

**CALIFORNIA STATE LANDS COMMISSION**

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*Established in 1938*

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November 18, 2022

File Ref: SCH # 2022100372

City of Pacifica  
Attn: Bonny O'Connor  
Planning Department  
540 Crespi Drive  
Pacifica, CA 94044



VIA ELECTRONIC MAIL ONLY ([boconnor@pacifica.gov](mailto:boconnor@pacifica.gov))

**Subject: Notice of Preparation for an Environmental Impact Report for the 310-330 Esplanade Drive Infrastructure Preservation Project, San Mateo County**

Dear Bonny O'Connor:

The California State Lands Commission (Commission) staff has reviewed the subject Notice of Preparation (NOP) for an Environmental Impact Report (EIR) for the 310-330 Esplanade Drive Infrastructure Preservation Project (Project), which is being prepared by the City of Pacifica (City). The City, as the public agency proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign lands and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on State sovereign land, the Commission will act as a responsible agency. Commission staff requests that the City consult with Commission staff on preparation of the Draft EIR as required by CEQA section 21153, subdivision (a) and the State CEQA Guidelines (Cal. Code of Regulations, title 14) section 15086, subdivisions (a)(1) and (a)(2).

### **Commission Jurisdiction and Public Trust Lands**

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and

submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court.

According to the NOP, bluff stabilization includes a seawall and related structures that could encroach on lands managed by the State of California and therefore requires a lease. The City should provide preliminary plans showing the most recently surveyed mean high tide line for further review once they are available to Kenneth Foster (contact information is provided at the end of this letter).

### **Project Description**

The City proposes to construct several structural elements to fortify the toe of the bluff adjacent to the properties at 330 to 380 Esplanade Avenue, including a sheetpile wall that would extend below the beach to an approximate elevation of 10 feet below sea level. A cap beam would be placed on top of the sheetpile wall and a shotcrete (sprayed concrete) wall secured to the bluff face with tensioned tieback rods/tendons drilled into the bluff face.

The wall is estimated to be 650 feet long and would extend the seawall from the base of the bluff to an elevation of 40 feet (approximately 26 feet above the summer sand level). The wall would have tiebacks that go into the bluff to support the weight of the wall and protect the toe of the bluff from erosion. The work would also include removing loose debris from the toe of the bluff and the existing rip rap on the beach. Native plant landscaping along with public amenities are proposed on the bluff top where structures once stood. The wall would extend approximately 20 feet below the beach to protect against undermining scour from winter storms. According to the City, the Project would protect and maintain existing infrastructure along Esplanade Avenue.

From the Project Description, Commission staff understands that portions of the sheetpile wall below the mean high tide line would likely fall within the jurisdiction of the Commission.

### **Environmental Review**

Commission staff requests that the City consider the following comments when preparing the Draft EIR to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the EIR to support a future lease approval for the Project.

#### General Comments

- Project Description: A thorough and complete Project Description should be included in the Draft EIR in order to facilitate meaningful environmental review of potential impacts, mitigation measures, and alternatives. The Project Description should be as precise as possible in describing the details of all allowable activities (e.g., types of equipment or methods that may be used, maximum area of impact or volume of sediment removed or disturbed, seasonal work windows, locations for material disposal, etc.) as well as the details of the timing and length of activities. In particular, illustrate on figures and engineering plans and provide written description of activities occurring below the mean high tide line for Project area waterways. Thorough descriptions will facilitate Commission staff's determination of the extent and locations of its leasing jurisdiction, make for a more robust analysis of the work that may be performed, and minimize the potential for subsequent environmental analysis to be required.

#### Biological Resources

- Sensitive Species: For land under the Commission's jurisdiction, the Draft EIR should disclose and analyze all potentially significant effects on sensitive species and habitats in and around the Project area, including special-status wildlife, fish, and plants, and if appropriate, identify feasible mitigation measures to reduce those impacts. The City should conduct queries of the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database and U.S. Fish and Wildlife Service's (USFWS) Special Status Species Database to identify any special-status plant or wildlife species that may occur in the Project area. The Draft EIR should also include a discussion of consultation with the CDFW, USFWS, and National Marine Fisheries Service (NMFS) as applicable, including any recommended mitigation measures and potentially required permits identified by these agencies.
- Construction Noise: The Draft EIR should also evaluate noise and vibration impacts on wildlife from construction activities. Mitigation measures could

include species-specific work windows as defined by CDFW, USFWS, and NMFS. Again, staff recommends early consultation with these agencies to minimize the impacts of the Project on sensitive species.

### Climate Change

- Greenhouse Gas (GHG): A GHG emissions analysis consistent with the California Global Warming Solutions Act (Assembly Bill [AB] 32; Nuñez, Chapter 488, Statutes of 2006) and required by the State CEQA Guidelines should be included in the Draft EIR. This analysis should identify a threshold for significance for GHG emissions, calculate the level of GHGs that will be emitted as a result of construction and ultimate build-out of the Project, determine the significance of the impacts of those emissions, and, if impacts are significant, identify mitigation measures that would reduce them to the extent feasible.
- Sea Level Rise: A tremendous amount of State-owned lands and resources under the Commission's jurisdiction will be impacted by rising sea levels. Because of their nature and location, these lands and resources are already vulnerable to a range of natural events, such as storms and extreme high tides.

Governor Brown issued Executive Order B-30-15 in April 2015, which directs State government to fully implement the Safeguarding Plan and factor in climate change preparedness in planning and decision making. Please note that when considering lease applications, Commission staff will (1) request information from applicants concerning the potential effects of sea-level rise on their proposed projects, (2) if applicable, require applicants to indicate how they plan to address sea-level rise and what adaptation strategies are planned during the projected life of their projects, and (3) where appropriate, recommend project modifications that would eliminate or reduce potentially adverse impacts from sea-level rise, including adverse impacts on public access.

In addition, the State of California released the *2018 Update to the Safeguarding California Plan* in January 2018, to provide policy guidance for state decision-makers as part of continuing efforts to prepare for climate risks. The Safeguarding Plan sets forth "actions needed" to safeguard ocean and coastal ecosystems and resources as part of its policy recommendations for state decision-makers. On hazard avoidance for new development, the Safeguarding Plan calls on decision-makers to carefully consider, in light of principles described in the Safeguarding Plan, whether there is a "compelling need" for significant new structures or infrastructure prior to authorizing their construction. Specifically, the Safeguarding Plan acknowledges that

shoreline protective structures result in the loss of beach and lateral beach public access and asks agencies to take steps to minimize the adverse effects of sea level rise, erosion, and storms. According to the Safeguarding Plan, “[t]he loss of beaches due to armoring and sea level rise will in turn result in loss of public beach access, tourism losses, losses of marine mammal haul-out area and sandy beach habitat, and loss of beach buffering capacity against future bluff erosion.”

On page 1 of the NOP, it states “The City is implementing a project to protect and maintain existing infrastructure along Esplanade Avenue.” The Draft EIR should further clarify what existing infrastructure is being protected on the bluff and whether the proposed improvements are allowable under the Local Coastal Plan. As sea level continues to rise, staff anticipates receiving more applications for shoreline protective structures and large-scale beach nourishment projects to protect upland development from erosion. In many circumstances, at least portions of these protective structures and beach nourishment projects will be proposed on State sovereign lands. Commission staff acknowledges that shoreline protective structures are necessary in some circumstances to protect existing structures. However, it is equally important to assess whether portions of protective structures are actually necessary and can be installed or moved more landward or removed completely in order to maximize or uncover beach area and improve lateral public beach access.

### Cultural and Tribal Resources

- Title to Resources: The Draft EIR should mention that the title to all archaeological sites and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the California State Lands Commission (Pub. Resources Code, § 6313). Commission staff requests that the City consult with Staff Attorney Jamie Garrett, should any cultural resources on State lands be discovered during construction of the proposed Project. In addition, Commission staff requests that the following statement be included in the EIR’s Mitigation and Monitoring Plan: “The final disposition of archaeological, historical, and paleontological resources recovered on State lands under the jurisdiction of the State Lands Commission must be approved by the Commission.”
- Tribal Engagement and Consideration of Tribal Cultural Resources: Commission staff recommends that the Draft EIR reflect the September 2016 update to the State CEQA Guidelines Appendix G Checklist Form (see [https://www.opr.ca.gov/s\\_ab52.php](https://www.opr.ca.gov/s_ab52.php)) and include the discussion of Tribal engagement and consideration of Tribal Cultural Resources in order to demonstrate compliance with AB 52 (Gatto; Stats. 2014, ch. 532), which applies to all CEQA projects initiated after July 1, 2015. The Draft EIR should

comply with AB 52 provisions, which provide procedural and substantive requirements for lead agency consultation with California Native American Tribes, consideration of effects on Tribal Cultural Resources (as defined in Pub. Resources Code, § 21074), and examples of mitigation measures to avoid or minimize impacts to these resources. Even if no Tribe has submitted a consultation notification request for the Project area covered by the Draft EIR, the City should:

- a. Contact the Native American Heritage Commission to obtain a general list of interested Tribes for the Project area
- b. Include the results of this inquiry within the Draft EIR
- c. Disclose and analyze potentially significant effects to Tribal Cultural Resources and avoid impacts when feasible

Since the NOP does not disclose if notification or outreach to interested Tribes has occurred and does not document their response, Commission staff recommends that the City include this information in the Draft EIR to maintain a clear record of the City's efforts to comply with AB 52.

### Recreation

The Draft EIR should thoroughly analyze impacts to public access and recreation during and after construction of the proposed improvements both on the bluff (as mentioned on page 3 of the NOP), and on the beach to assure safe and continued access to the beach by the public. In addition, although not mentioned in the NOP's project description, a figure included in the scoping slides indicates the addition of a staircase from the bluff to the beach below. The Draft EIR should clarify how this staircase would be constructed and maintained in perpetuity.

### Alternatives

- Alternatives: No alternatives were detailed in the NOP. In addition to describing mitigation measures that would avoid or reduce the potentially significant impacts of the Project, the City should identify and analyze a range of reasonable alternatives to the proposed Project that would attain most of the Project objectives while avoiding or reducing one or more of the potentially significant impacts (see State CEQA Guidelines, § 15126.6).

### Environmental Justice

- Environmental justice is defined by California law as "the fair treatment and meaningful involvement of people of all races, cultures, and incomes with

respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." (Gov. Code § 65040.12) This definition is consistent with the Public Trust Doctrine's principle that management of trust lands is for the benefit of all people.

The Commission adopted an updated [Environmental Justice Policy and Implementation Blueprint](#) in December 2018 to ensure that environmental justice is an essential consideration in the agency's processes, decisions, and programs. The twelve goals outlined in the Policy reflect an urgent need to address the inequities of the past, so they do not continue. Through its policy, the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations.

Although not legally required in a CEQA document, Commission staff suggests that the City include a section describing the environmental justice community outreach and engagement undertaken in developing the Draft EIR and the results of such outreach. The California Office of Environmental Health Hazard Assessment developed the [CalEnviroScreen](#) mapping tool to assist agencies with locating census tracts near proposed projects and identifying the environmental burdens, should there be any, that disproportionately impact those communities. Environmental justice communities often lack access to the decision-making process and experience barriers to becoming involved in that process. It is crucial that these communities are consulted as early as possible in the project planning process. Commission staff strongly recommends using the [CalEnviroScreen](#) tool and then, as applicable, reaching out through local community organizations, such as the [California Environmental Justice Alliance](#). Engaging in early outreach will facilitate more equitable access for all community members. In this manner, the CEQA public comment process can improve and provide an opportunity for more members of the public to provide input related to environmental justice. Commission staff also recommends incorporating or addressing opportunities for community engagement in mitigation measures. Commission staff will review the environmental justice outreach and associated results as part of any future Commission action.

Thank you for the opportunity to comment on the NOP for the Project. As a trustee and responsible agency, Commission staff requests that you consult with us on this Project and keep us advised of changes to the Project Description and all other important developments. Please send additional information on the Project to the Commission staff listed below as the Draft EIR is being prepared.

Please refer questions concerning environmental review to Cynthia Herzog, Senior Environmental Scientist, at (916) 574-1310 or [cynthia.herzog@slc.ca.gov](mailto:cynthia.herzog@slc.ca.gov).

For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Staff Attorney Jamie Garrett, at (916) 574-0398 or [jamie.garrett@slc.ca.gov](mailto:jamie.garrett@slc.ca.gov). For questions concerning Commission leasing jurisdiction, please contact Kenneth Foster, Public Lands Manager, at (916) 574-2555 or [kenneth.foster@slc.ca.gov](mailto:kenneth.foster@slc.ca.gov).

Sincerely,



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Eric Gillies, Assistant Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
C. Herzog, Commission  
K. Foster, Commission  
J. Garrett, Commission