" (unconsolidated shore) probably is associated with intermittent unvegetated (disced, vegetation disturbed) conditions. The NWI wetland mapping of the field broad-brush treatment of prevailing past wetland distribution, but the precision of the NWI wetland *type* boundaries is not precise enough for the DEIR to represent as "existing conditions" in 2014 CEQA assessment. In my professional opinion, "wetlands" meeting the jurisdictional criteria for Coastal Commission ("Commission") policies, and classification as "wetland" under the Cowardin (U.S. Fish and Wildlife Service, USFWS) system, are in fact present and widely distributed over the Pedro Point field today, despite past unauthorized ditching and drainage activities (see wetland history, below).

Despite DEIR's inclusion of NWI mapped wetlands in some figures, the DEIR fails to apply the NWI wetland mapping and classification (as well any current field reconnaissance observations to update or verify them) to any meaningful biological assessment of potential wetland impacts of land use

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designation changes to the field, and assessment of alternatives. The DEIR fails to assess the extent and distribution of the field's seasonal wetlands (meeting Cowardin/California Coastal Commission wetland criteria) in relation to land use changes proposed. The DEIR does not consider the accuracy or distribution of the (old) NWI wetland maps based on existing field conditions. Specifically, the DEIR does not analyze whether the field's wetlands are localized or extensively distributed in the field, so it cannot analyze whether it is even feasible to designate a coastal residential mixed-use development without committing the City's General Plan to significant wetland impacts, in conflict with its own land use policies and Coastal Act policies.

Further, because of the DEIR's omissions about wetland impacts, comparison of alternatives will lack relevant information about feasible land use alternatives that may avoid or minimize wetland impacts, and which may be environmentally preferable. Examples of environmentally preferable alternatives consistent with City and Coastal Act policies include existing "Commercial" land use (with and without "Commercial-Recreation" zoning) compatible with low-intensity visitor-serving commercial recreation/tourism-promoting uses; or "Conservation" - all of which are consistent with City policies for tourism destination, avoidance of natural hazards, wetland conservation, and consistency with recreational, scenic values that Coastal Act policies give priority over residential development.

1.3. Wetland jurisdiction and CEQA

The DEIR cites multiple state and federal wetland jurisdictions. With respect to assessment of *biological* impacts to wetlands, USFWS (NWI, Cowardin wetland classification), California Coastal Act, and California Department of Fish and Wildlife wetland policy definitions are applicable because these are fundamentally based on habitat, hydrogeomorphic features, and ecological functions. In contrast the narrowest federal definition (U.S. Army Corps of Engineers and Environmental Protection Agency; USACE/EPA) under the Clean Water Act is specifically limited to *legal* wetland definition for jurisdiction over authorization of discharges of earthen fill regulated under Section 404 of the Clean Water Act. The USACE/EPA wetland definition contains federal exemptions and policy disclaimers that are not relevant to biological impact assessment under CEQA, and it is a narrower and more exclusive definition that is likely to underestimate the extent of habitat-based or hydrogeomorphic definitions appropriate for impact assessment.

The California Coastal Act Section 30231 defines a wetland as:

> *...lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.*

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Similarly, the Cowardin (USFWS, NWI) wetland classification uses a general broad definition of wetlands:

> Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.

California Coastal Act jurisdictional wetlands criteria in the California Code of Regulations at 14 14 CCR Section 13577 establish a "one-parameter definition" that only requires evidence of a single wetland parameter to establish wetland conditions, in contrast with federal wetlands criteria under the Clean Water Act:

> Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts…

The Commission's one-parameter definition is similar to the USFWS wetlands criteria, which state that wetlands must have one or more of the following three attributes:

> (1) at least periodically the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

In contrast, the U.S. Army Corps of Engineers (USACE) and the Environmental Protection Agency use a three parameter definition for delineating wetlands under Clean Water Act jurisdiction, which is relevant *only in context of USACE permit authorization for discharges of fill in jurisdictional waters* of the United States. The USACE definition is narrower than those of the Coastal Commission (relevant to LCP) and USFWS (relevant to wetland impact assessment under CEQA, not limited to fill discharges and subject to federal exemptions irrelevant to CEQA).

The City's wetland policies (Land Use; DEIR p. 3.1-21) cite both USACE/EPA and Coastal Commission wetland definitions. CO-I-5, CO-I-6 cites both, and CO-I-8 cites State (CDFW/CCC) wetlands only. The narrower USACE/EPA definition is relevant only to those land use policy elements that specifically cite it in context of wetland fill permits. **The USACE/EPA jurisdictional wetlands are not the proper standard for determining consistency of GPU consistency with Coastal Act wetlands policies, or wetland impacts under CEQA**. This should be corrected in the EIR, or else the EIR will not provide accurate conclusions about Pedro Point field land use impacts regarding wetlands in context of CEQA or Coastal Act policies.

1.4. Special-status species and Environmentally Sensitive Habitat Areas (ESHA): California red-legged frogs (*Rana draytonii)* environmental baseline

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California red-legged frogs (*Rana draytonii;* CRLF) occur in the freshwater marsh drainage swale bordering the Pedro Point Field along its eastern edge. I reported their presence to the U.S. Fish and Wildlife Service Sacramento Fish and Wildlife Office, Endangered Species Program in 2005. If the DEIR preparers had consulted properly with state and federal wildlife agencies, or local residents, about the local distribution of special-status or other wildlife species, this information would have been available to include in the DEIR. The DEIR, however, failed to disclose the local sub-population of CRLF in the drainage swale bordering the field, and its relationship with the population of the lower San Pedro Creek wetland complex.

I have observed adult red-legged frogs are most often observable basking along muddy or prostrate grass banks near the culverts draining San Pedro Avenue at the southeast corner of the field. The perennial moisture in this swale provides year-round hydration habitat for CRLF, as well as foraging and potential breeding habitat. CRLF breeding is indicated by intermittent local population increases in red-legged frogs here, most notably in 2010. Foraging activities of CRLF likely extend to adjacent non-wetland flats (rich in invertebrate prey) in the field during moist, foggy nighttime and early morning conditions. I am not aware of protocol nighttime surveys for California red-legged frog conducted either in the freshwater marsh swale adjacent to the field, or in the field itself. The vicinity of the freshwater marsh swale and field are a complex of foraging, basking, dispersal, and breeding wetland and upland habitat for California red-legged frogs. It thus also meets criteria for Environmentally Sensitive Habitat Areas (ESHA) under California Coastal Commission regulations. The DEIR fails to include this information about CRLF at and in proximity to the field.

In addition, the DEIR fails to analyze the potential adverse, significant impacts to CRLF from the proposed land use changes. Land use designations that would foreseeably increase the intensity of land use, such as the proposed redesignation to allow residential development or other substantial increases in the built environment, may have significant direct and indirect impacts on CRLF. The proposed residential mixed-use development of the field would likely (a) substantially reduce available nocturnal foraging habitat for CRLF (food and prey base impacts to growth and survival; (b) increase contaminant loads in the drainage swale due to runoff from driveways, roads, and backyard sources of pesticides, petroleum hydrocarbons, solvents, and detergents (reproductive impacts); (c) increase peak flow velocities in the swale during major storm runoff events (juvenile mortality impacts).

Not only has the DEIR not assessed such impacts, it has not identified feasible programmatic mitigation measures. Feasible mitigation for ESHA/California red-legged frog habitat and frog populations must include measures to (a) avoid and minimize "take" of individual frogs, (b) avoid and minimize impacts to CRLF habitat; and (c) provide adequate buffer zones to minimize adverse effects of incompatible adjacent land uses. The spatial structure of CRLF mitigation aligned with the freshwater marsh swale bordering the field may substantially constrain the feasibility of some incompatible land use designations, especially any that increase runoff, contaminants or pesticides, predator pressure on CRLF,

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or reduce the extent or quality of potential productive nighttime foraging habitat. The Bolsa Chica court decision [Bolsa Chica Land Trust *v.* Superior Court 71 Cal. Ap.4th 493, 507] confirmed that the Coastal Act requires that ESHA be avoided and buffered from development impacts and that providing compensatory mitigation alone is insufficient as ESHA mitigation.

Intermittent breeding habitat of California red-legged frogs in freshwater marsh swale bordering the southeast corner of the field, near roadside culverts. An adult CRLF is shown at the concrete base of foundation culvert on August 20, 2006, after the field ditch connections were breached to the swale north of this pool. CRLF frequently bask in the western muddy or grassy banks of this pool in wet (non-drought) years.

1.5. **Wetland context and cumulative impacts: environmental setting of Pedro Point**

The DEIR also omisrepresents the existing *environmental setting and context* of the wetlands of the Pedro Point field. The field's wetlands are represented as completely *isolated* from any other significant wetlands or potential wetland-dependent endangered species habitats. See Figures 3.1-1, 3.7-1, 3.7-2, and 3.7-3, all of which fail to show the San Pedro Creek mouth wetlands and their riparian wetland habitat, vegetation and hydrological connections with Pedro Point field and its wetlands. The San Pedro Creek stream mouth wetlands, however, are shown as red-legged frog habitat (marsh, creek, and riparian vegetation) in Figure 3.7-1, but *without* their wetland connections to the Pedro Point field and drainage swale wetlands. The omission of the San Pedro Creek mouth wetlands in the Coastal Zone is either arbitrarily selective or at least inconsistent in the DEIR: the riparian corridor and wetlands upstream of Highway 1, outside the coastal zone, are represented in Figure 3.7-1 and 3.7-4, but not in Figure 3.7-2.

This error of selective omission of wetlands in the project vicinity appears to be due to the DEIR's failure to critically interpret and update National Wetlands Inventory map with even cursory examination of readily available current aerial or satellite imagery of San Pedro Creek mouth (e.g., Google Earth), or field reconnaissance surveys of the conspicuous restored freshwater marsh there.

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Figure 3.7-2, "National Wetlands Inventory Wetlands", completely fails to represent the perennial freshwater emergent marsh and freshwater streams of San Pedro Creek mouth as they existed at the time of the DEIR's notice of preparation, and as they have existed for about a decade. The DEIR cannot uncritically transfer NWI map data without checking for errors of omission due to outdated data layers. The NWI wetland classification (Cowardin USFWS classification system) provides sufficient clear wetland criteria to identify the obvious wetlands (cattail and tule marsh vegetation 6 to over 10 feet tall with standing water) at the mouth of San Pedro Creek. This marsh is clearly known to the City of Pacifica, which was the local partner in the project that restored it.

The adjacent San Pedro Creek mouth freshwater marsh is very significant as an environmental setting of the seasonal wetlands of the Pedro Point field. Ecological connectivity (wildlife corridors for wetland-dependent wildlife) exists between the creek mouth marsh and the field, provided by the drainage swale wetlands (not currently channelized; infilled with sediment and wetland vegetation) consisting of willow swamp (riparian scrub) and freshwater marsh dominated by broadleaf wetland forbs and grasses.

The environmental setting and potential Project and cumulative impacts to wetlands at the Pedro Point field are related to their hydrogeomorphic setting and historical origins and development. The pre-agricultural "natural" condition of the field was freshwater nontidal marsh within the floodplain of San Pedro Creek (San Pedro Valley lowlands). The modern field was part of complex of freshwater marsh and swamp (alder-willow) surrounding Lake Mathilda (the freshwater lagoon outlet of San Pedro Creek prior to channelization), behind the barrier beach (San Pedro Beach). The rich organic fine-grained alluvial soils were converted to agricultural cropland (artichoke fields) by draining and ditching in the late 19th century. The field apparently persisted with either low-intensity agricultural use (grazing, haying) into the 1950s or early 1960s when Linda Mar was extensively developed. Some fill was placed on at least portions of the field in recent decades, but differential subsidence in the flat to very gently sloping (<2%) field maintained depressional microtopography (shallow swales, pools) to the present day.

I have observed the Pedro Point field since the year 2000 in all seasons. Wet (saturated to seasonally flooded) depressions in the field persisted for weeks to months, supporting typical seasonal wetlands grasslands dominated by ryegrss, toad rush, buck's-horn plaintain in winter-spring months. In addition, a regionally rare vernal pool/pond plant, the flowering quillwort (*Lilaea scilloides*) occurred in local abundance in several pools. In January, 2006, the current landowner and assistants manually excavated diagonal ditches and side-cast fill (ditch spoils) across the field, apparently with the intent of draining the field. In August 2006, mechanical equipment breached wide gaps in the berm between the field and the adjacent drainage swale marsh. These drainage activities were apparently completed without benefit of a Coastal Development Permit or authorization from the U.S. Army Corps of Engineers.

Despite the 2006 drainage ditching and subsequent maintenance and repeated discing of the field, depressional wetlands have persisted and re-emerged (due in part to differential settlement and choking of

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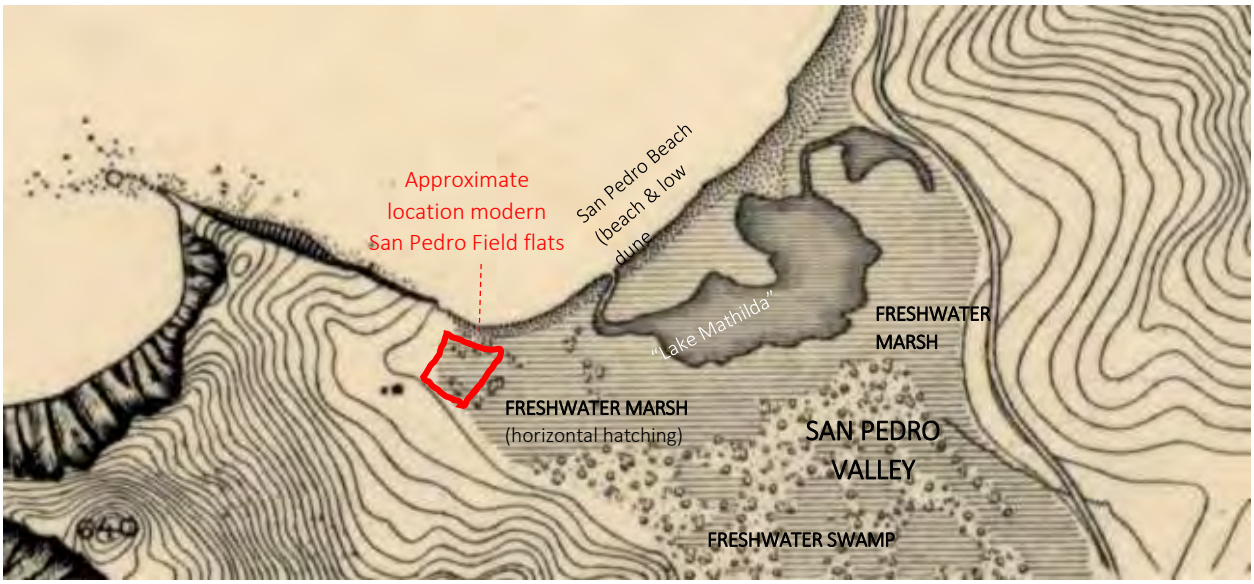
ditches) in the field. The ditching appears to have reduced the duration and extent of wetland hydrology, but significant wetland areas remain widely distributed across most of the field, including the original seasonal wetland plant community.



Excerpt of U.S. Coast Survey map of San Francisco Peninsula, 1869, based on 1850s topography: San Pedro Creek Valley and beach, now Linda Mar. Approximate location of San Pedro Field (Calson/former Archdiocese property) in red shows the relationship of the modern field wetlands to the historical valley floodplain wetland complex. Parallel horizontal hatched lines indicate freshwater marsh. Stippled shoreline area indicates sandy beach, dune, washover. Fine horizontal hatching is open freshwater (Lake Mathilda; historical Pedro Creek Lagoon, drained for agriculture 19th century). Irregular circles/dots within marsh = wooded freshwater swamp (alder, willow). No scale.

Extensive seasonal flooding of the Pedro Point Field during the transition between the historical agricultural era (derelict or low-intensity agricultural use) and suburban development of Linda Mar in San Pedro Valley lowlands (background), likely 1950s-early 1960s. View to E/SE. The eucalyptus and Monterey cypress trees at the fenceline correspond the mature trees present today along the drainage swale at the east end of

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the field. The extensive seasonal pond likely represents flooding patterns prior to partial filling of the wetlands.

Flooding patterns delineate undrained depressions of shallow open water in a matrix of saturated soils in San Pedro Field following heavy rainfall. December 26, 2005. View to N.

Shorebirds (likely sanderlings) forage in the seasonally saturated and flooded field during high tide and storm wave conditions that restrict foraging habitat availability on the adjacent San Pedro (Pacifica State) Beach. December 27, 2005, prior to unauthorized ditching of the field. Red-necked phalaropes also forage in the saturated to flooded field during winter storms.

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January 19, 2006. Manual excavation of drainage ditches in flooded field at the east end of the field. Grass grows above water surface. Water in bare spots can be seen as reflected sunlight on the field; emergent unvegetated mud is dark brown.


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During discing of the field in summer, the berm along the east end of the field was mechanically breached at multiple locations to connect new drainage ditches (excavated in seasonal wetlands of the field) to the large drainage swale occupied by California red-legged frogs, draining to San Pedro Creek through culverts at the northwest end. August 20, 2006.

Despite new unauthorized ditching and drainage connections of the field, ditches merely reduce the extent and duration of soil saturation and flooding; they do not eliminate wetland conditions in the winter following ditching. December 27, 2006

Today, wildlife in the seasonal wetlands of the Pedro Point field includes shorebirds, meadowlarks, black-tail deer, tree frogs, small mammals, and raptors, all of which move between the field wetlands, the adjacent drainage swale wetlands, uplands, and the mouth of San Pedro Creek. Sanderlings and red-necked phalaropes occur intermittently in the flooded to saturated fields, particularly during high tides and storm wave conditions that flood the beach.. In summer, meadowlarks inhabit the field some years, particularly when grass and forb vegetation cover is thick. Small mammals, including mice, pocket gophers, and voles, occur frequently in the field (indicated by burrows, runs) and provide a prey base for raptors, including great horned owls (roosting in eucalyptus trees near the field), and red-tail hawks. Deer browse in the field at night, and at times in the morning as well. The marsh swale bordering the east end

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of the field has supported a breeding population of tree frogs (*Pseudacris sierra*) and a population of federally listed threatened California red-legged frogs (*Rana draytonii*) most years at least since 2000 (see special-status species, below). The DEIR fails to disclose intermittent red-legged frog populations in the vicinity (and sometimes directly bordering) the field, and the existence of probably nocturnal foraging habitat (for this species spring-fall non-breeding adults) within in the field itself. The DEIR failed to identify these significant wildlife movement and habitat connections between the field and habitats in its wetland setting. The DEIR fails to analyze potentially significant impacts to red-legged frogs using the field that would be affected by proposed conversion to coastal residential mixed use development.

The DEIR's failure to correctly characterize the wetland environmental setting (the wetland complex comprising the San Pedro Creek mouth wetlands, the drainage swale wetlands, and the historical and existing condition of the Pedro Point field wetlands) prevents the DEIR from accurately analyzing potentially significant cumulative impacts caused by wetland habitat loss, degradation or fragmentation in the lower San Pedro Creek corridor, and the Pedro Point neighborhood.

Given the outstanding biological significance of the field as the *only open, level (flatland) space left in the Pedro Point neighborhood*, and despite years of being the focus of substantial public concern and comment in scoping and other public meetings, the DEIR's failure to provide even minimally accurate, consistent baseline environmental description of the field is a very serious defect in the DEIR. It precludes accurate assessment of potentially significant impacts that are not mitigated at the policy or site-specific level.

1.6. Biological Resource Impact Assessment and Mitigation in the DEIR

Despite identifying wetlands occurring potentially throughout the field, the DEIR fails to assess potential adverse, significant impacts to Coastal Act wetlands from the proposed land use designation changes at the Pedro Point Field. The DEIR provides no explanation why converting existing wetlands of the Pedro Point field to residential mixed use development would have no significant biological or land use policy impacts. The DEIR omits any specific reference at all to the Pedro Point field wetlands in discussion of biological impacts.

Further, the DEIR's cumulative impact analysis must consider that the extent of Coastal Act wetlands in the field was modified by ditching and drainage activities conducted by the landowner and assistants on January 19, 2006, during conditions of saturation and widespread flooding of the field. As far as I am aware, ditching and draining activities of these wetlands occurred without issuance of a Coastal Development Permit or analysis of environmental impacts. The apparently unauthorized drainage of the field probably results in underestimation of the actual extent of proper Coastal Commission jurisdictional wetlands in the field. See wetland history, below. The errors in the DEIR's environmental baseline, described above, contribute to basic errors in assessment of significant biological impacts and mitigation to wetlands and special-status species.

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The DEIR identifies only two potential *general* city-wide biological impacts, without area-specific reference to Pedro Point neighborhood and the specific land use changes proposed in the revised General Plan. Both of these impacts are incorrectly assessed with respect to Pedro Point biological resources, and their proposed programmatic (policy-level) mitigation is infeasible applied to Pedro Point field.

Figure 3.1-2 of the DEIR (p. 3.1-9; "Existing General Plan Land Use") shows the majority of the Pedro Point field mapped in red ("Commercial"), and apparently one small lot in the northwest corner of the field mapped in light yellow-orange ("low density residential"). The biological impacts of this proposed land use change must be assessed at a programmatic level, commensurate with *the level of detail of land use designation change in the programmatic EIR at neighborhood-scale*. The DEIR, however, fails to assess biological impacts at this geographic scale even at a programmatic level. It merely assesses biological impacts at a sweeping, vague, city-wide, policy level, omitting neighborhood-level biological impacts of specific land use changes proposed (DEIR p. 3.7-48 Impact 3.7-1; p. 3.7-57, Impact 3.7-3). The DEIR also provides only vague, policy-level "mitigation" (pseudo-mitigation; purely speculative policy without reference to physical or biological conditions) for land use change impacts in the aggregate, city-wide:

> **Impact 3.7-1 Implementation of the proposed General Plan would not have a substantial adverse effect, either directly or through habitat modifications, on candidate, sensitive, or special status species identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service. *(Less than Significant)***
>
> **Impact 3.7-3 Implementation of the proposed General Plan would not have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means. (*Less than Significant*)**

The DEIR provides no substantial evidence and no arguments for either impact findings or their level of significance. It is inconsistent with proposed land use changes (coastal residiential mixed-use development) for the field, and the presence of extensive seasonal wetlands and adjacent special-status species populations.

Although the DEIR does not need to assess impacts of land use change at a project-specific level (*i.e.*, it cannot speculate about the design of specific project proposals or their impacts in site-specific detail), it must address biological impacts that are reasonably foreseeable for the type of land uses proposed in the environmental setting under existing conditions. There is only one major land use change proposed in Pedro Point, and the DEIR provides no biological impact or mitigation discussion about it at

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all – not even the cursory programmatic wetland discussion presented in the Draft Land Use plan itself (LUI-30, p. 4-36, Pacifica Draft Land Use Plan, March 2014). The boilerplate, standard wetland permit discussion in the DEIR at p. 3.7-42 has no substantial bearing on impact or mitigation analysis for wetlands at Pedro Point.

Potentially significant biological impacts of proposed residential land use (development) at the Pedro Point Field and adjacent habitats are enumerated below. These are based on a more adequate characterization of the Pedro Point field wetlands, their relationship to San Pedro Creek wetlands, and their wildlife and hydrological attributes described above. None of these potentially significant biological impacts were analyzed in the DEIR.

Coastal Zone Wetland impacts

- Direct filling (loss) of the last coastal zone seasonal wetlands in Pedro Point watershed due to residential development. Lack of available off-site compensatory mitigation area within the coastal zone of the San Pedro Creek watershed (no feasible compensatory mitigation).
- Degradation of remaining coastal zone wetlands (wetland swale east of field) the San Pedro Creek watershed due to hydrological changes; increased impermeable surfaced area, decreased groundwater infiltration, increased storm runoff from drained residential lots within basin (historic floodplain).
- Degradation of remaining wetlands (wetland swale east of field) due to increased contaminant loading from adjacent residential development: pesticides (residential pesticide use and pesticide loading from runoff and drainage), increased petroleum hydrocarbon contaminant loads from street and driveway runoff; increased surfactant runoff to the drainage swale from residential car washing.

Wildlife and Special-status species impacts

- Loss of storm high tide refuge habitat for shorebirds
- Loss of meadowlark foraging habitat
- Loss of nocturnal deer browsing habitat
- Loss of raptor foraging habitat (Great Horned Owl, red-tail hawk, kestrel)
- Loss of terrestrial foraging habitat for California red-legged frogs
- Loss of flood refuge habitat for California red-legged frogs during peak flood events of San Pedro Creek.

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2.0 Land Use Impacts – Coastal Zone

The DEIR proposes to change the land use designation of the Pedro Point field from "Commercial" (Pacifica General Plan, pp. 86 and 90; DEIR Figure 3.1-2) to "Coastal Residential Mixed Use" (CRMU; DEIR Figure 2.2-1). The DEIR inaccurately states that the new proposed CRMU designation corresponds with an existing "Mixed Use" land use category (Table 3.1-3), but no such independent or category or subcategory of "mixed use" exists in the 1980 General Plan; "mixed use" is simply described as a contingent allowable use of "commercial" land use in the original General Plan (1980 General Plan p. 32-33). The project description is inconsistent, incorrect, and confusing in terms of existing and proposed land uses.

The 2014 Draft General Plan Land Use element states the following with regard to the CRMU designation on p. 4-24: "The Plan retains flexibility for any future development on the vacant site west of the shopping center, which could have residential and small-scale commercial and visitor-oriented uses. Future development should include a small park and access to the berm and the beach beyond". Table 4.1 of the Draft General Plan states that residential density with CRMU designation may range between 10-15 gross units per acre.

The DEIR, in contrast with the original 1980 General Plan, fails to assess even at a programmatic level the area-specific effects of proposed land use designations for the Pedro Point neighborhood, and specifically for the vacant Pedro Point field, in terms of land use impacts (*cf.* 1980 General Plan, pp. 84-89). The DEIR gives no reason why the level of specificity for impact assessment should be broader and more programmatic than the level of specificity for individual parcel land use designations like the Pedro Point field, or why the level of neighborhood-specific assessment should be significantly less than that of the 1980 General Plan's treatment of Pedro Point, especially in the Coastal Zone.

The existing land use designation of the field, "commercial" is compatible with low-intensity, visitor-serving commercial recreational land uses that support coastal-dependent (beach and coastal scenic) recreation and associated economic uses, which matches the existing zoning (commercial-recreation) of the field. Low-intensity commercial land uses that do not involve ditching, draining, filling, paving, or construction in the field (open-space and recreational uses, special events, coastal agriculture) are potentially compatible with conservation of wetlands, environmentally sensitive habitat areas, and special-status species, and relevant Coastal Act policies. Proposed Coastal Residential Mixed Use land uses, however, are likely to have significant impacts on **Coastal Act land use policies** (cited in Draft Pacifica Local Coastal Land Use Plan, March 2014, Appendix A) and Pacifica General Plan policies involving these elements, as discussed below.

The extensive distribution of Coastal Act jurisdictional wetlands in the Pedro Point field, and the presence of California red-legged frog habitat and population in the adjacent freshwater marsh swale,

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both indicate that land use designations for the field must be compatible with ESHA policies of the Coastal Commission. According to the Coastal Commission's LCP Update Guide: Sensitive Habitats and Natural Resources (April 3, 2007 update), the DEIR and LCP should clearly state that only "resource dependent" development, such as restoration or nature study, is allowed in ESHA, consistent with Coastal Act §30240. No ESHA assessment for the proposed changes in land use designation of the Pedro Point field has been provided in the DEIR, which is likely related to the DEIR's failure to accurately identify wetlands and special-status species at the site. The DEIR must be revised to include this analysis of potentially significant environmental impacts even at a programmatic level.

The 1980 Pacifica General Plan provided a programmatic analysis of consistency between proposed (commercial) land use designation of the Pedro Point Field and specific Coastal Act policies (1980 General Plan p. 86), including assessment of unimproved coastal access through foot trails (p. 88). The DEIR for the General Plan update has provided no such analysis for proposed changed land use designation of the field or coastal access impacts. It merely included the Coastal Act policies as an appendix, without analysis of proposed land use designation change impacts. The changed land use designation has potential significant land use policy conflicts (impacts) with Coastal Act land use policies, each of which affects ESHA (wetlands and special-status wetland-dependent wildlife). Some examples are provided below. The *DEIR should fully assess at a programmatic level all such potential significant land use impacts, and compare the compatibility (conflict) of existing, proposed and alternative land use designations for the field in terms of Coastal Act policies*.

> **Section 30212 New development projects**
>
> **(a) *Public access from the nearest public roadway to the shoreline* and along the coast *shall* be provided in *new development projects* except where:**
> **(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,**
> **(2) adequate access exists nearby, or,**
> **(3) agriculture would be adversely affected.**

Pedro Point field has three well-established and persistent foot trails that lead from San Pedro Avenue (the nearest public roadway to the shoreline) to a private beach with long-established open public access. The foot trails are visible in aerial photographs dating back to at least 1993 (Google Earth images) and re-emerge after being temporarily erased by discing, ditching, or mowing. The foot trails are formed by trampling patterns established between physical points of access from the roadway to a stairway from the beach to the historic railroad berm, and to a public path to the beach at the mouth of San Pedro Creek. Foot trails are frequently used by beach visitors and surfers seeking minimal travel distances to the beach. The foot trails evidently established long before the current ownership of the property. The foot trails are the most efficient short cuts from San Pedro Avenue to the public shore; alternative routes along public

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roads would nearly double foot trail distance from the public roads to the shore from established access points.

Pedro Point field in relation to public and private ocean shores, and freshwater marsh and stream habitat of San Pedro Creek mouth. 2013 Google Earth image.

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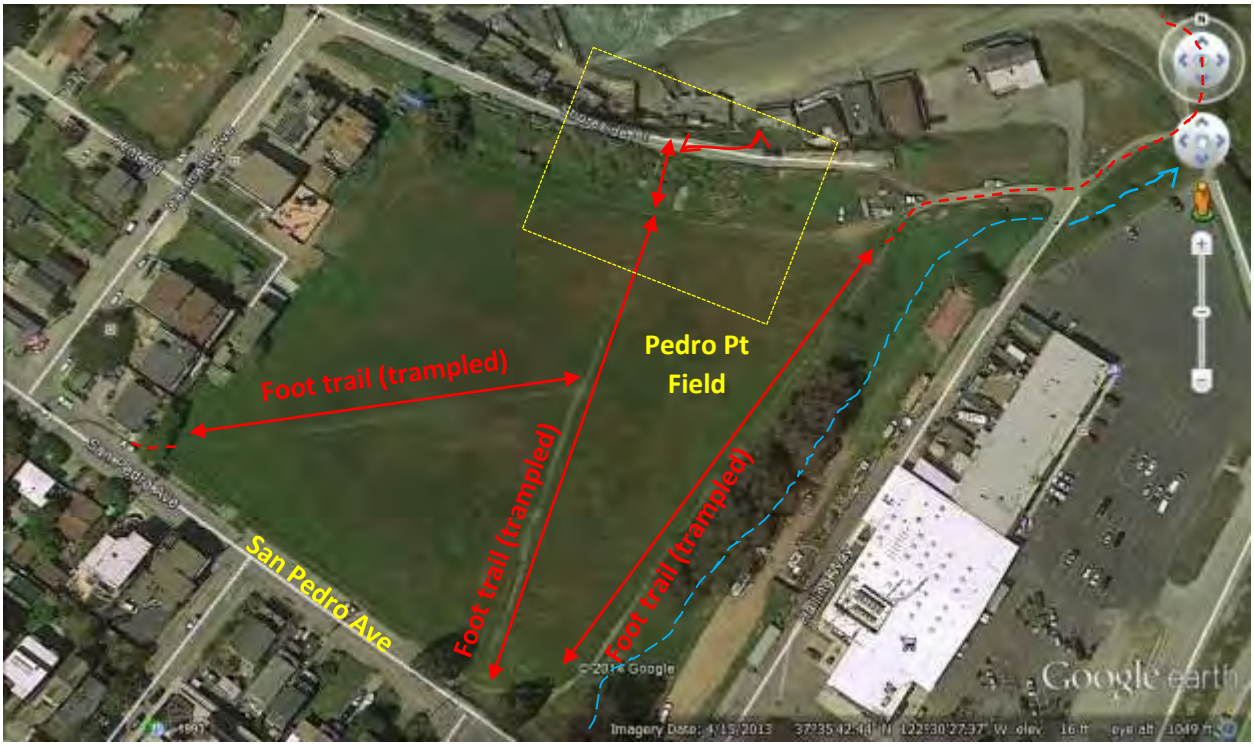

Foot trail network (2013) of Pedro Point Field, showing connections to levee trail access to private shore with long-established public access. Freshwater wetland drainage swale connecting to San Pedro Creek mouth is shown in dashed blue line. 2013 Google Earth image.

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Detail of Pedro Point field foot trail connection to the public access walkway to privately owned beach (with public access) across the historic railroad berm. 2013 Google Earth image.

Proposed coastal residential mixed-use development may potentially eliminate or significantly impair existing long-established public access from San Pedro Avenue to the public shore. This could be mitigated by requirements to provide public access easements along existing trails or equivalent efficient alignments (similar travel distance, slopes, road access points), but the DEIR proposed no mitigation or policy that would ensure such mitigation. The impact and mitigation for this Coastal Act policy were not assessed in the DEIR. There are no military needs, fragile coastal resources, or existing agriculture to provide exemptions for this policy.

> **Section 30221 Oceanfront land; protection for recreational use and Development**
>
> ***Oceanfront land suitable for recreational use shall be protected for recreational use and development* unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.**

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The Pedro Point field is separated from the ocean only by the railroad berm, and in its original condition (backbarrier floodplain marsh) it was "oceanfront", with line of sight to the ocean over the low barrier beach. According to Pedro Point long-term residents, the field has been used for recreation for years prior to and during the current land ownership. Recent recreational uses include children's games, domestic animal feeding and observation (former llama and emu enclosure along the toe of the railroad berm), ball sports, playground activities extending from the adjacent Pedro Point firehouse playground, and dog walking. The field is suitable for these established recreational uses, and is suitable for other recreational uses as well.

Proposed Coastal Mixed Use Residential land use changes could eliminate, reduce, or substantially interfere with long-established recreational uses of the oceanfront land. This impact is not assessed in the DEIR. The feasibility of mitigation for this impact is not assessed, and no mitigation is proposed. Recreational uses that depend on extensive area or open scenic views may not be feasible to mitigate with small parks enclosed by development.

> **Section 30222 Private lands; priority of development purposes**
>
> **The use of private lands suitable for *visitor-serving commercial recreational facilities* designed to enhance public opportunities for coastal recreation *shall have priority* over *private residential*, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.**

The proposed change in land use from an open field (compatible with public access, coastal views, and recreation) to a mixed-use *private* residential development would conflict with this coastal act policy. This would be a significant impact that, by definition, could not be mitigated. General industrial or commercial development of the field would also conflict with this policy. Commercial development by agriculture including public access and visitor-serving commerce (such as a coastal berry farm, pumpkin farm with visitor-serving amenities), in contrast, would not conflict with this policy. No mitigation is feasible for this conflict, by definition of "priority" of land uses cited in the policy.

> **Section 30240 Environmentally sensitive habitat areas (ESHA); adjacent developments**
>
> **(a) Environmentally sensitive habitat areas sh*all be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.***
>
> **(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas *shall be sited and designed to prevent impacts which would significantly degrade* those areas, and *shall be compatible with the continuance of those habitat and recreation areas*.**

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The field contains extensive seasonal wetlands (winter-saturated and temporarily flooded depressional wetlands and drainage swales, ditches). The perennial wetlands of the drainage swale at the east end of the field supports California red-legged frog habitat and is typically occupied by a population (see comments in this letter, above). The seasonal wetlands and the zone bordering the frog habitat of the swale meet the definition of ESHA. Residential and mixed use commercial development would likely eliminate, significantly reduce, or degrade existing wetlands and ESHA on the site. Since the field is the last undeveloped lowland floodplain of San Pedro Creek within the Coastal Zone that is available for wetland restoration and enhancement, it is infeasible to mitigate impacts to these wetlands off-site; compensatory mitigation is not available for the red-legged frog populations in lower San Pedro Creek in the coastal zone. The DEIR failed to assess impacts to this Coastal Act policy or propose any feasible mitigation for it. The only feasible mitigation for this policy impact would be avoidance of impacts by not applying the residential mixed use land use designation.

Section 30242. Lands suitable for agricultural use; conversion

> All other ***lands suitable for agricultural use*** shall not be converted to nonagricultural uses unless (l) continued ***or renewed*** agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands. (emphasis added)

The Pedro Point field was historically prime agricultural land, but was abandoned. Nonetheless, renewal of prime agricultural use of the field is potentially feasible (physically and economically) and could be integrated with visitor-serving recreational and economic development aligned with the new coastal trail to Devil's Slide. The original prime agricultural soils are present beneath shallow fill. The site is suitable for coastal commercial visitor-oriented berry farm or produce farm and related recreational or visitor-serving uses (viz. Half Moon Bay to Davenport). Renewed agricultural use combined with tourism, some recreational uses, or eco-tourism may be compatible with conservation of seasonal wetlands and special-status wildlife if properly designed. The DEIR failed to consider feasible alternatives compatible with this section.

Section 30243 Productivity of soils and timberlands; conversions

> **The long-term productivity of soils and timberlands shall be protected, and conversions of coastal commercial timberlands in units of commercial size to other uses or their division into units of noncommercial size shall be limited to providing for necessary timber processing and related facilities.**

The Pedro Point field is former prime agricultural land (historic artichoke farm) on rich alluvial soils (drained marshland). The soils have been degraded by placement of fill, but may be remediated by either

removal of fill or addition of soil amendments to restore agricultural productivity similar to farms on the marine terraces and valleys along the San Mateo Coast south of Pacifica. There are no other potential highly productive historic farmland soils left in the Coastal Zone of Pacifica. Residential development of the field would conflict with this policy that requires the protection of long-term soil productivity. This impact was not assessed or mitigated in the DEIR.

> **Section 30251 Scenic and visual qualities**
>
> **The *scenic and visual qualities of coastal areas shall be considered and protected* as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to *minimize the alteration of natural land forms,* to be *visually compatible with the character of surrounding areas*, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.**

The Pedro Point field is the last undeveloped lowland (floodplain) in the Coastal Zone of San Pedro Creek's watershed that retains the original overall floodplain topography and visual character of the historic farms that dominated the valley. All other valley lowlands have been developed in the Coastal Zone of Pacifica, including the Salada Valley (the historical Salada Valley farmland has been developed, drained and filled, with only the deepest lagoon bed remaining as a wetland). The visual character of the adjacent historic railroad berm is dependent on the contrast between the steep relief of the berm and the adjacent lowland flats of the field. Residential development (with or without "pocket parks") would not protect the scenic and visual qualities of the field and adjacent historic berm. Residential development of the field would fully fill the lowland open space visual character of Pedro Point. This would conflict with the policy.

> **Section 30253 Minimization of adverse impacts**
>
> New development shall do all of the following:
>
> (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
>
> (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. […]

Most of the Pedro Point field lies approximately 15-17 feet in elevation above Mean Sea Level (MSL), only about 3-5 feet above the marsh and high tide beach at the mouth of San Pedro Creek. In addition, the

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alluvial soils (historical wetland) of the field have the same relative liquefaction (earthquake shaking) potential as diked bay muds and marshes in San Francisco Bay, like those that underlie filled San Francisco peninsula baylands. (Witter, Robert C., Keith L. Knudsen, Janet M. Sowers, Carl M. Wentworth, Richard D. Koehler, and Carolyn E. Randolph. 2006. Maps of Quaternary deposits and liquefaction susceptibility, nine-county San Francisco Bay Area. U.S. Geological Survey Open-File Report 2006-1037 Version 1.1; shown in Draft Pacifica Coastal Land Use Plan 2014, Figure 5.1). This condition contrasts with relatively low risk of liquefaction affecting residential and commercial development in adjacent lands built over bedrock. Structural (residential or commercial) development of the field may cause significant conflicts (impacts) with this section. In contrast, this section would be potentially compatible with recreational or other low-intensity commercial development or agricultural redevelopment of the field. The DEIR failed to analyze alternative land use designations compatible with this section.

Similarly, placing additional residential development in the last undeveloped floodplain area within the coastal zone of San Pedro Valley – currently able to function as a flood detention and storage basin when San Pedro Creek is at extreme high flood stage during extreme high tides – would conflict with this land use policy (Draft Pacifica Coastal Land Use Plan 2014 p. 5-19). The intensity, frequency, and significance of this land use policy conflict would likely increase as sea level rises, and as intense storm frequency increases with climate change. In addition, the field lies within a Tsunami evacuation area of the Coastal Zone (Draft Pacifica Coastal Land Use Plan 2014, Figure 5.3). Flooding, liquefaction, sea level rise impacts, increasing over time as indicated by the draft Pacifica Coastal Land Use plan (2014) demonstrate the conflict between this Coastal Act policy and the proposed land use change for Pedro Point field.

> **Section 30255 Priority of coastal-dependent developments**
>
> ***Coastal-dependent developments shall have priority over other developments on or near the shoreline*. Except as provided elsewhere in this division, *coastal-dependent developments shall not be sited in a wetland.* When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.**

Residential development itself is not fundamentally "coastal dependent", even if the land use designation nomenclature is "Coastal Residential Mixed Use". "Coastal" as a modifier does not denote any essential distinction in the nature of residential development, but merely describes its location in the coastal zone. Other types of commercial development based on recreational access to the shoreline or the distinctive coastal climate (*e.g.*, surfer recreational events, coastal agritourism like berry farm stands with berry farming) would have priority over residential development at this location. Residential development would conflict with this policy. In addition, development within wetlands as defined in the Coastal Act

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(whether or not they meet federal wetland criteria for fill authorization under the Clean Water Act) would conflict with this policy.

City of Pacifica Land Use Policy Impacts

The DEIR's proposed change in land use for the Pedro Point field also conflicts (and thus causes a significant land use policy impact) with the City's own policy on Wetlands Conservation**:**

> p. 3.1-22 CO-I-8 **Maintain Functional Capacity of Wetlands.** Ensure that any diking, filling, or dredging in existing wetlands maintains or enhances their functional capacity. *Any alteration of coastal wetlands identified by the Department of Fish and Game must be limited to very minor incidental public facilities, restorative measures, or nature study, according to the California Coastal Act.*

The "functional capacity" of the existing wetlands at the Pedro Point field and adjacent to them are dependent on their geographic setting and landscape position – their relationship to San Pedro Creek (off-channel flood velocity refuge; population buffer for California red-legged frogs; infiltration and groundwater recharge potential; flood detention and flood peak attenuation) and other hydrogeomorphic and ecological functions (red-legged frog nocturnal foraging habitat potential; shorebird storm refuge and roost sites). There are no other undeveloped historic floodplain locations within the lower San Pedro Creek valley, let alone the Coastal Zone, where loss or degradation of these functions could be compensated by wetland restoration Residential development of the field would likely have a significant impact on existing wetlands of the site and its vicinity, and without any feasible mitigation identified.

This City policy is also vague and unenforceable as mitigation for wetland impacts because: (a) it does not cite or define the scope or meaning of the jargon of wetland "functional capacity"; (b) it does not identify any geographic setting within Pacifica for 'functional capacity" (on-site or off-site/within-watershed) and (c) it fails to cite or provide any meaningful criteria for what constitutes maintenance or enhancement of "functional capacity". Furthermore, the California Department of Fish and Wildlife does not delineate or identify coastal wetlands as a service to local governments. The Department and the Coastal Commission use approximately the same wetland indicator criteria for determination of wetlands, but the agencies themselves generally do not conduct wetland delineations. The policy is also misleading as proposed policy-level mitigation in the DEIR because potential wetland fill in context of proposed land use designation changes in the DEIR do not involve restoration, nature study, or public facilities. The DEIR identifies wetlands at the Pedro Point field exactly where it proposes private mixed use residential and commercial development as the new land use designation. This "alteration" does not meet the criteria cited in the policy, and does not involve "enhancement" of functional capacity if the wetlands must be filled or drained for residential or commercial development. The land use designation proposed basically conflicts with this policy, and appears to be an unmitigated significant impact, since no feasible

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mitigation is identified. Furthermore, the DEIR alleges that no mitigation is even required because it wrongly asserts that there is no impact.

3.0 Conclusions

The DEIR fails to provide adequate analysis of potential impacts and feasible mitigation measures for the proposed land use changes at the Pedro Point field, compared with (a) existing conditions; (b) existing land use designations under the General Plan/LCP, and (c) alternatives that are environmentally superior and compatible with Coastal Act policies. Because the DEIR is fundamentally inadequate, after such revisions, the DEIR should be recirculated for further public review.

Thank you for considering these comments. Please contact me if you have any questions.

Peter Baye

Cc: Pedro Point Community Association

Law Offices of Brian Gaffney APC

Richard Grassetti

California Coastal Commission

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ATTACHMENT A – STATEMENT OF QUALIFICATIONS - Peter R. Baye, Ph.D.

I am a coastal ecologist and botanist with over 30 years of professional and academic experience. My Ph.D. research in coastal ecology (University of Western Ontario, Canada, Department of Plant Sciences, 1990) was followed by a career in applied ecology in California. I worked for the U.S. Army Corps of Engineers, San Francisco District, where I served as a senior environmental scientist and regulatory project manager conducting endangered species consultation, wetland jurisdictional determinations, wetland assessments, preparing Environmental Assessments and managing joint NEPA/CEQA Environmental Impact Statements/Reports. My Corps regulatory projects included sites adjacent to Port Sonoma (Sonoma Baylands, Carl's Marsh). Subsequently I worked for the U.S. Fish and Wildlife Service, where I prepared endangered species recovery plans (including comprehensive plans covering all of Marin Baylands and tidal marshes) and endangered species biological opinions. I was a contributing author and participant in the Baylands Ecosystem Habitat Goals Report (Goals Project 1999), its companion volume on Bayland species and community profiles (2000), and its 2014 update (in preparation), for which I developed many Marin bayland recommendations. I have developed or substantially contributed to estuarine wetland restoration and management plans for many Marin coastal wetland sites, including some adjacent to the plan area: Corte Madera Baylands Conceptual Sea Level Rise Adaptation Strategy, prepared by The San Francisco Bay Conservation and Development Commission and ESA PWA (specific focal area: Corte Madera Ecological Reserve marshes); Aramburu Island, Richardson Bay (with Wetlands and Water Resources) and wetland restoration projects at Bahia, Novato (with ESA-PWA) and Bolinas Lagoon (Kent Island, with William Carmen & Associates).

California Red-legged Frog in drainage channel adjacent to Calson field – April 12, 2020
Photo by Jon Harman in presence of Jon, Sheila Harmon, and Michael Vasey

04 23 2020

Subject: Fw: Red-legged Frogs
Date: Sunday, December 20, 2020 at 9:35:48 AM Pacific Standard Time
From: Stan Zeavin
To: KoppmanNorton, Julia@Coastal
Attachments: 20200519_1669.jpg, 20200519_1687.jpg, 20200519_1683.2.jpg, 20200519_1675.2.jpg, 20200519_1697.2.jpg, 20190202_5736.4.jpg

Hi Julia,

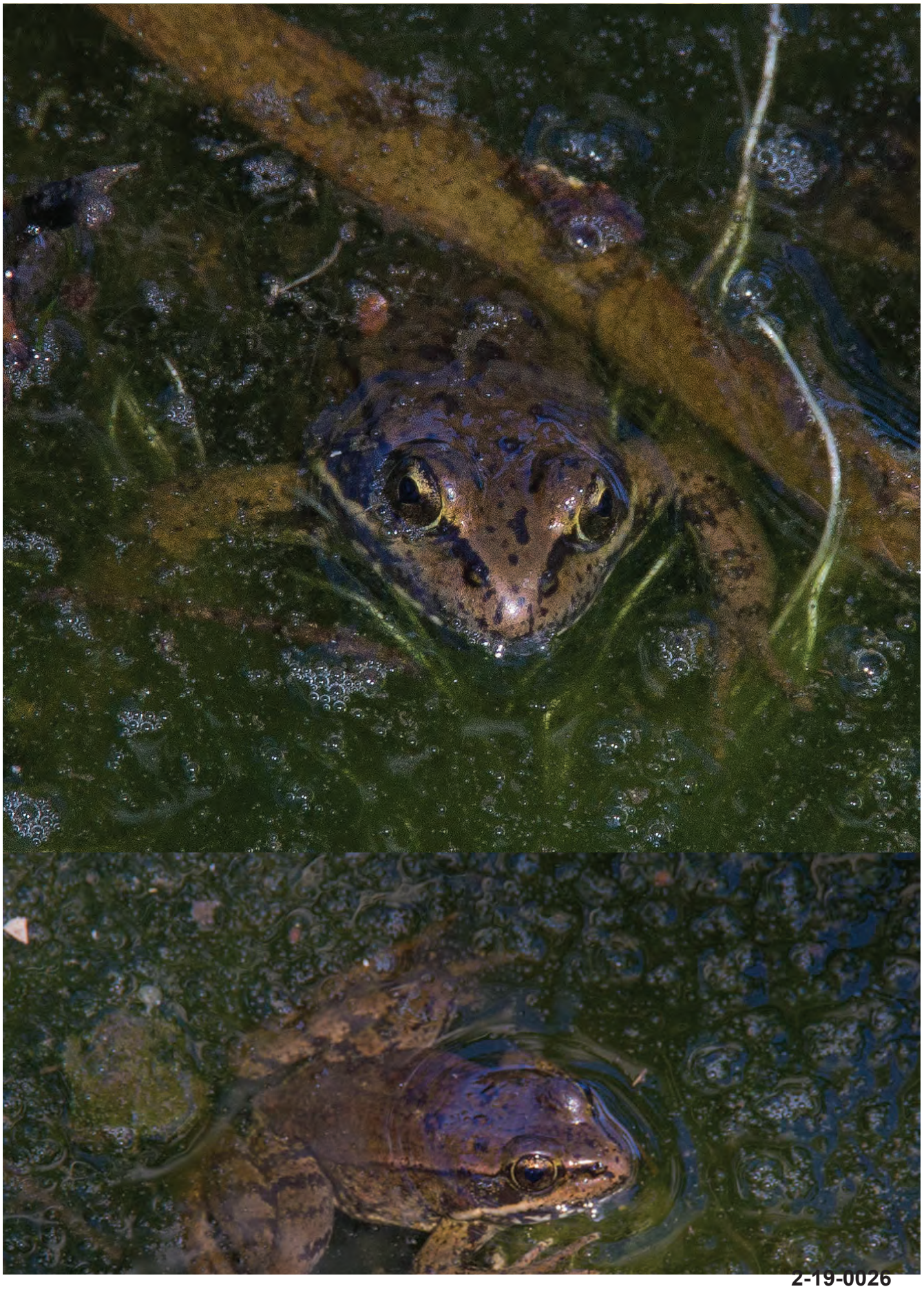
FYI, a naturalist friend took the pictures below over on Pedro Point last January after our USFWS winter plover survey at Linda Mar. The last photo with the cypress tree is on the small creek behind the strip mall that drains the entire area. The CRLFs forage west up onto the Calson property at night.

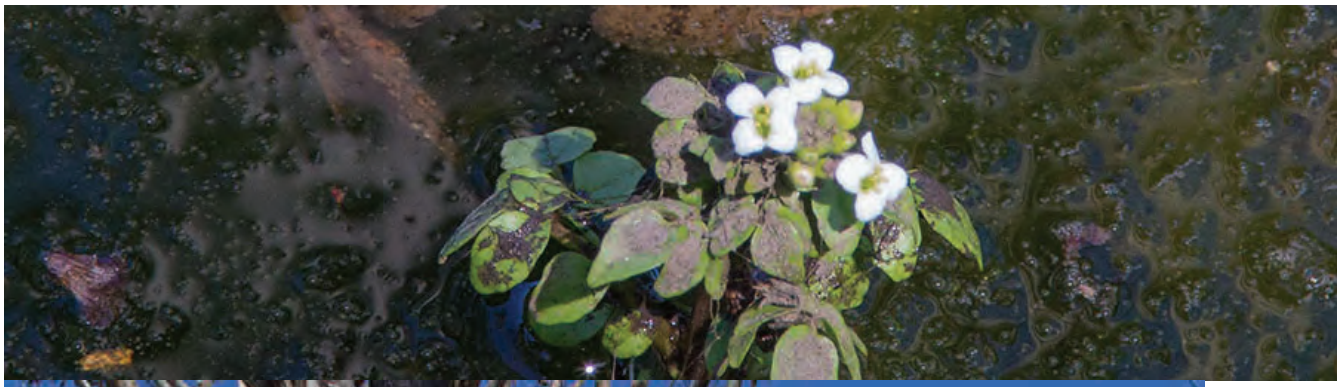
Hoping for some peace and relaxation for you over the holidays. And Happy solstice, too!

Margaret

----- Forwarded Message -----
Subject: Red-legged Frogs

May 19, 2020






SLOW
CHILDREN
AT PLAY

36D>Ā2#Ā1A@6<D9
artist - naturalist - photographer
-)-Ā/@F6Ā1B=E9

CNDDB Online Field Survey Form Report

California Natural Diversity Database
Department of Fish and Wildlife
1416 9th Street, Suite 1266
Sacramento, CA 95814
Fax: 916.324.0475
cnddb@wildlife.ca.gov
www.dfg.ca.gov/biogeodata/cnddb/

This data has been reported to the CNDDB, but may not have been evaluated by the CNDDB staff

Source code VAS20F0001
Quad code 3712254
Occ. no. _____
EO index no. _____
Map index no. _____

Scientific name: *Rana draytonii*

Common name: California red-legged frog

Date of field work (mm-dd-yyyy): 04-12-2020

Comment about field work date(s): Field observation in a drainage channel along road near my home on San Pedro Road

OBSERVER INFORMATION

Observer: Michael C. Vasey

Affiliation: San Francisco State University

Address: 368 San Pedro Avenue , Pacifica, CA 94044

Email: mvasey@sfsu.edu

Phone: (650) 255-5763

Other observers: Sheila Harman and Jon Harman

DETERMINATION

Keyed in: Visually and from close up photograph

Compared w/ specimen at:

Compared w/ image in: https://www.nps.gov/rlc/pacificcoast/california-red-legged-frogs.htm

By another person:

Other:

Identification explanation: The individual frog was in drainage channel along road. Observation was about 3' away. Close-up photo taken by Jon Harman (my neighbor) is attached

Identification confidence: Confident

Species found: Yes **If not found, why not?**

Level of survey effort: Low. Drainage channel along road. Drainage known to harbor CRLF in the past (a few years ago) but they have not been present recently.

Total number of individuals: 1

Collection? No **Collection number:**

Museum/Herbarium:

ANIMAL INFORMATION

How was the detection made? Seen

Number detected in each age class:

adults	juveniles	larvae	egg mass	unknown
	1			

Age class comment: Appears to be juvenile (relatively small) but I'm not an expert

2-19-0026
Exhibit 10
Page 1 of 4

Site use description: Drainage channel that drains water from Pedro Point down, across San Pedro Road, and then along east side of Calson field into a willow swale and then into San Pedro Creek near its entry into the ocean.

What was the observed behavior? Resting on floating vegetation half submerged.

Describe any evidence of reproduction: None observed.

SITE INFORMATION

Habitat description: Drainage channel along roadway

Slope: 0 Land owner/manager: City of Pacifica

Aspect: standing water

Site condition + population viability: Fair

Immediate & surrounding land use: 5 acre vacant field known to have been filled during mid 1900's, drainage channel flows east down to 'dogleg' bend and then along eastern boundary of the field until going under some culverts and a swale before entering San Pedro Creek near ocean

Visible disturbances: Recent tree trimming near site but frog observed to persist after this activity. Human and dog traffic into the field but frog about 2-3 feet below banks of channel so reasonably well protected.

Threats: Water could dry up but persisting due to run-off from neighborhood. Non-point source run-off could be polluted. Possible disturbance by people and dogs passing by.

General comments: First sighting of CRLF in around five years. Used to be a larger population, apparently breeding, in the dogleg portion of the channel near the road. So far, only one individual observed.

MAP INFORMATION

ID	County	24K Quadrangle	Elev. (ft)	Latitude NAD83	Longitude NAD83	UTM E NAD83	UTM N NAD83	UTM Zone
	San Mateo	Montara Mountain	18	37.59432	-122.50808	543426	4160920	10
1	**Public Land Survey**	**Feature Comment**						
	M T04S R06W 10	Drainage channel in 2 feet of standing water						

The mapped feature is accurate within: 5 m

Source of mapped feature: CNDDB Field survey form

Mapping notes: Drainage channel along north side of San Pedro Road near junction with Grand Ave in floating algae but clearly visible. Frog has been there persistently since first observed.

Location/directions comments: Take turn off from Hwy 1 and San Pedro Road, cross creek by shopping center, take big curve by Ace Hardware, just past Grand Ave is the drainage channel on north side of road.

Attachment(s): CRLF in drainage channel Pedro Point, Pacifica.pdf

Presumed California red-legged frog in drainage channel along San Pedro Road – Observed by Sheila Harman, Jon Harman, and Michael Vasey on April 12, 2020. Photo by Jon Harman.

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
VOICE (415) 904- 5200
FAX (415) 904-5400
WWW.COASTAL.CA.GOV

MEMORANDUM

FROM: Lauren Garske-Garcia, Ph.D. – Senior Ecologist

TO: Julia Koppman Norton – North Central Coast District Analyst
Jeannine Manna – North Central Coast District Manager
Dan Carl – North Central Coast District Deputy Director
Jessica Reed – North Central Coast Legal Counsel

SUBJECT: 505 San Pedro, Pacifica (APN 023-72-010): Ecological Resources

DATE: January 25, 2021

Documents Reviewed:

- California Natural Diversity Database (CNDDB), latest query: January 10, 2021.
- Coast Ridge Ecology. Biological Resources Assessment for APN 023-72-010. Prepared for Shawn Rhodes/NorCal Surf Shop, Pacifica, California 94044; March 2015.
- Coast Ridge Ecology. 505 San Pedro Avenue, Pacifica Wetland Delineation. Prepared for Shawn Rhodes/NorCal Surf Shop, Pacifica, California 94044; November 2019.
- Coast Ridge Ecology. Letter to Shawn Rhodes RE: Observed Change of Flow Conditions of Drainage Channel Adjacent to the Pedro Point Shopping Area and the Proposed NorCal Surf Shop Mixed-Use Development Project, San Mateo County, California. CDP Application 2-19-0026; June 13, 2020.
- Live Oak Associates, Inc. Letter to Nick Pappani RE: Biological Resources Assessment Peer Review for the Shawn Rhodes/NorCal Surf Shop project, located in the City of Pacifica, San Mateo County, California (PN 2110-01); January 19, 2017.
- Thomas Reid Associates. 2005a. Biological Assessment Report. APN (023-72-10) Pacifica, CA 94044. For Compliance with San Mateo County Local Coastal Program Policies. Prepared for Rick D Lee and Richard Lee. August 2005.
- Thomas Reid Associates. 2005b. Site Assessment for California Red-Legged Frog. APN (023-72-10) Pacifica, CA 94044. For US Fish and Wildlife Service, Sacramento Field Office. Prepared for Rick D Lee and Richard Lee. August 2005.

- Wood Biological Consulting. One-Parameter Wetland Delineation for the Proposed NorCal Surf Shop Mixed-Use Development, San Mateo County, California (CDP Application 2-19-0026). Prepared for Shawn Rhodes, 5460 Pacific Coast Highway, Pacifica, CA 94044; May 14, 2019.

The North Central Coast District has requested a technical analysis of the ecological resources that could be adversely impacted by proposed development at 505 San Pedro Avenue in Pacifica, California (APN 023-72-010). The project would almost entirely cover the approximately 600-ft long by less than 60 ft-wide parcel with several buildings, a skate park, parking, and pedestrian pathways. The parcel is bounded by Halling Way and a strip mall to the east, San Pedro Avenue to the south, a drainage and an open field to the west, and to the north, a footpath leading to the southern reach of Pacifica State Beach (**Figure 1**). The adjacent drainage intermittently conveys water, including from westward San Pedro Avenue to a culvert at the northern end of the subject parcel, which connects to the mouth of San Pedro Creek on the opposite side of a shopping center parking lot, approximately 270 feet to the east. Importantly, the parcel is divided between jurisdictions, with approximately one third nearest the sea occurring within the Commission's retained jurisdiction and the remainder nearest San Pedro Avenue within the City's jurisdiction – the applicant did not elect to pursue a consolidated permit and the City approved a permit for the portion of the project in its jurisdiction in 2018. The following analysis addresses the Coastal Development Permit (CDP) application submitted to the Commission and my **conclusion is summarized on page 12**.

History

Since May 2010, when the applicant preliminarily sought consultation with Commission staff, staff has consistently identified concerns regarding wetlands and other biological resources both on and adjacent to the project site. In a letter dated May 8, 2015 to the City of Pacifica concerning review coordination for the proposed project, staff cited a 2005 biological report that characterized the drainage as an intermittent stream, that California red-legged frogs (CRLF) were likely present and breeding in the area surrounding the property, and that the drainage likely served as a dispersal corridor from nearby San Pedro Creek. In the 2015 letter, staff concluded that the proposed project would not conform to Local Coastal Plan (LCP) policies protecting sensitive habitats. In May 2018, staff commented on the project's Initial Study/Minimum Negative Declaration (IS/MND)[1] and again reiterated concern for both wetlands and sensitive species that may be affected, specifically citing concern for CRLF use of the drainage as a corridor and its movement across adjacent areas including the subject parcel. The City's response largely dismissed these concerns[2] and since that time, staff has continued to reiterate them to the applicant.

Following review of several submitted documents, initial desktop research, and having made an informal roadside visit to the site in March 2019, I and several District staff met with the applicant and their representatives on-site on October 3, 2019. During this visit, ecological concerns were again discussed at length.

[1] Email from Patrick Foster, Coastal Commission Analyst, to Christian Murdock, Senior Planner at City of Pacifica RE: 505 San Pedro CEQA Document. May 1, 2018.

[2] City of Pacifica. 2018. Response to Comments: 505 San Pedro Avenue Project Initial Study/Mitigated Negative Declaration, Public Review Draft – Agency Comments. June 2018.

Wetlands

The 2005 biological report referenced in the Commission staff 2015 letter regarded the drainage adjacent to the subject parcel as an intermittent stream and the California Aquatic Resources Inventory (CARI) maps it as part of a natural fluvial drainage sourcing from across San Pedro Avenue and the forested area behind existing development (**Figure 2**). The drainage receives flows from the Pedro Point neighborhood, which primarily enter through a culvert directly east of the subject parcel and flow northward until meeting San Pedro Creek. A scour pool has formed at the mouth of the culvert, next to the roadside, and water generally ponds for some distance thereafter, even well after seasonal flows cease (**Figure 3**). During larger flows, surface water continues along the full length of the drainage paralleling the subject parcel and exits through a culvert largely obscured by the willow thickets at its north end, which daylights within a restoration area on City land for a short distance, enters another culvert, and then flows into San Pedro Creek on the other side of the San Pedro Shopping Center. Aerial imagery shows that throughout the year, the drainage remains largely green with vegetation even when surrounding areas dry out (**Figure 4**).

Despite suggestions that the drainage be characterized as a stream, I believe it is more accurately treated as wetlands for several reasons. First, while there may be intermittent seasonal surface flows along the length of the drainage between San Pedro Avenue and the northern willow thickets, the scour pool near San Pedro Ave appears to remain a largely wetted feature year-round, while mid-way ponding and flow beyond this is more seasonal, and in the area furthest north, limited to the largest flows. Second, apart from the planted windbreak along the western side of the drainage, which is above the banks and/or normal extent of flows, the drainage largely lacks the multi-strata structure of a typical riparian corridor; instead, the vegetation is primarily composed of an herbaceous layer with some vines and brambles along the eastern bank. Third, the presence of emergent vegetation typical of wetlands (e.g., willows and bulrush) has reportedly increased over time despite the drainage's relatively degraded state, suggesting the persistence of subsurface water.[3] Fourth, a previous biological assessment report references delineated three-parameter wetlands within the drainage totaling approximately 0.02 ac (Thomas Reid Associates 2005a). Fifth, as detailed in a 2014 comment letter provided by Dr. Peter Baye to the City regarding the Draft Environmental Impact Report for the Pacifica General Plan Update Project, this area was historically a complex of freshwater marsh and alder-willow swamp surrounding what was once Lake Mathilda, a freshwater lagoon outlet of San Pedro Creek prior to its channelization and infill to support the development observed today.[4] Finally, the project's 2018 IS/MND regarded the drainage as a man-made intermittently flowing swale that would be exempt from creek protections under the Local Coastal Land Use Plan (LCLUP) and asserted that the proposed project would have a less-than-significant impact on sensitive resources even though it acknowledged that the drainage would meet the Coastal Commission definition of a wetland (and despite the lack of a proper delineation at that time).[5]

Wetlands are protected under the Coastal Act by several policies including §30231, which emphasizes the importance of protecting and enhancing water quality and states:

> ***Biological productivity; water quality***
> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes*

[3] Baye, P. 2014. Letter to City of Pacifica RE: Draft Environmental Impact Report for the Pacifica General Plan Update Project – SCH #2012022046. 29pp

[4] Baye, P. 2014. *Ibid.*

[5] City of Pacifica. 2018. 505 San Pedro Avenue Project Initial Study/Mitigated Negative Declaration, Public Review Draft. April 2018.

appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Another key policy is §30233, which limits the allowance of direct impacts to wetlands to specified situations, requires that such action would constitute the least environmentally damaging feasible alternative, and that the impact is minimized and mitigated for:

Diking, filling or dredging; continued movement of sediment and nutrients
(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(l) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities…

Wetland Delineations

In May 2019, the applicant submitted a wetland delineation to inform the proposed project's potential to impose adverse impacts on wetland resources, both on the subject parcel and in the adjacent drainage. This delineation had several issues and shortly following our site visit in October 2019, a second delineation was completed; the delineation dated November 2019 has since been used as a basis for technical analysis. Despite having been completed outside of the wet season when wetlands are best detected and delineated, all three wetland parameters were present in at least some areas[6] and six different wetland types were identified within the drainage channel, characterized as: arroyo willow thicket, perennial rye grass, small-fruited bulrush marsh, smartweed, ephemeral channel, and wetted channel. Two of these have been mapped on the subject parcel itself (a small area of smartweed within the City's jurisdiction and a large portion of the arroyo willow wetlands at the

[6] United States Army Corp of Engineers jurisdictional wetlands, based upon the presence of all three parameters (hydrology, vegetation and soils), totaled 0.088 ac; Coastal Commission wetlands, based upon the presence of at least a single parameter, totaled 0.248 ac.

northern end, in the Commission's jurisdiction). Of note is that the increase in area delineated in 2019 relative to what was reported from 2005 (Thomas Reid Associates 2005a) supports observations also made by Dr. Baye that wetland areas have expanded at this location.[7]

According to estimates provided in the analysis of the November 2019 wetland delineation, the proposed development would occur inside the wetland boundary at the arroyo willow thickets where a retaining wall to support an existing earthen berm and proposed pedestrian pathway along the full length of the subject parcel would be constructed. **Figure 5** illustrates that the retaining wall would in fact encroach roughly 20 ft into the willows and directly remove wetland habitat; however, the project fails to qualify as an allowable use under Coastal Act §30233 and moreover, the willow stand also qualifies as ESHA (see next section). Elsewhere along the length of the drainage, the retaining wall would be sited no more than 11 ft from the delineated Commission wetlands while the buildings and other development features would sit between 9 and 30 ft of the wetland boundaries at their nearest points.

Wetland Buffers

Typically, staff recommends at minimum 100-ft buffers surrounding wetland habitats to adequately protect them from the many impacts that they may experience due to adjacent development. Such impacts can include altered drainage patterns and runoff, noise, debris, visual disturbance to wildlife, and inadvertent trampling. In some situations, reduced buffers have been recommended after taking into consideration wetland quality, the surrounding landscape, habitat functions, and the wetland's susceptibility to various impacts; however, buffers sufficient to provide meaningful protection are still generally required.[8] Here, based on the information available to us prior to April 2020, including a lack of records affirming concerns for sensitive species use, I have advised that **with the proposed BMPs and additional project modifications to avoid direct impacts to wetlands and to protect water quality, that wetland buffers might be reduced to no less than 25 ft along most of the drainage except where delineated by willow thickets and bulrush marsh. Around the willow thickets and bulrush marsh, which constitute arguably robust features providing relatively more habitat value and support for other species (e.g., complex shelter, refuge, foraging), my recommendation was a minimum 50-ft wetland buffer**. Further informing my recommendation is that the willow thickets and bulrush marsh are characterized by the California Department of Fish and Wildlife (CDFW) as sensitive natural communities that qualify as ESHA (see discussion below). These recommended wetland buffers are reflected in **Figure 5** except around a small patch of small-fruited bulrush marsh, which would extend further onto the subject parcel than as depicted.

Environmentally Sensitive Habitat Areas

Coastal Act §30107.5 defines environmentally sensitive [habitat] areas as:

> *… any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Rarity determinations for habitats and species are made by CDFW, the United States Fish and Wildlife Service (USFWS), and California Native Plant Society (CNPS), and are used to support Coastal Commission ESHA

[7] Baye, P. 2014. *Ibid.*

[8] For example, see: Blackman and O'Connell (A-2-PAC-15-0046) where wetland buffers surrounding a willow stand were reduced to 50 ft, or Trask (A-1-DNC-07-036) where wetland buffers surrounding emergent vegetation were reduced to a minimum 68 ft.

determinations.[9] An ESHA determination may also be made on the basis of an area constituting 'especially valuable habitat' where it is of a special nature and/or serves a special role in the ecosystem, such as providing a pristine example of a habitat type or supporting important ecological linkages.

The key policies addressing ESHA follow under §30240:

> *(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
>
> *(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

This is notably more restrictive than the preceding wetland policies, as it limits uses of ESHA to those dependent upon it and requires protection from not only direct impacts, but also indirect impacts that may result from adjacent development.

Sensitive Natural Communities

Arroyo Willow Thickets

The arroyo willow thickets located at the northern end of the subject parcel and continuing into the adjacent drainage are classified by CDFW as a natural vegetation community. Although the broader alliance Arroyo Willow as a whole is not considered rare, the more specific association characterized by stands exclusively composed of the namesake species, arroyo willow (*Salix lasiolepis*), is represented at this site and is considered sensitive.[10] While this association does not presently have a rarity ranking, CDFW guidance is to treat communities designated as sensitive, whether or not they are ranked, with comparable protections. Under the Coastal Act, the arroyo willow thickets delineate as a wetland on the basis of their facultative wetland indicator status and therefore, must be treated as wetlands under Coastal Act §30233 rather than as ESHA under §30240[11]; however, the sensitive natural community status gives weight to the ecological significance of the thickets and is reflected in my more protective buffer recommendation of 50 ft relative to that for other wetlands at this site (except small-fruited bulrush marsh), as detailed above. Though not documented at this location, sensitive species such as the saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*; CA Species of Special Concern) are known to use willow thickets as breeding habitat and many birds and smaller animals use them more generally.

Small-fruited Bulrush Marsh

Similar to the arroyo willow thickets, the small-fruited bulrush marsh identified in the wetland delineation is characterized by CDFW as a sensitive natural community. Specifically, the alliance Small-Fruited Bulrush has a state rarity ranking of S2 indicating that is considered imperiled within the state and at high risk of extirpation. The association characterized by stands exclusively composed of the namesake species, small-fruited bulrush

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[9] CDFW defines natural communities, animals, and plants with a global or state ranking of 1, 2, or 3 as rare and the CCC typically finds these to be ESHA. CCC also typically considers plant and animal species listed by the federal and state endangered species acts (ESA and CESA, respectively) and/or identified under other special status categories (e.g., California Species of Special Concern), and/or identified by the California Native Plant Society (CNPS) as '1B' and '2' plant species as constituting ESHA.

[10] Explanation of alliance vs. association; see Arroyo Willow Thickets alliance (CaCode: 61.201.00) and *Salix lasiolepis* association (CaCode: 61.201.01) in California Sensitive Natural Communities list (version: September 9, 2020) – accessible online at https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=153609&inline.

[11] *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493

(*Scirpus microcarpus*), is represented at this site and though unranked, is considered sensitive.[12] The species is an obligate wetland indicator and like the arroyo willow, is necessarily treated under wetland policies but warrants the protection of a 50-ft buffer due to its ecological significance. Species such as the California red-legged frog (see below) frequently use bulrush habitat for breeding.

Sensitive Wildlife

California Red-Legged Frog

The California red-legged frog (*Rana draytonii*) is federally-listed as threatened and recognized by the state as a Species of Special Concern, is state-ranked as S3 indicating that it is considered vulnerable, and is the official state amphibian.[13] It is the largest native frog in the western United States and is frequently associated with freshwater emergent wetlands, marshes, and riparian corridors throughout the central California coast but can also inhabit lagoons, ephemeral water bodies, stock ponds, and man-made drainages as well as drier habitat types within the wetter and cooler coastal fogbelt. CRLF uses both aquatic and upland habitat, the former for refuge and breeding, and the latter for foraging, dispersal, and aestivation. Breeding habitat is often characterized by perennial bodies of water with emergent vegetation providing structural complexity such as cattails, bulrush (see above), or dense riparian cover; however, sub-optimal habitats with little to no emergent vegetation and/or that periodically dry out are also known to be used.[14] Dispersal habitat is generally considered to be areas within 1-2 miles of breeding areas, and can include forests, grasslands, coastal scrub, root masses formed by brambles or thickets, and oak woodlands in addition to those already named above.[15] CRLF movement across habitat tends to peak during rainy periods and can vary widely among individuals.

CRLF breeding occurs from November to April. Reproduction rates tend to be highly variable and responsive to climate conditions (e.g., drought vs. wet years). Individuals may remain at breeding sites year-round or disperse to neighboring areas. Along the central coast, the species is particularly mobile and has been documented traversing areas that would not otherwise be expected, especially during wet conditions.[16]

CRLF has a diverse diet, which changes throughout its life cycle. Early in its life, it is believed to primarily consume algae, diatoms and detritus.[17] As it matures, terrestrial and aquatic insects tend to make up the largest fraction of its diet, although larger frogs have been documented as consuming smaller invertebrates, including the smaller Pacific chorus frog (*Pseudacris sierra*), which is also common throughout this region.[18] CRLF are considered diurnal but primarily forage at night.

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[12] See Small-fruited Bulrush Marsh alliance (CaCode: 52.113.00) and *Scirpus microcarpus* association (CaCode: 52.113.01)

[13] California Assembly Bill 2364, approved June 28, 2014 - http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2364

[14] USFWS. 2004. Federal Register: Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the California Red-legged Frog (*Rana aurora draytonii*); Proposed Rule. 50 CFR. Part 17. Vol 69. No. 71: 19620-19642.

[15] Fellers, G. 2005. *Rana draytonii* Baird and Girard, 1852b California red-legged frog. Pages 552-554 in M. Lannoo (editor). Amphibian declines: the conservation status of United States species. University of California Press. Berkeley, California; CWHA database

[16] Bulger, JB, NJ Scott Jr. & RB Seymour. 2003. Terrestrial activity and conservation of adult California red-legged frogs *Rana aurora draytonii* in coastal forests and grasslands. Biological Conservation 110(1): 85-95.

[17] Fellers, G. 2005. *Ibid.*

[18] Hayes, MP & MR Tennant. 1985. Diet and feeding behavior of the California red-legged frog, *Rana aurora draytonii* (Ranidae). The Southwestern Naturalist 30(4): 601-605; Fellers, G. 2005. *Ibid.*

Key threats to CRLF are recognized as habitat loss, urban encroachment, and the introduction of non-native species such American bullfrogs that can compete with CRLF for habitat as well as prey upon them. Several introduced freshwater fish species are also known prey on CRLF. Herbicide and pesticide use as well as disease may be other significant threats to CRLF, as has been documented for many amphibians around the globe.[19]

Prior to April 2020, we were unaware of any records affirming the presence of California red-legged frogs (*Rana draytonii*) at the subject parcel or its immediate surroundings although it has been well-documented at nearby San Pedro Creek.[20] While I and the consulting reports I had initially reviewed for this project considered the species to have at least a moderate potential to occur given records from the nearby creek, there has also been recognition of the degraded state of the subject parcel and adjacent drainage as relatively unfavorable when compared to nearby habitat opportunities. No published record had appeared in the California Natural Diversity Database (CNDDB) beyond the creek's main channel, the project's IS/MND, or the other known reports for the location that staff generally relies upon. In addition, recent neighboring developments within the City's jurisdiction along San Pedro Avenue had truncated the drainage's corridor extension to more forested areas in the south and potential foraging, aestivation, and dispersal areas to the east (**Figure 2**). As such, my recommendations had focused on the wetlands and ensuring that appropriate measures would be taken during construction, in the off chance a frog was encountered.

On April 18, 2020, Commission staff received a report and accompanying photo from Pedro Point resident and San Francisco State University ecologist, Michael Vasey, documenting the presence of CRLF in ponded water at the drainage adjacent to the subject parcel six days prior.[21] I was able to validate that the animal in the photo (**Figure 6a**) was a CRLF based upon diagnostic markings that were clearly visible and advised Dr. Vasey to submit his documentation to CDFW for further validation and inclusion to the CNDDB; District staff informed the applicant of this new finding. On April 24, another Pedro Point resident, Sheila Harman, contacted staff on behalf of herself and Jon Harman, with additional reports of having observed as many as four CRLF at the same location at one time and provided both time-stamped photos and a video also showing the surrounding location in relation to San Pedro Avenue to confirm this (**Figure 6b-c**)[22]. She also commented that this was the first time in the past seven years that they had observed CRLF at the site, indicating previous but undocumented observations. On April 28, Dr. Vasey communicated with staff again, indicating that he and the Harman's had now seen as many as five CRLF at a time in the drainage ditch along San Pedro Avenue and the pool just past the culverts feeding into the drainage adjacent to the subject parcel at 505 San Pedro Avenue.[23] He also relayed a 2014 comment letter he had discovered through conversation with Peter Baye, another ecologist working along the central coast. This letter is referenced above in the discussion on wetlands.[24]

Dr. Baye's 2014 letter provides important insights specific to CRLF, the surrounding area, and the drainage itself.

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[19] Davidson, EW, M Parris, JP Collins, JE Longcore, AP Pessier, & J Brunner. 2003. Pathogenicity and transmission of chytridiomycosis in tiger salamanders (*Ambystoma tigrinum*). Copeia 2003(3): 601-607.

[20] CNDDB records for Occurrence Number 652 cover the lower half-mile of San Pedro Creek since 2002, when a total of 5 frogs were recorded from approximately 0.2 mi north of the subject parcel; reports since 2014 have more frequently detailed occurrences, including as many as 129 frogs caught in June-October in 2014 and notes that that adults were observed year-round in 2015. Egg masses were documented in 2014 and 2015.

[21] Vasey, M. (personal communication, April 18, 2020)

[22] Harman, S. (personal communication, April 24-29, 2020)

[23] Vasey, M. (personal communication, April 29, 2020)

[24] Baye, P. 2014. *Ibid*.

He presents information on CRLF not found in the research various parties had conducted, including reporting having observed CRLF at the drainage over different seasons since at least 2005 and having submitted an official report to USFWS in 2005.[25] Dr. Baye specifies that his observations have occurred regularly at the drainage and that CRLF have been most frequently found in the ponded, perennially wet area [scour pool] nearest San Pedro Avenue, the location neighborhood residents made reports from in April 2020. He hypothesizes that these animals may represent a local sub-population with a relationship to the lower San Pedro Creek wetland complex and that this perennially wet area may be breeding habitat given his observations of intermittent local population fluctuations and observation of other habitat requirements being immediately proximate, including the large field just west of the drainage. He also states that he believes this area would qualify as ESHA. Dr. Baye's report goes on to note that CRLF was apparently absent throughout the drought period beginning in 2012 through the time of his report in 2014. As the drought ended in the winter of 2017, it is not all the surprising that the applicant's consultants would not have observed CRLF at the site when conducting the biological assessments in 2015 (Coast Ridge Ecology) or January 2017 (Live Oak Associates) as the area was just coming out of drought status.[26]

I reached out to colleagues at CDFW and the USFWS in May 2020 to further investigate whether there was any other unpublished CRLF occurrence information, either from the drainage or otherwise nearby apart from San Pedro Creek. CDFW staff at the Biogeographic Branch were able to confirm that Dr. Vasey's April 2020 CNDDB submission appeared to be valid, including the species identification; since then, his record has been processed and officially incorporated to the state database (**Figure 2**). USFWS staff from the Bay-Delta Regional Office indicated that while they did not have the 2005 record submitted by Dr. Baye available digitally, it was likely that it has been held as a paper file that cannot be accessed readily due to constraints imposed by the current pandemic. Nonetheless, they were not surprised by the contemporaneous observations and were able to provide comments on recent observations from nearby San Pedro Creek[27] as well as advise that ESA Section 10 permitting may be necessary and that recommended habitat corridors for CRLF are typically 300 ft, which is consistent with Commission decisions elsewhere along this part of the coast.[28]

In response to the discovery of CRLF in April 2020 at the drainage channel, the applicant's consultant at Coast Ridge Ecology (2020) has observed that significantly more water appears to be flowing through the drainage now than during their initial assessment in 2015. Notably, 2015 would have been several years into a drought (stage 3: extreme drought) whereas conditions were less severe in 2020 (stage 1: moderate drought), so this might be reasonably expected.[29] The consultant speculates that the differences could be a result of supplemental water inputs from nearby residential properties but does not provide any evidence thereof or consider alternative explanations (including relative drought conditions). They also express doubt concerning CRLF's ability to have moved from San Pedro Creek into the drainage and suggest that they may have been "assisted by humans (i.e. planted in the drainage)". They consider the area "isolated" without acknowledging the dispersal range and known movement patterns of the species, particularly in the coastal fogbelt, where culverts connect the drainage channel directly to a City restoration area and ultimately, San Pedro Creek only 300 ft away from the north end of

[25] Baye, P. 2005. Letter to United States Fish and Wildlife Service RE: Documentation of California red-legged frog occurrence at Pedro Point, Pacifica, San Mateo County. May 4, 2005.

[26] https://www.drought.gov/historical-information for January 2017

[27] For example: United States Fish and Wildlife Service. Consultation Letter to United States Army Corps of Engineers RE: Formal Consultation on the San Pedro Terrace Project in San Mateo County, California. Reference #08ESMF00-2017-F-1370. April 5, 2018.

[28] UC Santa Cruz Marine Science Campus - Coastal Long Range Development Plan. January 2017. 344pp.

[29] https://www.drought.gov/historical-information for March 2015 and April 2020

the subject parcel. Though these avenues of dispersal are perhaps not the most idyllic, the species is capable of having used any variety of these. Finally, the consultant argues that the location is unlikely to provide "*consistent, stable long-term habitat for [CRLF] over time*" and that it would likely be considered a population sink. However, CRLF is known to use (and require) a mosaic of habitat types across the landscape and we cannot ignore that the species has been documented using this location intermittently for decades, even in the absence of focused study. Moreover, it is not necessary for CRLF to carry out its full life cycle in the drainage for the area to have ecological value for this sensitive species.

In August 2020, I reached out to Dr. Baye to inquire whether he had a copy of his 2005 report to the USFWS, which had been referenced in his 2014 letter. He was able to forward this report to staff, including photos of CRLF, thus providing additional information that had not been otherwise available through standard data searches or inquiries during the pandemic. On May 4, 2005, Dr. Baye reported to USFWS having observed three adult CRLF at the [scour] pool adjacent to San Pedro Avenue on the previous day, at the southern end of the drainage ditch directly adjacent to the subject parcel. He also states that he had observed "*multiple aural detections of diving frogs in April"* and indicates that water turbidity limited visual detections but *"no egg masses were observed within the visible upper 10 cm of water column."* **Figure 7** is excerpted from Dr. Baye's report and also appears in his 2014 letter to the City.

In the course of my research, I also sought out the biological assessment report from 2005, which had been referenced in the May 8, 2015 staff letter to the City regarding review coordination for the proposed project. Although such reports are generally considered outdated after five years for the purposes of evaluating current conditions at a site, they can be informative in the context of habitat change as well as documenting patterns of use (or likely use). Where data is limited and/or species may not be readily detected, historical reports can be especially helpful. In this situation, I located not only the biological assessment report (Thomas Reid Associates 2005a) but also discovered a site assessment specifically for CRLF (Thomas Reid Associates 2005b). Both 2005 reports had been intended to inform a different project at the same location, which would have restored habitat over approximately 60% of the subject parcel including the willow thickets and upland areas to be contiguous with the then-planned wetland restoration at San Pedro Creek. Concerning CRLF, while the species was not explicitly confirmed on-site by these two reports, it was regarded that "*there is a high potential for them to be present within proximal aquatic habitats… [including] the drainage ditch adjacent to the property as a traveling corridor or nearby upland areas for aestivation*" and the consultants recommended "*that this report be submitted to the [USFWS]*" for further consultation, though it remains unclear whether it ever was. The proposed restoration was apparently anticipated to benefit CRLF among other species.

The recent repeated daytime observations of multiple CRLF at the roadside end of the drainage indicates that even in the absence of formal surveys, the area has been functioning as habitat for more than an individual transient CRLF. Consideration of this, the multiple reported occurrences of CRLF at the drainage since at least 2005, and the concurrence of information from colleagues at partner resource agencies informs my revised opinion that CRLF occurrence here is not a moderately hypothetical possibility but in fact, a demonstrated pattern of use. Given the connection to San Pedro Creek, including by way of the underground culvert, the observations of CRLF near San Pedro Avenue, wetlands, and evidence of the drainage's role as a green corridor year-round, the full length of the drainage adjacent to the subject parcel should be considered habitat. In addition, because CRLF requires not only wetted areas but also makes use of upland habitats for foraging, dispersal, and estivation, this habitat is very likely extends to adjacent upland areas on either side of the drainage. Though we cannot presently delineate the full extent of CRLF use in these areas without protocol-level surveys, we can interpret that at a

minimum, the drainage itself constitutes ESHA and is likely functioning as a habitat corridor for this species between San Pedro Creek and upland areas.

Habitat Corridors

The drainage running adjacent to the subject parcel arguably constitutes a habitat corridor for CRLF but additionally, likely supports several other species moving across the landscape as well. As evident from the time-series of aerial imagery (**Figure 4**), the drainage remains relatively green throughout the seasons and as compared to adjacent parcels. It also connects to San Pedro Creek (through culverts), the shore, and the Pacific Ocean in the north; a large open space to the west; historically, to spaces in the east beyond the subject parcel (i.e. the parcel due east of Halling Way, along San Pedro Avenue); and to a major forested area to the south, which again connects to San Pedro Creek, though this connection was somewhat fragmented by recent development.

Despite the more recent encroachments of development, it remains that the drainage provides a connection across the landscape capable of supporting many species including birds and small mammals that may be less affected by some of these interruptions. For example, birds move primarily by line of sight rather than on-the-ground conditions and while raptor nests have not been observed in the trees immediately along the drainage, the forested area to the south is better-suited for such and the large open space just west of the drainage provides excellent conditions for foraging on fossorial rodents and small reptiles; raptors have been regularly observed using the area.[30] These same small animals (and others) are likely to find refuge within the drainage relative to sun, wind, and predator exposure where surrounding areas are paved, mowed, or otherwise devoid of vegetation. During my brief roadside visit in March 2019, I observed a duck resting among ponded waters of the drainage (**Figure 3e**) indicating that waterfowl also use the shaded and wetted area at least occasionally. Small mammals such as skunks, raccoons, and coyote would all be likely to make use of the drainage area as well.

In addition, the California Essential Habitat Connectivity Project identifies a major natural landscape block beginning in Pacifica and extending south through the San Mateo and Santa Cruz Counties coast and mountains (**Figure 8**).[31] It also recognizes "small" natural areas (defined as < 2000 ac), with one of approximately 140 ac occurring some 800 ft south of the project site, in the forested area that has already been discussed (**Figure 9**). All of this emphasizes the especially valuable role of the drainage in facilitating connections across a semi-developed landscape, from the shore and creek mouth to forested areas inland, as well as open spaces that can function as upland habitat and foraging grounds, and I recognize it as a habitat corridor rising to the level of ESHA.

ESHA Delineation & Buffers

The sensitive natural communities of **Arroyo Willow Thickets and Small-fruited Bulrush Marsh both constitute ESHA** in addition to wetlands, as delineated in the November 2019 wetland delineation report. As stated above in the wetlands section, **buffers of 50 ft should be applied to these two areas**.

As a federally-threatened and California Species of Special Concern, the California red-legged frog qualifies for Coastal Act protection under ESHA policies. Thus, the revelation that CRLF does, and has, in fact occurred at this location necessitates consideration of habitat beyond that of the wetlands. With the limited documentation available, it is not possible to precisely delineate boundaries for CRLF habitat but we can observe that there is no

[30] eBird records for the area include white-tailed kites, golden eagles, sharp-shinned hawks, red-shouldered hawks, and red-tailed hawks – www.ebird.org

[31] Spencer, WD, P Beier, K Penrod, K Winters, C Paulmann, H Rustigian-Romsos, J Strittholt, M Parisi and A Pettler. 2010. California Essential Habitat Connectivity Project: A Strategy for Conserving a Connected California. Prepared for California Department of Transportation and California Department of Fish and Game, and Federal Highways Administration. 313 pp.

biological argument that would exclude CRLF from the subject parcel or limit its movement to the narrow drainage immediately adjacent. Provided the species ecology, including dispersal and foraging patterns along the central coast, I expect it will readily use nearby upland areas and move freely with little regard for topography or substrate. Given the USFWS recommendation of providing CRLF with at least a 300-ft dispersal corridor where it is known, we can conclude that even if this width was centered on the drainage, it would extend across and beyond the subject parcel well to the east (**Figure 5**); therefore, **I find that the entire subject parcel constitutes CRLF ESHA and that this extends some yet-to-be-defined distance beyond the parcel. No buffer recommendation is provided since it is irrelevant in the absence of an outer habitat limit from which to apply.**

Habitat corridors are increasingly critical to preserve as natural lands are converted and encroached upon by development; however, their delineation can be challenging since each species will use the space differently. Often, riparian areas are treated as corridors with the outermost extent of riparian vegetation being recognized as the edge, from which buffers are then applied to ensure that wildlife movement in and out of riparian cover is protected for some distance. In this case, it is clear that the drainage adjacent to the subject parcel is part of a larger network connecting different habitats but its boundaries are less well-defined by a canopy than riparian areas and it is likely somewhat more permeable within the landscape mosaic. Because we know that CRLF is almost certainly using the drainage as a corridor but cannot clearly define the bounds of such use with the data available, the same determination must transfer to the EVH-based ESHA – **I find that the subject parcel is part of a general habitat corridor ESHA, which extends some yet-to-be-defined distance beyond the parcel. No buffer recommendation is provided since it is irrelevant in the absence of an outer limit from which to apply.**

In conclusion, I find that the subject parcel includes wetlands, Arroyo Willow Thicket ESHA, California red-legged frog ESHA, and habitat corridor ESHA. These sensitive habitat resources are continuous with the immediately adjacent drainage, which additionally includes Small-fruited bulrush marsh ESHA. The boundaries of at least some of these sensitive resources extend beyond both the drainage and subject parcel, resulting in the entire subject parcel necessarily being recognized as ESHA in addition to the wetlands that have also been delineated there.

Figure 1a: 505 San Pedro Avenue parcel (approximated in yellow) as situated in the broader surrounding landscape, and **b:** relative to specific features including the adjacent drainage (approximated by dashed white arrow), scour pool (red asterisk), and willow thickets.

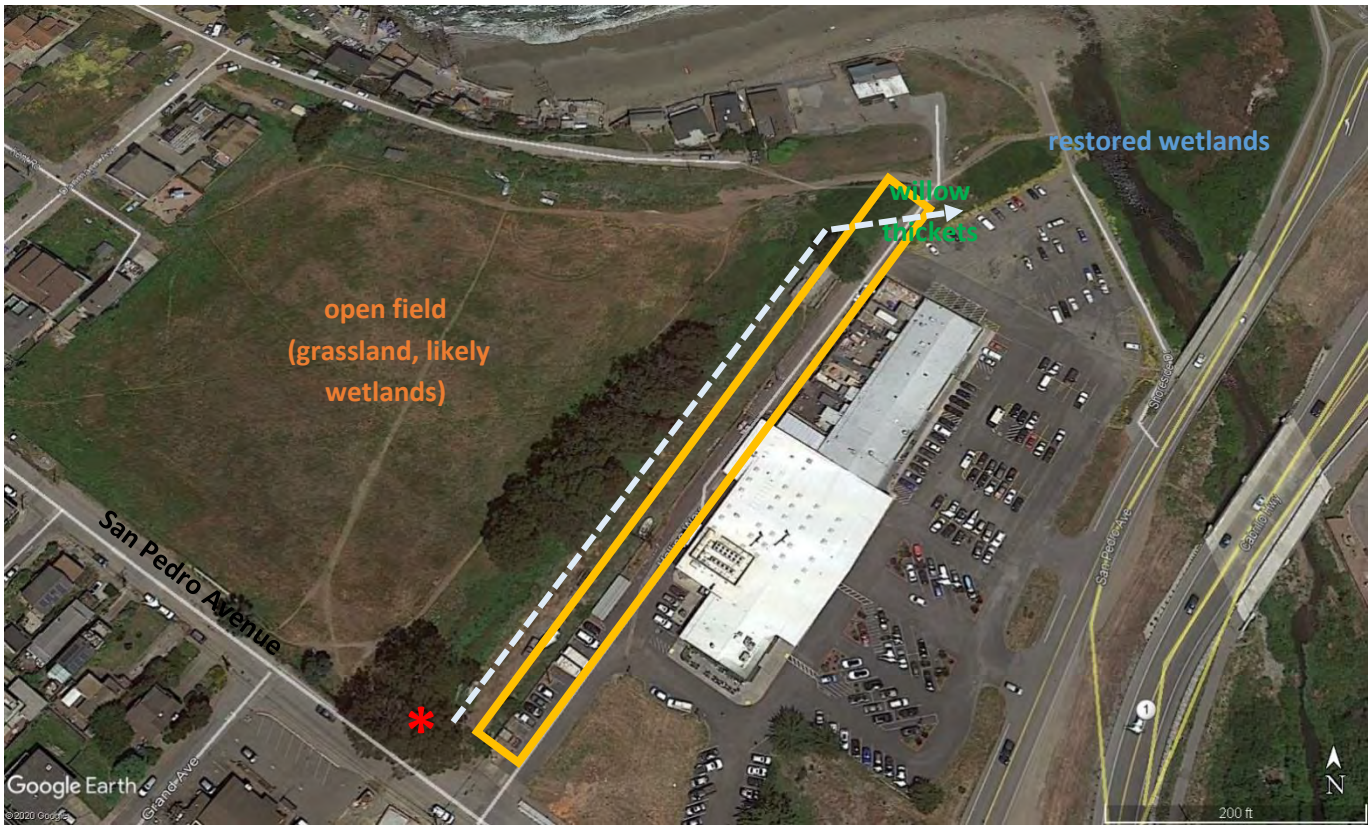

Figure 2: CDFW Biogeographic Information and Observation System (BIOS) Viewer display of the California Aquatic Resources Inventory (CARI) stream layer and California Natural Diversity Database (CNDDB) records surrounding the subject parcel (yellow box). CARI data shown as blue lines, including the drainage immediately west (left) of the parcel and San Pedro Creek (far right). Red thatching represents areas with known occurrences of California Red-Legged Frog.

Figure 3: Photos from site visits in March and October 2019, showing seasonal variation in drainage conditions – **a-b:** culvert running parallel to San Pedro Avenue, immediately west of the drainage and subject parcel; **c-d:** from San Pedro Avenue, facing north with scour pool in foreground; **e-f:** from San Pedro Avenue, facing north-northwest into drainage (note Eucalyptus wind break on left (west) before open field and subject parcel on right (east), and duck (white circle) using drainage as resting area in e); **g:** from western side of drainage, looking south towards San Pedro Avenue (note continuation of tree canopy into forested area south of San Pedro Avenue).


field
subject parcel
e


field
subject parcel
f

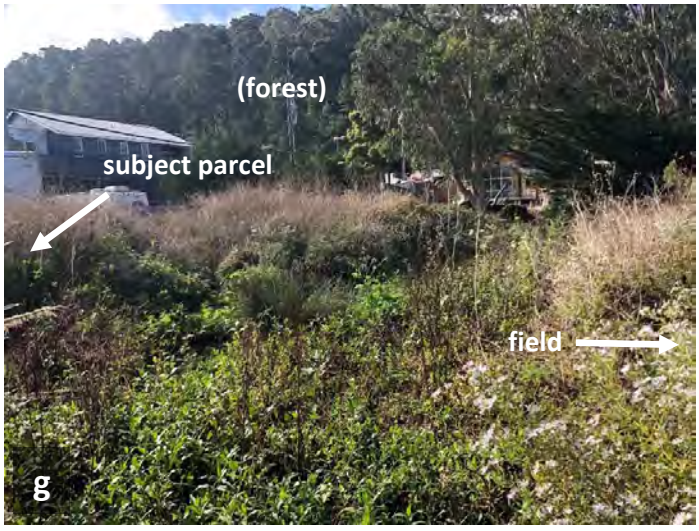
(forest)
subject parcel
field
g

Figure 4: Subset of larger aerial time series (2002-2020) of the subject parcel (yellow box) and the surrounding landscape, showing wet versus dry season patterns of vegetation. Note how the drainage immediately adjacent to the subject parcel consistently provides a green corridor and effectively links San Pedro Creek with the open field to the west while providing a valuable secondary connection to the forested habitat south of the site.


May 2010
Google Earth
N


September 2003
Google Earth
N


April 2020
recently developed parcels
& interrupted tree canopy
Google Earth
N
300 ft


July 2020
recently developed parcels
& interrupted tree canopy
Google Earth
N
300 ft

Figure 5: Delineated single-parameter wetlands (solid green lines) and approximate wetland buffers (dashed green lines) relative to proposed project. Note that 50-ft buffer was drawn around the willow ESHA but should also extend slightly further south around some small-fruited bulrush marsh ESHA, which would further overlap with the proposed footprint, even as potentially modified (red lines).

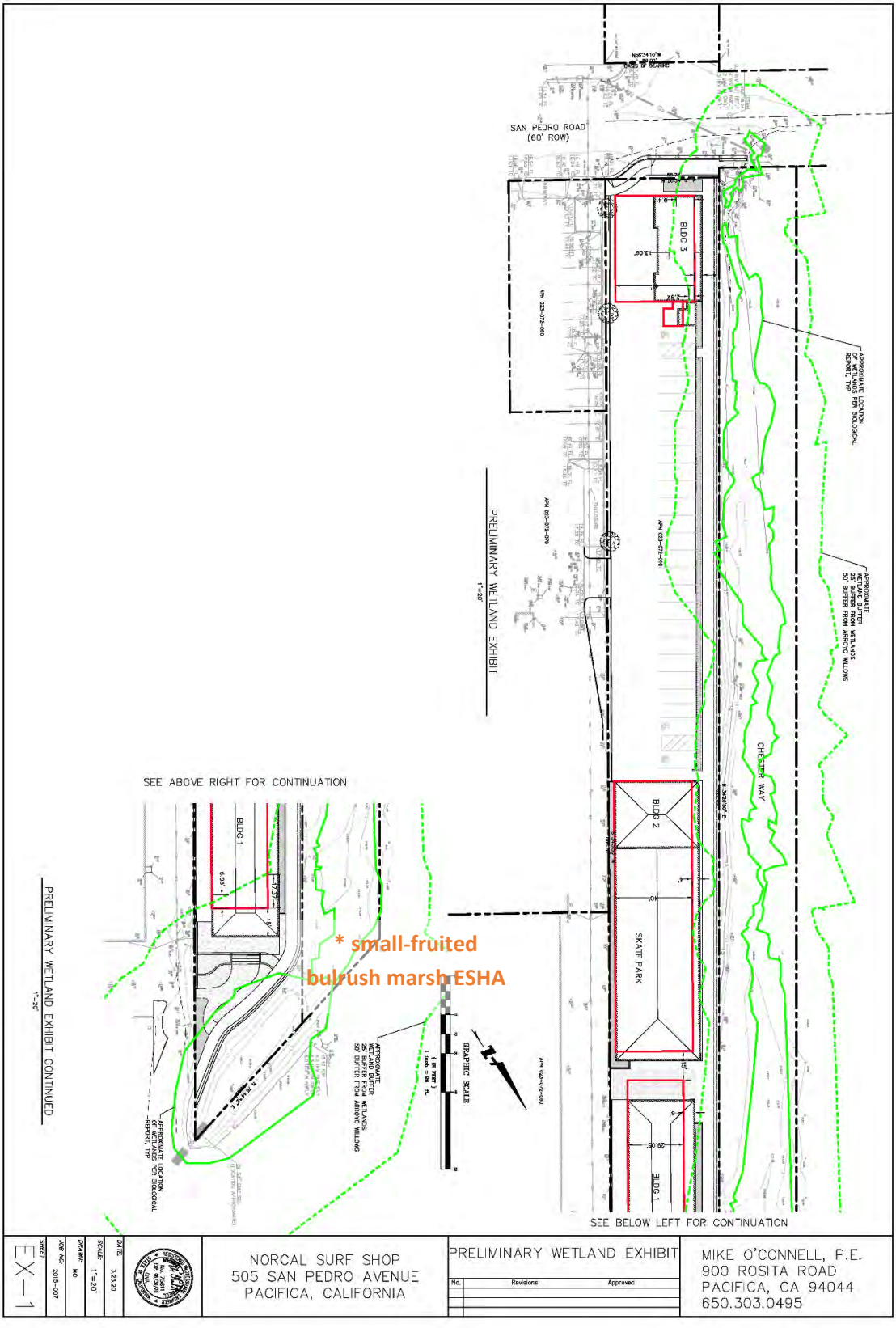

Figure 6a: CRLF as observed at San Pedro Avenue on April 12, 2020 by Michael Vasey, Sheila Harman and Jon Harman (photo credit: Jon Harman); **b-d:** CRLF as observed at San Pedro Avenue on April 23, 2020 by Sheila Harman. Individual CRLF circled in white for visibility.

Figure 7a: From San Pedro Avenue, looking northeast, view of scour pool in drainage with subject parcel as grassy area immediately behind the fence, and **b:** CRLF observed in scour pool by Peter Baye. Photos by Peter Baye, as submitted to USFWS in May 4, 2005 letter.

Figure 8: Excerpt from California Essential Habitat Connectivity Project displaying the San Mateo-Santa Cruz Counties coastal corridor (within red box). The project location in Pacifica is approximately located at the black arrow, near the northern edge of the extent. Areas in green represent connected stretches of habitat and the yellow-brown spectrum represents areas that would ideally be added to provide better linkages. The Pedro Point area is among those areas identified as valuable additions to improving connections through this corridor.

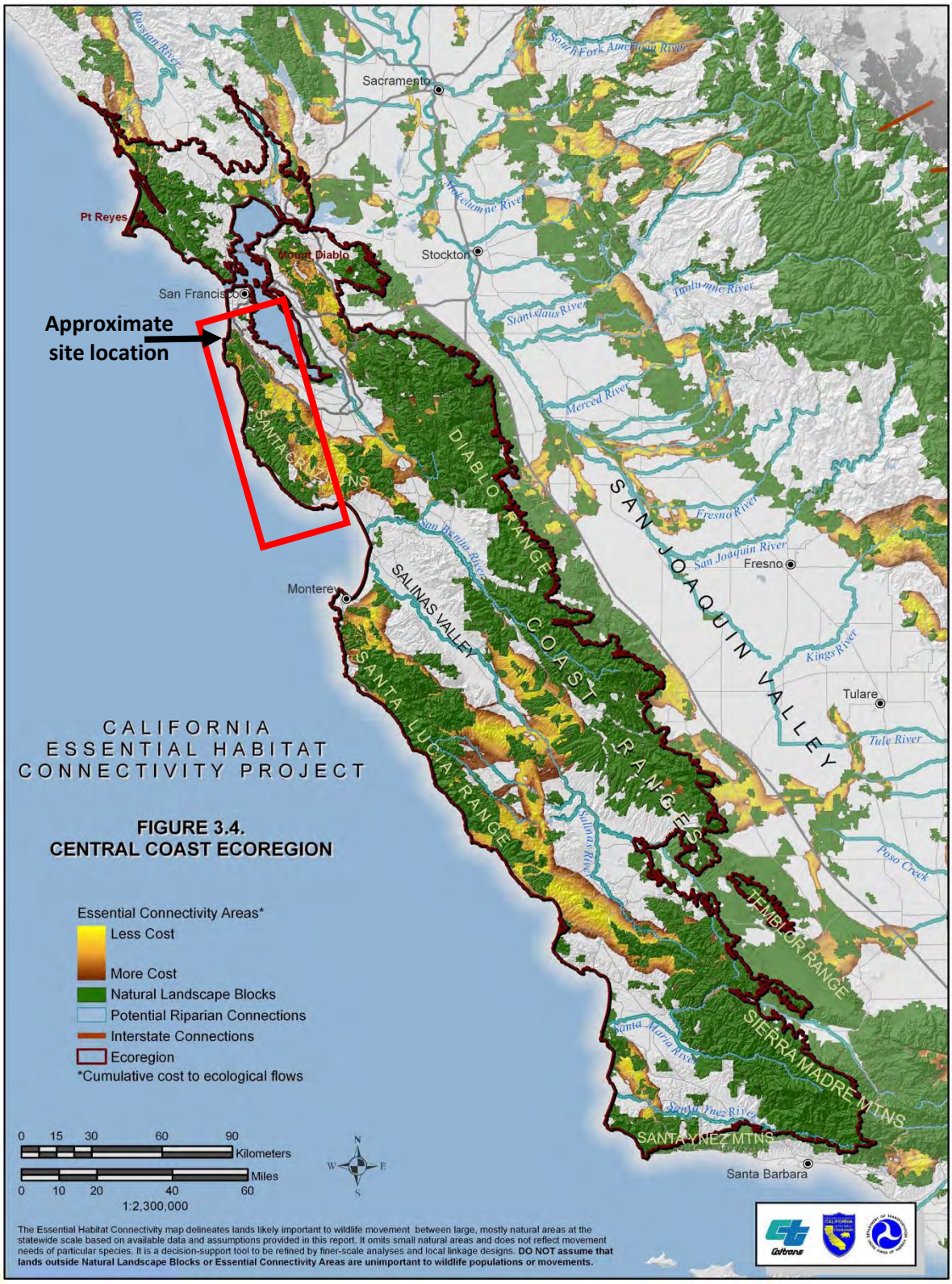

Figure 9: CNDDB display of the Pedro Point area in Pacifica, with CRLF occurrences observed in thatched red areas and finer-scale features identified as particularly valuable by the California Essential Habitat Connectivity Project in solid green. The proposed project site (yellow bar) is largely covered by the upper two CRLF occurrences and is situated to link multiple habitats across the landscape mosaic, including riparian, wetland, forest, and grassland.