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15 PACIFICANS FOR A SCENIC COAST

16 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 IN AND FOR THE COUNTY OF SAN MATEO

18 PACIFICANS FOR A SCENIC COAST, an
19 unincorporated association,

20 Petitioner,

21 v.

22 CALIFORNIA DEPARTMENT OF
23 TRANSPORTATION; and DOES 1 through
24 10,

25 Respondents.

26 SAN MATEO COUNTY
27 TRANSPORTATION AUTHORITY; CITY
28 OF PACIFICA, and DOES 11 through 50,

29 Real Parties in Interest.
30

FILED
SAN MATEO COUNTY

MAY 22 2014

Clerk of the Superior Court

By

DEPUTY CLERK

Case No.: CIV 523973

OPENING TRIAL BRIEF ON MERITS

ASSIGNED FOR ALL PURPOSES TO
HON. MARIE S. WEINER, DEPT. 2

CEQA

Hearing Date: August 22, 2014
Hearing Time: 2p.m.
Department: 2

FILE BY FAX

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NOTE ON CITATIONS TO CEQA AND THE ADMINISTRATIVE RECORD

This brief uses the following citation conventions regarding references to the California Environmental Quality Act (“CEQA”) and the City’s Certified Administrative Record:

CEQA is codified at Public Resources Code section 21000, *et seq.* All statutory citations in this brief are to CEQA unless otherwise indicated, and shall consist of a section symbol (§) followed by the section number and, if any, the subdivision(s) cited thereto. For example, a citation to Public Resources Code section 21080, subdivision (e)(2), would appear as follows: § 21080(e)(2).

The CEQA Guidelines are codified at California Code of Regulations, title 14, chapter 3, section 15000, *et seq.* All citations to the CEQA Guidelines shall consist of the word “Guidelines” followed by a section symbol, the relevant section number, and, if any, the subdivision(s). For example a citation to Cal. Code Regs., tit. 14, ch. 3, § 15088.5, subd. (a)(4), would appear as follows: Guidelines, § 15088.5(a)(4). The Supreme Court has not decided whether the Guidelines constitute regulatory mandates. “At a minimum, however, courts should afford great weight to the CEQA Guidelines except when a provision is clearly unauthorized or erroneous under CEQA.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, fn. 2.)

Citation to the Caltran’s Certified Administrative Record shall consist of the abbreviation “AR” followed by the relevant page number(s).

1 **INTRODUCTION**

2 Petitioner Pacificans for a Scenic Coast challenges the California Department of
3 Transportation's (Caltrans) certification of an EIR for procedural violations of the California
4 Environmental Quality Act and approval of the State Route 1/Highway 1 Widening/Calera
5 Parkway Project ("Project") in reliance thereon.
6

7 **STATEMENT OF FACTS**

8 The Project has had several previous similar project proposals, including approval of a
9 Project Study Report in 1999 (AR4200-4283). There was a Scoping Meeting for another
10 similar project in 2004 where the public expressed concerns regarding adverse project impacts
11 and opposition to the project. (AR4937-4946) For this Project, Caltrans circulated a Notice of
12 Preparation for the draft Environmental Impact Report. (AR1041) A Scoping Meeting in 2010
13 was attended by approximately 100 people. (AR4949-4950, AR8) Due to public controversy,
14 an additional meeting was held at the Pacifica City Council Chambers on June 22, 2010 with
15 approximately 100 people attending. (AR8, 4953-5010) The public scoping comment period
16 was extended until July 22, 2010 because of the controversy. (AR9) At both meetings, the
17 public expressed intense interest in other alternatives to the proposed Project, and expressed
18 concerns regarding visual impacts, community impacts, biological impacts and public safety.
19 (AR10436-10486, AR10487-10549)
20
21
22

23 The Draft EIR was made available for public review and comment on August 8, 2011.
24 (AR9, AR146-432) Due to public opposition, the comment period on the Draft EIR was
25 extended to October 22, 2011. (AR9) Approximately 100 people attended the single public
26 hearing on the Draft EIR on September 22, 2011. (AR9, AR5011-5041) Members of the
27 public, including members of Petitioner objected to the Project and to the adequacy of the EIR
28 at the public hearings. (AR869-937) Approximately 180 members of the public, including
29
30

1 members of Petitioner, timely submitted written comments before the Draft EIR comment
2 deadline. The majority of comments were in opposition to the Project. (AR1047-1053)

3
4 On June 25, 2012, the Pacifica City Council adopted the following: "Motion to give
5 direction to staff to participate in the Project Development Team (PDT) to encourage the
6 selection of the landscape median alternative, but reserve the final decision on the Calera
7 Parkway Project until after the FEIR is issued." (AR5042-5114) Despite numerous requests
8 from Pacifica residents for the City to hold hearings regarding specific Project impacts, and
9 requests for more information regarding alternatives to the Project as proposed, the City
10 refused to hold any such meeting. W with the exception of a requested extension in the
11 comment period, the City of Pacifica failed to submit any written scoping or Draft EIR
12 comments regarding Project impacts, mitigations or alternatives. (AR1102-1103)

13
14 On July 18, 2012, the Project Development Team (PDT) formally identified the
15 Landscape Median Build Alternative as the preferred alternative. (AR10) On June 24, 2013,
16 the City Manager of Pacifica agreed to a formal commitment to maintain the landscaping in the
17 median of the proposed Landscape Median Built Alternative. (AR10141). Caltrans approved
18 the Final EIR/EA and Finding of No Significant Impact on August 1, 2103 and approved the
19 Project on August 2, 2013. (AR3, 437, 439) Caltrans did not provide an opportunity for public
20 comment on the new information in the Final EIR. The Notice of Determination was received
21 by the State Office of Planning and Research on August 8, 2013. (AR1-2)

22 23 24 **ARGUMENT**

25 **I. THE EIR'S PROJECT DESCRIPTION IS UNSTABLE AND SHIFTING.**

26 "[A]n accurate, stable and finite project description is the *sine qua non* of an
27 informative and legally sufficient EIR." (*San Joaquin Raptor Rescue Center v. County of*
28 *Merced* [*San Joaquin Raptor II*] (2007) 149 Cal.App.4th 645, 655 quoting *County of Inyo v.*
29
30

1 *City of Los Angeles* (1977) 71 Cal.App.3d 185, 199.) A legally sufficient project description
2 must include a general description of the project's technical, economic and environmental
3 characteristics, considering principal engineering proposals and supporting facilities.
4 (Guideline 15124, subd. (c).) At a minimum, the EIR must include *detail sufficient for*
5 *evaluation and review of environmental impacts.* (Guideline 15124, emphasis added.) Even
6 where an EIR is adequate in all other respects, a "truncated project concept" violates CEQA.
7 (*San Joaquin Raptor/Wildlife Rescue Ctr. v. Cnty. of Stanislaus [San Joaquin Raptor I]* (1994)
8 27 Cal. App. 4th 713,730; *County of Inyo, supra*, 71 Cal.App.3d at 200.)
9

10
11 This EIR omits or provides inconsistent information about key Project components,
12 including (1) pedestrian crossings and Highway widths, (2) Project boundaries, and (3) Project
13 grade height, retaining wall location and size, and excavation volume. First, the EIR entirely
14 fails to disclose the width of intersections at Fassler Avenue and at Reina del Mar with the
15 Project. (AR551-52) The EIR fails to disclose that the intersection at Fassler would be widened
16 from 80 to 120 feet, nor that the Reina del Mar intersection would be widened from 100 to 165
17 feet.¹ (AR984). An enigmatic project description "draws a red herring across the path of
18 public input." (*County of Inyo, supra*, 71 Cal.App.3d 185 at 197-98.) Intersection width is
19 important for the public to intelligently comment on Project impacts to traffic circulation and
20 public safety. As argued, *infra* at section III.B, the EIR failed to analyze impacts to public
21 safety from Highway crossing time - despite concerns of the public and responsible agencies.
22

23
24 Relatedly, the EIR fails to consistently describe the *increase* in Highway width. The
25 EIR states the width of the Project alternatives will vary from 20 feet to 50 feet wide (AR443)
26 (improperly comparing the alternatives to each other rather than against the baseline), but
27 elsewhere states that "SR 1 would be widened from approximately 64 feet to a maximum of
28

29
30 ¹ The information, included in Jan. 2012 Biological Opinion, was readily available. (AR984)

1 approximately 132 feet. Figure 1.4 and Figure 1.5 show the existing and proposed roadway
2 width/profile.” (AR549) This width information, added to the Final EIR after the close of
3 public comment, varies from the information in the Draft, and the 132 feet is contradicted by
4 Figures 1.4 and 1.5.²
5

6 Figures 1.4 & 1.5 show the “boundaries” of the proposed Highway overlaid on an aerial.
7 Yet, Figures 1.4 and 1.5 are “preliminary assessments, and should not be used as official
8 records.” (AR 210-211.) The figures are only “conceptual.” (AR209; AR549.) The Response
9 to Comments affirms that “*all plans* are conceptual and are not to be used as official records.”
10 (AR1113 [emphasis added].) Project boundaries which can’t be relied upon (“not official
11 records”) contravene CEQA’s requirement for “precise” boundaries, and a finite project.
12 (Guideline 15124.) Such an indefinite project description thwarted the public’s ability to
13 understand, *inter alia*, pedestrian crossing time, biological impacts, and visual impacts.
14
15

16 Project characteristics are also not stable. The Final EIR released after project approval
17 discloses for the first time that north and south lanes will be at different elevations (“vertically
18 separated”) (AR567, 681); that there will be 8 retaining walls up to 22 feet high and 1000 feet
19 long, totaling 4,100 feet of new retaining walls (AR24; AR560), and that excavations up to
20 1000 feet long, 60 feet deep and 60 feet wide are part of the Project. (AR706) Shifts in project
21 descriptions “vitate the City’s EIR process as a vehicle for intelligent public participation.”
22 (*County of Inyo, supra*, 71 Cal.App.3d at 197.)
23

24 Accurate intersection and Highway widths, Project boundaries, and finite principal
25 engineering proposals are essential to enable public understanding of public safety, visual,
26 traffic, and biological impacts, and to assess mitigation measures, and alternatives. This
27 information in turn affects Coastal Act and General Plan consistency determinations. The
28
29

30 ² The minute scale of Figures 1.4 & 1.5 conceal important Project details. The reader, if one
has the technology and inclination, is forced to add the Project distances from these Figures.

1 degree of specificity required depends on the type of project. Here, where the project proposed
2 is highway widening, providing stable information of how wide the project will be is essential
3 for the public to understand the environmental impacts. (*Dry Creek Citizens Coalition v.*
4 *County of Tulare* (1999) 70 Cal.App.4th 20, 28 Without a stable, accurate project description, it
5 is impossible for City officials or the public to 1) balance the proposal's benefit against its
6 impacts, 2) consider mitigation measures, 3) consider terminating the proposal, or 4) weigh
7 other alternatives in the balance. (*County of Inyo, supra*, 71 Cal.App.3d at 192-93; *City of*
8 *Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454.) Caltrans' approach is
9 similar to *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, where
10 the EIR failed to describe integral Project facilities. (*Id.* at 829.) An agency which simply
11 promised that the applicant "will furnish" plans hid potentially important Project ramifications
12 "at the time the project was being discussed and approved. This frustrates one of the core goals
13 of CEQA." (*Id.* at 830.)

17 **II. THE EIR DOESN'T INCLUDE A COMPLETE AND ACCURATE ENVIRONMENTAL**
18 **SETTING.**

19 The EIR doesn't describe the environmental setting for utilities, biological or Native
20 American resources. An EIR must describe the environmental setting: the physical conditions
21 in the "vicinity" of the Project viewed from a "local and regional perspective." (Guideline
22 15125, subs. (a), (c).) The description must be sufficiently comprehensive to allow the
23 impacts "to be considered in the full environmental context." (*Id.* at subd (c).) Special
24 emphasis must be placed on rare and unique environmental resources. (*Ibid.*) This EIR is
25 flawed in regards to the existing setting for utilities, biological resources, and cultural
26 resources. Without an adequate setting, "analysis of impacts, mitigation measures and project
27 alternatives becomes impossible." (*County of Amador v. El Dorado County Water Agency*
28 (1999) 76 Cal.App.4th 931, 953-54.)
29
30

1 **A. The Utilities Baseline is Insufficient.**

2 The Draft EIR only describes the utilities environmental setting as:

3 Various utility lines (e.g., gas, electric, water, communications, sanitary sewer,
4 stormwater, etc.) are located within or cross under SR 1 in the project area.
5 Utility lines are also located within the local streets near SR 1 in the project
6 vicinity.

7 (AR259) The North Coast County Water District commented that the project setting includes:

- 8 (1) east of Highway 1, an 18" water main which is the only water main for the entire south end
9 of Pacifica and will serve the Devils Slide Tunnel emergency fire sprinklers (need to relocate);
10 (2) crossing Highway 1 at Fassler, a 12" iron pipe serving the Rockaway Beach area (need to
11 replace);
12 (3) west of Highway 1, a reclaimed water line (need to relocate);
13 (4) west of Highway 1, more than one "forced sewer mains" parallel the reclaimed water lines;
14 (5) under Highway 1, about 300 yards north of the Rockaway area / San Marlo intersection, a
15 12" water line would need to be extended.³

16 (AR1646) The EIR also excluded the existing storm drain system, including northern and
17 southern culverts crossing under the Highway which will need to be modified. (AR986) The
18 EIR also omits description of electric lines which parallel the Highway through the project
19 area. The EIR included none of this information in the Final EIR's utility baseline. (AR646)
20 "Existing conditions must be determined, to the extent possible, in the EIR itself." (*Save Our*
21 *Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99,
22 120.) This EIR's failure to do so violates CEQA.

23 **B. The Biological Baseline is Inadequate.**

24 The EIR's environmental setting is improper where it excludes adjacent wetlands.

25 (AR5649) The EIR's wetlands baseline "does not include private land on either side of SR 1."

26 (AR750 at Fn 36) All wetlands studies were conducted "only in the Caltrans easement areas."

27 (Ibid.) Clearly, this exclusion violates the requirement to disclose the conditions in the Project
28 "vicinity." (Guideline 15125.) In *San Joaquin Raptor I*, where the EIR failed to describe

29 _____
30 ³ Utility relocation west of the Highway will be "complicated by" designated "extremely
sensitive environmental area" with rare / endangered species habitat. (AR1646)

1 wetland areas at a nearby park, the environmental setting was inadequate as a matter of law,
2 and the analysis of the project's impacts was legally inadequate. (*San Joaquin Raptor I, supra*,
3 27 Cal. App. 4th at 729.) Here, the EIR baseline must include adjacent wetlands, even if on
4 private land, to properly assess direct and indirect impacts to wetlands, habitat values,
5 threatened species, and to assess proposed wetlands buffers. In addition, as the Coastal
6 Commission commented, the EIR will inform review of consistency with the Coastal Act and
7 Pacifica's Local Coastal Plan focus of protecting coastal wetlands. (AR1626).

8
9 The EIR's biological baseline ("Biological Study Area" or "BSA") by definition
10 "consists of the footprint of the project as well as all areas that may be affected directly or
11 indirectly by the construction activity or action." (AR739, 757) As in *San Joaquin Raptor I*,
12 this EIR's vague description doesn't identify the specific location and extent of the "adjacent"
13 habitat. (*San Joaquin Raptor I, supra*, 27 Cal.App.4th at 726.) The EIR leaves the baseline ill-
14 defined, failing to disclose to the public what areas may or may not be directly/indirectly
15 affected.⁴ Further, the biological baseline appears to fluctuate. Figure 2.5 is entitled the
16 Biological Study Area (AR741), yet Figures 2.6 and 2.7 are "Revised" Biological Study Areas
17 (AR 743, 745). The EIR does not disclose how the BSA is revised, or why.

18
19 In addition to wetlands, special status animals and their habitat may be present
20 "outside" of the BSA including white tailed kite (AR758), threatened California red-legged
21 frog (AR762), and endangered San Francisco garter snake (AR762). Seasonal
22 wetland/seasonal aquatic habitat types occur in a ditch that parallels SR 1 "outside" of the BSA
23 "for the most part."⁵ (AR342) The error of this approach is clear: without considering areas
24 outside the BSA, the EIR concludes that hydrology of aquatic habitats "outside" the BSA with
25

26
27
28 ⁴ Vagueness is not required. The USFWS' Biological Opinion specifically defines the baseline:
29 "Service considers the action area, comprising 83.80 acres, to encompass the project footprint
30 and undeveloped areas extending 500 feet west and 300 feet east of the SR-1." (AR996)

⁵ Threatened frogs have been "observed" in the ditch. (AR763)

1 frogs present “would not be altered by the project.” (AR764, 804) Not only is the exclusion of
2 adjacent habitat improper, but the EIR fails to disclose how much of the wetland/aquatic habitat
3 is inside the BSA and how much is outside.

4 What location constitutes the existing setting (the BSA in this EIR’s parlance) matters.
5
6 “Adequate information concerning [wetlands] or other nearby riparian habitats [] from which a
7 reader could derive an understanding of their [wetland] locations” is required. (*San Joaquin*
8 *Raptor I, supra* at 725.) “[F]ailure to provide clear and definite analysis of the location, extent
9 and character of wetlands possibly within and definitely adjacent to the development project”
10 precludes the court’s review of whether that all impacts were properly analyzed. (*Id.* at 729.)

11
12 Also, while claiming that the BSA includes indirect impacts, the EIR’s approach raises
13 troubling questions about whether indirect impacts have been excluded. The EIR discloses that
14 there are approximately 0.87 of wetlands “on the project site” (AR750), but doesn’t disclose
15 how much wetlands are “within the BSA.” Further, if the impact being considered is water
16 quality impacts, the EIR cannot analyze direct and indirect impacts where the BSA(s) in
17 Figures 2.5 through 2.7 exclude downstream sections of Rockaway Creek, Calera Creek,
18 Sanchez Creek, and the Pacific Ocean – all direct receiving water bodies for the Project.⁶
19 (AR691) Analysis of indirect impacts is important here because development “in most of the
20 study area” extends to the banks of Calera Creek and Rockaway Creek” (AR691) and Project
21 sedimentation, erosion and equipment fuels leaks could adversely affect numerous wildlife
22 species. (AR785)

23
24 For threatened frogs west of Highway 1, the EIR vaguely says they “use portions of the
25 mosaic of habitats in the area west of SR 1 for breeding, foraging and dispersal” (AR765) and
26
27

28
29 ⁶ The BSA excludes Rockaway Creek, claiming Calera Creek is the only water body in the
30 BSA. (AR747)

1 have been “observed in several habitats and locations west of SR 1” (AR763). The EIR fails to
2 disclose where these habitats are located.

3 The biological baseline is internally contradictory regarding whether threatened frogs
4 migrate east of the Highway. The Draft EIR states categorically that “California red-legged
5 frogs are not known in Calera Creek east of SR 1.” but vaguely refers to frogs dispersing across
6 the Highway. (AR355 [“virtually no east-west dispersal across SR 1 occurs”].) The Final EIR
7 still states that frogs “are not known in Calera Creek east of SR 1,” but further obscures the
8 baseline by claiming that the Calera Creek culvert under the Highway provides “some
9 connectivity in this location,” and that Calera Creek provides habitat east of the Highway
10 which “may support dispersing California red-legged frogs.”⁷ (AR763) An inconsistent
11 baseline for threatened frog migration through the culvert impedes analysis of impacts and
12 mitigations. For example, the EIR discussion of barriers to frog movement is limited to frog
13 dispersal “onto” but not under the Highway. (AR771)

14
15
16
17 **C. The Cultural Resource Baseline is Incomplete.**

18 The Draft and Final EIRs state that there are “two recorded archaeological sites (CA-
19 SMA-162 and CA-SMa-238) within *or adjacent* to the APE” (Areas of Potential Effect)
20 (AR292, 684 [emphasis added]), but don’t clarify if portions of sites 162 and/or 238 are outside
21

22
23 ⁷ The U.S. Fish & Wildlife Service determined that “California red-legged frogs inhabit lands
24 east of SR-1 and may therefore occur within all areas of suitable habitat on either side of SR -1.
25 Based on the numerous reported occurrences within the action area, presence of suitable
26 breeding, non-breeding aquatic, upland and dispersal habitat within the action area, and
27 connectivity to known populations, the Service has determined there is a reasonable probability
28 for California red-legged frogs to inhabit or disperse through the action area.” (AR1002). The
29 Service’s Project action area includes the project footprint and undeveloped areas 300 feet east
30 of SR-1. (AR996) The Service previously determined for the Police Station project on Calera
Creek immediately east of the Highway that “Calera Creek provides a direct surface water
connection” through a large culvert passing under the Highway, and that “it is reasonable to
assume that garter snakes and red-legged frogs could migrate from the Calera Creek restoration
site [west of Highway] upstream through the culvert to utilize the 1.05 acres of waters
wetlands and dense riparian vegetation in and around Calera Creek [on east side].” (AR5637)

1 of the area affected. More importantly, the EIR fails to describe site 238 as part of the baseline,
2 or analyze impacts to this resource.

3 In addition, Caltrans had information about the cultural setting, but didn't include this in
4 the EIR reviewed by the public. The EIR fails to disclose that the setting is one where Native
5 American jaw, skull, bones and teeth were found two feet below ground level, as well as
6 spearheads, arrowheads, potential necklace, and pottery. (AR3280) Nor does the EIR reveal
7 that prior construction of the highway box culvert in this location exposed burials and artifacts
8 later recorded as site CA-SMA-268.⁸ (AR3284; see also AR3276-77 [APE map signed by
9 SMCTA & Caltrans in July 2008].)

12 Third, the cultural APE "consists of the area within the footprint of the project, as well
13 as those areas directly adjacent to the project where indirect effects could occur." (AR684) The
14 EIR doesn't explain what constitutes the "areas directly adjacent" or where indirect effects
15 could occur, prohibiting public understanding of the cultural setting, impacts and mitigations.
16 The area affected by the project "cannot be so narrowly defined that it necessarily eliminates a
17 portion of the affected environmental setting." (*Bakersfield Citizens for Local Control v. City of*
18 *Bakersfield* (2004) 124 Cal.App.4th 1184, 1216.)

21 Properly evaluating the local and regional area matters. For example, testing in
22 December 2008 indicated **no** significant cultural resources "are present in the construction area
23 on the west side of SR 1." (AR685) Yet, subsequent researchers "expanded the boundary" and
24 one testing program "increased the original site boundary to the west based on the presence of
25

26 ⁸ The EIR does not state that this information can be found in the Architectural Survey Report.
27 Information in the Report shows it was reasonable for the EIR to include as the cultural setting,
28 and certainly does not excuse its omission from the EIR. The public can not "reasonably be
29 expected to ferret out an unreferenced discussion," and incorporate the information into the
30 EIR. Data in an EIR "must not only be sufficient in quantity, it must be presented in a manner
calculated to adequately inform the public." Information buried in a report does not substitute.
(*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40
Cal.4th 412, 442 [citations omitted].)

1 buried deposits.” (Ibid.) Andrew Galvan, a descendant of the aboriginal inhabitants of the
2 region (AR3289) and a member of the Ohlone Indian Tribe (AR3336) commented that he
3 wanted to know the “location” of human remains. (AR3278)
4

5 **III. THE ANALYSIS OF SIGNIFICANT IMPACTS IS INADEQUATE.**

6 This EIR doesn’t properly disclose impacts related to the construction-phase, public
7 safety, aesthetics, Rockaway Beach traffic circulation, or threatened species.

8 An EIR must evaluate all significant environmental effects of a proposed project. (§§
9 21100(b) (1), 21061; Guidelines 15126(a), 15143.) Both direct and indirect impacts must be
10 analyzed, in the short term and the long term. (Guideline 15126.2.) “Significant effects should
11 be discussed with emphasis in proportion to their severity and probability of occurrence.”
12 (Guideline 15143.) EIRs “should be prepared with a sufficient degree of analysis to provide
13 decision-makers with information which enables them to make a decision which intelligently
14 takes account of environmental consequences.” (*Galante Vineyards v. Monterey Peninsula*
15 *Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1123; Guideline 15151.)
16
17

18 Bare conclusions without explanation of the factual and analytical basis is not sufficient
19 analysis of an environmental impacts. (*Laurel Heights Improvement Assn. v. Regents of*
20 *University of California* (1988) 47 Cal.3d 376, 404; *City of Maywood v. Los Angeles Unified*
21 (2012) 208 Cal.App.4th 362, 393.) Failure to explain the reasons why an impact is insignificant
22 violates CEQA and thwarts judicial review. (*Protect The Historic Amador Waterways v.*
23 *Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111-12.)
24

25 **A. The EIR Fails to Properly Analyze Project Construction Impacts.**

26 All project phases must be considered in an EIR. (Guideline 15126.) An EIR must
27 “analyze any significant environmental effects the project might cause by bringing
28 development [] into the area affected.” (Guideline 15126.2(a), emphasis added.) The EIR
29
30

1 references short-term construction traffic, water quality, air quality, and noise effects under EIR
2 section 2.22. (AR701 [either alternative may affect water quality], 723, 733) Analysis of
3 these impacts is important as Project construction is expected to last two years. (AR785)

4
5 1. Construction Traffic. The EIR does not analyze traffic impacts related to
6 excavations at three locations labeled Cuts 1, 2 and 3. (AR785) Cut 3 alone will be more than
7 1000 feet long, requiring removal of 3,600,000 cu. ft. of hillside. (AR4190; AR4193) In fact,
8 the EIR defers any analysis of the “traffic-related aspects of construction.” (AR785) Analysis
9 of “traffic handling in each stage of construction, pedestrian safety/access, and bicycle
10 safety/access” is deferred until after EIR certification.⁹ (Ibid.) Further, traffic impacts from
11 heavy equipment access to and from construction staging areas were not discussed. (AR562)
12 “CEQA’s informational purpose ‘is not satisfied by simply stating information will be provided
13 in the future.’” (*Vineyard Area, surpa*, 40 Cal.4th at 441 [citations omitted].) This EIR
14 improperly avoids analysis of construction traffic impacts.
15

16
17 2. Construction Air Quality. Construction emissions may cause adverse air quality
18 impacts. (AR787) Construction will generate diesel exhaust emissions, particulate matter
19 emissions, construction dust, and organic gas emissions from asphalt, solvents, paints and
20 thinners causing urban ozone. (Ibid.) The EIR admits that these exhausts may “result in
21 adverse health effects,” but doesn’t disclose if the effects will be significant. (Ibid.)
22

23 3. Construction Noise. Project construction activities could be within 50 feet of
24 noise-sensitive uses on both sides of the highway. (AR728) Most construction phases would
25 generate average noise up to 13 dBA Leq (hr) higher than ambient day or night traffic noise.
26

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28
29 ⁹ The EIR considers the Transportation Management Plan (TMP) as analysis of *impacts* for
30 Highway 1 and intersection operations (AR451-52 [section 2.6 summary]); AR785, AR804
[construction traffic impacts]), but also improperly refers to the TMP as mitigation for traffic
and greenhouse gas impacts. (AR643, 814)

1 (AR789) At a distance of 50 feet, the construction hourly average noise would be from 79 to
2 95 dBA. (Ibid.) Maximum noise levels will reach 101dBA. (Ibid.)

3 The EIR considers a noise impact to be significant when Project noise levels (1) result
4 in a substantial noise increase (12 dBA or more) or (2) approach or exceed the "Noise
5 Abatement Criteria" (NAC). (AR728; 733-734) Despite these standards, the EIR does not
6 disclose if construction noise impacts will be significant. (AR789-90)

8 4. Construction Water Quality Impacts

9 The EIR entirely fails to discuss water quality impacts from Project excavations
10 resulting in "non-storm water discharges." (AR701) Further, the Draft EIR released for public
11 review did not even state if admittedly "adverse" water quality impacts from construction
12 sedimentation, erosion, and Project fuels and lubricants will be significant or insignificant.
13 (AR785) Project impacts from grading and excavation over the 2-year construction period is
14 only vaguely described as "degrade water quality" of "various" undisclosed creeks as a result
15 of Project sedimentation, erosion and equipment fuels/lubricants (AR 785), and thereby also
16 "adversely affect" "numerous wildlife and plant species." (AR 785)

17 This analysis is important. Water quality in the creeks depends upon the concentration
18 of contaminants flowing into the creeks. "In sufficient concentrations, these pollutants []
19 adversely affect the aquatic habitat of these streams and the Pacific Ocean." (AR700) Ponds in
20 and fed by Calera Creek are habitat for endangered frogs and snake. (AR1001-02) Most of the
21 storm drains discharge into the various creeks. (AR785) Rockaway Creek, Calera Creek,
22 Sanchez Creek, and the Pacific Ocean are direct receiving water bodies for the Project.
23 (AR691) "Development in most of the study area" extends to the banks of Calera and
24 Rockaway Creeks, which both discharge into the Pacific Ocean. The Project also affects the
25 Sanchez Creek watershed; Sanchez Creek empties into Horse Stable Pond, where water is
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1 pumped to the Pacific Ocean. (Ibid.) San Francisco garter snakes continue to persist in the
2 wetlands and adjacent upland areas northwest of the action area at Horse Stable Pond, Sanchez
3 Creek and Mori Point pond enhancement sites. (AR1003)

4 In the Final EIR, after close of public comment (and without recirculating) Caltrans
5 belatedly claimed:
6

7 construction-related activities *may temporarily affect* storm water quality due to
8 increased erosion and the potential for spills and leaks of lubricants and other
9 fluids associated with vehicles and equipment during construction. Certain
10 pollutants are associated with storm water runoff from highways and increases
11 in roadway and other impervious surfaces also result in increases in storm water
12 runoff, which could increase pollutants. The Build Alternatives would result in
13 an increase in the amount of roadway paving and other impervious surfaces.
14 However, this *increase would be minimal, especially given the fact that most of*
15 *the project site already consists of roadways* (i.e., the existing freeway).
16 Therefore, the project would not result in significant impacts to water quality.

17 (AR221 [emphasis added].) This approach is improper. Claiming that impacts are minimal or
18 temporary does not excuse omission of analysis. This EIR does not discuss (1) how much
19 Project sedimentation will runoff to Rockaway Creek (excluded from the BSA), Calera Creek,
20 Sanchez Creek wetlands, or the Pacific Ocean; (2) how Project scheduling will affect storm
21 water runoff; or (3) what levels of expected fuels and oil lubricants may leak from Project
22 machinery. The EIR must include analysis of *how adverse* the Project's adverse impacts will
23 be. (*Galante Vineyards, supra*, 60 Cal.App.4th at 1123 [emphasis added], citing *Santiago*
24 *County Water, supra*, 118 Cal.App.3d at 831.) Without this analysis, the EIR does not provide
25 decisionmakers with information to make a decision which "intelligently takes account of
26 environmental consequences." (Ibid.)

27 Nor does EIR section 3.2.1.17, again added only to the Final EIR, cure the EIR's flawed
28 construction impact analysis as it concludes insignificance only after applying mitigations.
29 (AR804-05) The first step in EIR's analysis of a proposed project's environmental effects is to
30 evaluate significant project impacts, followed then by analysis of mitigations. (1 Kostka &

1 Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2014, §13.2.) This
2 EIR skips that first step. An EIR “must determine whether any of the possible significant
3 environmental impacts of the project will, in fact, be significant.” (*Protect Historic Amador*,
4 *supra*, 116 Cal.App.4th at 1109; Guideline 15126.) In addition, by circulating a draft for public
5 review that did not say that impacts were significant or not, Caltrans deprived the public of
6 meaningful participation.
7

8 **B. The EIR Fails to Properly Analyze Direct and Indirect Traffic Impacts.**

9 The EIR fails to adequately analyze impacts to pedestrians from increased crossing time
10 for Highway intersections at (1) SR1/Fassler/Rockaway Beach and (2) SR1/Reina Del Mar.
11 Caltrans is required to give “full consideration” to safe accommodation of pedestrians,
12 particularly the “special needs of the elderly and the disabled.” (AR628) When pedestrian
13 traffic potentially conflicts with vehicle traffic, “every effort” must be made to minimize
14 detrimental effects on all highway users. (Ibid.) So too, under the Coastal Act consideration
15 must be given to pedestrian access. (AR610) Pedestrians “would require extra time to cross the
16 street, which the traffic analysis assumes would be a *minimum increase* of eight seconds at
17 each intersection.” (AR629) Despite these legal requirements and conclusion that extra time
18 will be needed, the EIR doesn’t analyze how adverse the impact will be or if the impact will be
19 significant. (See p. 14 *infra*.)
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23 Adequate analysis is important because schoolchildren use this intersection, the
24 proposed Project will increase minimum pedestrian crossing-time, and traffic speeds will
25 increase to “freeway/expressway standards” increasing to 55mph.¹⁰ (AR12; AR23; AR9388)
26 [13% of Vallemar School students use transit to commute to school].) Pedestrian safety has
27 been an ongoing public controversy, voiced at public meetings as early as 2004. (AR4941-42)
28

29 _____
30 ¹⁰The EIR also fails to analyze how increased crossing time for schoolchildren will affect
projected traffic circulation and vehicular delay.

1 The National Park Service raised the issue of providing safe pedestrian access across the
2 Highway and also pointed out that Caltrans has a number of policies encouraging response “to
3 community values where state highways serve as main streets.” (AR1613). Caltrans failed to
4 respond (AR1079), or revise its analysis in response.
5

6 In *City of Maywood*, the Court found an EIR deficient which failed to analyze potential
7 pedestrian safety impacts and hazards. (*City of Maywood, supra*, 208 Cal.App.4th at 391-394.)
8 As here, the EIR lacked evidence that it investigated issues, as it contained only conclusory
9 statements insufficient to satisfy CEQA’s requirements. (*Id.* at 393 citing *Environmental*
10 *Protection Information Center, Inc. v. Johnson* (1985) 170 Cal.App.3d 604, 628, 216.)
11

12 The EIR also doesn’t analyze traffic impacts of converting Old County Road into a cul-
13 de-sac near the Rockaway Beach Avenue intersection (AR94) or alternately converting Old
14 County Road and San Marlo Way to one-way only streets. (AR552) Both reduce traffic
15 outlets from this area, but the EIR doesn’t analyze traffic circulation impacts from these street
16 conversions (singularly or in combination as these streets are connected), or parking impacts.
17 The EIR only considers additional traffic trips and changes to the “overall distribution of trips”
18 throughout the whole Project. (AR 639-640) CEQA requires that direct and indirect effects be
19 “clearly identified and described” including relevant specifics of the area and changes in use.
20 (Guideline 15126.2(a).) The EIR has not met this standard.
21
22

23 **C. The EIR’s Analysis of Visual Impacts is Flawed.**

24 1. The EIR Fails to Use its Own Aesthetics Thresholds of Significance.

25 The EIR fails to utilize its own stated thresholds of significance in evaluating Project
26 impacts. Thresholds of significance are used to determine the significance of environmental
27 effects. (Guideline 15064.7, subd. (a).) A threshold of significance is an identifiable
28 quantitative, qualitative or performance level of an environmental effect. (*Ibid.*) Failure to
29
30

1 comply with a significance threshold means the effect will normally be determined significant,
2 and conversely compliance with a significance threshold means the effect normally will be
3 determined to be less than significant. (Ibid.; see also *Communities for a Better Environment v.*
4 *California Resources Agency* (2002) 103 Cal.App.4th 98, 111.) Because the purpose of an EIR
5 is to identify significant impacts (§21002.1, subd. (a)), thresholds of significance play a role in
6 determining if “any of the possible significant environmental impacts will, in fact, be
7 significant.” (*Protect the Historic Amador, supra*, 116 Cal.App.4th at 1109.)
8

9
10 The EIR states that the level of visual impact is “determined by *combining* the severity
11 of resource change *with* the degree to which people are likely to oppose the change.” (AR644)
12 Yet, the EIR’s aesthetics analysis omits discussion of “the degree to which people are likely to
13 oppose the change.” Many commenters objected to the adverse aesthetic changes.¹¹ (See e.g.
14 AR1629, 1442, 8809) The EIR entirely fails to address public opposition in its discussion of
15 visual impacts. Failure to analyze impacts by utilizing the EIR’s own threshold of visual
16 significance was a failure to proceed by law which thwarted public disclosure.
17

18 2. The EIR Fails To Disclose If Visual Changes Will Be Adverse or Significant.

19 The EIR fails to disclose if visual changes will be adverse or significant. This despite
20 the EIR admissions that “the project Build Alternatives would alter the visual character,” that
21 visual changes could be “permanent” in some areas, that the Project would diminish the quality
22 of the visual experience, and that the Project “will contrast with the natural features and will
23 change the appearance of these areas.” (AR658). The visual impact analysis is also flawed as
24 the EIR fails to disclose the number, location and size of trees to be cut.¹² Disclosing these
25
26

27 ¹¹ EIRs must summarize areas of controversy raised by agencies and the public. (Guideline
28 15123, subd.(b)(2).)

29 ¹² Failure to specify which trees will be cut also impairs the EIR’s analysis of impacts to
30 protected birds such as the white-tailed kite. (AR 480, 756) The EIR says that loss of “habitat”
for white tailed kite would not be substantial, but does not say if the expected loss of this fully
protected species will be significant.

1 project impacts is essential for the EIR to analyze *how adverse* the Project’s adverse impacts
2 will be. (*Galante Vineyards, supra*, 60 Cal.App.4th at 1123.)

3 **D. The EIR Fails to Properly Analyze Impacts to Threatened Red-Legged Frogs.**
4

5 1. Project Indirect Impacts to Frogs Are Not Analyzed.

6 The EIR fails to properly analyze indirect impacts to California red-legged frogs though
7 those impacts are reasonably foreseeable. The EIR is expressly limited to “direct” permanent
8 and temporary effects on habitats used by California red-legged frogs. (AR765, 804) Also
9 areas outside the BSA “where California red-legged frogs could be present” are not considered.
10 (AR765) Thus, there is no analysis of impacts downstream in Calera Creek, and no analysis of
11 impact to frogs on the east side of Calera Creek. (AR763) Discussion of indirect impacts to
12 frogs is important because CEQA requires particular attention be given to threatened species,
13 and because Project water quality will “adversely affect” “numerous wildlife and plant
14 species.” (AR 785)
15
16

17 2. The Location and Severity of Temporary Impacts to Frogs is Obscured.

18 Where temporary impacts will occur and whether impacts will be significant is
19 obscured. “Temporary impacts would occur in the area between the proposed future edge of
20 pavement and the outer limits of cut and/or fill plus construction staging and access areas.”
21 (AR765) Yet, the EIR doesn’t disclose where this “area between” is located or whether these
22 temporary impacts will be significant. An EIR must consider short-term effects. (Guideline
23 15126.2, subd. (a).) Nothing in CEQA suggests that short-term effects cannot be significant.
24 (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84-85 supplemented (1975) 13 Cal.3d
25 486.) An EIR must discuss the severity and duration of short-term impacts. (*Neighbors for*
26 *Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 455.)
27
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30

1 **E. The EIR Fails to Properly Analyze Climate Change**
2 **and Greenhouse Gas Emission Impacts.**

3 Guideline 15064.4 requires determination of greenhouse gas (GHG) significance
4 requires “careful judgment” by the agency, and consistency with Guideline 15064. (See also
5 *Friends of Oroville v. City Of Oroville* (2013) 219 Cal.App.4th 832, 839 841 [proper threshold
6 of significance where City adopted Assembly Bill 32’s GHG reduction targets].) In assessing
7 the significance of these emissions, the agency should consider the extent to which the project
8 may affect emissions levels; whether emissions exceed an applicable threshold of significance;
9 and whether the project complies with regulations or requirements adopted to implement
10 statewide, regional, or local plans to reduce GHG’s. (Guideline 15064.4, subd. (b).)

11 This EIR fails to properly analyze climate change or greenhouse gas emissions.
12
13 (AR726) The EIR fails to consider, or determine the significance of, Project impacts from
14 greenhouse gas emissions, as required by Guideline 15064.4. (AR 811) Further, the EIR
15 confuses Project impacts with cumulative impacts. (AR811 [“An individual project does not
16 generate enough GHG emissions to significantly influence global climate change. Rather,
17 global climate change is a cumulative impact”].) Caltrans concludes it is our “determination
18 that in the absence of further regulatory or scientific information related to greenhouse gas
19 emissions and CEQA significance, it is too speculative to make a determination regarding the
20 significance of the project’s direct impact and its contribution on the cumulative scale to
21 climate change.” (AR814)

22 The EIR fails to provide this analysis for project based impacts. The EIR also fails to
23 analyze the GHG emissions resulting from two years of construction. (AR814). The analysis
24 that the EIR provides is based on modeling factors that would occur without project
25 implementation such as improved technologies in reducing GHG emissions and programs and
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1 plans to address climate change and reduce GHG emissions.¹³ (AR812-819). Failure to
2 analyze impacts to greenhouse gas emissions and climate change violates under CEQA.

3 **F. The EIR Fails To Adequately Disclose And Analyze Land Use Consistency.**

4 An EIR must discuss inconsistencies with general plans, specific plans, and regional
5 plans. (Guideline 15125(d).) The EIR fails to discuss consistency with Pacifica's Heritage Tree
6 Ordinance. A permit is required for removal of heritage trees and a tree protection plan for new
7 construction. While numerous trees would be removed (AR741), the EIR does not disclose the
8 location, number or size of trees affected. This analysis affects consistency with Pacifica's
9 General Plan Conservation Element and Scenic Highways Element. (AR5139-39). The EIR
10 concludes that Project's impacts would not designation as a State Scenic Highway, but doesn't
11 consider the loss of trees in reaching this conclusion. (AR12; 5138)

12 The EIR also fails to discuss inconsistencies with the General Plan Circulation Element
13 from converting local connector streets into one-way only streets. (AR552; 5136) The EIR also
14 fails to address inconsistencies with the Rockaway Beach Specific Plan, which requires any
15 modification to the Highway "enhance" the area appearance. (See e.g. AR550 [10' high, 540'
16 long retaining wall above Rockaway Beach and Holiday Inn].) These flaws thwarted the
17 public and decision-makers understanding of the proposed Project's impacts.

18 **IV. THE EIR FAILS TO ADEQUATELY DISCUSS MITIGATIONS IDENTIFIED IN THE EIR.**

19 **A. There is No Mitigation for Significant Operational Noise Impacts.**

20 Having determined that noise will approach or exceed the Noise Abatement Criteria
21 (NAC) at four locations (AR733-34), the EIR discusses but declines to adopt soundwalls as a

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27 ¹³ The EIR also fails to consider expert advice in addressing the impact of GHG emissions
28 over the life of the Project, including the construction Considering the increased emissions
29 from highway construction and additional vehicle travel, adding one mile of new highway lane
30 will increase CO2 emissions by more than 100,000 tons over 50 years. ((AR5765 [2007
Sightline Institute Report: "Increases in greenhouse-gas emissions from highway-widening
projects."])

1 mitigation. (AR734-37). The EIR violates CEQA as no other mitigations are discussed for
2 noise that exceeds the Noise Abatement Criteria, including noise measures suggested by the
3 public. (§§ 21002, 21002.1(a) & (b); Guideline 15126(e), 15126.4.)
4

5 **B. The EIR Improperly Deferred Mitigation For Threatened Frog and Snake.**

6 The Project will result in significant impacts to frogs and snakes from killing, injury,
7 harassment and habitat loss. (AR765-772) To compensate for permanent loss and degradation
8 of 7.08 habitat acres, and temporary degradation of 3.75 habitat acres, the EIR proposes
9 Mitigation Measure T&E-1.8. (AR775-777) The EIR proposes to “enhance” 5.14 acres of City
10 property and 5.46 acres of National Park Service land. (AR775-776) The EIR improperly
11 defers mitigation, without performance criteria, and fails to properly discuss the feasibility of
12 proposed frog mitigation measures.
13

14 1. EIR Mitigation Analysis Improperly Deferred Without Performance Criteria.
15

16 Formulation of mitigation measures should not be deferred until some future time, but
17 measures may specify performance standards which would mitigate the Project’s effects.
18 (Guideline 15126.4(a)(1)(B.) An EIR is inadequate where mitigation efforts largely depend
19 upon management plans that have not yet been formulated, and have not been subject to
20 analysis and review within the EIR. (*Communities for a Better Environment v. City of*
21 *Richmond* (2010) 184 Cal.App.4th 70, 92, citing *San Joaquin Raptor II, supra*, 149
22 Cal.App.4th at 670.)¹⁴
23

24 As part of Measure T&E-1.8, a Habitat Mitigation and Monitoring Plan (HMMP) “will
25 be developed” describing the measures that will be taken to manage the land and to monitor the
26 effects of management on the California red-legged frog and San Francisco garter snake.
27

28
29 ¹⁴ Deferred mitigation is also conditioned on whether the EIR undertook a complete analysis of
30 the significance of the impact (*Communities for a Better Environment, supra*, 184 Cal.App.4th
at 95), which this EIR failed to do. (See section III.D. *supra*, p.18.)

1 (AR777-778) The EIR improperly defers, without performance criteria, (1) what the
2 enhancement will be, (2) the specific performance indicators and success criteria, (3) what the
3 contingency measures will be for mitigations that do not meet performance criteria, and (4)
4 where the funding will come from. (AR778) Caltrans' response to concerns of the National
5 Park Service and the California Coastal Commission was only that the HMMP "will be
6 developed subsequent to the project approval" at which time mitigation measures, timeline,
7 funding, and responsible party will be described.¹⁵ (AR1084; AR1100) Clearly, the HMMP
8 has not been formulated, and has not been subject to analysis within the EIR.
9

10
11 2. Caltrans Failed to Properly Analyze or Adopt Feasible Mitigations.

12 Caltrans failed to properly analyze mitigations for Project impacts to wetlands and
13 threatened and endangered species and their habitat by discussing the feasibility of avoiding
14 and minimizing Project construction and operational impacts. (Guideline 15370.) CEQA
15 requires agencies not approve projects unless feasible mitigation measures have been adopted
16 to reduce significant impacts. (§§ 21002; 21002.1, subd (b); 21081, subd (b)(3).) Feasible"
17 means capable of being accomplished in a successful manner within a reasonable period of
18 time taking into account economic, environmental, legal, social, and technological factors.
19 (Guideline 15364.) CEQA requires agencies to deny project approval when feasible mitigation
20 measures can substantially lessen such effects. (*Sierra Club v. Gilroy City Council* (1990) 222
21 Cal. App. 3d 30, 41, disapproved on other grounds by *Western States Petroleum Ass'n v.*
22 *Superior Court* (1995) 9 Cal. 4th 559.)
23
24
25

26 ¹⁵ The National Park Service (GGNRA) commented that the EIR "poorly explains what is
27 meant by habitat enhancement or preservation" making it difficult "to understand how adverse
28 impacts to wildlife and listed species from permanent habitat loss would be adequately
29 compensated with so little detail about the mitigation." (AR1077) Likewise, the Coastal
30 Commission commented that the EIR failed to identify how the mitigation would work, how
maintenance would be conducted, and "what performance criteria would be used to ensure the
habitat functions as proposed." (AR1099)

1 Caltrans has not completed its feasibility analysis for wetlands impacts. (AR123
2 [Caltrans to subsequently “determine appropriate mitigation for building so close to the
3 wetlands;” additional mitigation may be necessary].) Nor has Caltrans completed its feasibility
4 analysis for compensation of impacts to frogs and snakes. (AR123, 1613 [No approval from
5 National Park Service for mitigation suggested by Caltrans]; AR777-778 [no mitigation bank
6 credits available elsewhere for to a 2:1 mitigation ratio].)¹⁶

8 The EIR also fails to discuss how potential “enhancement” of habitat adequately
9 compensates for the loss of 10.83 acres of habitat loss.¹⁷ The EIR fails to address
10 compensating net loss of habitat acreage, values and functions for threatened species, wetlands
11 and wetlands buffers. (*California Native Plant Soc. v. City of Rancho Cordova* (2009) 172
12 Cal.App.4th 603, 612.) The GGNRA 5.46 ac. parcel is already included in the Mori Point
13 Restoration and Trail Plan (not disclosed in the EIR) and the City’s 5.14 ac. parcel has a
14 previous mitigation commitment that wasn’t disclosed in the EIR or Biological Opinion.
15 (AR9133-34). If the Project does not proceed, these species will still have the benefit of the
16 preservation and enhancement commitments for these parcels, yet if the Project does proceed,
17 the species will suffer a net loss of 10.83 acres of habitat degradation and loss as well as
18 adverse impacts from construction and Project implementation. (AR765-772)

22 The EIR fails to address that the San Francisco garter snake is a “fully protected
23 species” and that any take of this snake is prohibited. (Fish & G. Code § 5050, subd.(b)(2).)
24 Caltrans’ biological consultant warned that the “Project simply cannot take any individuals of
25

26
27 ¹⁶ A possible mitigation measure discussed by the NPS is restoration of the Calera Creek
28 culvert, a wildlife corridor potentially used by the endangered snake and threatened frog. (AR
1076).

29 ¹⁷ In contrast, the Project’s 2012 Biological Opinion based its mitigation approval on
30 “preservation and enhancement” of the City’s 5.14 acres parcel and enhancement of GGNRA’s
5.46 acres parcel as well as only 9.56 acres of total habitat impacts. (AR995-96)

1 the species or they can be prosecuted” (AR9272), yet the EIR fails to disclose this
2 inconsistency or consider a mitigation to avoid illegal take of this species. (§ 21081; Guideline
3 15091.) Caltrans choose to stage all Project construction activities on endangered species
4 habitat, instead of avoiding or minimizing these adverse impacts by locating construction
5 staging elsewhere. The EIR admits there the Project could cause “loss of individual SFGS
6 snakes,” and likely adversely affect the snake because of mortality. (AR772)

8 **V. CALTRANS FAILED TO ADOPT AN ADEQUATE MMRP.**

9
10 For a project based on an EIR, the MMRP must be adopted at the time of final project
11 approval. (§ 21081.6, subd (a); Guideline 15091, subd. (d); Guideline 15097, subd (a).) There
12 is no MMRP for this project. There is an “Avoidance, Minimization Mitigation Summary”
13 (AR957–78), but this is not a Mitigation Monitoring & Reporting Plan; it is largely a cut and
14 paste from the mitigation sections of the EIR.¹⁸

15
16 Caltrans’ Project approvals do not include any program for monitoring or reporting of
17 mitigation measures for impacts related to visual (AR682-683), hazardous materials (AR624),
18 relocations (AR624), natural communities (AR969), traffic (AR643), animals (AR760),
19 invasives (AR784), or related to construction phase impacts.¹⁹ (AR785-90)

20
21 While the summary includes some references to monitoring for impacts to cultural
22 resources (e.g. AR961 monitoring within the Archaeological Monitoring Area), paleontological
23 resources (AR965 [“actual” locations will be subsequently defined where monitoring
24 necessary]), groundwater monitoring (AR968), and biological resources (AR972). Likewise,
25 the EIR states that BMPs will include monitoring for water quality, flooding, and wetlands. .

26
27 Mentioning monitoring in a summary does not constitute a monitoring or reporting program as
28 it does not meet CEQA’s purpose “to ensure that feasible mitigation measures will actually be

29 ¹⁸ The Summary does not include all of the mitigations noted in the EIR.

30 ¹⁹ Many of these mitigations are also cumulative impact mitigations. (AR797)

1 implemented as a condition of development, and not merely adopted and then neglected or
2 disregarded.” (*Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000)
3 83 Cal.App.4th 1252, 1261; § 21081.6, subd. (a); § 21002.1, subd. (b).)

4
5 **VI. EIR MITIGATION MEASURES HAVE NOT BEEN MADE ENFORCEABLE.**

6 CEQA requires that “measures to mitigate or avoid significant effects on the
7 environment are fully enforceable through permit conditions, agreements, or other measures”
8 (§ 21081.6, subd. (b); Guideline 15091, subd. (d).) Caltrans failed to make mitigation measures
9 enforceable in the Final Project Report or elsewhere. (AR61-63)

10
11 Project findings (improperly limited to only threatened/endangered species impacts)
12 reveal that the primary biological mitigation is to compensate the 7.08 acres of habitat
13 permanently affected and the 3.75 acres temporarily affected. (AR140; 142) There is no
14 condition of approval adopted for this mitigation measure. Caltrans only suggested a
15 “mitigation package” to enhance 5.14 acres of upland habitat owned by the City of Pacifica and
16 5.46 acres on Mori Point, but the package has not been approved by the National Park Service.
17 (AR142; 1613) Clearly, this is not a fully enforceable condition.²⁰

18
19 Nor do any of the other biological mitigation measures have conditions of approval.
20 These measures include, *inter alia*, 1) minimized nighttime construction, 2) work lights
21 directed away from adjacent habitat, 3) installation of wildlife exclusion fencing and
22 construction fencing, 4) pre / post construction surveys, 5) training for construction personnel,
23 and 6) biological monitor’s daily on-site presence and fence inspection. (AR141-42)

24
25 None of the other dozens of mitigation measures identified in the EIR are made
26 enforceable through permit conditions, agreements or other measures. (*See* AR959-978)
27

28
29 ²⁰ Nor is the “alternate plan for compensatory mitigation” enforceable; this option is
30 “postponed” as no mitigation credits are available. (AR143)

1 **VII. The EIR Fails to Adequately Analyze Feasible Alternatives.**

2 Discussion of alternatives must be sufficiently detailed to foster informed decision-
3 making and public participation. (*Save Round Valley Alliance v. County of Inyo* (2007) 157
4 Cal. App. 4th 1437, 1456, 1460.) The EIR violated CEQA when it failed to explain in
5 meaningful detail the reasons and facts supporting the rejection of a feasible alternative, the
6 earlier proposed "Narrow Median" alternative. (AR122). (*Marin Mun. Water Dist. v. KG*
7 *Land Cal. Corp.* (1991) 235 Cal. App. 3d 1652, 1664.)²¹

8
9 The Coastal Commission was extremely concerned about the Draft EIR's cursory
10 analysis of alternatives considered but rejected without further study because they were
11 determined to be infeasible or ineffective. (AR1095-96) The Commission also noted that that
12 some combination of the rejected alternatives might be used to create a project that adequately
13 reduces traffic congestion while avoiding coastal resource impacts (i.e. Coastal Act
14 inconsistency). The Commission's alternative could feasibly attain most of the project's basic
15 objectives while avoiding or lessening the many Project impacts and avoid conflicts with local
16 and state laws, including greenhouse gas emissions and vehicle miles travelled. The Final
17 Project Report noted that the Coastal Commission may require a "Transit oriented" solution as
18 an alternative for study. (AR122).

19
20 Also, as the EIR fails to identify the two signalized intersections as the inherent source
21 of traffic congestion in the Project area, the EIR fails to adequately analyze an alternative to
22 replace the light signal at the Reina Del Mar Avenue intersection (Grade Separation at Reina
23 Del Mar Avenue alternative). The EIR prematurely dismissed this alternative from the EIR

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27 ²¹ Caltrans also failed to support its rejection with substantial evidence. (Guideline 15091,
28 subd. (b).) This earlier "Narrow Median" project alternative proposed a 10-foot median (2-foot
29 barrier and two 4-foot wide shoulders. (AR122) Caltrans approved the Landscaped Median
30 alternative resulting in "potentially affecting biological resources with the expansion of new
pavement and cut and fill, up to 25 additional feet on the west and up to 20 additional feet on
the east. (AR7246) This increase is beyond the revised Narrow Median Alternative which is at
least 20 feet wider than the original Narrow Median. (Fig. 1.4 AR546)

1. discussion, even though “this alternative would provide the most substantial travel time
2. benefits for traffic on SR1.” (AR580). The EIR improperly found that the cost of this
3. alternative was a basis for rejection (AR585), yet the cost for this alternative is in the same
4. range as the preferred alternative. (AR562, AR122). *In re Bay-Delta Programmatic Env'tl.*
5. *Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1165, held an EIR should not
6. exclude an alternative from detailed consideration merely because it would impede to some
7. degree the attainment of the project objectives or be more costly.

9. **VIII. THE EIR MUST BE RECIRCULATED FOR FURTHER PUBLIC AND AGENCY COMMENT.**

10. Recirculation is essential when 1) substantial new information on a project's
11. environmental consequences is added to an inadequate EIR, 2) there is a feasible mitigation
12. measure not previously analyzed which would clearly lessen significant impacts but the
13. proponents decline to adopt it, and 3) “the draft EIR was so fundamentally and basically
14. inadequate that meaningful public review and comment were precluded.” (Guideline 15088.5,
15. subd. (a).) This EIR should be recirculated as it meets each of these standards.

16. **A. Information about Significant Impacts Is Added to the Final EIR.**

17. This EIR adds an entire new section to the Final EIR regarding Paleontological impacts:
18. (AR 469-471; 705-707; 803-804) The Draft EIR reviewed by the public stated that there “are
19. no known paleontological resources located in the project area” (AR243), and thus included no
20. discussion of impacts. The Final EIR for the first time discloses that “the project area is
21. considered to have a high potential of paleontological sensitivity.” (AR706) Areas of
22. excavation “within the project footprint could potentially impact paleontological resources.”²²

23. _____
24. ²² Approximately 3,700,000 cubic feet of excavation will occur in three locations: Cut 1, Cut 2
25. and Cut 3. (AR4190, 706) Cut 3 will be 3,600,000 cu. ft. of hillside on the west side of the
26. highway northwest of Reina Del Mar Avenue. (AR4190) Cut 3 will be approximately 1,000
27. feet long, 60 feet wide, and 60 feet deep. Cut 1 and Cut 2 are approximately 700 and 600 feet
28. long, and will excavate 49,000 and 42,000 cubic feet of soil, respectively. (AR4189-90; 706)

1 (AR706; 802) These impacts are potentially significant; the EIR included a discussion of
2 mitigation measures AM PALI-1 and AM PALI-2. (AR706-707)

3 Caltrans' response that this disclosure does not trigger recirculation (AR1222) is
4 contradicted by substantial record evidence. The Final EIR is based on a "Paleontological
5 Identification Report" by a Caltrans professional geologist. (AR4179-4199). The report,
6 prepared after the public comment period, determined that "[t]his project should be considered
7 to have a high potential of paleontological sensitivity" (AR4189), that "areas with a high
8 potential for containing significant paleontological resources require monitoring and
9 mitigation" (AR4184), and that "[p]lanned ground-disturbing activities within the project
10 footprint could potentially impact paleontological resources." (AR4189) The disclosure of this
11 significant new impact requires recirculation for further review and public comment. (*Sutter*
12 *Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 818, 823.)

13
14
15
16 **B. Feasible Noise Mitigation Which Would Clearly Lessen Project
Impacts Is Considered But Not Adopted in the Final EIR.**

17 A soundwall is considered feasible if it is capable of lowering traffic noise by a
18 minimum of five decibels at a sensitive receptor. (AR734) If a soundwall is not feasible, no
19 further analysis is undertaken. (*Ibid.*). Here, Caltrans determined that Soundwall 2 is feasible,
20 and conducted a "reasonableness evaluation" in which the "reasonable monetary allowance"
21 was found to be less than the "cost" of the soundwall. (*Ibid.*)

22
23 The EIR discloses that Soundwall 2, to be located east of the Highway north of Fassler
24 Avenue at the edge of the roadway shoulder, "would feasibly abate traffic noise for up to 11
25 single-family houses." (AR735) As for "reasonableness," Table 2.15 shows that the
26
27
28
29
30

1 Soundwall 2 cost would be less than the “total reasonable allowance” whether the wall is 6, 8,
2 10, 12, or 14 feet high.²³ (AR737)

3 Noise mitigation is important because long term (operational) noise levels would
4 exceed noise abatement criteria. (AR733-734 [Table 2.14]; AR30 [“substantial increase in
5 traffic noise”], AR58 [noise approaching or exceeding Noise Abatement Criteria]) Also,
6 construction would generate noise up to 13 dBA higher than ambient traffic noise, with
7 maximum noise levels reaching 101dBA. (AR789) Despite this, Caltrans’ “Final Decision” is
8 that it does not intend to incorporate soundwalls as noise mitigation. (AR736)

9
10
11 **C. The Draft EIR Was Fundamentally Inadequate And Conclusory.**

12 The Draft EIR circulated for public review was so basically inadequate that, at a
13 minimum, recirculation of the Final EIR is required. The inadequacy of the Draft EIR is
14 evidenced by the new information disclosed for the first time in the Final EIR:

- 15
16 (1) the Highway would be widened from 64 feet to a maximum of approximately 132 feet
(AR549);
17
18 (2) a complete list of the number, size and location of retaining walls (AR549-550);
19
20 (3) the Landscape Median Alternative would “vertically separate the two sides of SR1 with
the southbound being lower and northbound higher” (AR565, 567, 681);
21
22 (4) excavation will occur in three locations and providing the dimensions: at the
southeastern end of the project site (Cut 1), southeast of Fassler Avenue (Cut 2), and northwest
of Reina Del Mar Avenue (Cut 3). The average depths of Cut 1 and Cut 2 are seven feet and the
average depth of Cut 3 is 60 feet. Cut 1 and Cut 2 are approximately 10 feet wide and are 700
and 600 feet long, respectively. Cut 3 is approximately 60 feet wide and 1,000 feet long.
(AR706);
23
24
25 (5) numerous admitted adverse impacts would, in fact, be only insignificant

26 The Draft EIR was fundamentally and basically inadequate that public comment on the
27 draft was in effect meaningless; therefore the EIR should be recirculated for public and

28
29 ²³The estimated cost “includes” \$200,000 cost for relocating existing gas, sewer and water
utility lines. (AR735) Despite Table 2.15, the EIR presents a conflicting and confusing
30 conclusion that cost for Soundwall 2 “is not less” than the estimated construction costs. (Ibid;
see also AR59.)

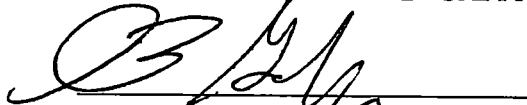
1 responsible agency review. (*Laurel Heights Improvement Assn. v. Regents of University of*
2 *California* (1993) 6 Cal.4th 1112, 1130.) Allowing deficient analysis in the Draft EIR to be
3 bolstered by a Final EIR never circulated for public comment would subvert CEQA. To
4 evaluate the Draft EIR in conjunction with the Final EIR here “would only countenance the
5 practice of releasing a report for public consumption that hedges on important environmental
6 issues while deferring a more detailed analysis to the final” EIR that insulated from public
7 review. (See *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043,
8 1052.)
9

10
11 **CONCLUSION**

12 For the foregoing reasons, Pacificans for a Scenic Coast request that the Court issue a
13 peremptory writ of mandate 1) setting aside Caltrans’ certification of the EIR and Project
14 approvals based thereon, and 2) suspending any activities in furtherance of the Project that may
15 cause adverse environmental change based on the invalidated approvals.
16

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18 Dated: May 22, 2014



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