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*Via Email*

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Michael Schaller, Senior Planner  
San Mateo County Planning Department  
455 County Center, 2nd Floor  
Redwood City, CA 94063  
[mschaller@smcgov.org](mailto:mschaller@smcgov.org)

**RE: Gray Whale Cove Pedestrian Crossing Initial Study / Negative Declaration**

Dear Mr. Schaller,

This comment is submitted on behalf of the Sierra Club, Loma Prieta Chapter, regarding the Gray Whale Cove Pedestrian Crossing Initial Study and proposed Negative Declaration (IS/ND). For the reasons provided below, Sierra Club urges San Mateo County to prepare an Environmental Impact Report on this proposed project, and to correct the legal issues identified below.

**The Substantial Evidence of Potentially Significant Adverse Impacts Triggers the Need to Prepare an Environmental Impact Report**

An EIR “shall” be prepared where, as here, “there is substantial evidence, in light of the whole record before the lead agency, that the project *may* have a significant effect on the environment.” Pub. Res. Code § 21080(d), emphasis added. If there is substantial evidence supporting a “fair argument” that a project “may” have a significant environmental effect, the lead agency “shall” prepare an EIR. CEQA Guideline 15064(a)(1); *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 112, 1135. The fair argument standard provides a “low threshold” for requiring the preparation of an EIR, with a preference for resolving doubts in favor of an EIR. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84; *Architectural Heritage Assn. v. County of Monterey* (2004) 122 Cal.App. 4th 1095, 1110.

There is substantial evidence before San Mateo County that the Gray Whale Cove Pedestrian Crossing project will have potentially significant adverse environmental effects on California red-legged frog and their habitat, San Francisco garter snake and their habitat, sensitive bird species and their habitat, and on ESHA and that these significant impacts will not be reduced by proposed mitigation measures. See the comments of Shawn Smallwood, PhD, and William Leo Leon submitted herewith.

“Substantial evidence” is “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other

conclusions might also be reached.” CEQA Guideline 15384(a). Before San Mateo County are numerous facts, reasonable assumptions predicated upon facts, as well as expert opinions supported by fact that the Gray Whale Cove Pedestrian Crossing project will have potentially significant adverse impacts. CEQA Guideline 15384(b).

### **Proposed San Francisco Garter Snake Mitigation Will Violate California Fish & Game Code 5050**

The San Francisco garter snake is a fully protected species under California Fish & Game Code 5050, and any take of this snake is prohibited. (Fish & G. Code § 5050, subd.(b)(2).) Gray Whale Cove's proposed mitigation measures include capture of San Francisco garter snake. The California Supreme Court has held that an "agency may not rely in a CEQA document on the prospect of capture and relocation [of a fully protected species] as mitigating a project's adverse impacts." *Ctr. for Biological Diversity v. Dep't of Fish & Wildlife* (2016) 62 Cal. 4th 204, 232. Here “conservation measures” #2 and #4 for the Gray Whale Cove Pedestrian Crossing include snake capture, and thus the project as proposed violates State law.

In addition, the IS/ND is flawed because it fails to disclose to the public that the San Francisco garter snake is a “fully protected species” and that any take of this snake is prohibited. (Fish & G. Code § 5050, subd.(b)(2).)

### **The Initial Study and Negative Declaration Do Not Discuss If The Project Site And Surrounding Area Is ESHA under the Coastal Act.**

The IS / ND ignores its obligation to integrate CEQA review with the requirements of the Coastal Act and to consult with the California Coastal Commission. CEQA sets out a fundamental policy requiring local agencies to “integrate the requirements of this division with planning and environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively.” Pub. Res. Code § 21003, subd. (a). An agency must integrate CEQA requirements with other environmental review and consulting requirements. CEQA Guideline 15006, subd. (i). Toward that end, agencies are encouraged to consult with state and local responsible agencies before preparation of an environmental impact report so that the document will meet the needs of all the agencies which will use it. CEQA Guideline 15006, subd. (g). As soon as an agency has determined that an Initial Study will be required for the project, the agency must consult informally with all Responsible Agencies and all Trustee Agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a Negative Declaration should be prepared. CEQA Guideline 15063, subd. (g).

This project is in the coastal zone, and the project will require a Coastal Development Permit from San Mateo County. Therefore, it is incumbent upon San Mateo County to evaluate the proposed project for its effects on ESHA under San Mateo County’s LCP and the Coastal Act, and to consult with the California Coastal Commission.

Under the Coastal Act “Environmentally sensitive areas” are any area in which animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities. Pub. Res. Code § 30107.5. The San Mateo County LCP defines Environmentally Sensitive Areas as habitats containing or supporting rare or endangered species, intermittent streams, as well as coastal areas containing breeding or nesting sites and coastal areas used by migratory and resident water associated birds for resting areas and feeding. LCP 7.1.

Given the presence on the project site and nearby of California red-legged frog and their larvae, habitat for the listed San Francisco garter snake, the intermittent Green Valley Creek, and coastal areas used by migratory and sensitive birds for resting, feeding, and likely nesting (see Smallwood comments submitted herewith), it is incumbent upon San Mateo County to disclose this ESHA to the public, consult with the California Coastal Commission as part of the County’s CEQA review, and analyze potential project impacts on the ESHA in the County’s environmental review document. It is insufficient for the IS/ND to analyze the impacts of the Gray Whale pedestrian crossing project, including those on sensitive habitat areas, without accounting for potential ESHA. *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal. 5th 918, 936-937.

ESHA are given enhanced protection by the Coastal Act and the San Mateo County LCP. ESHA must be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. Pub. Res. Code § 30240, subd. (a); see also LCP 7.3(a). Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas. Pub. Res. Code § 30240, subd. (b); see also LCP 7.3(b).

#### **4) The IS/ND Fails To Consider the Habitat Conservation Plan for Pacific Gas and Electric Company's San Francisco Bay Area Operations and Maintenance**

The IS/ ND erroneously states that the project site is not within the boundaries of any conservation plan, and thus no conflict with an adopted HCP. In fact, the project is within the boundaries of the Habitat Conservation Plan for Pacific Gas and Electric Company's San Francisco Bay Area Operations and Maintenance, and therefore must be evaluated for any conflict. See <https://www.fws.gov/sacramento/outreach/2017/11-22/>. See also <https://www.federalregister.gov/documents/2017/03/24/2017-05856/habitat-conservation-plan-for-pacific-gas-and-electric-companys-san-francisco-bay-area-operations>

Sincerely,



Brian Gaffney