

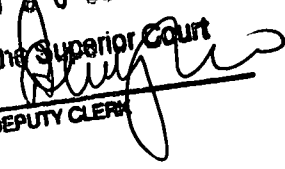
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SAN MATEO COUNTY

JUN 30 2014

Clerk of the Superior Court

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN MATEO

08/22
2

11 PACIFICANS FOR A SCENIC COAST,
12 an unincorporated association,
13 Petitioner and Plaintiff,

14 v.

15 CALIFORNIA DEPARTMENT OF
TRANSPORTATION; and DOES 1
16 through 10,
17 Respondents and
Defendants.

19 SAN MATEO COUNTY
TRANSPORTATION AUTHORITY;
20 CITY OF PACIFICA, and DOES 11
through 50,
21 Real Parties in Interest
22 and Defendants.

Case No. CIV 523973 FILE BY FAX

Assigned for all purposes to:
Honorable Marie S. Weiner, Dept. 2

REAL PARTY-IN-INTEREST CITY OF
PACIFICA'S RESPONDENT'S BRIEF
AND JOINDER IN CALTRANS'
RESPONDENT'S BRIEF

Date: August 22, 2014
Time: 2:00 p.m.

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1 The City of Pacifica (the "City") submits this Respondent's Brief in opposition to the
2 Opening Trial Brief ("OB") submitted by Petitioner Pacificans for a Scenic Coast ("PSC"). In
3 addition, the City joins the Respondent's Brief submitted contemporaneously herewith by the
4 California Department of Transportation ("Caltrans").

5 I. INTRODUCTION

6 At issue is whether PSC can prove that Caltrans violated the California Environmental
7 Quality Act ("CEQA") by failing to prepare an adequate Environmental Impact Report ("EIR")
8 for its project to improve a 1.3-mile segment of Highway 1, the Calera Parkway Highway 1
9 Widening Project (the "Project").

10 PSC contends Caltrans violated CEQA in innumerable ways. In its Respondent's Brief,
11 Caltrans will explain how PSC's claims fail. The City joins in Caltrans' briefing.

12 PSC articulates one claim that is of particular interest to the City—whether the EIR
13 properly analyzes the Project's consistency with City land use regulations, e.g., the City's General
14 Plan and Local Coastal Land Use Plan. In this brief, which is intended to complement Caltrans'
15 brief, the City explains that PSC's claims fail because (1) PSC shirked its obligation to set forth
16 an accurate statement of the record, (2) PSC failed to exhaust administrative remedies on
17 applicable issues, and (3) substantial evidence shows Caltrans prepared a legally adequate EIR.

18 II. STATEMENT OF FACTS

19 The City sets forth the following facts which pertain to the discussion below.

20 A. **The EIR Comprehensively Analyzes Environmental Issues, Including the** 21 **Consistency of the Project with the City's Land Use Regulations and Issues** 22 **Associated with the Removal and Replanting of Trees**

23 The EIR comprehensively analyzes environmental issues, including without limitation
24 land use, growth, utilities/emergency services, traffic and transportation, cultural resources
25 hydrology, hazardous materials, air quality, geology, wetlands, and plant and animal species
26 (including endangered species). (See, e.g., AR 433 et seq. [Final EIR]; AR 146 et seq. [Draft
EIR]).¹

27 ¹ The Table of Contents for the Final EIR is at AR 525-29. The Table of Contents for the Draft
28 EIR is at AR 197-200.

1 With respect to land use, one of the topics is the consistency of the Project with the City's
2 land use regulations, e.g., the City's General Plan and Local Coastal Land Use Plan. The EIR
3 provides thoughtful analysis on these issues and concludes that the Project is consistent with the
4 City's land use plans. For example, the EIR explains that the Project is consistent with the City's
5 General Plan:

6 The project is also consistent with the general plan of the City of
7 Pacifica, which identifies SR 1 as a major transportation facility.
8 The Pacifica General Plan contains a number of policies that are
9 relevant to the proposed project:

10 Circulation Element Policy #4: Provide access which is safe and
11 consistent with the level of development. The project is consistent
12 with this policy since it proposes access and safety improvements to
13 accommodate existing and projected traffic volumes.

14 Circulation Element Policy #9: Development of safe and efficient
15 bicycle, hiking, equestrian and pedestrian access within Pacifica
16 and to local points of interest. The project is consistent with this
17 policy since it provides improved bicycle and pedestrian access
18 within the project segment.

19 Circulation Element Policy #11: Safety shall be a primary objective
20 in street planning and traffic regulations. The project is consistent
21 with this policy since the proposed roadway and intersection
22 modifications will improve vehicle, bicycle, and pedestrian safety
23 within the project segment.

24 Circulation Element Policy #15: Promote orderly growth in land
25 uses and circulation. The project is consistent with this policy since
26 it will increase SR 1 capacity within the project segment to
27 accommodate existing and projected traffic volumes, however; the
28 project would not create any new connections to other roadways or
29 areas, and the project would not open any new areas to
30 development.

31 Scenic Highways Element Policy #4: Encourage appropriate
32 multiple recreational uses along scenic highways and routes other
33 than auto. The project is consistent with this policy since it
34 provides improved bicycle and pedestrian access, as well as vehicle
35 access, within the project segment.

36 (AR 608-09, emphasis in original [Final EIR]; see also AR 246 [Draft EIR].)

37 Similarly, the EIR explains that the Project is consistent with City's Local Coastal Land
38 Use Plan:

39 The project is consistent with the City of Pacifica Local Coastal
40 Land Use Plan, which states that highway improvements should
41 also increase the safety of existing intersections along SR 1,

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including access to the quarry (opposite Reina Del Mar Avenue) and Rockaway Beach Avenue. It also states that SR 1 should be considered a multi-modal travel corridor and pedestrian, bicycle, bus transit, and emergency vehicle access should be included in any planned improvements

(AR 607 [Final EIR]; see also AR 245 [Draft EIR].)

Further, the EIR analyzes Local Coastal Land Use Plan policies, including the following relevant policies:

- Safety and operational improvements and any future improvements shall ensure erosion control, protect coastal views and improve the visual edge of the highway.
- Highway 1 shall be considered as a multi-modal travel corridor. Consideration in planning improvements shall include pedestrian, bicycle, bus transit, and emergency vehicle access within the corridor.
- Landscaping shall be included in highway improvements to ensure erosion control, protect coastal views and improve the visual edge of the highway.

(AR 609-610 [Final EIR]; see also AR 247 [Draft EIR].) The EIR concludes as follows:

The project would be consistent with these policies since either Build Alternative would provide improved bicycle and pedestrian access, as well as vehicular access, within the project segment (refer to Section 2.6 Traffic & Transportation/Pedestrian & Bicycle Facilities). The project would also include erosion control and storm water detention measures (refer to Section 2.9 Hydrology and Floodplain and 2.10 Water Quality and Storm Water Runoff). While the two Build Alternatives would require the removal of mature landscaping and trees along the highway, particularly the mature trees west of SR 1 north of San Marlo Way, the project would include new landscape planting and would protect and/or improve coastal views (refer to Section 2.7 Visual/Aesthetics).

(AR 619 [Final EIR]; see also AR 254 [Draft EIR].)²

The EIR also analyzes issues associated with the removal and replanting of trees. For example, the EIR explains that Caltrans will remove some trees, and that the removal will improve the views of the coast, enhancing aesthetics. (See, e.g., AR 567, 1094, 1121-22 [Final EIR].) The EIR also explains that Caltrans will plant at least 40 trees. (See, e.g., AR 819 [Final EIR]; AR 396 [Draft EIR].)

² The City's General Plan and Local Coastal Land Use Plan are at AR 5118 et seq. and 5368 et seq., respectively.

1 The EIR analyzes multiple other issues, as discussed in Caltrans' Respondent's Brief.

2 **B. No One Asserted During the Administrative Process that Caltrans Did Not**
3 **Adequately Analyze Several Issues that PSC Now Seeks to Litigate**

4 Caltrans received and responded to hundreds of comments regarding the Draft EIR.³ (See,
5 e.g., AR 1035 et seq. [Final EIR, vol. II: Chapter 4 – Comments and Coordination; see also AR
6 1601 et seq. [Final EIR, vol. III: Appendix K – Part 1].)⁴

7 A few commenters broadly asserted that the Project is not consistent with the City's
8 General Plan and Local Coastal Land Use Plan. (See, e.g., AR 1183, 1185.) Caltrans responded
9 to the comments, explaining how and why the Project is consistent with these land use plans.
10 (See, e.g., AR 1183-1185.) However, no one specifically asserted that the Project is inconsistent
11 with the City's General Plan with respect to the creation of one-way streets, or that it is
12 inconsistent with the Rockaway Beach Specific Plan with respect to Highway 1's enhancement of
13 Rockaway Beach.

14 A few commenters questioned whether the Caltrans' tree removal and replanting plans
15 would have a visual impact. (See, e.g., AR 1100 [Final EIR].) Caltrans responded, explaining
16 why and how the Project would not have a significant visual impact and would actually improve
17 coastal views. (See, e.g., AR 1100, 1094-95, 1423-24 [Final EIR].) However, no commenter
18 asserted that Caltrans should have analyzed the Project's consistency with the City's Heritage
19 Tree Ordinance.

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24 ³ PSC's statement of facts includes various allegations concerning actions the City did not take
25 with respect to the Project, such as failing to hold hearings regarding Project impacts and failing
26 to submit written scoping or draft EIR comments, etc. (Opening Brief at 2:3-13). But PSC offers
27 no argument to suggest that the City failed to proceed in the manner required by law. The City is
28 not the lead agency for the Project, and therefore had no obligation under CEQA to hold a public
hearing. However, the City was part of the Project Development Team for the Project, and
Caltrans, as lead agency, held public hearings as required under CEQA.

⁴ A Table of Contents for the comments is included at AR 1047-53 and 1603-09.

1 **III. ARGUMENT**

2 **A. Rules and Principals for Judicial Review of CEQA Claims**

3 **1. Standard of Review**

4 PSC omitted any discussion of the standard of review. The City provides the following
5 brief discussion (to supplement Caltrans' discussion of the standard of review).

6 The Court's inquiry extends only to whether Caltrans committed a prejudicial abuse of
7 discretion. Such an abuse occurs only if Caltrans "has not proceeded in a manner required by law
8 or if the [agency's] determination or decision is not supported by substantial evidence." (Pub.
9 Resources Code § 21168.5.) "The decisions of the agency are ... given substantial deference and
10 presumed correct." (*San Franciscans Upholding the Downtown Plan v. City and County of San*
11 *Francisco* (2002) 102 Cal.App.4th 656, 674; see also Evid. Code § 664.)

12 As to Caltrans' factual determinations, the only question is whether they are supported by
13 substantial evidence. "For CEQA, 'substantial evidence' is enough relevant information and
14 reasonable inferences from this information that a fair argument can be made to support a
15 conclusion, even though other conclusions might also be reached. Whether a fair argument can
16 be made...is to be determined by examining the whole record before the lead agency." (*Gilroy*
17 *Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 918.) The
18 substantial evidence standard "is applied to conclusions, findings and determinations. It also
19 applies to challenges to the scope of an EIR's analysis of a topic, the methodology used for
20 studying an impact and the reliability or accuracy of the data upon which the EIR relied because
21 these types of challenges involve factual questions." (*San Joaquin Raptor Rescue Center v.*
22 *County of Merced* (2007) 149 Cal.App.4th 645, 654 (internal quotations and citation omitted).)

23 "[T]he agency is the finder of fact and a court must indulge all reasonable inferences from
24 the evidence that would support the agency's determinations and resolve all conflicts in the
25 evidence in favor of the agency's decision." (*Ibid.*) The agency's decision-makers may rely on
26 their staff's and consultants' opinions as substantial evidence. (See, e.g., *Gentry v. City of*
27 *Murrieta* (1995) 36 Cal.App.4th 1359, 1379-800; *Browning-Ferris Industries v. City Council*
28 (1986) 181 Cal.App.3d 852, 866.)

1 The “EIR is presumed adequate (Pub. Resources Code § 21167.3), and the petitioner has
2 the burden of proving otherwise.” (*Al Larson Boat Shop, Inc. v. Board of Harbor*
3 *Commissioners* (1993) 18 Cal.App.4th 729, 740, 740 (citation omitted).) In light of these
4 principles, “[t]he court does not pass upon the correctness of the EIR’s environmental
5 conclusions, but only upon its sufficiency as an informative document.” (*Citizens of Goleta*
6 *Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) Likewise, “[t]echnical perfection is
7 not required [in an EIR]; the courts have looked not for an exhaustive analysis, but for adequacy,
8 completeness and a good-faith effort at full disclosure.” (*Concerned Citizens of South Central*
9 *Los Angeles v. Los Angeles Unified School District* (1994) 24 Cal.App.4th 826, 836.)

10 Thus, the question for the Court with respect to the challenge to the EIR is not whether
11 substantial evidence supports PSC’s assertions, but whether there is any substantial evidence that
12 supports Caltrans. (*Laurel Heights Improvement Association of San Francisco, Inc. v. The*
13 *Regents of the University of California* (1988) 47 Cal.3d 376, 409.)

14 **2. A Challenger to an EIR Must Provide an Accurate Statement of the Record**

15 Because of the deferential nature of the substantial evidence standard, and because PSC
16 bears the burden of proof to show the illegality of Caltrans’ actions, PSC “must set forth in its
17 brief all material evidence on [each point], not merely its own evidence. [Citation.] A failure to
18 do so is deemed a concession that the evidence supports the findings.” (*Citizens for a Megaplex-*
19 *Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 112-13.) “A reviewing court will
20 not independently review the record to make up for [petitioner’s] failure to carry his burden.”
21 (*Id.* at 113 (citation omitted); see also *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th
22 1261, 1266 (“[the party] challenging an EIR for insufficient evidence must lay out the evidence
23 favorable to the other side and show why it is lacking”).)

24 Accordingly, in *Citizens for a Megaplex-Free Alameda*, the First District Court of Appeal
25 rejected a CEQA challenge regarding historic resources because the petitioner had not described
26 the evidence upon which the agency relied. (*Citizens for a Megaplex-Free Alameda*, 149
27 Cal.App.4th at 113.)

28 ///

1 **3. A Challenger to an EIR May Only Litigate an Issue if Administrative**
2 **Remedies Were Pursued Regarding that Issue**

3 The doctrine of exhaustion of remedies “precludes judicial review of issues, legal and
4 factual, which were not first presented at the agency level.” (*Coalition for Student Action v. City*
5 *of Fullerton* (1984) 153 Cal.App.3d 1194, 1196.) “The essence of the exhaustion doctrine is the
6 public agency’s opportunity to receive and respond to articulated factual issues and legal theories
7 before its actions are subjected to judicial review.” (*Id.* at 1198 (original emphasis).) Thus,
8 “[f]ailure to raise an issue in protest at the public hearing constitutes a waiver of the right to have
9 that issue determined by the ...court.” (*Morgan v. Community Redevelopment Agency* (1991) 231
10 Cal.App.3d 243, 259.) The petitioner bears the burden to prove exhaustion. (*North Coast Rivers*
11 *Alliance v. Marin Municipal Water District Board of Directors* (2013) 216 Cal.App.4th 614,
12 624.)

13 The Legislature codified the exhaustion of remedies doctrine as part of CEQA. (See Pub.
14 Resources Code § 21177; *Ultramar, Inc. v. South Coast Air Quality Management District* (1993)
15 17 Cal.App.4th 689, 700.) Subdivision (a) of section 21177 provides as follows:

16 No action or proceeding may be brought . . . unless the alleged
17 grounds for noncompliance with [CEQA] were presented to the
18 public agency orally or in writing by any person during the public
 comment period . . . or prior to the close of the public hearing on
 the project before the issuance of the notice of determination.

19 “[T]he requirement of exhaustion is a jurisdictional prerequisite, not a matter of judicial
20 discretion.” (*Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577,
21 589.) The doctrine “is founded on the theory that the administrative tribunal is created by law to
22 adjudicate the issue sought to be presented to the court, and the issue is within its special
23 jurisdiction.” (*Ibid.*) Otherwise, parties disputing the wisdom of agency actions would often
24 refrain, for strategic purposes, from revealing their alleged grievances to agency decision makers;
25 and many disputes that could be resolved at the agency level would needlessly burden the courts.⁵

26 ⁵ [I]t was never contemplated that a party to an administrative hearing should withhold any
27 defense or make only a perfunctory or “skeleton” showing in the hearing and thereafter obtain an
28 unlimited trial de novo, on expanded issues, in the reviewing court. (*Coalition for Student Action*,
153 Cal.App.3d at 1197 (internal quotations and citations omitted).)

1 The exhaustion requirement is “viewed with favor because it facilitates the development of a
2 complete record that draws on administrative experience and promotes judicial efficiency.”
3 (*Sierra Club v. San Joaquin Local Agency Formation Commission* (1999) 21 Cal.4th 489, 501.)

4 Generalized or conclusory statements of objections are not enough. Objections must be
5 communicated with enough specificity to allow the lead agency a meaningful opportunity to
6 understand and respond to the issue. (*Coalition for Student Action*, 153 Cal.App.3d at 1197.) In
7 fact, “the exact issue raised in the lawsuit must have been presented to the administrative
8 agency” (*Resource Defense Fund v. Local Agency Formation Commission* (1987) 191
9 Cal.App.3d 886, 894, disapproved on another issue in *Voices of the Wetlands v. State Water*
10 *Resources Control Bd.* (2011) 52 Cal.4th 499, 529; *Banker’s Hill etc. v. City of San Diego* (2006)
11 139 Cal.App.4th 249, 282 (objection must be “sufficiently specific” and not “isolated and
12 unelaborated”).)

13 For example, in *Banker’s Hill*, the petitioner alleged that the city violated CEQA by
14 “piecemealing” the project to avoid the obligation to consider the project as a whole. (*Banker’s*
15 *Hill*, 139 Cal.App.4th at 281.) The petitioner had not raised this issue during the administrative
16 proceedings. Instead, it relied on a third party comment at a council meeting that “[n]ow there
17 ha[s] also been a project splitting, ignoring environmental issues such as traffic and light” (*Id.*
18 at 282.) This “isolated and unelaborated comment” was not “sufficiently specific so that the
19 agency ha[d] the opportunity to evaluate and respond” regarding whether it improperly
20 piecemealed the project. (*Ibid.*) Thus, the petitioner failed to demonstrate administrative
21 remedies were exhausted. (*Ibid.*)⁶

22 The recently published *Sierra Club v. County of Fresno* case provides an excellent
23 example in the context of a general plan inconsistency claim. The petitioner submitted a letter to

24 ⁶ In another example, the petitioner alleged that the agency failed to consider the nexus between
25 greenhouse gas emissions and climate change. (*Citizens for Responsible Equitable*
26 *Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 530.) During the
27 administrative proceedings, the petitioner asserted that climate change was “a significant
28 environmental issue” that warranted environmental review and that the “project will cause direct
and indirect greenhouse-gas emissions that, when considered cumulatively, are significant.”
(*Ibid.*) This generalized grievance was insufficient to exhaust administrative remedies. (*Id.* at
531.)

1 the county that asserted a development project was inconsistent with the county's general plan,
2 including because it promoted intense urban development on agricultural land and failed to direct
3 development to land with existing infrastructure. (*Sierra Club v. County of Fresno* (May 27,
4 2014) -- Cal.App.4th --, 2014 WL 2199317, *10.) In court, the petitioner asserted that levels of
5 traffic service under project conditions were inconsistent with general plan traffic policies. (*Id.* at
6 *8.) Because the comment letter did not specifically address this issue, the county had not been
7 informed "that it should address whether those levels of service were consistent with the general
8 plan's traffic policies." (*Id.* at *11-12.) Accordingly, administrative remedies were not
9 exhausted. (*Id.* at *12.)

10 **B. PSC's Challenge to the EIR's Land Use Consistency Analysis Fails**

11 **1. The Opening Brief Does Not Adequately Set Forth the Record**

12 PSC contends that the EIR fails to discuss the consistency of the Project with City land
13 use regulations. (OB, p. 20:3-20.) However, rather than address the EIR's substantial discussion
14 of the Project's consistency with the City's land use regulations, PSC makes broad and bald
15 assertions. PSC did not meet its obligation to set out in its Opening Brief an accurate statement of
16 the record.

17 As discussed above, the EIR includes a healthy discussion of how the Project is consistent
18 with the City's land use regulations. The EIR explains, for example, that the Project is consistent
19 with General Plan policies (e.g., in the Circulation Element) to promote orderly growth in land
20 uses and to improve safety for vehicles, bicycles and pedestrians. The EIR also explains that the
21 Project is consistent with Local Coastal Land Use policies to improve the views and the aesthetics
22 of the highway and to include access for vehicles, bicycles and pedestrians. The Opening Brief
23 fails to discuss the EIR's analysis.

24 Thus, PSC has effectively conceded that the land use consistency analysis is sufficient.
25 (See, e.g., *Citizens for a Megaplex-Free Alameda*, 149 Cal.App.4th at 113 (failure to discuss
26 historic resources analysis constituted concession that analysis was sufficient).)

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1 **2. Land Use Consistency Issues Were Not Exhausted**

2 In addition to failing to meet its burden to sufficiently describe the record, PSC has failed
3 to exhaust administrative remedies because neither it (nor any other party) raised issues before
4 Caltrans that it now seeks to litigate.

5 PSC requests this Court to rule that the “EIR fails to discuss consistency with Pacifica’s
6 Heritage Tree Ordinance,” and “fails to discuss inconsistencies with the General Plan Circulation
7 Element” with respect to the creation of one-way streets. (OB, p. 20:6-16.) However, during the
8 administrative proceedings no commenter asserted that the EIR did not comply with the Heritage
9 Tree Ordinance or the General Plan Circulation Element. (AR 1035 *et seq.* [Final EIR, vol. II:
10 Chapter 4 – Comments and Coordination; AR 1601 *et seq.* [Final EIR, vol. III: Appendix K –
11 Part 1]; AR 2065 *et seq.* [Final EIR, vol. III: Appendix K – Part 2].)

12 As previously noted, “objections must be sufficiently specific so that the agency has the
13 opportunity to evaluate and respond to them.” (*Sierra Club, supra*, 2014 WL 2199317 at *9.)
14 Where a petitioner asserts that a project is inconsistent with a specific ordinance or plan, the court
15 looks to whether the objections presented during the administrative process specifically reference
16 that ordinance or plan, articulate an allegation of inconsistency, and/or refer to the requirements
17 of the ordinance or plan in question. (*Id.* at *11-12.) A petitioner cannot rely on an objection that
18 is not sufficiently specific to satisfy the exhaustion requirement. (e.g. *Id.* at *12; *Banker’s Hill*,
19 139 Cal.App.4th at 281-82 [piecemealing claim barred by failure to specifically raise it during
20 administrative proceedings].)

21 Like the petitioners in *Sierra Club* and *Banker’s Hill*, PSC has not and cannot cite to any
22 comments or objections from the administrative proceedings showing that PSC (or any third
23 party) raised the issue of the EIR’s consistency with Pacifica’s Heritage Tree Ordinance or the
24 General Plan Conservation Element. (AR 1035 *et seq.* [Final EIR, vol. II: Chapter 4 – Comments
25 and Coordination; AR 1601 *et seq.* [Final EIR, vol. III: Appendix K – Part 1]; AR 2065 *et seq.*
26 [Final EIR, vol. III: Appendix K – Part 2].) While some comments raised during the
27 administrative proceedings acknowledged the removal of trees as being a component of the
28 Project, none of those comments specifically referenced the Heritage Tree Ordinance, allege any

1 inconsistency with the Ordinance, or referred to the alleged requirements of the Ordinance that
2 PSC now contends are violated by the EIR. Similarly, while comments raised issues concerning
3 traffic, safety, and alternative modes of transportation, no comments specifically referenced the
4 Circulation Element of the General Plan or referred to the requirements of the Circulation
5 Element and alleged inconsistencies within the EIR. As a result, none of the comments were
6 sufficiently specific to inform Caltrans that it should address the issues now raised by PSC. (See,
7 e.g., *Banker's Hill*, *supra*, 139 Cal.App.4th at 281-82; *Sierra Club*, *supra*, 2014 WL 2199317 at
8 *8-12.)

9 Accordingly, PSC's contentions on these issues are barred by its failure to exhaust
10 administrative remedies. (See, e.g., *Banker's Hill*, *supra*, 139 Cal.App.4th at 281-82; *Sierra*
11 *Club*, *supra*, 2014 WL 2199317 at *8-12.)

12 **3. Substantial Evidence Supports the EIR's Analysis that the Project is**
13 **Consistent with the City's Land Use Regulations**

14 Finally, PSC cannot succeed on the merits of its claim that the EIR fails adequately to
15 analyze the Project's consistency with the City's land use regulations.

16 **a. The Courts Require Harmony, Not Absolute Consistency, with**
17 **General Plans and Associated Planning Regulations**

18 It is well established that a project need not be an "exact match" with a general plan. All
19 that is required is that the project be compatible with the objectives and policies of a general plan.
20 (*San Franciscans*, 102 Cal.App.4th at 678.) As the First District expounded:

21 [S]tate law does not require precise conformity of a proposed
22 project with the land use designation for a site, or an exact match
23 between the project and the applicable general plan. [Citations.]
24 Instead, a finding of consistency requires only that the proposed
25 project be "**compatible with the objectives, policies, general land**
26 **uses, and programs** specified in "the applicable plan. (Gov. Code,
27 §66473.5, italics added.) The courts have interpreted this provision
as requiring that a project be "**in agreement or harmony with**"
the terms of the applicable plan, not in rigid conformity with every
detail thereof. (*Sequoyah Hills*, *supra*, 23 Cal.App.4th at p. 718;
Greenebaum v. City of Los Angeles, *supra*, 153 Cal.App.3d at
p. 406; 59 Ops. Cal.Atty.Gen. 129, 131 (1976).)

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1 (San Franciscans, 102 Cal.App.4th at 678 (bold added); see also *Friends of Lagoon Valley v. City*
2 *of Vacaville* (2007) 154 Cal.App.4th 807, 816.)

3 “[I]t is beyond cavil that no project could completely satisfy every policy stated in [a
4 General Plan], and that state law does not impose such a requirement.” (*Sequoyah Hills*
5 *Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719.) In short, it is not the
6 province of the “courts to micromanage these development decisions.” (*Ibid.*)

7 Accordingly, many courts have rejected claims challenging determinations that a project
8 is consistent with the agency’s general plan (or “any specific plan adopted to further the
9 objectives of the general plan.” (See *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th
10 1490, 1509-11.) In *Sierra Club*, the county approved a winery project which would destroy a half
11 acre of wetlands. (*Id.* at 1495.) The Sierra Club claimed the approval was inconsistent with a
12 specific plan policy that “[a]ll wetland and stream habitat shall be protected in their natural state,
13 unless this is proved to be infeasible.” (*Id.* at 1510.) The First District deferred both to the
14 county’s finding that wetland preservation was not feasible and to the finding that the Project
15 would advance competing policies, e.g., those supporting winery development. (*Id.* at 1510-11.)
16 Thus, the Court upheld the consistency determination. (*Id.* at 1511.)⁷

17 In *San Franciscans*, the court considered whether approval of substantial demolition of
18 the Emporium was consistent with a general plan policy to preserve such an historic building,
19 unless there was no substantial remaining market value. The court upheld the finding of general
20 plan conformity because substantial evidence showed rehabilitation and preservation was too
21 expensive, and the project advanced other general plan policies. (*San Franciscans*, 102
22 Cal.App.4th at 675-80; see also *No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223,
23 244-49 (ordinance authorizing oil drilling on land designated for open space uses was consistent
24 with general plan; although municipal code described oil drilling as heavy, extractive industry,
25 general plan anticipated open space land uses could include, in addition to recreational and
26 conservation uses, resources production); *Friends of Lagoon Valley*, 154 Cal.App.4th 807, 817-21

27 ⁷ The Court also noted that it is “impossible for a project to be in perfect conformity with each
28 and every policy set forth in the applicable plan.” (*Ibid.*)

1 (court deferred to finding that office park project was consistent with multiple general plan
2 policies, including policies (a) not to worsen traffic without mitigation measures, which was
3 merely a payment of impact fees, and (b) to preserve view corridors and the open space feel of the
4 valley); *Sequoyah Hills*, 23 Cal.App.4th at 720 (while there was evidence that development
5 project, by removing knoll and developing highly visible lots, conflicted with general plan
6 policies to discourage significant alteration of land forms, the court deferred to findings of
7 conformity based on evidence that approval sought to minimize these impacts); *Clover Valley*
8 *Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 239 (limited roadway encroachments
9 into creek buffer zone was not inconsistent with general plan policies to preserve the buffer zone
10 as open space).)

11 **b. Substantial Evidence Supports Caltrans' Consistency Determinations**

12 As explained in the EIR, the Circulation Element of the City's General Plan includes the
13 following policies: (1) to provide safe access consistent with the level of development, (2) to
14 improve pedestrian and bicycle access, (3) to improve safety of the local circulation system, and
15 (4) to promote orderly growth in land use and circulation. In addition, the Scenic Highways
16 Element includes a policy to encourage multiple recreational uses along scenic highways and
17 routes other than auto. (AR 246, 608-09 [General Plan, Circulation Element, Policy nos. 4, 9, 11
18 and 15].)

19 These General Plan policies provide ample substantial evidence to support Caltrans'
20 determination that the Project is consistent with the General Plan. For example, the EIR explains
21 that the Project will improve the safety of this segment of Highway 1, provide for improved
22 alternative modes of transportation (e.g., bicycle and pedestrian travel), and increase the capacity
23 of this segment for current and projected traffic volumes without increasing the overall capacity
24 of the highway. (AR 246, 608-09.)

25 The EIR also explains that relevant Local Coastal Land Use Plan policies include
26 (1) improving the operation of Highway 1 to ensure erosion control, to protect views and to
27 improve "the visual edge" of the highway, (2) improving intermodal travel along the highway,

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1 e.g., pedestrian, bicycle and emergency access, and (3) improving landscaping to ensure erosion
2 control, to protect views and to improve “the visual edge” of the highway. (AR 247, 609-10.)

3 These policies provide ample substantial evidence for the conclusion that the Project is
4 consistent with the Local Coastal Land Use Plan, including because it will (1) improve bicycle
5 and pedestrian access as well as vehicular travel, (2) provide for erosion control, and (3) improve
6 coastal views. (AR 254, 619.)

7 Moreover, the EIR offers substantial evidence that the removal and replanting of trees will
8 not have a significant impact, but will actually improve views of the coast. (AR 396, 567, 819,
9 1094, 1121-22.)

10 Lastly, there is substantial evidence for the conclusion that the Project is consistent with
11 the Rockaway Beach Specific Plan (“RBS Plan”). The goal of the RBS Plan is to stimulate and
12 attract private investment in the area by improving the City’s economic health and strengthening
13 the overall image and attractiveness of the area. (RBS Plan, p. 8.) To achieve this goal, the plan
14 seeks to, among other things, provide for automobile circulation which enhances rather than
15 detracts from the future vitality of the area, encourage a network of walkways and small scale
16 pedestrian spaces, provide for a continuous bikeway and walkway system which will connect
17 with area with adjacent coastal areas, enhance opportunities for views of the ocean and natural
18 coastal formations, and ensure that future public improvements would not detract from the
19 appearance and economic success of the area. (RBS Plan, pp. 9-11.)

20 Consistent with the RBS Plan, the EIR explains that the Project will result in
21 improvements to pedestrian sidewalks and bicycle facilities throughout the Project area (AR 453,
22 562, 608), that the Project will not detract from current views or aesthetics of the Project corridor
23 (AR 455) and will improve the views of the coastal areas from locations east of Highway 1 (AR
24 499), that the Project will improve traffic operations by improving safety, decreasing traffic
25 congestion, and improving peak-period travel times along the highway (AR 498, 539, 607-608),
26 and that the Project will not detract from the economic success of the area (AR 452, 496, 542,
27 785, 801). Further, Caltrans determined that the Project was “consistent with the Redevelopment
28 Plan for the Rockaway Beach Project Area, which calls for construction of right-of-way,

1 intersection, and traffic control improvements to enhance vehicular and pedestrian circulation on
2 Highway (SR) 1.” (AR 608.) Notably, the Redevelopment Plan for Rockaway Beach was
3 originally adopted in July 1986, shortly after the City adopted the RBS Plan in February 1986.
4 Further, when adopting and amending the Redevelopment Plan for Rockaway Beach, the City
5 acknowledged that the goals of the Redevelopment Plan were consistent “with the General Plan,
6 the [Local Coastal Program Land Use Plan] and the [RBS Plan].” (Redevelopment Plan for
7 Rockaway Beach, p. 3.) Thus, the EIR offers more than substantial evidence for a determination
8 that the Project is consistent with the RBS Plan.

9 Accordingly, even if this Court were to reach the merits of PSC’s contentions, the record
10 demonstrates that Caltrans complied with CEQA.

11 IV. CONCLUSION

12 For the reasons stated above and in Caltrans’ Respondent’s Brief, this Court should reject
13 PSC’s challenge to Caltrans’ approval of the EIR for the Calera Parkway Highway 1 Widening
14 Project.

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16 Dated: June 30, 2014

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